

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL A. HIPONA, APPELLANT.

G.R. No. 185709. February 18, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Michael A. Hipona (appellant) was convicted by Decision of September 10, 2002[1] of the Regional Trial Court of Cagayan de Oro City, Branch 18 with "Rape with Homicide (and Robbery)" [sic]. His conviction was affirmed by the Court of Appeals by Decision of January 28, 2008.[2]

The Second Amended Information charged appellant together with Romulo Seva, Jr. and one John Doe with Robbery with Rape and Homicide as follows:

That on or about June 12, 2000 at 1:00 o'clock dawn at District 3, Isla Copa, Consolation, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the offended party (AAA) who is the Aunt of accused Michael A. Hipona, she being the younger sister of the accused's mother and against her will, that on occasion of the said rape, accused, with evident premeditation, treachery and abuse of superior strength, and dwelling, with intent to kill and pursuant to their conspiracy, choked and strangled said AAA which strangulation resulted to the victim's untimely death. That on the said occasion the victim's brown bag worth P3,800.00; cash money in the amount of no less than P5,000.00; and gold necklace were stolen by all accused but the gold necklace was later on recovered and confiscated in the person of accused Michael A. Hipona.[3] (emphasis and underscoring in the original)

The following facts are not disputed.

AAA[4] was found dead on the morning of June 12, 2000 in her house in Isla Copa, Consolation, Cagayan de Oro City. She was raped, physically manhandled and strangled, which eventually led to her death. Her furniture and belongings were found strewn on the floor. AAA's necklace with two heart-shaped pendants bearing her initials and handbag were likewise missing.

Upon investigation, the local police discovered a hole bored into the lawanit wall of the comfort room inside AAA's house, big enough for a person of medium build to enter. The main electrical switch behind a "shower curtain" located at the "back room" was turned off, drawing the police to infer that the perpetrator is familiar with the layout of AAA's house.

SPO1 Bladimir Agbalog of the local police thus called for a meeting of AAA's relatives during which AAA's sister BBB, who is appellant's mother, declared that her son-appellant had told her that "Mama, I'm sorry, I did it because I did not have the money," and he was thus apologizing for AAA's death. BBB executed an affidavit affirming appellant's confession.[5]

On the basis of BBB's information, the police arrested appellant on June 13, 2000 or the day after the commission

of the crime. He was at the time wearing AAA's missing necklace. When on even date he was presented to the media and his relatives, appellant apologized but qualified his participation in the crime, claiming that he only acted as a look-out, and attributed the crime to his co-accused Romulo B. Seva, Jr. (Seva) alias "Gerpacs" and a certain "Reypacs."

A day after his arrest or on June 14, 2000, appellant in an interview which was broadcasted, when asked by a radio reporter "Why did you do it to your aunt?," answered "Because of my friends and peers." When pressed if he was intoxicated or was on drugs when he "did it," appellant answered that he did it because of his friends and of poverty.

Appellant's co-accused Seva was later arrested on July 9, 2000, while "Reypacs" remained at large.

Appellant entered a plea of not guilty while Seva refused to enter a plea, hence, the trial court entered a "not guilty" plea on his behalf.

Post mortem examination of AAA revealed the following findings:

Rigor mortis, generalized, Livor mortis, back, buttocks, flanks, posterior aspect of neck and extremities (violaceous).

Face, markedly livid. Nailbeds, cyanotic. With extensive bilateral subconjunctival hemorrhages and injections. Petechial hemorrhages are likewise, noted on the face and upper parts of neck.

ABRASIONS, with fibrin: curvilinear; three (3) in number; measuring 1.1x0.4 cms., 0.8x0.3 cms., and 0.6x0.1 cm.; within an area of 2.8x1.1 cms. at the left side of the neck, antero-lateral aspect.

HEMATOMAS, violaceous; hemispherical in shapes, highly characteristic of bite marks: 3.5 x 0.4 cms. and 4.1x1.4 cms.; located at the right lower buccal region, lateral and medial aspects, respectively.

SOFT TISSUE DEFECT, with irregular edges; 2.5 x 2.7 cms.; left thigh, distal 3[rd], medial aspect; involving only the skin and underlying adipose tissues; with an approximate depth of 1.6 cms.

ABRASIONS, with fibrin, curvilinear in shapes; 0.6x0.3 cm. and 0.5x0.3cm., right upper eyelid; 0.4x0.2 cms. and 0.3x 0.2 cms, right upper arm, distal 3[rd], medial aspect; 0.5x0.3 cm., right forearm, proximal 3[rd], medial aspect; 0.7x0.3 cm., left elbow; 0.5x0.2 cm., left forearm, middle 3[rd], posterior aspect.

HEMATOMA, violaceous: 2.2x2.5 cms., right upper arm, middle 3[rd], medial aspect

DEPRESSED FRACTURE, body of thyroid cartilage, lateral aspects, bilateral.

PETECCHIAL HEMORRHAGES, subpleural, bilateral, and sub-epicardial.

x x x x

GENITAL FINDINGS:

Subject is menstruating. Pubic hairs, fully grown, abundant. Labiae majora and minora, both coaptated. Vestibular mucosa, pinkish, smooth. Hymen, short, thin with COMPLETE, FRESH HYMENAL LACERATION (with fibrin and fresh reddish soft blood clot) at 6:00 o'clock position, and extending to the posterior aspect of vestibular mucosa up to the area of fourchette. Hymenal orifice originally annular, admits a glass tube of 2.5 cms. diameter with moderate resistance. Vaginal rugosities, prominent. Cervix, firm. Uterus, small.

VVVVVVVVVVVV

CAUSE OF DEATH: Asphyxia by strangulation (manual).

REMARKS: Genital injury noted, age of which is compatible with sexual intercourse(s) with man/men on or about June 11-12 2000.[6] (underscoring supplied)

Albeit appellant's mother BBB refused to take the witness stand, SPO1 Agbalog and Consuelo Maravilla, another relative of appellant, testified on BBB's declaration given during the meeting of relatives.

Appellant refused to present evidence on his behalf while Seva presented evidence to controvert the evidence on his alleged participation in the crime.

By Decision of September 10, 2002, the trial court, after considering circumstantial evidence, viz:

Based on the foregoing circumstances, specially of his failure to explain why he was in possession of victim's stolen necklace with pendants, plus his confession to the media in the presence of his relatives, and to another radio reporter "live-on-the-air" about a day after his arrest, sealed his destiny to perdition and points to a conclusion beyond moral certainty that his hands were soiled and sullied by blood of his own Aunt.[7] (underscoring supplied),

found appellant guilty beyond reasonable doubt of "Rape with Homicide (and Robbery)." [sic]. It acquitted Seva. Thus the trial court disposed:

WHEREFORE, in view of all the foregoing, the Court finds accused MICHAEL HIPONA GUILTY beyond reasonable doubt of a special complex crime of Rape with Homicide (and Robbery) punishable under Articles 266-A and 266-B, of the Revised Penal Code, as amended by R.A. 8353, and after taking into account the generic aggravating circumstance of dwelling, without a mitigating circumstance, accused MICHAEL HIPONA is hereby sentenced and SO ORDERED to suffer the supreme penalty of DEATH by lethal injection, plus the accessory penalties. He is hereby SO ORDERED to pay the heirs the sum of One Hundred Thousand (P100,000.00) Pesos, as indemnity. Another One Hundred Thousand (P100,000.00) Pesos, as moral damages. In order to further give accused Michael Hipona a lesson that would serve as a warning to others, he is also directed and SO ORDERED to pay another Fifty Thousand (P50,000.00) Pesos, as exemplary damages.

For failure on the part of the prosecution to prove the guilt of the accused Romulo Seva, Jr., beyond reasonable doubt, it is SO ORDERED that he should be acquitted and it is hereby ACQUITTED of the crime charged, and is hereby released from custody unless detained for other legal ground.

Pursuant to Section 22 of R.A. 7659, and Section 10 of Rule 122 of the Rules of Court, let the entire record be forwarded to the Supreme Court for automatic review."[8] (emphasis in the original; underscoring supplied)

On elevation of the records of the case, the Court, following *People v. Mateo*, [9] referred the same to the Court of Appeals.

Appellant maintains that his guilt was not proven beyond reasonable doubt.[10]

As stated early on, the Court of Appeals sustained appellant's conviction. It, however, modified the penalty [11] imposed, and the amount of damages awarded by the trial court. Thus the appellate court, by the challenged Decision of January 28, 2008, disposed:

WHEREFORE, the Decision of the lower court is hereby AFFIRMED with the following MODIFICATIONS:

- That the penalty imposed is reclusion perpetua;
- That appellant is hereby ordered to pay the heirs of AAA the following: the sum of P100,000.00 as civil indemnity; P75,000.00 as moral damages; and P100,000.00 as exemplary damages.

SO ORDERED.[12] (underscoring supplied)

The records of the case were elevated to this Court in view of the Notice of Appeal filed by appellant. Both the People and appellant manifested that they were no longer filing any supplemental briefs.

The appeal is bereft of merit.

For circumstantial evidence to suffice to convict an accused, the following requisites must concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[13]

The confluence of the following established facts and circumstances sustains the appellate court's affirmance of appellant's conviction: First, appellant was frequently visiting AAA prior to her death, hence, his familiarity with the layout of the house; second, appellant admitted to his relatives and the media that he was present during commission of the crime, albeit only as a look-out; third, appellant was in possession of AAA's necklace at the time he was arrested; and fourth, appellant extrajudicially confessed to the radio reporter that he committed the crime due to his peers and because of poverty.

Appellant argues that he should only be held liable for robbery and not for the complex crime of "Rape with Homicide (and Robbery)" [sic]. He cites the testimony of prosecution witness Aida Vilorio-Magsipoc, DNA expert of the National Bureau of Investigation, that she found the vaginal smears taken from AAA to be negative of appellant's DNA.

Appellant's argument fails. Presence of spermatozoa is not essential in finding that rape was committed, the important consideration being not the emission of semen but the penetration of the female genitalia by the male organ.[14] As underlined above, the post-mortem examination of AAA's body revealed fresh hymenal lacerations which are consistent with findings of rape.

Not only does appellant's conviction rest on an unbroken chain of circumstantial evidence. It rests also on his unbridled admission to the media. *People v. Andan* instructs:

Appellant's confessions to the media were likewise properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence.[15] (underscoring supplied)

Appellant argues, however, that the questions posed to him by the radio broadcaster were vague for the latter did not specify what crime was being referred to when he questioned appellant. But, as the appellate court posited, appellant should have qualified his answer during the interview if indeed there was a need. Besides, he had the opportunity to clarify his answer to the interview during the trial. But, as stated earlier, he opted not to take the witness stand.

The Court gathers, however, that from the evidence for the prosecution, robbery was the main intent of appellant, and AAA's death resulted by reason of or on the occasion thereof. Following Article 294(1)[16] and Article 62(1)1[17] of the Revised Penal Code, rape should have been appreciated as an aggravating circumstance instead.[18]

A word on the amount of exemplary damages awarded. As the Court finds the award of P100,000 exemplary damages excessive, it reduces it to P25,000, in consonance with prevailing jurisprudence.[19]

WHEREFORE, the Decision of January 28, 2008 of the Court of Appeals is hereby **AFFIRMED** with **MODIFICATION**. Appellant, Michael A. Hipona is found guilty beyond reasonable doubt of Robbery with Homicide under Article 294(1) of the Revised Penal Code. He is accordingly sentenced to reclusion perpetua.

And the award of exemplary damages is reduced to P25,000. In all other respects, the Decision is affirmed.

SO ORDERED.

Puno, C.J., (Chairperson), Nachura[*], Bersamin, and Villarama, Jr., JJ., concur.

[*]Additional member per Special Order No. 821.

[1] CA rollo, pp. 41-69.

[2]Penned by Associate Justice Romulo V. Borja with the concurrence of Associate Justices Mario V. Lopez and Elihu A. Ybañez; rollo, pp. 5-32.

[3] CA rollo, p. 16.

[4] The Court shall withhold the real name of the victim and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victim/s or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. (People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419-420)

[5] Records, p. 5.

[6]Id. at 415-416.

[7] CA rollo, p. 139.

[8]Id. at 143-144.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[10] CA rollo, pp. 93-115.

[11] The imposition of death penalty has been prohibited by Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[12] Rollo, p. 31.

[13] Rules of Court, Rule 133, Sec. 4.

[14] People v. Bato, 382 Phil. 558, 566 (2000), citing People v. Sacapaño, 372 Phil. 543, 555 (1999); People v. Manuel, 358 Phil. 664, 672 (1998).

[15] Citing People v. Andan, G.R. No. 116437, March 3, 1997, 269 SCRA 95, 111 citing People v. Vizcarra, 115 SCRA 743, 752 (1982).

[16] Art. 294. Robbery with violence or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of from reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional

mutilation or arson. x x x (emphasis and underscoring supplied)

[17] Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

[18] People v. Ganal, 85 Phil. 743 (1950).

[19] People v. Basmayor, G.R. No. 182791, February 10, 2009, 578 SCRA 369.

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