

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GABRIEL DAWANDAWAN, ACCUSED-APPELLANT.

G.R. NO. 87203. April 06, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Gabriel Dawandawan appeals from a decision of the Regional Trial Court of Davao del Sur, Branch 18, finding him guilty of the crimes of Rape and Frustrated Homicide. The dispositive portion of the decision reads:

"WHEREFORE, with the aggravating circumstances of evident premeditation and nighttime which was purposely sought by the accused which are hereby appreciated against him, this Court finds Gabriel Dawandawan guilty beyond reasonable doubt of the crimes of Rape defined and penalized under Article 335 of the Revised Penal Code and hereby imposes upon him the penalty of Reclusion Perpetua and Frustrated Homicide which he is hereby sentenced to an indeterminate prison term of six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum, to suffer all the accessory penalties of the law, to indemnify Maria Nedia Villafuerte in the amount of Thirty Thousand (P30,000.00) Pesos as moral damages and to pay the costs.

The filing fees corresponding to the civil liability awarded by this Court shall constitute a first lien on the judgment award and no payment by execution or otherwise may be made to the offended party without her first paying the amount of such filing fees to the Clerk of Court." (Original Records, P. 85)

The information filed by the Provincial Fiscal charged Gabriel Dawandawan with the crime of rape with frustrated homicide under Art. 335, allegedly committed as follows:

"The undersigned accuses Gabriel Dawandawan of the crime of Rape with Frustrated Homicide under Article 335 of the Revised Penal Code, committed as follows:

That on or about November 2, 1984, in the Municipality of Hagonoy, Province of Davao Del Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there wilfully, unlawfully, and feloniously, by means of force and intimidation, box Maria Nedia Villafuerte in the stomach and different parts of her body thereby rendering her unconscious, and have carnal knowledge of her several times against her will; that on the same occasion the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and slash and stab the throat of the said Maria Nedia Villafuerte with a knife, inflicting upon the latter injuries which ordinarily would cause the death of said Maria Nedia Villafuerte, thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of his will, that is by the timely and able medical assistance rendered to said Maria Nedia Villafuerte which prevented her death." (Original Record, p. 1)

The facts upon which the finding of guilt was based are summarized by the Solicitor General as follows:

"On November 2, 1984, at about 11 o'clock in the evening, Gloria Vda. de Asis, her children and her younger sister, Maria Nedia Villafuerte, the victim in this case, were roused from their sleep. Somebody knocked at

their door and contemporaneously someone uttered 'We are here together with our companions, the Commander of the NPA' (pp. 30?32, tsn, Nov. 12, 1985).

Despite the fear that had engulfed Gloria Vda. de Asis and her companions, her sister, Maria Nedia Villafuerte opened the door, whence, the intruder pointed his arm at them (p. 32, tsn, *ibid.*). Gloria Vda. de Asis was able to hold the object which was pointed at them which turned out to be a knife (p. 36, tsn, *ibid.*).

The intruder went upstairs but the occupant thereat failed to recognize the man as he was wearing a black T-shirt mask (pp. 32, 33, 35, tsn, *ibid.*).

While thereat, the intruder looked for Gloria Vda. de Asis and she was pointed at by her sister, Maria Nedia Villafuerte. Because Gloria Vda. de Asis was afraid, she ran out of the house and at that moment while running she heard the words 'Gloria why did you run?' (pp. 33, 34, *ibid.*).

Gloria vda. de Asis proceeded to their neighbor named Juaning Ignacio to seek help (pp. 34, 36, *ibid.*)

Nonoy, the husband of Juaning, together with four other companions went back to the house of Gloria vda. de Asis (p. 37, tsn, *ibid.*).

Subsequently, at six o'clock in the morning of the following day, Gloria Vda. de Asis was informed that her sister, Maria Nedia Villafuerte, was found wounded. She saw her sister by the side of the road loaded in a pedicab. At the time she saw her sister, Maria Nedia Villafuerte, she was already weak. She sustained wounds in her neck and there were contusions in her body and her clothes removed from waist up (p. 43, *ibid.*).

Gloria Vda. de Asis asked her sister if she was able to recognize the man responsible for her predicament but Maria Nedia Villafuerte failed to answer because she was nervous and trembling (pp. 43, 46, tsn, *ibid.*).

The dress which Maria Nedia Villafuerte wore the night she was sexually and physically molested was retrieved by her neighbors and subsequently turned over to the police (pp. 41, 42, tsn, *ibid.*). The description of Maria Nedia Villafuerte's outfit tallied with what was retrieved. The dress was stained with blood (pp. 44, 45, tsn, *ibid.*).

On November 5, 1984, accused-appellant was brought to the hospital where Maria Nedia Villafuerte was confined for treatment. While at the hospital and upon seeing Maria Nedia Villafuerte, accused-appellant uttered 'I thought she (referring to Maria Nedia Villafuerte) was already dead.' Upon seeing accused-appellant, Maria Nedia Villafuerte trembled and tightly clenched her fist and cried (pp. 57, 58, tsn., *ibid.*).

Maria Nedia Villafuerte testified that when she opened the door, she saw a man holding a knife. Since her sister ran away to seek help, she was left behind. The man choked her and dragged her to a coconut drier (pp. 10, 11, 13, and 22 tsn, October, 14, 1986). While being dragged to that coconut drier, she struggled to free herself. But her effort was unsuccessful. On the way to the coconut drier, the man removed his mask and revealed his identity. It was accused-appellant who was wearing mask and while dragging Maria Nedia Villafuerte, accused-appellant identified himself as being their neighbor and that he is the uncle of Maria Nedia Villafuerte's boyfriend, Nestor Tan (pp. 20, 22, 23, tsn, *ibid.*).

Upon reaching the coconut drier, accused-appellant boxed Maria Nedia Villafuerte at her mid-section causing her to lose consciousness. Upon regaining her consciousness, she realized that accused-appellant had sexually molested her as she had felt pain in her sex organ (pp. 25, 27, 28 & 29, tsn, *ibid.*). After sexually molesting her, accused-appellant slashed Maria Nedia Villafuerte's neck. He slapped her and boxed her in several parts of her body and stabbed her on the left side of her breast (pp. 38, 39, 40 tsn, *ibid.*). And she again lost her consciousness.

At the time of the incident, accused-appellant was wearing a fatigue jacket and only a brief (pp. 30, 32, 33, 35, tsn, *ibid.*).

Further, Maria Nedia Villafuerte testified that she was brought to the hospital and that accused-appellant was brought to her by a certain Sosing Fernandez. At the hospital, accused-appellant asked for forgiveness from Maria Nedia Villafuerte which the latter refused as she was angry (pp., 37, 40, tsn, *ibid.*).

Jesus Fernandez, a member of the Civil Home Defense Force (CHDF) in the locality of Liling, Hagonoy, Davao del Sur, testified that on November 2, 1984, somebody sought her assistance by the name of Gloria Vda. de Asis who informed him what took place in her house (pp. 9, 10, tsn, June 3, 1986). Jesus Fernandez, together with his companions, roamed around the vicinity to locate for (sic) Maria Nedia Villafuerte. Failing to locate her, they stopped the search and rescue operation but resumed the same on the following day (p. 13, tsn, *ibid.*).

At nine o'clock the following morning, they were able to locate Maria Nedia Villafuerte naked, her neck, breast and hand slashed and her body bathed with blood. They called for a pedicab and requested certain individuals to bring her to the regional hospital at Digos, Davao del Sur (pp. 13, 14, 15, tsn, *id.*). Jesus Fernandez made some verifications and inquiries. Three days after or on November 5, 1984, Jesus Fernandez asked permission from the Chief of Police to apprehend accused-appellant which was granted (pp. 16, 17, k tsn, *id.*).

He was successful as he was able to arrest accused-appellant in Kulungan, Sta. Maria, Davao del Sur and was (sic) brought to Digos, Davao del Sur barracks. Accused-appellant was brought to the municipal jail of Hagonoy and subsequently brought to the hospital where Maria Nedia Villafuerte was confined. Thereat, accused-appellant was pointed to by Maria Nedia Villafuerte as the perpetrator of the crime against her (pp. 24, 25, 27 & 28, tsn, *id.*).

Dr. Francisco Tongcos, a surgeon at the Davao del Sur Provincial Hospital, testified that he treated a certain Maria Nedia Villafuerte (pp. 4, 5, tsn, Nov. 12, 1985). He identified the medical certificate he prepared and issued pertaining to Maria Nedia Villafuerte.

His findings as to the injuries sustained by the victim are as follows:

- Multiple incised wounds on:

- 1) the neck anterior lateral areas
- 2) right mandibular area deep penetrating
- 3) submandibular area.

- Multiple contusions all over the back and chest areas.

- Lacerations 1.7. o'clock (hymen) - admits 1 finger with ease.

- Multiple lacerations superficial right hand dorsum, left breast.

- Subcutaneous emphysema, minimal right scapular area.

(Exh. "A", Folder of Exhibits, Record)." (Appellee's Brief, pp. 4-12)

On arraignment, the accused pleaded not guilty. Trial on the merits followed and a judgment of conviction was rendered.

The appellant's version of the facts consists of denial and alibi. He states:

"Accused Gabriel Dawandawan testified that on Nov. 2, 1984, he was at San Agustin, Sta. Maria. He was weeding at the farm. He started at 7 a.m. and went home at 12:00 noon. He went back to the farm later and went home at 5:00 p.m. At 5:30 p.m., he went to the house of his in-laws because he would attend church the

following morning. The church is 30 meters from the home of his in-laws. He was with his 2 children. He was arrested at 8:00 a.m. of Nov. 3.

On the night of Nov. 2, he slept in the house of his in-laws. He does not know the time when he slept because he had no watch but it was already late at night. Before he slept, he was conversing with Pastor Paulino Comonos. They took dinner at 7:30. p.m. After that he waited for his brother-in-law who was a fisherman because he would help him carry the banca from the sea to the shore. Sosing Fernandez, Gloria de Asis and the victim are liars." (Appellant's Brief, p. 7)

Feeling aggrieved with the decision rendered, the accused interposes this appeal and assigns the following errors:

I

"THE COURT A QUO ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONY OF THE COMPLAINANT AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT.

III

ASSUMING ARGUENDO THAT ACCUSED IS GUILTY, HE IS ONLY GUILTY OF THE COMPLEX CRIME OF RAPE WITH FRUSTRATED HOMICIDE AND NOT OF THE SEPARATE CRIMES OF RAPE AND FRUSTRATED HOMICIDE." (Appellant's Brief, Rollo, p. 34)

The accused-appellant assails the credibility of the complainant's testimony on the ground that it is unnatural for a person who is about to rape a girl to divulge his identity because, then, the risk of his being arrested becomes greater. We find nothing unnatural about the statements of the accused because the extent of the physical injuries he inflicted manifests his intention to extinguish the life of the victim, in which case he would have no fear of exposure. As the trial court put it, "He was certain of the victim's death which would have sealed her lips forever." In fact, during the confrontation in the hospital, he uttered the words, "I thought she was already dead." Dawandawan denied that there was such a confrontation in the hospital but the victim herself, Gloria de Asis and Sosing Fernandez testified that there really was such a confrontation.

Dawandawan further contends that the identification made by the victim was uncorroborated, that Gloria could not identify the owner of the voice of the man who knocked at the door and called out her name. This Court has oft-repeated the ruling that the accused could be convicted solely on the basis of the victim's testimony if credible. (People v. Serna, G.R. No. 78530, March 6, 1990)

As earlier stated, the accused interposed alibi as his defense. This court when confronted with the defense of alibi in rape cases with circumstances similar to the one now before us has invariably found it unconvincing and unsatisfactory (See People v. Dadaeg, 137 SCRA 500 [1985]). In the case at bar, alibi is unavailing because although Eddie Carr saw the accused at 5:30 p.m. of the day of the incident, and Pedro Comonos at up to about 7:30 p.m., nobody could account for the whereabouts of the accused at 11:00 p.m. He explained his whereabouts by saying that he slept in his in-laws' house to attend church service the following morning. We do not see any particular need for his staying in his in-laws' place to be able to attend the church service considering that the distance between his house and his in-laws' is only 1/2 kilometer and the distance from his in-laws' house to the church is 30 meters giving a total of 530 meters only - a distance which is easily manageable.

Anent the other assigned error, the accused-appellant alleges that the crime committed is a complex crime of Rape with Frustrated Homicide and not the separate crimes of Rape and Frustrated Homicide.

Article 48 of the Revised Penal Code states: "A complex crime may occur when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other xxx."

To categorize the crime as a complex one, the appellant would like this Court to believe that the stabbing preceded the rape - that it was necessary for the accused to stab the victim before she could be raped because she was resisting. There is no merit to this contention. The victim herself testified that she was boxed, thus causing her to lose consciousness. And while unconscious Dawandawan started to rape her after which she regained consciousness again only to lose it once more when her neck was slashed. The victim testified, thus:

xxx xxx xxx

Q

before you were abused, what did the accused do, if he did anything?

A.

he boxed me once at my mid section, sir.

Q.

what happened to you when you were boxed at your mid section?

A.

I lost consciousness. (TSN, October 14, 1986, p. 149)

xxx xxx xxx

"the Court:

court's question.

what else happened or what else can you remember aside from that incident where you were boxed by the accused in your mid section, according to you?

A.

after he boxed me, he abused me and then slashed my neck in order that i cannot tell the incident, i cannot relate the incident.

the court:

a while ago you said that you lost consciousness after you were boxed by the accused, will you please tell us how you knew that your neck was slashed by the accused and you were abused by the accused?

A.

when he slashed my neck i regained consciousness again and after that, after slashing my neck, i again lost my consciousness and i regained it again at the hospital already. (TSN, October 14, 1986, pp. 150-151)

The physical injuries which could have caused the victim's death were not the result of the rape committed; neither was the slashing a necessary means for committing the rape. Independently of the slashing of the victim's neck and the stabbing, the accused was able to consummate the rape. The physical injuries were inflicted after the

rape and were not a necessary means to commit the same. Hence, the crimes committed are the two separate crimes of Rape and Frustrated Homicide.

Finally, we reiterate in this case the fundamental rule that the findings of fact of the trial court should be accorded great weight and respect since the Judge had the inestimable advantage of observing demeanor of the witnesses while testifying. (People v. Dalinog, G.R. No. 74952, March 12, 1990; People v. Rafanan, G.R. No. 48362, February 28, 1990).

WHEREFORE, in view of the foregoing, we find the accused-appellant guilty of the crimes of Rape and Frustrated Homicide. The decision of the trial court is hereby **AFFIRMED** in all respects.

SO ORDERED.

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

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