

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO OCAMPO Y CABRERA, ACCUSED-APPELLANT.

G.R. No. 80262. September 01, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellant was charged with the commission of the crime of rape with homicide before the Regional Trial Court of Macabebe, Pampanga in an information reading as follows:

INFORMATION

The undersigned Provincial Fiscal and Assistant Provincial Fiscal accuse FERNANDO OCAMPO y CABRERA of the felony of Rape with Homicide, committed as follows:

That on or about the 8th day of February, 1987, in Barangay Capalangan, Municipality of Apalit, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, FERNANDO OCAMPO y CABRERA, with lewd designs, and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Evelyn Bildan y Danganan, a minor of ten (10) years of age, against her will and without her consent, and on the occasion thereof, with intent to kill and with grave abuse of superior strength, did then and there willfully, unlawfully and feloniously assault, attack and employ personal violence upon said Evelyn Bildan y Danganan, inflicting upon her fatal and mortal injuries which caused her death shortly thereafter.

ALL CONTRARY TO LAW.

(p. 2, Record)

Upon arraignment, accused-appellant pleaded not guilty. After trial, the court a quo rendered a decision, on September 18, 1987, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Fernando Ocampo y Cabrera guilty beyond reasonable doubt of the crime of qualified rape or rape with homicide, defined and penalized under Article 335 of the Revised Penal Code, as amended, and as consequence thereof, he is hereby sentenced to suffer the penalty of Reclusion Perpetua and/or be imprisoned for the remaining years of his life, together with all the necessary penalties provided in Article 41 of the same code. In addition, the said accused shall indemnify the heirs of the victim in the amount of P30,000.00 and reimburse them the further sum of P28,566.40 with interest at the rate of 12% per annum computed from February 8, 1987, and to pay the cost of the proceedings.

(p. 61, Rollo.)

From said decision, the instant appeal was interposed on the lone alleged error that the trial court erred in convicting accused-appellant.

Upon a painstaking evaluation of the evidence, we find that the following facts are clearly established by the

evidence.

The victim, Evelyn Bildan y Danganan, was 10 years, 3 months, and 4 days old at the time of the incident on February 8, 1987. Accused-appellant is the widower of a sister of the victim's mother. His house is adjacent to that of the victim and her parents, located at Barangay Capalangan, Apalit, Pampanga.

At around 11 o'clock on the morning of February 8, 1987, Mary Jane Bildan, an elder sister of the victim, was proceeding from the house of Amalia Lorenzo, her aunt, just across the road from their house at Capalangan, Apalit, Pampanga. As she was entering the gate of their residence, she saw accused-appellant Fernando Ocampo ascending the stairs. Curious at what accused-appellant was up to, Mary Jane stayed under the house. After about four minutes, she heard a loud thud coming from inside the house. She immediately went upstairs to verify. But since the door was locked, she peeped through a hole near the door and she thereupon saw accused-appellant naked making coital movements over the naked body of her sister Evelyn who appeared to be unconscious.

Frightened, Mary Jane shouted for help, causing accused-appellant to jump out of the window, still naked, bringing with him his clothes. Hearing Mary Jane's outcry, Jerry Lorenzo, Mary Jane's cousin, who was strolling nearby, arrived at the scene, followed by other neighbors. Ten minutes later, accused-appellant arrived. He opened the door by climbing through a window by means of a ladder.

As soon as the door was opened, Mary Jane and Jerry Lorenzo went inside the house and saw the lifeless body of Evelyn, lying prostrate and naked on the floor. Mary Jane noticed discolorations on Evelyn's stomach and nose.

Rural Health Physician Melinda Cabugawan conducted a post mortem examination on the body of the victim on February 9, 1987 and in her report (Exhibit A) she stated that: "The victim's clitoris has slight bleeding and hematoma on the tip. Abrasion and hematoma is also noted on the 11th and 1 o'clock. The vaginal mucosa has evidence of irritation"; that the "victim was sexually abused"; and that "the victim did not commit suicide" Exhibit A, p. 1, Prosecution's Exhibit Folder). On February 17, 1987 the Medico Legal Officer of the Pampanga Regional Office of the National Bureau of Investigation conducted an autopsy on the body of the victim and his autopsy report confirmed the findings of the Rural Health Physician and concluded that the cause of death was asphyxia by strangulation. (Exhibit C, p. 3, *ibid.*)

Under his lone assigned error, accused-appellant assails the testimony of Mary Jane Bildan, the sister of the victim, as incredible. Accused-appellant contends that Mary Jane was prodded by her relatives, for lack of any other suspect, to point to accused-appellant as the culprit. This is sheer conjecture by accused-appellant without any shred of evidence. Such conjecture cannot prevail over Mary Jane Bildan's positive identification of accused-appellant as the author of the rape-homicide of Evelyn Bildan. We quote at length her testimony:

FISCAL

Questioning

At about eleven o'clock of February 8, 1987, where were you?

A - I came from my aunt and going home.

Q - What is the name of your aunt that you came from?

A - Amalia Lorenzo, sir.

Q - Where was the house of Amalia Lorenzo where you came from on your way home on February 8, 1987?

A - The house of my aunt is across the road.

Q - Is it on the same barangay at Capalangan?

A - Yes, sir.

x x x

x x x

x x x

FISCAL

Questioning

How about your younger sister Evelyn Bildan, where was she on February 8, 1987 at about eleven o'clock in the morning?

A - She was in our house, sir.

Q - As you said you were on your way home coming from your aunt's house at about eleven o'clock on February 8, 1987, did you reach you house on that date and hour?

A - Yes, sir, I reached our house.

Q - Before reaching your residence, did you notice if there was a person inside you house?

A - While I was entering the gate or yard of our house, I saw Fernando Ocampo going upstairs of our house and then I tried to follow him up.

Q - Did you see if Fernando Ocampo was able to enter your house?

A - Yes, sir.

Q - Why do you know this Fernando Ocampo whom you saw on February 8, 1987 entered your house?

WITNESS

He is our neighbor, sir.

Q - At Capalangan, Apalit, Pampanga?

A - Yes, sir.

Q - You said you tried to follow him up and listen. Where did you go and listen to Fernando Ocampo in your house?

A - I went downstairs or under the house, sir.

Q - And while you were under the house listening, did you hear anything unusual?

A -

ATTY. RIVERA

The question is very leading, Your Honor.

COURT

Answer. She was listening at that time, so she knows.

WITNESS

I heard a strong thud and I went upstairs and I saw Fernando Ocampo without any clothes.

FISCAL

Questioning

Where did you see Fernando Ocampo inside your house without any clothes or naked?

WITNESS

Near the door where there was a hole.

x x x

x x x

x x x

FISCAL

Questioning

Could you tell us the position of Fernando Ocampo when you saw him inside your sala naked?

WITNESS

I saw Fernando Ocampo naked standing while I saw him on top of my sister who was then lying and already dead and he was then making coitus movements.

Q - Alright, could you tell us what was the physical condition of your sister when you saw her with the accused on top of your sister and making coitus movements?

A - She was already dead or I mean she was unconscious, sir.

Q - Was she dressed when you saw her?

A - Without clothes, sir.

Q - Did you notice if she was wearing panty at that time?

x x x

x x x

x x x

WITNESS

She was without panty, sir.

FISCAL

Questioning

Alright, when you saw accused Fernando Ocampo on top of your naked sister unconscious and was making coitus movements, what did you do?

A - Because I was then confused, I shouted and called for help, sir.

Q - What did you say in your shout?

A - I said my sister was killed by Fernando Ocampo, sir.

Q - Where was Fernando Ocampo when you were shouting those words?

A - I suddenly saw him jumped out on one of the windows, sir.

(pp. 9-14, TSN May 14, 1987.)

We find the aforequoted testimony of Mary Jane all too candid and forthright to preclude prevarication or evasiveness.

Accused-appellant maintains that the delay of Mary Jane in revealing the identity of the rapist-killer of her sister (from February 8, 1987, the date of the incident, to February 12, 1987, when she gave her sworn statement at the CIS Office in Camp Olivas) is a clear indication that her testimony, pointing to the accused-appellant as the perpetrator of the rape-killing of her sister, is pure concoction. We do not subscribe to accused-appellant's theory. The delay of four (4) days from the time she witnessed the rape-killing of her sister up to the time she confided to her mother and uncle, Federico Danganan, the identity of the malefactor, does not impair her credibility. A delay of thirty-five (35) days before the victim reported the sexual assault upon her was not considered an unreasonable delay by this Court in *People vs. Santiago* (197 SCRA 556 [1991]). Delay or vacillation in making a criminal accusation does not impair the credibility of the witness, if such delay is satisfactorily explained (*People vs. Elizaga*, 73 SCRA 524 [1976]; *People vs. Roxas* (73 SCRA 583 [1976])). Mary Jane categorically testified that she did not immediately name accused-appellant as the author of the crime because "because I was afraid that he might do something to me, sir." (TSN, May 14, 1987, pp. 44-47). Tardiness in making an accusation due to fear of reprisal does not vitiate the credibility of the witness (*People vs. Artieda*, 90 SCRA 144 [1979]).

Judging from her age at the time she witnessed the crime on February 8, 1987 until she sat on the witness stand three months thereafter, Mary Jane's timidity to relay what she saw is thus understandable for a fifteen-year old teenager who could not be expected to act like a matured woman. Withal, her inability to speak out her mind then was sufficiently clarified and her delay in informing others of what she knew about a criminal offense will not impair her credibility (*People vs. Martinada*, 194 SCRA 36 [1991]). Verily, Mary Jane's procrastination was brought about by the natural reticence and abhorrence of most individuals to get involved in a criminal case (*People vs. Punzalan*, 153 SCRA 1 [1987]).

At any rate, it is a longstanding rule consistently adhered to by this Court that findings of fact of the judge who tried the case and heard the witnesses are not to be disturbed on appeal unless there are substantial facts and circumstances which, if properly considered, might affect the result of the case (*People vs. Brioso*, 37 SCRA 336 [1971]). Where the issues raised on appeal hinge on the credibility of witnesses, as in the case at bar, the appellate tribunals will accord due respect to the assessment of facts made by the trial court, said court having had the opportunity, not only of receiving the evidence, but also of observing the conduct and demeanor of the witnesses while testifying (*People vs. Sales*, 44 SCRA 489 [1972]).

A sedulous examination of the record fails to disclose the presence of facts or circumstances of sufficient weight which would justify setting aside the findings of fact of the trial court. The inconsistencies in the testimony of the prosecution witnesses pointed out by accused-appellant are so minor and trivial and thus do not impair the probative value of said testimony.

To the query of whether or not the identity of accused-appellant was adequately established, there seems to be a variance between Mary Jane's declaration vis-a-vis Jerry Lorenzo's own statement on which accused-appellant rests his plea for exculpation. While the sister of the victim was categorical enough to utter that Evelyn was killed

by Fernando Ocampo (TSN, May 14, 1987, p. 14), the cousin, who was then accidentally present, testified that he heard Mary Jane shouting that her sister was dead without anything said about the identity of the culprit (TSN, May 20, 1987, p. 19; p. 22; p. 27; p. 31; p. 33). Notwithstanding such discrepancy, it has been stressed that when the testimony of two witnesses contradict each other, the court is not precluded from adopting the testimony which it believes to be true, as in this case where the trial court relied on the positive testimony of the victim's sister in support of its finding of accused-appellant's culpability (U.S. vs. Lasada, 18 Phil. 90 [1910]; 2 Regalado, Remedial Law Compendium, Fifth Rev. Ed., 1988, p. 553; Sibal and Salazar, Jr., Compendium on Evidence, Second Ed., 1988, p. 393). In practical terms, accused-appellant is engaged in a subtle experiment to impeach, nay, assail Mary Jane's credibility -- which issue, to repeat, should not now be reviewed in the light of the well entrenched axiom in law that the faculty of assigning values to declarations at the witness stand is primarily and almost exclusively conferred upon a trial judge who, unlike appellate magistrates, is distinctly and advantageously positioned to properly evaluate such testimony (People vs. Magallanes, et al., 65 O.G. 19216; 2 Regalado, supra, at p. 552).

Accused-appellant also argues next that if he was indeed responsible for what happened to Evelyn, he should not have immediately returned to the situs of the crime, much less opened the door to the house after passing through the window from where he escaped, for such actuations are incongruous with human nature. There can be no dispute to the legal proposition that flight from the scene of the felony is one of the indicia of a guilty conscience. However, it is equally true that in exceptional cases, culprits have become bolder by returning to their prey to ensure that the victim was successfully eliminated under the pretext of feigning innocence. The fact that this form of reverse psychology does not happen as often as flight does not mean that it can never take place.

The defense of alibi interposed by accused-appellant is unavailing in the face of Mary Jane's positive identification of accused-appellant as the author of the rape-killing of Evelyn (People vs. Mercado, 38 SCRA 168 [1971]; People vs. Cardesan, 56 SCRA 631 [1974]). For the defense of alibi to be tenable, the accused must prove that it was physically impossible for him to be at the scene of the crime at the time of its commission (People vs. Cortez, 57 SCRA 308 [1974]). According to accused-appellant, from 11 A.M. to 1 P.M. of February 8, 1987, the day of the rape-killing of Evelyn, he was playing a card game called "paris--paris" at his house with 4 other persons when was informed by Angelita, another sister of the victim (TSN, July 7, 1987, p. 9), that Evelyn died such that he responded to the call for help by proceeding to the house where he found the unconscious Evelyn. However, his house, by his own admission, is adjacent to the house of the victim where the crime was committed (p. 7, T.S.N., July 7, 1987; p. 18, T.S.N., June 25, 1987). Definitely, therefore, there was no physical impossibility for accused-appellant to be present at the scene of the crime at the time of the commission thereof, apart from the fact that not one of the persons whom accused-appellant mentioned were with him was presented to corroborate his version (People vs. Briosio, 67 O.G. 4438).

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the modification as to the amount of indemnity to be paid to the heirs of the victim which is hereby increased to Fifty Thousand Pesos (P50,000.00) in line with current jurisprudential pronouncements (People vs. Alegado, 201 SCRA 37 [1991]).

SO ORDERED.

Feliciano, Bidin, Romero, and Vitug, JJ., concur.

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