

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELINO GUARNES Y LANZUELA, ACCUSED-APPELLANT.

G.R. No. 65175. April 15, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an automatic review of the decision of the Regional Trial Court of Pili, Camarines Sur (Branch 31) which imposed on the accused-appellant Marcelino Guarnes the supreme penalty of death. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Marcelino Guarnes v. Lanzuela guilty beyond reasonable doubt of the special complex crime of rape with homicide punishable under Article 335 of the Revised Penal Code as amended by R.A. No. 2632 and R.A. 4111 and hereby sentences said accused with the penalty of death." (p. 387, Original Records)

Appellant Guarnes was initially charged with the crime of murder with rape in a complaint filed by the Chief of Police of Bula, Camarines Sur before the Municipal Court of said municipality. During the preliminary investigation held on September 16, 1975, the accused-appellant, duly assisted by a counsel-de-oficio pleaded guilty to the crime charged. Hence, an information was filed against him on October 2, 1975 alleging the following:

"The undersigned Special Counsel accuses MARCELINO GUARNES y LANZUELA of the crime of RAPE WITH HOMICIDE defined and punished under No. 3, last par., thereof, of Art. 335, as amended, of the Revised Penal Code, committed as follows:

"That on or about the 2nd day of September, 1975, in the sitio of Badbaron, barrio of Palsong, municipality of Bula, province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and violence, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Marcelina Apundar, a woman, against her will and consent and without her giving provocation to it; and that the said accused, by reason and on the occasion of the said rape, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and strangulate with his hands said Marcelina Apundar and placed earth and leaves of bamboo on the latter's nose and mouth, thereby preventing her from breathing and as a consequence thereof said Marcelina Apundar died of asphyxiation.

"That in the commission of the said crime the aggravating circumstance of uninhabited place was attendant such circumstance having facilitated the commission thereof.

"That as a consequence of the unlawful acts of the accused the heirs of the deceased suffered the following items of damages, to wit:

- "1. P12,000.00 - as an indemnity for her death;
- "2. P 5,000.00 - for loss of earning capacity; and

"3. P10,000.00 - for moral damages, or a total of

Twenty Seven Thousand Pesos (P27,000.00), Philippine Currency, excluding actual damages which will be proved during the trial.

"Acts Contrary to Law." (p. 18, Original Records)

Upon arraignment on November 12, 1975, Guarnes, with the assistance of counsel-de-oficio again pleaded guilty to the crime charged. (p. 38, Original Records)

The evidence presented disclosed the following facts:

xxx xxx xxx

"x x x [I]n the afternoon of September 1, 1975 at about 4:00 o'clock, Avelino Balbuena, the father-in-law of the accused, Marcelino Guarnes, visited Romulo Ballecer at the latter's residence at Palsong, Bula, Camarines Sur. Ballecer had just arrived that afternoon from the 'Our Lady Mediatrix Hospital' at Iriga City, after a two-day confinement thereat (Exh. V). During that visit, Ballecer asked Balbuena to spray his palay plants with insecticide. Having committed himself to do the same work for another Balbuena offered the services of his son-in-law, the accused herein, to do the job. In the morning of the next day, September 2, 1975, the accused reported to Romulo Ballecer to spray with insecticide the latter's palay at his nearby ricefield located only at about 15 meters away from his house. By eleven (11:00) o'clock that morning, accused Guarnes was finished in his work. Considering that the accused has also to spray with insecticide the palay of his father-in-law, Avelino Balbuena, and so with the permission of Ballecer, accused filled the sprayer with insecticide and then left. By about one (1:00) o'clock in the afternoon of that day, the accused came back to the house of Romulo Ballecer to return the sprayer. Ballecer thereupon offered him food for lunch. The accused appeared unable to eat. He was noticed to have taken only two mouthfuls. At that instance Ballecer noticed the scratches on the neck of the accused. In answer to the query of Ballecer about the scratches, the accused answered that they were probably the result of his spraying insecticide in the ricefields. Thereafter, Ballecer instructed the accused to prepare the carabao and the sled for the loading of the coconuts of the accused's father-in-law, after which the accused left with the carabao and sled.

"The next day, September 3, 1975, at about 1:30 o'clock in the afternoon, Medes Tayer went to the house of Romulo Ballecer informing him that the body of a dead person was found in the land of Ballecer's mother-in-law, Mina Sepaga. Ballecer went down his house and fetched Councilman Ubaldo. The two proceeded to the place where the dead body was seen. That was about two (2:00) o'clock in the afternoon. Later, Police Corporal Antonio Lopez arrived and joined Ballecer and Ubaldo. While looking at the scene they noticed near the dead body foot prints of unusual shape. That night, a little after midnight, at about one (1:00) o'clock (early morning of September 4, 1975) Cpl. Lopez and a few others went to the house of Romulo Ballecer. Cpl. Lopez asked Ballecer about anyone who came to his house recently. Ballecer informed Cpl. Lopez that accused went to his house the day previous. It was in the course of their conversation that Ballecer reminded Cpl. Lopez of the similarity of the shape of the foot prints at the crime scene to those of the feet of the accused, Marcelino Guarnes. Cpl. Lopez recognized the foot prints too because in 1973 he apprehended the accused, Marcelino Guarnes, for the theft of a cavan of rice from the Lanzuela Rice Mill also in Bula, Camarines Sur, and the foot prints of Guarnes were also found in the scene of the crime. He remembered those foot prints to be similar to the foot prints found near the dead body. The shape of the feet of Guarnes show that the toes are bent inward like those of the foot prints found near the dead body. Nobody among those in the area has feet similar in shape except Guarnes. It should be stated herein that with the consent of the accused the tracings of the shape of his feet were taken during the hearing and according to Ballecer they bore striking similarity to the foot prints found near the dead body (marked Court exhibit). Likewise, Ballecer also mentioned to Cpl. Lopez the scratches he noticed on the neck of Guarnes. Again, it is to be noted that the same scratches have been testified to by Dr. Angeles Federis which he noticed on the neck of the accused when he

saw the latter in his detention cell immediately after performing the autopsy on the dead body. Upon learning of the presence of the scratch marks, Cpl. Lopez, his companions and Ballecer, decided to proceed to the house of Avelino Balbuena, the father-in-law of the accused and where the latter resides. That place was at Badbaron, Bula, Camarines Sur. Upon arriving at Balbuena's house and after observing the place for sometime, Cpl. Lopez knocked at the door and he was met by the mother-in-law of the accused. Cpl. Lopez asked for Guarnes and the latter came out. When asked about his knowledge of the dead woman, he stammered in his answer. At that instance, Cpl. Lopez flashed the light of his flashlight at the neck of the accused and on seeing the scratches remarked that they were 'human scratches', but the accused remained silent. Cpl. Lopez then requested the accused to remove his clothes. When the accused obliged to the request, Cpl. Lopez found scratches on the breast of Guarnes. Lopez noticed four (4) scratches at about 2½ inches in length. He also noticed that the scratches had peeled skin and the direction of the scratches is going downward. With the permission of his mother-in-law the accused was invited by Cpl. Lopez to come with them. The group proceeded to the house of Councilman Ubaldo. As the group started walking, the accused verbally admitted to Cpl. Lopez having committed the offense against the dead woman. At the house of Councilman Ubaldo, Pat. Elorita who was with Cpl. Lopez, took down the statement of the accused. At 5:00 o'clock that morning of September 4, 1975, the accused was brought to the crime scene and photographs of the dead body and the scene of the incident were taken (Exhibits E, E-1, E-2, F-1, F-2, F-3, G-1, G-2, H-1, H-2, I-1, I-2, J-1, J-2, J-3 and K-1, K-2 and K-3). At the crime scene, the accused pointed, among others, to the carabao trail he trod on in going to the creek and the place in ascending therefrom. He pointed to the place where he sexually assaulted the victim (Exh. G-1) and the place where he dumped or placed her (Exh. H-1). On September 5, 1975, the formal typewritten statement of the accused was taken at the office of the Chief of Police of Bula, Camarines Sur. On September 9, 1975, the same was subscribed and sworn to before Hon. Mariano Fuentesbella, Judge of the Municipal Court of Bula, Camarines Sur. Judge Fuentesbella testified that he dismissed the policeman who accompanied the accused in his office. After going over the written statement by himself and finding the same to be an admission of guilt, the Judge read to the accused the whole written statement as written in the Bikol dialect. Admitting it to be his statement, the accused swore to it and thereafter signed it before the Judge.

"To prove the corpus delicti the prosecution presented Leonilo Apundar who identified the deceased victim to be Marcelina Apundar, his sister. An autopsy on the cadaver of the victim was performed by Dr. Angeles Federis, the Municipal Health Officer of the Capital town of Pili, Camarines Sur. His findings show that Marcelina A. Apundar died by asphyxia, strangulation (death certificate, Exh. S). His autopsy report (Exh. R) shows that the eyes were bulging with darkly ecchymatic eyelids which show that the pressure was applied at the neck. This means according to the Doctor, that there was manual strangulation applied immediately at the right side of the parotid area and around the neck and on the right side of the chestwall. Likewise, contusions appear on the right parotid area. This is the area at the angle of the mandible bounded circularly by the angular bone and the clavicle. The contusion could have been caused by hands according to the Doctor. Contusions also appear around the mouth going down sideways to the mandible. This contusion could have been caused by hands. Found in the mouth of the victim was dark colored clay filling up the oral cavity, together with the dislodged false upper denture. Internal findings show that the lungs were spongy with the outer section showing dark red blood, oozing. The right ventricle and auricle were filled with dark red blood. The myocardium was soft and friable. These indicate death by asphyxia by ligature, the Doctor said. An examination of the sex organ of the deceased revealed that she lost her virginity immediately before her death as shown by the coaptated labia minora and majora. This is revealed when resistance was encountered when a moderately sized speculum was inserted into the vagina. Hymenal lacerations were found at eleven (11:00) o'clock position. There were contusions around the introitus and there was presence of seminal fluid at the fornix, a structure located between the vaginal cavity and the cervix uterina. The contusions in the vaginal canal and the lacerations of the hymen could have been caused by a blunt instrument, like the human penis, the Doctor testified. Out of the seminal fluid a smear was prepared and examined microscopically. The smear was found positive of spermatozoa.

"Immediately after he performed the autopsy/postmortem examination (Exh. R) of the deceased, Dr. Federis

went to the detention cell of the accused and he found fingernail marks covering the whole circumference of his neck, characterized by swelling, puncture marks and discolorations". (pp. 377-380, Original Records)

After presentation of evidence by the prosecution, the defense was allowed to prove mitigating circumstances. However, the accused, then assisted by another counsel-de-oficio, filed a motion requesting that he be subjected to a mental examination and with the manifestation that he was withdrawing his plea of guilty to not guilty. (pp. 235-237, Original Records)

The results of the examination showed that the accused-appellant was free from psychosis or insanity (p. 242, Original Records). Trial resumed and a decision was rendered convicting him. He now assigns the following errors in support of his plea:

I

THE LOWER COURT ERRED IN CONVICTING THE DEPENDANT-APPELLANT OF THE CRIME CHARGED ON PURELY CIRCUMSTANTIAL EVIDENCE.

II

THE LOWER COURT ERRED IN NOT ACQUITTING THE DEPENDANT-APPELLANT OF THE CRIME CHARGED ON THE GROUND OF REASONABLE DOUBT.

(p. 2, Defendant-Appellant's Brief)

Both contentions are untenable because apart from the overwhelming strength of the circumstantial evidence, the records include the appellant's judicial statements which were corroborated by other evidence presented by the prosecution and the existence of some physical facts. We have to disregard the extra-judicial statement in view of the provision in the 1973 Constitution, Art. 4, Sec. 20 which includes among the rights of the accused "the right to remain silent and to counsel and to be informed of such right." Any confession obtained in violation of the provision is inadmissible in evidence against him. "Thus, even if the confession of the accused is gospel truth, since it was made without the assistance of counsel, it becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given." (People v. Pineda and Garcia, G.R. No. 72400, January 15, 1988).

Nevertheless, even without the confession, the evidence against the appellant remains strong.

The presence of the accused-appellant at the scene of the crime was adequately established. The records show that the scratches on his neck and breast appeared only after he sprayed insecticide in the fields. The accused contends that the scratches were results of the spraying. It must be noted, however, that the palay variety used on the farm does not grow beyond four feet and, therefore, cannot reach the neck of the accused who was above 5 feet. It is not explained how palay could inflict the kind of scratches found on the accused-appellant. Furthermore, the scratches were verified by Dr. Federis as finger nail marks (tsn., p. 95, Oct. 11, 1976). Despite the heavy work he had done in the field, the accused-appellant was noticed to have taken two mouthfuls only during his meal and seemed to be bothered (p. 184, tsn., Nov. 6, 1979). His behavior and actuations were not normal for a man who had been out in the fields working for several hours.

The appellant's foot prints near the victim's body, being of unusual shape were easily shown by witnesses to have been the same foot prints identified as those of the accused when he was previously arrested for a series of thefts in the community (p. 59, tsn., Dec. 9, 1975; p. 223, tsn., Feb. 4, 1980).

It was the accused-appellant who led the investigators to the place where the victim was way-laid and to the carabao trail going down to the spot from where the victim was dragged upwards to the place where she was

raped and killed. During the preliminary investigation conducted by the municipal judge of Bula, Camarines Sur, the accused-appellant admitted his guilt. He also pleaded guilty during the arraignment on November 12, 1975 although he was allowed to change this plea to "Not Guilty" after documentary evidence was presented and three witnesses had already testified for the prosecution.

As his defense, the appellant testified that Romulo Ballecer, the man who hired him to spray the ricefield, told him at about 11:00 o'clock that day of the incident that a girl whom Ballecer was courting would pass by and that he (Ballecer) was going to rape her. The accused-appellant states that under the threats of Ballecer and two other men - Alfredo Urbana and Mides Tayer, he (appellant Guarnes) way-laid the victim, dropped her across the ditch, and made possible the rapes committed by Ballecer, followed by Tayer, and then Urbana. He was then allegedly ordered by Ballecer to stay by the side of the road to act as guard or look-out. He testified that after Ballecer, Urbana and Tayer had committed the multiple rapes, the four of them fled to the house of Ballecer where he (Guarnes) was instructed to eat. After eating, the accused-appellant testified that he went home.

The testimony of the appellant about the multiple rapes is obviously a concoction but it definitely places him at the scene of the crime when rape was committed.

The accusations made by the accused-appellant against Ballecer, Urbana and Tayer were denied by the latter and reasons behind their being implicated were sufficiently explained.

Ballecer could not have committed the crime as he was not physically prepared to engage in such activity considering that he had just been released from the hospital as evidenced by his medical certificate (Exh. V, p. 178, tsn., Nov. 6, 1979). Compared to the baseless accusation by Guarnes, Ballecer's explanation regarding the imputation against him is more logical. It was Ballecer who gave leads to the police authorities (p. 183, tsn., Nov. 6, 1979) since it was he who noticed the scratches and the unusual behavior of Guarnes. Urbana and Tayer, on the other hand, never saw Ballecer on September 2, 1975 nor prior to that date. Their having been implicated was satisfactorily explained. Urbana was instrumental in the apprehension of Guarnes in August, 1975 when the accused escaped while he was under detention. Tayer was the one who fetched Cpl. Lopez who investigated the crime. Furthermore, the foot prints which were seen at the place of the crime belonged to only two (2) persons - the accused and the victim (p. 57 tsn., Dec. 9, 1975). The charges against the three are, therefore, without basis.

The appellant has failed to show any valid ground to reverse his conviction.

The accused-appellant's defense, apart from shifting the blame to three other persons, is a general denial. He contends that the burden rests on the prosecution to prove every element of the crime. This defense is without merit because the accused himself partly admitted his participation in the crime by way-laying the victim and acting as look-out. (p. 166, tsn., Feb. 28, 1979) Thus, even by his own version, he has to prove his non-culpability in order to be exempt from criminal liability.

We agree with the Solicitor General that the defense of Guarnes is far from convincing. It is illogical for Ballecer, Urbana and Tayer to force and/or threaten someone to help them in the commission of the rapes and run the risk of being exposed when they could have done it by themselves. Guarnes could have likewise exposed them from the moment the police knocked at their house but he chose to remain silent on the pretext that he was being intimidated and threatened. This reasoning cannot inspire belief because he had several opportunities to do so and yet he did not. Instead, he consistently admitted his guilt regardless of the presence or absence of people who allegedly threatened him and this, despite the fact that the charges had already been explained to him by the Judge (pp. 62-67, Original Records). It was only later that he changed his plea to not guilty.

The accused-appellant has failed to substantiate his allegation that the circumstantial evidences are not consistent

with each other and not consistent with his guilt. The trial court found the evidences to be established facts duly attested to and proved by prosecution witnesses.

As held in *People v. Pineda and Garcia* (G.R. No. 72400, January 15, 1988), resort to circumstantial evidence is a necessity in the face of the Bill of Rights provision treating confessions without a counsel inadmissible in evidence. Circumstantial evidence is deemed sufficient to warrant a conviction when:

1. there is more than one circumstance;
2. the facts from which the inferences are derived are proven;
3. the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

"The requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof, as excluding the possibility of error, produces absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind." (*People v. Pineda and Garcia*, supra; Rule 134, Sec. 2, Rules of Court, *US v. Lasada*, 18 Phil. 90; and *People v. Lavarias*, 23 SCRA 1301).

All considered, the Court finds the accused GUILTY beyond reasonable doubt of the crime of RAPE with HOMICIDE.

WHEREFORE, the appealed judgment is hereby AFFIRMED except for the commutation of the death penalty to reclusion perpetua, pursuant to Section 19, Article III of the Constitution, and the increase in the indemnity to the heirs of the deceased, Marcelina Apundar, which shall be THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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