

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSCORO PEDROSA, ACCUSED-APPELLANT.

G.R. No. 56457. January 27, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The appellant, Dioscoro Pedrosa, was convicted by the trial court[*] of the special complex crime of Rape with Homicide committed against Maria Belen Almaden, a nine-year old girl, and was accordingly sentenced to suffer the extreme penalty of death. The victim was brutally strangled to death after having been sexually assaulted and abused.

Before us on automatic review, the appellant, who was twenty three years old at the time of his conviction, three years after the commission of the crime, prays for acquittal, denying his participation in such a barbaric, inhumane, and heartless crime.

The evidence for the prosecution shows that in the afternoon of June 9, 1977, spouses Leovigildo Almaden and Erlinda Velasco Almaden left their house in Barangay Tacuranga, Palo, Leyte, to harvest palay in neighboring Barangay Capiwaran.[1] They left behind their daughter Maria, their 11-year old son Roberto, their 7-year old daughter Agnes, and a 13-year-old house guest, Delia Hezoli.[2]

The children went to bed at about 8:00 o'clock. Maria and Delia shared one bed while Agnes and Roberto slept in another.[3]

At about 11:30 p.m., Delia was awakened when someone tugged at her head. As she sat up on the edge of the bed, she heard Maria cry out in pain. She also heard the rattling sound of empty water gallon containers in the house. She was seized with fear because she sensed that the hand that touched her head was not Maria's. She groped for Maria but could not find her. Unable to find a match, she went out of the house to seek help from the neighbors. The first house she went to was that of Santiago Villas. When Villas refused to accompany her because his wife would not let him, she proceeded to the neighboring house of 70-year old Francisco Mas.[4]

In the meantime, Roberto, who slept only three (3) meters away from the bed of Delia and Maria,[5] had also been awakened when Maria cried out in pain. When he heard the sound of water containers striking one another, he stood up and went to the other bed but he found it empty. He sat down. Then he felt something hit his foot; it was the foot of a man wearing pants but without shoes. The man's pants had irregular and unravelled edges. Roberto went to the porch and sat down. A man emerged from the room and joined him. Roberto, from apparent fright, shouted, calling for Delia. The man became angry, telling Roberto that he would awaken the neighbors.[6]

Just then Francisco Mas and Delia arrived at the house of the Almadens with a lamp. They found the appellant sitting at the porch.[7] With the light provided by the lamp, Roberto saw that the man sitting on the porch was wearing the unevenly edged trousers of the man who hit his foot; he identified the man as the appellant.[8] Francisco tried to go up the house but he had to beat a hasty retreat when the appellant shouted at him not to

enter.[9]

After Francisco left, Delia, Roberto, and the appellant went inside and found Maria lying in bed. Dioscoro, the appellant, shook the girl, but she did not move. She was dead.[10]

That night, Agnes, Delia, and Roberto stayed together in one bed while the appellant lay beside Maria.[11]

The following morning, at about 9:00 o'clock, the appellant, who appeared restless and disturbed ("nalilisang"), went to the house of Nonilon Chiquillo, a 39-year old tuba gatherer of the same barrio, and asked him for Endrin, a poisonous insecticide, but Nonilon said he had none. The appellant left thereafter.[12]

Later that morning, the appellant accompanied Roberto to Bo. Capiwaran to inform Linda of her daughter's death.[13] They found Linda doing laundry work near a well in the yard. Maria's father, Leovigildo, who was working in the ricefield, heard the news and joined them. He heard the appellant tell his (Leovigildo's) wife: "Mama Linda, Maria Belen is already dead. She suffered from stomach ache and pains." The bereft Almadens went home.[14]

Upon reaching home, Leovigildo saw his dead child, Maria, lying on a bloodied blanket. When he examined her and found that the blood came from her vagina, he suspected foul play. He looked for a doctor, but finding none at the Maternity House, he reported the matter to the police. Patrolman Rogelio Montejo, who was assigned to investigate the case, accompanied Leovigildo back to his house. The two looked for the appellant but he was nowhere to be found. According to Linda, the appellant ran when Leovigildo went out to look for a doctor to examine their child. They found the appellant later in his house. When Pat. Montejo asked him if he was Dioscoro, the appellant's reply was, "I did not know what I was doing." The appellant was then brought to Leovigildo's house, to the room where the dead girl still lay. There, he was told by Pat. Montejo, "Look at what you have done." The appellant did not say anything. He did not deny the imputation of the police officer.[15]

Maria's body was brought to the Maternity House where Dr. Santiago Sudario, Jr. conducted an autopsy. His findings, as contained in his Post-Mortem Examination Report, are the following:

"FINDINGS:

1. Abrasion

-

confluent, 10 cm. x 8.5 chest, overlying median portion of both right and left clavicles down to sternum.

2. Contusion

-

6 cm. x 6 cm. from sub-man-dibular to front of neck.

3. Abrasion

-

linear 5 cm. #2 sub-mandibular

4. Abrasion

-

4.5 cm. x 2.5 cm. confluent axilla right.

5. Contusion

-

reddish 28.5 cm. x 17 cm. from medial portion of right arm, 5 cm. distal to right elbow to axillary area and to right scapular area.

6. Contusion

-

reddish whole area of back.

7. Contusion

-

reddish from upper border of both sides of public (sic) at back down heel of both right and left lower extremity.

8. Internal Examination:

1. Hymen - completely destroyed.
2. Vaginal canal admits 2 fingers with ease.
3. Vaginal wall lacerated at 9:00 o'clock 4 cm. x 3 cm. x 0.5 cm.

CAUSE OF DEATH:

Asphyxia due to Manual Strangulation."[16]

In his defense, appellant Dioscoro Pedrosa presented a different version of the tragic incident which was corroborated by the testimony of his elderly mother. His story follows:

On June 9, 1977, at about 11:00 in the evening, he was in his house sleeping. He was awakened by his mother, to heat her drinking herb (dolao ha soled). After he handed the drink to his mother, he heard someone calling for help; the voice came from the direction of the house of Leovigildo Almaden. It said, "Help, help, neighbors, Mano

Coroy, you come to us because here is Maria Belen Almaden, we do not know what is happening to her." He heard the voice three times. From his house to the Almadens is a distance of about 100 meters or less. He asked his mother if she heard the cries for help, and the latter told him to go and verify. So he went down with a torch and walked over to the Almadens' house. Upon arriving there, he saw Francisco (Pangcoy) Mas sitting on the porch. He asked Francisco what had happened; and the latter answered, "Maria is already dead." Upon hearing that, Dioscoro went up the house. He saw Maria Belen lying in bed. He shook her but she (Belen) did not move. He asked Delia Hezoli what happened to Maria Belen, but Delia answered that she did not know, that she only heard her say "agui". He (appellant) slept in the house of the Almadens until the following morning when he and Roberto Almaden went to Capiwaran to inform the parents of Maria Belen about her death. They found Erlinda Velasco, mother of Maria Belen washing clothes. He told her (Erlinda) that her daughter, Maria Belen, was already dead. When her husband, Leovigildo Almaden, arrived, Erlinda Velasco told him that their child Maria, was already dead. Leovigildo became enraged, but his wife was able to pacify him. They all proceeded back to Tacuranga. Upon arriving at their house, Mrs. Almaden requested appellant Dioscoro to fetch water. After fetching the water he requested permission to go home. Upon arriving at his house, she looked for his mother but she was not there and, as he was hungry, he went to her aunt's place and found his mother there. While they were eating, the police arrived and told Dioscoro that he was wanted at the municipal building. He went with the policemen and he was immediately placed inside the jail. He asked why he was being sent to jail and the policemen answered that someone had a score to settle with him, but no one came to see him in jail except his mother.[17] He denied having touched the foot of Roberto Almaden, and said that he was wearing short pants, not trousers. He denied having raped and killed Maria Belen. He believed the reason why the Almadens filed the case against him was because of a dispute over a piece of property which he and his mother and the Almadens had inherited from their grandmother and which was subsequently sold by Erlinda Velasco Almaden (victim's mother and first cousin of the appellant). Another reason was that he stopped gathering and delivering tuba to the Almadens.[18]

For us to consider is the following assignment of errors interposed by the appellant in his Brief:

I

THE TRIAL COURT ERRED IN HOLDING THAT THERE IS SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO CONVICT THE ACCUSED OF THE OFFENSE CHARGED.

II

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF ACCUSED AND HIS WITNESSES.

According to the appellant's Brief, the prosecution did not present any direct evidence to prove that the appellant was without a doubt the guilty party; and that not one of the witnesses for the prosecution actually saw the appellant rape and kill Maria Belen. The prosecution merely presented circumstantial evidence to establish certain facts and circumstances upon which may be drawn the inference that it was the accused who committed the offense.

The Court does not, however, rule out the overpowering force of circumstantial evidence to establish the guilt of the accused. Sec. 5 of Rule 133, Rules of Court, provides that "Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

In determining the sufficiency of circumstantial evidence to support a conviction, each case is to be determined on its own peculiar circumstances. All the facts and circumstances are to be considered together as a whole. When so considered, they may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose.[19]

After a thorough review of the records, we find no cogent reason to reverse the findings and conclusions of the trial court, the same being in accord with the evidence and the law.

The trial court, in its decision, made a lengthy list of established facts and circumstances which, taken collectively, led to the conviction of the appellant, to wit:

(a) That the accused, being a first cousin of the mother of the victim, had free access to the house of the victim. As a matter of fact, the accused, in his testimony, admitted that for eleven (11) months prior to and including November, 1976, he actually lived in the house of the victim. Such free access, and the relatively long period of time that the accused lived in the house of the victim, must have given him sufficient knowledge as to the "lay-out" of the house, together with the various means as to how one may effect entrance to, or exit, therefrom.

(b) The testimony of the accused to the effect that on June 9, 1977, he was living in his own house which was only about 80 meters away from the house of Leovigildo Almaden. Such apparent proximity in distance could have easily been negotiated by the accused.

(c) The testimony of Erlinda Velasco Almaden, the mother of the victim and the first cousin of the accused, to the effect that even prior to June 9, 1977 she had seen the accused hold the hair of her daughter Maria Belen, and that on June 9, 1977, before she left her house for Barrio Capiwaran, she saw Maria Belen crying, and when she asked her why she was crying, her daughter replied that whenever she is alone the accused would kiss her and hold her hair; that she confronted the accused and told him not to do such acts as Maria Belen was losing respect for him and would call him "Coroy" instead of "Tata". This allegation of Erlinda Velasco Almaden, directed as it is against her own flesh and blood, cannot but be given the imprimatur of truth by this Court. This allegation establishes the fact that the accused, on June 9, 1977, and even prior thereto, had a particular affection for Maria Belen, an affection which ended in tragedy. Further, and thus giving weight to the allegation of Erlinda Velasco Almaden, the accused, while under Cross-examination, admitted that he saw Maria Belen and her mother during the daytime on June 9, 1977.

(d) The testimony of Delia Hezoli, in answer to questions propounded by the Court, to the effect that on June 9, 1977, from 2:00 o'clock to 5:00 o'clock in the afternoon, the accused and one Pedro Escobido were drinking tuba in the house of Leovigildo Almaden, and that when Leovigildo Almaden left for Barrio Capiwaran, the accused and Pedro Escobido also left the house of Leovigildo Almaden. This allegation establishes the fact that the accused knew that the spouses Leovigildo Almaden and Erlinda Velasco would be in Barrio Capiwaran in the evening of June 9, 1977, and that only Delia Hezoli and the three children would be left in the house of Leovigildo Almaden.

(e) The testimony of Delia Hezoli and Roberto Almaden to the effect that when they awakened at about 11:00 o'clock in the evening of June 9, 1977, they heard Maria Belen cry out in pain. This allegation cannot but lead to the logical inference that Maria Belen was then under assault.

(f) The testimony of Delia Hezoli to the effect that she woke up because her head was touched, and the testimony of Roberto Almaden to the effect that when he was sitting on the edge of the bed where Delia Hezoli and Maria Belen had slept, but who were no longer there, his foot was hit by the foot of a person with no shoes but was wearing pants with irregular, unravelled edges. These allegations, taken in conjunction with the further testimony

of Roberto Almaden to the effect that when he was already sit-ting on the porch, to where he had gone to (sic) after his foot was hit, the person inside the room also went to the porch and whom he recognized to be the accused, definitely established the fact that the accused had been inside the room where Maria Belen went to sleep and where she was later assaulted.

(g) The act of the accused in getting angry at Roberto Almaden, when they were already both at the porch, for shouting and awakening the neighbors, and the act of the accused in preventing Francisco Mas, in a harsh manner, from going up the house, cannot but lead this Court to conclude that the accused wanted to prevent discovery of the fact that Maria Belen had been brutally and sexually assaulted. It may well be that the accused, at the time he committed the acts referred to, did not know that Maria Belen was already dead and could no longer speak.

(h) The testimony of the accused to the effect that the houses of Francisco Mas (Mang Pangcoy) and Santiago Villas are very near the house of Leovigildo Almaden. This allegation lends and gives credence to the testimony of Delia Hezoli to the effect that when she left the house of Leovigildo Almaden in the evening of June 9, 1977 seeking help, she went to the houses of Santiago Villas and Francisco Mas who were their nearest neighbors.

(i) The act of the accused, after discovering that Maria Belen was already dead, in lying down beside the dead body of Maria Belen. To the mind of the Court, such a strange and unusual act denotes not only affection, it is likewise, an act of repentance. This Court cannot think of any other logical inference for the simple reason that people do not usually lie down beside a dead body except for a compelling cause induced by the person's frame of mind.

(j) The act of the accused in running towards his house after Leovigildo Almaden left to go to the municipal building. To the mind of the Court, this act of the accused is akin to flight indicative of guilt. The leaving of Leovigildo Almaden to report the incident to the proper authorities must have engendered in the mind of the accused the feeling that he would soon be made to account for the death of Maria Belen, thus causing him to run away. The subsequent acts of the accused quite clearly indicate that such was his frame of mind when he fled from the premises of Leovigildo Almaden.

(k) The act of the accused, after running from the house of Leovigildo Almaden, in proceeding to the house of Nonilon Chiquillo and requesting for endrin, a poison commonly used in the barrios, cannot but lead this Court to believe that the accused, with the knowledge that the authorities would soon appear, had decided to kill himself. Such an act is indicative of a feeling of guilt and of great remorse, coupled with a feeling of fear and apprehension that he would soon be made to answer for the death of Maria Belen, and specially more so when, at the time the request was made, the accused appeared "restless and disturbed". This Court believes that this is the only logical inference that can satisfactorily explain the act of the accused in requesting for poison. The means of livelihood of the accused offers no justification for such an unusual request. The antecedent circumstances, collectively taken, does so (sic).

(l) The reply of the accused, when he was asked by Patrolman Rogelio Montejo whether he was Dioscoro Pedrosa, which reply was made not very long after he had failed to secure poison, such a reply being: "I did not know what I was doing." This utterance is an unusual utterance. It was not the proper answer to a simple question. It was made spon-taneously and instinctively, with the knowledge that his fear and apprehension had been transformed into reality – he was already being made to answer and to account for the death of Maria Belen. This utterance is an admission of guilt. It is part of the *res gestae*.

(m) The silence of the accused when he was made to look at the dead body of Maria Belen and told by the policeman to "look at what he had done". The only logical inference that could possibly be made of such a silence is that it is a confirmation of a previous admission of guilt.[20]

We agree with the trial court that the aforementioned established facts and circumstances ineluctably lead to the logical conclusion that the appellant is guilty of the crime charged beyond reasonable doubt. Such circumstances, duly proven with certainty by direct evidence, when taken collectively, unerringly point to the appellant as the person who raped and killed Maria Belen.

Anent the second assigned error, we generally desist from disturbing the conclusions of the trial court on the credibility of witnesses. The findings of fact of the trial judge must be accorded great weight by an appellate tribunal for the latter can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written, translated words.[21]

The trial court stated in its decision that the witnesses for the prosecution testified in a frank and straightforward manner and showed no unwillingness nor hesitation in answering questions; that they testified with apparent sincerity and in a manner which indicated sufficient intelligence; that they testified to facts of which they had personal knowledge, and had the means and capacity of knowing and the opportunities of observing; and that there was no doubt, considering the circumstances then prevailing, that their attention and interest were focused upon the facts to which they respectively testified.

The star witnesses for the prosecution in this case are children of tender years. And from the mouths of children we get the truth.

An intelligent boy is undoubtedly the best observer to be found. The world begins to take him by storm with its thousand matters of interest; what the school and his daily life furnish cannot satisfy his overflowing and generous heart. He lays hold of everything new, striking, strange; all his senses are on the stretch to assimilate it as far as possible. No one notices a change in the house, no one discovers the bird's nest, no one observes anything out of the way in the fields; but nothing of that sort escapes the boy; everything which emerges above the monotonous level of daily life gives him a good opportunity for exercising his wits, for extending his knowledge, and for attracting the attention of his elders, to whom he communicates his discoveries. The spirit of the youth not having as yet been led astray by the necessities of life, its storms and battles, its factions and quarrels, he can freely abandon himself to everything which appears out of the way; his life has not yet been disturbed by education, though he often observes more clearly and accurately than any adult. Besides, he has already got some principles; lying is distasteful to him, because he thinks it mean; he is no stranger to the sentiment of self-respect, and he ever loses an opportunity of being right in what he affirms. Thus he is, as a rule, but little influenced by the suggestions of others, and he describes objects and occurrences as he has really seen them. We say again that an intelligent boy is as a rule the best witness in the world.[22]

Truly, children of sound mind are likely to be more observant of incidents which take place within their view than older persons, so their testimony is likely to be more correct and truthful than that of older persons, and where once established that they have fully understood the nature and character of an oath, as in this case before us, their testimony should be given full faith and credence.[23]

Moreover, Erlinda Velasco Almaden and Roberto Almaden are very close relatives of the appellant. We find no reason for them to falsely testify against a close relative (the appellant) regarding such a heinous crime.

Furthermore, no evidence was adduced as to why Francisco Mas, a neighbor of the appellant and already 70 years old when he testified, should impute false statements to the appellant. Neither was there any impeaching evidence offered against the testimony of prosecution witness Nonilon Chiquillo.

The crime charged against the appellant is Rape with Homicide. The Revised Penal Code, as amended, provides that "[w]hen by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death." [24] The gravity of the crime ordinarily would compel us to impose that penalty but which we can not do due to the constitutional prohibition.

WHEREFORE, premises considered, the conviction rendered by the trial court is hereby AFFIRMED. However, due to the prohibition on the imposition of the death penalty under Section 19, Article III of the 1987 Constitution, the appellant, Dioscoro Pedrosa, is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the late Maria Belen Almaden the amount of Thirty Thousand Pesos (P30,000.00). Costs against the appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[*]Circuit Criminal Court, 13th Judicial District, at Palo, Leyte; Hon. Filomeno D. Arteche, Jr., presiding judge, October 21, 1980.

[1] T.s.n., Sept. 19, 1978, 18.

[2] T.s.n., Dec. 8, 1977, 3-4.

[3] Id., 4; t.s.n., Aug. 14, 1978, 5.

[4] T.s.n., Dec. 8, 1977, 5-6.

[5] Id., 4.

[6] T.s.n., April 27, 1978, 30-36.

[7] T.s.n., Dec. 8, 1977, 7; t.s.n., Jan. 20, 1978, 4.

[8] T.s.n., 7,10; t.s.n., Aug. 14, 1978.

[9] T.s.n., Dec. 8, 1977, 6; t.s.n., Jan. 26, 1978, 4-5; t.s.n., April 27, 1978, 36.

[10] T.s.n., December 8, 1977, 8-9.

[11] T.s.n., April 27, 1978, 37.

[12] T.s.n., Sept. 18, 1978, 14-16.

[13] T.s.n., Dec. 8, 1977, 10.

[14] T.s.n., Sept. 18, 1978, 20-22.

[15] T.s.n., Sept. 19, 1978, 22-26.

[16] Rollo, 9.

[17] T.s.n., Aug. 23, 1979, 56-77.

[18] T.s.n., Aug. 23 1979, 67-71.

[19] People v. Nabaluna, No. L-60087, July 7, 1986.

[20] Decision, 29-34; Rollo, 68-73.

[21] People v. Tadyo, Nos. L-37928-29, September 29, 1987, 154 SCRA 349.

[22] People vs. Bustos, et al., 45 Phil. 9 (1923).

[23] People v. Alambra, et al., 55 Phil. 578 (1931).

[24] Article 335.

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