PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELFIN CALISO, ACCUSED-APPELLANT.

G.R. No. 183830. October 19, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The decisive question that seeks an answer is whether the identification of the perpetrator of the crime by an eyewitness who did not get a look at the face of the perpetrator was reliable and positive enough to support the conviction of appellant Delfin Caliso (Caliso).

Caliso was arraigned and tried for rape with homicide, but the Regional Trial Court (RTC), Branch 21, in Kapatagan, Lanao del Norte found him guilty of murder for the killing of AAA,[1] a mentally-retarded 16-year old girl, and sentenced him to death in its decision dated August 19, 2002.[2] The appeal of the conviction was brought automatically to the Court. On June 28, 2005,[3] the Court transferred the records to the Court of Appeals (CA) for intermediate review pursuant to the ruling in People v. Mateo.[4] On October 26, 2007,[5] the CA, although affirming the conviction, reduced the penalty to reclusion perpetua and modified the civil awards. Now, Caliso is before us in a final bid to overturn his conviction.

Antecedents

The information dated August 5, 1997 charged Caliso with rape with homicide perpetrated in the following manner:

> That on or about the 5[th] day of June, 1997, at Kapatagan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one AAA, who is a minor of 16 years old and a mentally retarded girl, against her will and consent; that on the occasion of said rape and in furtherance of the accused's criminal designs, did then and there willfully, unlawfully and feloniously, with intent to kill, and taking advantage of superior strength, attack, assault and use personal violence upon said AAA by mauling her, pulling her towards a muddy water and submerging her underneath, which caused the death of said AAA soon thereafter.
>
> CONTRARY to and in VIOLATION of Article 335 of the Revised Penal Code in relation to R.A. 7659, otherwise known as the "Heinous Crimes Law".[6]

At his arraignment on November 12, 1997,[7] Caliso pleaded not guilty to the charge.

The records show that AAA died on June 5, 1997 at around 11:00 am in the river located in Barangay Tiacongan, Kapatagan, Lanao Del Norte; that the immediate cause of her death was asphyxia, secondary to drowning due to smothering; that the lone eyewitness, 34-year old Soledad Amegable (Amegable), had been clearing her farm when she heard the anguished cries of a girl pleading for mercy: Please stop noy, it is painful noy!;[8] that the cries came from an area with lush bamboo growth that made it difficult for Amegable to see what was going on; that Amegable subsequently heard sounds of beating and mauling that soon ended the girl's cries; that Amegable

then proceeded to get a better glimpse of what was happening, hiding behind a cluster of banana trees in order not to be seen, and from there she saw a man wearing gray short pants bearing the number "11" mark, who dragged a girl's limp body into the river, where he submerged the girl into the knee-high muddy water and stood over her body; that he later lifted the limp body and tossed it to deeper water; that he next jumped into the other side of the river; that in that whole time, Amegable could not have a look at his face because he always had his back turned towards her;[9] that she nonetheless insisted that the man was Caliso, whose physical features she was familiar with due to having seen him pass by their barangay several times prior to the incident;[10] that after the man fled the crime scene, Amegable went straight to her house and told her husband what she had witnessed; and that her husband instantly reported the incident to the barangay chairman.

It appears that one SPO3 Romulo R. Pancipanci declared in an affidavit[11] that upon his station receiving the incident report on AAA's death at about 12:45 pm of June 5, 1997, he and two other officers proceeded to the crime scene to investigate; that he interviewed Amegable who identified the killer by his physical features and clothing (short pants); that based on such information, he traced Caliso as AAA's killer; and that Caliso gave an extrajudicial admission of the killing of AAA. However, the declarations in the affidavit remained worthless because the Prosecution did not present SPO3 Pancipanci as its witness.

Leo Bering, the barangay chairman of San Vicente, Kapatagan, Lanao Del Norte, attested that on the occasion of Caliso's arrest and his custodial interrogation, he heard Caliso admit to the investigating police officer the ownership of the short pants recovered from the crime scene; that the admission was the reason why SPO3 Pancipanci arrested Caliso from among the curious onlookers that had gathered in the area; that Amegable, who saw SPO3 Pancipanci's arrest of Caliso at the crime scene, surmised that Caliso had gone home and returned to the crime scene thereafter.[12]

Municipal Health Officer Dr. Joseph G.B. Fuentecilla conducted the post-mortem examination on the body of AAA on June 6, 1997, and found the following injuries, to wit:

> EXTERNAL FINDINGS:
>
> - The dead body was generally pale wearing a heavily soiled old sleeveless shirt and garter skirts.
>
> - The body was wet and heavily soiled with mud both nostrils and mouth was filled with mud.
>
> - The skin of hands and feet is bleached and corrugated in appearance.
>
> - 2 cm. linear lacerated wound on the left cheek (sic).
>
> - Multiple small (sic) reddish contusions on anterior neck area.
>
> - Circular hematoma formation 3 inches in diameter epigastric area of abdomen.
>
> - Four erythematus linear abrasion of the left cheek (sic).
>
> - Presence of a 6x8 inches bulge on the back just below the inferior angle of both scapula extending downwards.
>
> - The body was wearing an improperly placed underwear with the garter vertically oriented to the right stained with moderate amount of yellowish fecal material.
>
> - Minimal amount of pubic hair in the lower pubis with labia majora contracted and retracted.
>
> - There's no swelling abrasion, laceration, blood hematoma formation in the vulva. There were old healed hymenal lacerations at 5 and 9 o'clock position.

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- Vaginal canal admits one finger with no foreign body recovered (sic).

- Oval shaped contusion/hematoma 6 cm at its greatest diameter anterior surface middle 3[rd] left thigh.

- Presence of 2 contusion laceration 1x0.5 cm in size medial aspect left knee.[13]

Dr. Fuentecilla also conducted a physical examination on the body of Caliso and summed up his findings thusly:

P.E. FINDINGS:

- Presence of a 7x0.1 cm. horizontally averted linear erythematus contusion left side of neck (Post ?).

- 8x0.2 cm. reddish linear abrasion (probably a scratch mark) from the left midclavicular line extending to the left anterioraxillary line.

- Presence of 2 erythematus abrasion 3 cmx0.1 cm in average size dorsal surface (probably a scratch mark) middle 3[rd] left arm.

- 2.5 cm. abrasion dorsal surface middle and right forearm.

- Presence of a linear erythematus contusion (probably a scratch mark) 2x7 cm. in average size lateral boarder of scapula extending to left posterior axillary line.

- Presence of 2 oblique oriented erythematus contusion (probably a scratch mark) 14x022 cm. and 5x0.2 cm. in size respectively at the upper left flank of the lower back extending downward to the midline.

- Presence of 5 linear reddish pressure contusion parallel to each other with an average 5 cm left flank area.[14]

In his defense, Caliso denied the accusation and interposed an alibi, insisting that on the day of the killing, he plowed the rice field of Alac Yangyang from 7:00 am until 4:00 pm.

Yangyang corroborated Caliso's alibi, recalling that Caliso had plowed his rice field from 8 am to 4 pm of June 5, 1997. He further recalled that Caliso was in his farm around 12:00 noon because he brought lunch to Caliso. He conceded, however, that he was not aware where Caliso was at the time of the killing.

Ruling of the RTC
After trial, the RTC rendered its judgment on August 19, 2002, viz:

WHEREFORE, in view of the foregoing considerations, accused DELFIN CALISO is hereby sentenced to death and to indemnify the heirs of AAA in the amount of P50,000.00. The accused is also hereby ordered to pay the said heirs the amount of P50, 000.00 as exemplary damages.

SO ORDERED.[15]

The RTC found that rape could not be complexed with the killing of AAA because the old-healed hymenal lacerations of AAA and the fact that the victim's underwear had been irregularly placed could not establish the commission of carnal knowledge; that the examining physician also found no physical signs of rape on the body of AAA; and that as to the killing of AAA, the identification by Amegable that the man she had seen submerging AAA in the murky river was no other than Caliso himself was reliable.

Nevertheless, the RTC did not take into consideration the testimony of Bering on Caliso's extrajudicial admission of the ownership of the short pants because the pants were not presented as evidence and because the police officers involved did not testify about the pants in court.[16] The RTC cited the qualifying circumstance of abuse of superior strength to raise the crime from homicide to murder, regarding the word homicide in the information to be used in its generic sense as to include all types of killing.

Ruling of the CA

On intermediate review, the following errors were raised in the brief for the accused-appellant,[17] namely:

> i. The court a quo gravely erred in convicting the accused-appellant of the crime of murder despite the failure of the prosecution to prove his guilt beyond reasonable doubt;
>
> ii. The court a quo gravely erred in giving weight and credence to the incredible and inconsistent testimony of the prosecution witnesses.
>
> iii. The court a quo gravely erred in appreciating the qualifying aggravating circumstance of taking advantage of superior strength and the generic aggravating circumstance of disregard of sex[; and]
>
> iv. The court a quo gravely erred in imposing the death penalty.

As stated, the CA affirmed Caliso's conviction for murder based on the same ratiocinations the RTC had rendered. The CA also relied on the identification by Amegable of Caliso, despite his back being turned towards her during the commission of the crime. The CA ruled that she made a positive identification of Caliso as the perpetrator of the killing, observing that the incident happened at noon when the sun had been at its brightest, coupled with the fact that Amegable's view had not been obstructed by any object at the time that AAA's body had been submerged in the water; that the RTC expressly found her testimony as clear and straightforward and worthy of credence; that no reason existed why Amegable would falsely testify against Caliso; that Caliso did not prove the physical impossibility for him to be at the crime scene or at its immediate vicinity at the time of the incident, for both Barangay San Vicente, where AAA's body was found, and Barangay Tiacongan, where the rice field of Yangyang was located, were contiguous; that the attendant circumstance of abuse of superior strength qualified the killing of AAA to murder; that disregard of sex should not have been appreciated as an aggravating circumstance due to its not being alleged in the information and its not being proven during trial; and that the death penalty could not be imposed because of the passage of Republic Act No. 9346, prohibiting its imposition in the Philippines.

The CA decreed in its judgment, viz:

> WHEREFORE, the Decision of the Regional Trial Court dated August 19, 2002, finding appellant guilty of Murder, is hereby AFFIRMED with the MODIFICATION that appellant Delfin Caliso is sentenced to reclusion perpetua, and is directed to pay the victim's heirs the amount of P50,000.00 as moral damages, as well as the amount of P25,000.00 as exemplary damages, in addition to the civil indemnity of P50,000.00 he had been adjudged to pay by the trial court.
>
> SO ORDERED.[18]

Issue

The primordial issue is whether Amegable's identification of Caliso as the man who killed AAA at noon of July 5, 1997 was positive and reliable.

Ruling

The appeal is meritorious.

In every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.[19]

The CA rejected the challenge Caliso mounted against the reliability of his identification as the culprit by

Amegable in the following manner:[20]

> As to the first two errors raised, appellant contends that the testimony of Soledad Amegable was replete with discrepancies. Appellant avers, for instance, that Soledad failed to see the assailant's face. Moreover, considering the distance between where Soledad was supposedly hiding and where the incident transpired, appellant states that it was inconceivable for her to have heard and seen the incident. According to appellant, witness Soledad could not even remember if at that time, she hid behind a banana plant, or a coconut tree.
>
> At bench, the incident happened at noon, when the sun was at its brightest. Soledad could very well recognize appellant. Furthermore, notwithstanding the fact that it was his back that was facing her, she asserted being familiar with the physical features of appellant, considering that he frequented their barangay. Even during her cross-examination by the defense counsel, Soledad remained steadfast in categorically stating that she recognized appellant:
>
> Q: Mrs. Amegable, you said during your direct examination that you saw Delfin Caliso, the accused in this case, several times passed by your barangay, am I correct?
> A: Several times.
>
> Q: By any chance prior to the incident, did you talk to him?
> A: No, sir.
>
> Q: Are you acquainted with him?
> A: Yes, sir.
>
> Q: Even if he is in his back position?
> A: Yes, sir. (Emphasis Supplied)
>
> Given the circumstances as stated above, it was even probable that Soledad caught glimpses of the profile of the appellant at the time of the incident. She related, in addition, that when the victim was being submerged in the water, there was no object obstructing her view.
>
> The inconsistencies as alleged by appellant, between Soledad Amegable's declaration in court and her affidavit, such as the tree or plant from where she was hiding behind at the time of the incident, are insignificant and cannot negate appellant's criminal liability. Her whole attention was riveted to the incident that was unfolding before her. Besides, any such inconsistencies are minor. Slight contradictions are indicative of an unrehearsed testimony and could even serve to strengthen the witness' credibility. A witness who is telling the truth is not always expected to give a perfectly concise testimony, considering the lapse of time and the treachery of human memory.
>
> In fact, the testimony of a single eye-witness is sufficient to support a conviction, so long as such testimony is found to be clear and straightforward and worthy of credence by the trial court. Furthermore, over here, witness Soledad had no reason to testify falsely against appellant.
>
> Besides, the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court.
>
> Contrary to the CA's holding that the identification of Caliso based on Amegable's recognition of him was reliable, the Court considers the identification not reliable and beyond doubt as to meet the requirement of moral certainty.
>
> When is identification of the perpetrator of a crime positive and reliable enough for establishing his guilt beyond reasonable doubt?

The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct

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evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in People v. Gallarde,[21] to wit: (a) that by direct evidence, through an eyewitness to the very commission of the act; and (b) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

> xxx Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.[22]

Amegable asserted that she was familiar with Caliso because she had seen him pass by in her barangay several times prior to the killing. Such assertion indicates that she was obviously assuming that the killer was no other than Caliso. As matters stand, therefore, Caliso's conviction hangs by a single thread of evidence, the direct evidence of Amegable's identification of him as the perpetrator of the killing. But that single thread was thin, and cannot stand sincere scrutiny. In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. Her identification of Caliso as the perpetrator did not have unassailable reliability, the only means by which it might be said to be positive and sufficient. The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass unique physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.

A witness' familiarity with the accused, although accepted as basis for a positive identification, does not always pass the test of moral certainty due to the possibility of mistake.

No matter how honest Amegable's testimony might have been, her identification of Caliso by a sheer look at his back for a few minutes could not be regarded as positive enough to generate that moral certainty about Caliso being the perpetrator of the killing, absent other reliable circumstances showing him to be AAA's killer. Her identification of him in that manner lacked the qualities of exclusivity and uniqueness, even as it did not rule out her being mistaken. Indeed, there could be so many other individuals in the community where the crime was committed whose backs might have looked like Caliso's back. Moreover, many factors could have influenced her perception, including her lack of keenness of observation, her emotional stress of the moment, her proneness to suggestion from others, her excitement, and her tendency to assume. The extent of such factors are not part of the

records; hence, the trial court and the CA could not have taken them into consideration. But the influence of such varied factors could not simply be ignored or taken for granted, for it is even a well-known phenomenon that the members of the same family, whose familiarity with one another could be easily granted, often inaccurately identify one another through a sheer view of another's back. Certainly, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[23]

Amegable's recollection of the perpetrator wearing short pants bearing the number "11" did not enhance the reliability of her identification of Caliso. For one, such pants were not one-of-a-kind apparel, but generic. Also, they were not offered in evidence. Yet, even if they had been admitted in evidence, it remained doubtful that they could have been linked to Caliso without proof of his ownership or possession of them in the moments before the crime was perpetrated.

Nor did the lack of bad faith or ill motive on the part of Amegable to impute the killing to Caliso guarantee the reliability and accuracy of her identification of him. The dearth of competent additional evidence that eliminated the possibility of any human error in Amegable's identification of Caliso rendered her lack of bad faith or ill motive irrelevant and immaterial, for even the most sincere person could easily be mistaken about her impressions of persons involved in startling occurrences such as the crime committed against AAA. It is neither fair nor judicious, therefore, to have the lack of bad faith or ill motive on the part of Amegable raise her identification to the level of moral certainty.

The injuries found on the person of Caliso by Dr. Fuentecilla, as borne out by the medical certificate dated June 9, 1997,[24] did not support the culpability of Caliso. The injuries, which were mostly mere scratch marks,[25] were not even linked by the examining physician to the crime charged. Inasmuch as the injuries of Caliso might also have been due to other causes, including one related to his doing menial labor most of the time, their significance as evidence of guilt is nil.

In the absence of proof beyond reasonable doubt as to the identity of the culprit, the accused's constitutional right to be presumed innocent until the contrary is proved is not overcome, and he is entitled to an acquittal,[26] though his innocence may be doubted.[27] The constitutional presumption of innocence guaranteed to every individual is of primary importance, and the conviction of the accused must rest not on the weakness of the defense he put up but on the strength of the evidence for the Prosecution.[28]

WHEREFORE, the decision promulgated on October 26, 2007 is REVERSED and SET ASIDE for insufficiency of evidence, and accused-appellant Delfin Caliso is ACQUITTED of the crime of murder.

The Director of the Bureau of Corrections in Muntinlupa City is directed to forthwith release Delfin Caliso from confinement, unless there is another lawful cause warranting his further detention.

No pronouncement on costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

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[1] The real name of the victim and her immediate family are withheld per R.A. No. 7610 and R.A. No. 9262 (Anti-Violence Against Women and Their Children Act of 2004) and its implementing rules. See People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] Records, pp, 174-191.

[3] CA rollo, p. 122.

[4] G.R. Nos. 147678-87, July 7, 2004,433 SCRA 640.

[5] CA rollo, pp. 125-133; penned by Associate Justice Michael P. Elbinias, with Associate Justice TeresitaDy-Liacco Flores (retired) and Associate Justice Rodrigo F. Lim concurring.

[6] Records, p. 1.

[7] Id., p. 25.

[8] TSN, July 8, 1998, p. 4.

[9] TSN, September 2, 1998, p. 11.

[10] Id, p. 3.

[11] Records, p. 3.

[12] TSN, September 2, 1998, p. 12.

[13] Records, p. 73.

[14] Id., p. 74.

[15] Id., p. 191.

[16] Id., p. 186.

[17] CA rollo, pp. 54-68.

[18] Id., p. 133.

[19] People v. Pineda, G.R. No. 141644, May 27, 2004, 429 SCRA 478; People v. Esmale, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578; Tuason v. Court of Appeals, G.R. Nos. 113779-80, February 23, 1995, 241 SCRA 695.

[20] CA rollo, pp. 129-130.

[21] G.R. No. 133025, February 17, 2000, 325 SCRA 835.

[22] Id., at pp. 849-850; bold emphasis supplied.

[23] People v. Fronda, G.R. No. 130602, March 15, 2000; 328 SCRA 185; Natividad v. Court of Appeals, 98 SCRA 335, 346 [1980]; People v. Beltran, L-31860, November 29, 1974, 61 SCRA 246, 250; People v. Manambit, G.R. No. 1274445, April 18, 1997, 271 SCRA 344, 377; People v. Maongco, G.R. No. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[24] Records, p. 74.

[25] TSN, June 16, 1999, pp. 11.

[26] See Natividad v. Court of Appeals, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346.

[27] Pecho v. People, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533, Perez v. Sandiganbayan, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9; People v. Sadie, No. L-66907, April 14, 1987, 149 SCRA 240; U.S. v. Gutierrez, No. 1877, 4 Phil. 493 April 29, [1905].

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[28] People v. Pidia, G.R. No. 112264, November 10, 1995, 249 SCRA 687, 702.

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