

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO ALBIOR Y YBIOA, CARLOS MANALANGSANG Y
BAKATANO, RODOLFO VASQUEZ Y BALUGO, JOHN DOE ALIAS
“JUN” AND PETER DOE ALI...**

G.R. No. 75034. June 30, 1988

Ponente: CORTES, J.

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CORTES, J.:

This is an appeal interposed by a suspected look-out sentenced to life imprisonment for robbery and the gruesome rape and slaying of a young nurse in her own bedroom.

Accused-appellant Francisco Albior was among those charged on the basis of the following information:

The undersigned Assistant City Fiscal accuses CARLOS MANALANGSANG Y BAKATANO, FRANCISCO ALBIOR Y YBIOA, PETER DOE ALIAS "BERNARDO" and JOHN DOE ALIAS "JUN," the true names and present whereabouts of the last two accused have not as yet been ascertained, as principals, and RODOLFO VASQUEZ Y BALUGO as accessory after the fact, of the crime of Robbery with Homicide with Rape committed as follows:

That on or about the 30[th] day of May 1984, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, nighttime purposely sought, with intent of gain and by means of force upon things, did then and there willfully, unlawfully and feloniously rob the house of FLORENCIO GARCES Y OPPUS at No. 12 Salary Street, GSIS Village, Project 8, this City, inhabited by the latter and his family, in the following manner, to wit: the accused pursuant to their conspiracy destroyed one of the window glass frames of complainant's house, thereby creating an opening not intended for entrance or egress, through which accused gained entrance and, once inside, accused Peter Doe Alias "Bernardo," with lewd designs and by means of violence and against her will had sexual intercourse with DANA MAY GARCES, after which, with intent to kill, attack, assault and employ personal violence against the said DANA MAY GARCES, by then and there hitting her with a wooden baluster on the different parts of her body, thereby inflicting upon her serious and mortal wounds, which were the direct and immediate cause of her death, after which, with intent of gain, take, rob, and carry away the following personal properties belonging to said Florencio O. Garces, to wit:

One (1) Royal typewriter
One (1) lady's watch
Two (2) bangle watches
One (1) GE flat iron with regulator
One (1) nurse moccasin shoes
One (1) bottle of perfume
One (1) pair of gold 18k lady's earrings
One (1) black ballpen
Three (3) rubber shoes (Adidas)

all valued in the total amount of P10,000.00, Philippine Currency, to the damage and prejudice of the owners thereof and of the heirs of the deceased Dana May Garces in such amount as may be awarded to them under the provisions of the Civil Code.

The accused RODOLFO VASQUEZ YBALUGO, having knowledge of the commission of the crime of Robbery, and without having participated therein either as principal or accomplice, did then and there take part subsequently to its commission by assisting the offenders to profit by the effects of the crime, that is, helping them to sell the goods.

Contrary to law. [Rollo, p. 25]

Upon arraignment, accused-appellant Albior, together with accused Manalangsang and Vasquez pleaded "not guilty" to the charge. Accused John Doe alias "Jun" and Peter Doe alias "Bernardo" remained at large. Subsequently, accused Manalangsang withdrew his plea of "not guilty" and changed it to "guilty" and he was correspondingly sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P10,000.00 and to pay one-third (1/3) of the costs, without subsidiary imprisonment in case of insolvency.

Accused-appellant Albior and accused Vasquez were duly tried.

After trial, the court a quo rendered judgment on October 24, 1984, finding accused-appellant Albior guilty beyond reasonable doubt of the crime of robbery with homicide with rape and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim the amount of P30,000.00, plus P20,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay one-third (1/3) of the costs. Accused Vasquez was found guilty beyond reasonable doubt as an accessory to the crime of robbery and was sentenced to suffer imprisonment for four (4) months and one (1) day of arresto mayor in its medium period, and to pay one-third (1/3) of the costs.

As accused Vasquez had already served the term of his penalty while under preventive detention, he was released while accused-appellant was transferred to the National Penitentiary for service of his sentence.

Thus, only accused-appellant Albior interposed an appeal. In his brief, accused-appellant assigned the following errors:

I. THE COURTS A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE HEARSAY AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II. THE COURT A QUO GRAVELY ERRED IN ADMITTING PROSECUTION EVIDENCE WHICH WERE OBTAINED IN VIOLATION OF THE ACCUSED'S CONSTITUTIONAL RIGHTS.

III. THE COURT A QUO GRAVELY ERRED IN FINDING THERE WAS A CONSPIRACY PROVED BETWEEN THE APPELANT AND THE OTHER PARTICIPANTS.

IV. THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE GUILT OF THE ACCUSED DID NOT PASS THE TEST OF MORAL CERTAINTY.

Considering that the assigned errors are interrelated, the Court shall discuss and resolve them, jointly.

The testimonial evidence for the prosecution tended to prove the following facts:

1. Florencio Garces, the father of the victim, testified that on May 30, 1984, at about 4:00 am., as he was fetched by his son from the headquarters of the Criminal Investigation Service, where he was a Supervising Agent, and informed that there had been a robbery at their house at 12 Salary St. GSIS Village, Project 8,

Quezon City and that his daughter Dana May had been assaulted. He proceeded to the Quezon City General Hospital where Dana May was brought. Together with his wife, they transfer Dana May to the Chinese General Hospital, where Dana May was employed as a staff nurse, but she was already dead so they brought her body to the PC Crime Laboratory for autopsy. Garces also testified on the items stolen from their house, among which were some shoes belonging to him and a typewriter, and the expenses they incurred for Dana May's burial [TSN, August 1, 1984].

2. Dr. Dario L. Gajardo, medico-legal officer of the PC Crime Laboratory, testified that he conducted the autopsy on the victim and found a hematoma on the right parietal region and several contusions and abrasions on different parts of the body. The head of the pancreas, mesentery large intestine, omentum, lower lobe of the right lung and bronchus were hemorrhagic. They were subdural and subarachnoidal hemorrhages. He also found lacerations on the victim's hymen at the 6 and 3 o'clock positions. Vaginal and peri-urethral smears were positive for spermatozoa. He concluded that the cause of death was cardio-respiratory arrest due to shock and hemorrhage secondary to severe traumatic injury in the head. He added that the findings were compatible with recent sexual intercourse [TSN, August 9, 1984].

3. Agent Teofilo Jamela of the CIS Investigation Section testified that he was ordered to investigate the crime. When he investigated the scene of the crime, he found the room of the victim disarranged. One of the glass windows of the room was detached from its frame and must have been used by the assailant as entry to the room. He also found under the victim's bed the wooden baluster which was used in bludgeoning the victim. He further testified that he took the statements of the accused Manalangsang, Albior and Vasquez after their arrest, wherein Manalangsang and Albior, after having been appraised of their constitutional rights, admitted that they served as lookouts while Bernardo Reyes entered the victim's room. Vasquez stated that in a drinking spree at the house of one Rogelio Ferrer on the afternoon of May 30, 1984 Manalangsang and Reyes related to him that earlier that day they robbed the house of the victim and, in the course of the robbery, Reyes raped and killed the victim [TSN, August 29, 1984].

4. Agent Jose Dayco of the CIS Investigation Section declared that he interrogated the persons to whom the typewriter stolen from the Garces residence was sold and that the first buyer pointed to Manalangsang and Vasquez as the persons who sold it to him [TSN, August 30, 1984].

5. Sgt. Roberto Prado of the CIS Investigation Section testified that they recovered from the house of accused Vasquez the panty of the victim and the Adidas shoes. The typewriter, which Manalangsang and Vasquez admitted selling, was recovered in Divisoria [TSN, September 18, 1984, pp. 3-9].

6. Lt. Gracito Barangan of the CIS testified that he and his team went to the house of accused Vasquez at Fema Road, Quezon City, on June 7, 1984 where they "confronted" accused Manalangsang, Albior and Vasquez and "invited" them to the CIS headquarters for questioning. Bernardo Reyes was able to elude the CIS team. Recovered from Vasquez's house were the stolen items and the victim's panty [TSN, September 18, 1984, pp. 10-19].

For his defense, accused-appellant Albior testified that at the time of the commission of the crime, he was at the house of his cousin in Baesa, Quezon City and that he had nothing to do with the crime. He said that he did not understand Tagalog, the dialect in which the extra-judicial confession was written, being a Cebuano, and that he only signed it because he was told that if he did he would be released [TSN, October 22, 1984].

On his part, accused Vasquez testified that during a drinking spree at the house of Rogelio Ferrer in the afternoon of May 30, 1984, where accused Manalangsang and Albior were also present, Bernardo Reyes recounted how he and Manalangsang robbed the house of the victim, and how he hit her with a baluster when she awoke. When those drinking with him did not believe the story, Reyes brought out the panty of the victim and prodded Ferrer to smell it, but Ferrer got mad and quarreled with Reyes. Vasquez denied having sold the stolen typewriter and said that it was Manalangsang who sold it. He said that he signed the extra-judicial confession because he was

threatened at the CIS headquarters with physical violence [TSN, October 17, 1984].

On the basis of the evidence, the trial court concluded that there was a conspiracy among Bernardo Reyes (the mastermind), Carlos Manalangsang and Francisco Albior to rob the house of the victim; that while Manalangsang and Albior served as look-outs, Reyes entered the house of the victim by detaching a glass window from its frame and raped her and boxed and beat her to death with a wooden baluster and, thereafter, took several items, including the typewriter, the shoes, a bedsheet and the victim's panty. The trial court dismissed Albior's defense of alibi on the grounds that it was not corroborated and that it was not physically impossible for him to have been at the scene of the crime considering its proximity to the place where he claimed to have been. Further, Albior's extra-judicial confession was adjudged to have been voluntarily and freely given.

In his brief, accused-appellant Albior assailed the legality of his arrest and the seizure of the stolen goods by the CIS agents. However, as these issues were never raised in the proceedings before the trial court, they cannot be considered and passed upon on appeal.

With regard to Albior's sworn statement, the Court finds obvious defects that would render it inadmissible in evidence.

In the case of *People v. Galit* [G.R. No. L-51770, March 20, 1985, 135 SCRA 465], the Court, quoting from *Morales, Jr. v. Enrile* [G.R. No. 61016, April 26, 1983, 121 SCRA 538], said:

7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means — by telephone if possible — or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. [Italics supplied].

The lack of assistance of counsel in Albior's waiver of his right to counsel is evident from the testimony of the investigating officer, Agent Jamela:

Q

What else did you do?

A

I then proceeded to the investigation of Francisco Albior.

Q

What did you do when you investigated Francisco Albior?

A

I also apprized him of his constitutional rights.

Q

What are those constitutional rights which the accused was informed?

A

That he has the right to remain silent, that he has the right to get a lawyer of his own choice and that it gives any statement whatever statement he gave will be used against him in any Court of the Philippines. lld

Q

Now, after you have informed the accused of his constitutional rights, what else did you do if any?

A

He is willing to give a voluntary statement without assistance of counsel.

Q

What else did you do?

A

I then proceeded to get his statement. (TSN, August 29, 1984, p. 17.)

and the preface of the sworn statement that Albior was made to sign:

PAUNANG SALITA:

. . . Bago ako magsimula ng pagtatanong, nais kong ipabatid ang iyong karapatan na ayon sa saligan batas ng Republika ng Pilipinas, na ikaw ay hindi maaaring pilitin na magbigay ng salaysay na labag sa iyong kagustuhan. Karapatan mo rin na huwag sagutin ang aking tanong kung sa akala mong makakasama sa iyong kapakanan. Na kailangan kaharap ang Abogado mo sa gagawin kong pagtatanong upang makatulong sa iyo. At kung wala kang Abogado ang CIS ay mayroong Abogado na ipagkakaloob sa iyo ng walang bayad.

01. TANONG: Ikaw ba'y handang magbigay ng isang malaya at kusang loob ng salaysay na lahat ng iyong sasabihin ay paw ang katotohan lamang kahit wala ang Abogado mo?

SAGOT: Opo. Ako'y kusang loob na magbibigay ng salaysay kahit wala ang Abogado ko. At ako'y kusang loob na lumagda sa ibaba.

(Sgd.) Francisco Aibior
FRANCISCO Y. ALBIOR
(Nagsasalaysay)

It must also be noted that although Albior hardly speaks Tagalog, Cebuano being his native dialect, the sworn statement is in Tagalog [Exh. "N"]. It does not suffice that an interpreter, an agent of the CIS, was present during the interrogation (as stated in the sworn statement) because by virtue of its being written in Tagalog, Albior was deprived of the opportunity to comprehend through his own reading what he was signing.

Finally, the testimony of Albior that he agreed to sign the sworn statement because he was promised that he would be released adds to the conclusion that he did not understand what he was signing. No reasonable person would believe the promise that he would be released if he knows that he had just signed a statement admitting his participation in the commission of a very serious offense.

In view of the foregoing defects, the Court is constrained to hold Albior's sworn statement inadmissible in evidence.

At this juncture, the only issue to be resolved by the Court is whether or not the other evidence adduced by the prosecution would sustain a finding that accused-appellant Albior was guilty beyond reasonable doubt of the

crime charged.

Too glaring to escape the attention of the Court is the fact that it is only through Albior's sworn statement [Exh. "N"] that his participation in the commission of the crime can be directly established:

15.

T — Ikaw ba ay kasama sa pagnanakaw at ano ang partisipasyon mo kung mayroon sa Salary Street, GSIS Village, Q.C.?

S —

Opo at ako po ay look out rin.

16.

T — Paano nangyari itong pagnanakaw sa bahay No. 12 Salary Street, GSIS Village, Q. C. ?

S —

Ito po ay aming pinalano noong gablmg iyon ng ika 29 ng Mayo, 1984, at pinagkasunduan na si Bernardo Reyes alias Bernard at si Carlos Manalangsang ang aakyat ng bahay at kaml ni Jun ang bantay at pagkatapos naming pagkasunduan ang plano kami ay lumakad na at pinanhik na nila ang naulit na bahay.

However, the sworn statement is inadmissible in evidence, as above-mentioned.

Neither is the import of the statements of the other co-accused lost to the Court. In his sworn statement [Exh. "L"], accused Manalangsang categorically stated that only Reyes and himself committed the robbery, although he claimed that Albior and a certain "Jun" were included in the plan:

06.

T — Ano ang masasabi mo sa pangyayaring ito?

S — Inaamin ko po na isa ako na kasama ni Bernardo Reyes na nagnakaw sa bahay sa No. 12 Salary St., GSIS Village, Quezon City, noong madaling araw ng ika 30 ng Mayo 1984.

07.

T — Ano ang iyong partisipasyon sa nasabing nakawan?

S — Bantay po ako at nakatayo sa pagitan ng puno ng kaimito at pader.

*** **

13.

T — Sino pa ang kasama mo maliban kay Bernard?

S — Wala na po kaming dalawa lang.

25.

T — Ang sabi mo sa ika 7 na sagot ay ikaw ay bantay, kailan ba ninyo pinagusapan ang piano ninyong ikaw ang magbabantay sa inyong pagnanakaw sa Salary Street?

S — Noon din pong gabing iyon ika 29 ng Mayo, 1984, at pagkatapos na aming mayari at mapagkasunduan ang piano naming apat —Bernardo Reyes, Francisco Y, Albior, si Jun at ako na ang bantay ay sina Francisco Albior at si Jun at kami naman ni Bernardo Reyes and aakyat sa bahay ay nagpunta na kami sa No. 12 Salary St.,

GSIS Village, Quezon City ngunit ako ay doon lamang nakaabot sa porch (terrace) at bumaba na ako at si Bernardo Reyes ang pumasok, kinuha ang mga gamit sa loob at ginahasa ang babae. [Italic supplied]

Even accused Vasquez' sworn statement [Exh. "O"] tends to exculpate Albior even if later on in the same statement he mentions the name of Albior as one of those who committed the robbery:

12.

T:

Maari mo bang isalaysay kung paano sinabi sa iyo nina Bernard at Caloy tungkol sa pagpatay sa isang babae at pagnanakaw sa kanilang bahay sa Proj. 8, Quezon City?

S:

Ganito po iyon, noong hapon ng Mayo 30, 1984 habang kami ay nagiiinuman sa may malapit sa aking tinitirahan ay sinabi nina Bernard at Caloy na noong madaling araw ng Mayo 30, 1984, silang dalawa raw ay nagnakaw sa isang bahay sa Proj. 8, Quezon City at pinatay pa raw nila yong isang babae na nakatira roon at pagkatapos ay pinagsamantalahan at sinabi pa sa akin na sila ay nakakuha ng typewriter, mga alahas at mga iba pang mga pamit sa bahay na pinagnakawan nila at pagkatapos ay tumakbo na raw sila noong nagising ang mayari ng bahay.

*** **

18.

T:

Sinu-sino ang mga kasama nina Bernard at Caloy na nagnakaw sa Proj. 8, Quezon City at taga saan?

S:

Sina Bernard Reyes, Caloy Manalangsang, Francisco Albior at si Jun na hindi ko kilala ang apilyido pero silang apat ay taga Squatter Area ng Pugad Lawin, Proj. 8. Quezon City. (Italic supplied)

The statement of Vasquez must however be taken with caution as in the proceedings before the trial court he testified that he was not allowed to read his statement before signing it and that he was threatened with physical violence during his custodial investigation [TSN, October 17, 1984, pp. 11-12]. Further, no explanation was given by Vasquez how he came to know that Albior was one of those who participated in the robbery when he (Vasquez) did not participate in or even witness its commission.

These circumstances cannot but cast doubt on the trial court's conclusion that accused-appellant Albior participated in the robbery, rape and homicide of Dana May Garces.

That accused-appellant Albior conspired with Bernard Reyes, Carlos Manalangsang and "Jun" to commit the robbery has not been established either. The extrajudicial confessions of Manalangsang and Vasquez, the only evidence remaining against Albior with the rejection of his sworn statement, are contradictory as to whether or not Albior was actually part of the conspiracy. While Manalangsang claims that the plan included Albior and "Jun" as lookouts, he categorically stated that Reyes and himself had no other companions when they perpetrated the robbery [Exh. "L"]. On the other hand, Vasquez, whose information was undoubtedly hearsay, said that Albior and "Jun" were with Reyes and Manalangsang, but stated that Reyes and Manalangsang narrated during a drinking spree that only they were involved [Exh. "O"]. Without a doubt, no conviction can be had on the basis of these contradictory statements.

Clearly, the requirement of proof of guilt beyond reasonable doubt has not been met. Thus, although the Court

condemns in the strongest possible terms the brutal and shocking rape and slaying of Dana May Garces, given the attendant circumstances, it finds itself with no other recourse but to apply the law and to acquit Francisco Albior of the crime charged.

WHEREFORE, in view of the foregoing, accused-appellant Francisco Albior is hereby ACQUITTED.

SO ORDERED.

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

Gutierrez, Jr., J., on leave.

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