

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO DEVELLES ALIAS “TURING DEVELLES,” ACCUSED-APPELLANT.

G.R. No. 97434. April 10, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is an appeal from the decision dated December 3, 1990 of the Regional Trial Court of Roxas City, Branch 16, convicting the appellant of the crime of rape with homicide.

On September 18, 1986, at about 11:45 o'clock in the morning, in Tabuc Norte, Panitan, Capiz, Marlene Borro, eleven (11) years old, was walking home from school together with Dyna Depliyen, fourteen (14) years old, along a path beside the Panay River. They saw the appellant half-naked, wearing only a pair of blue short pants, standing beside a banana plant near the river bank. Appellant called Marlene. When she approached him, he held her hands and engaged her in conversation. After waiting for a while, Dyna told Marlene she would go on home ahead.

At about the same time, Dioscoro Dorado, Jr., a neighbor of Marlene, passed by on his way home from the market. He saw the appellant holding Marlene's hands while talking to her. Dioscoro proceeded on his way home.

By 4:00 o'clock in the afternoon of that same day, when Marlene had not yet arrived home from school, her parents began looking for her. Her parents sought the help of their neighbors and of the “Mountain Tigers,” a community assistance group, to look for Marlene. At about 7:30 in the evening of that same day, Marlene's body was found in the Panay River under waist-deep water. She was tied with barbed wire to a bamboo pole which was driven into the bed of the Panay River. Her dress was pulled up to her head covering her face and her panty had been removed.

An autopsy performed on the cadaver revealed that she had been dead for more than six (6) hours and that she was already dead before she was submerged in the river. She had multiple abrasions on her neck, contusions on her jaw, multiple abrasions on her chest, lower abdomen, and her vulva was gaping with extensive hymenal laceration at 1:00 o'clock position extending up to the clitoris, and another one at 6:00 o'clock position extending up to the perineum. Dr. Encarnacion Belvis who performed the autopsy testified that Marlene was raped and could have been killed by strangulation or that she died of shock and hemorrhage due to extreme pain and bleeding caused by extensive hymenal laceration.

On December 4, 1986, an information for rape with homicide was filed against the appellant, Arturo Develles, in the Regional Trial Court of Roxas City, Branch 16, and docketed as Criminal Case No. C-2386. It reads:

“The undersigned Assistant Provincial Fiscal, accuses ARTURO DEVELLES alias “TURING DEVELLES” of the crime of RAPE WITH HOMICIDE, committed as follows:

“That on or about 11:45 o'clock in the morning of September 18, 1986, at Barangay Tabuc Norte, Panitan,

Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent and motivated by lewd design did then and there wilfully, unlawfully and feloniously, with grave abuse of confidence and taking advantage of superior strength, by means of force, violence and intimidation have carnal knowledge with one MARLENE BORRO, a minor who at the time was eleven (11) years of age; that on the occasion of and in the furtherance of the act of rape MARLENE BORRO was killed and thrown into the Panitan River by her assailant.

“That due to the untimely death of MARLENE BORRO her heirs are entitled to death indemnity in the amount of P30,000.00 plus other damages in consonance with the provisions of the Civil Code.

“ACTS CONTRARY TO LAW with the generic aggravating circumstances of grave abuse of confidence and taking advantage of superior strength.” (p. 11, Rollo.)

Upon arraignment, appellant pleaded “Not Guilty.” After trial, the court rendered a decision on December 3, 1990, the dispositive portion of which reads:

“WHEREFORE, for all the foregoing, the court finds the accused ARTURO DEVELLES alias ‘Turing’ GUILTY beyond reasonable doubt of the crime of RAPE with Homicide punishable under the provisions of the last paragraph of Article 335 No. 3, as amended, and hereby imposes upon him the single penalty of Cadena perpetua (life imprisonment) with the corresponding accessory penalties; to indemnify the heirs of Marlene Borro in the amount of P60,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs of this case.

“The accused being a detention prisoner he is hereby credited with the full period of his detention as provided for under Art. 29, of the Revised Penal Code as amended by R.A. 6127.” (p. 33, Rollo.)

The accused appealed in due time alleging that the trial court erred:

1. in convicting him despite lack of positive identification that he was the perpetrator of the crime; and
2. in convicting him on the basis of weak circumstantial evidence.

There is no merit in the appeal.

Appellant’s contention that the testimonies of the prosecution witnesses identifying him as the perpetrator of the crime, were based on mere speculations, is not well taken.

The prosecution presented no less than seven (7) witnesses who testified on events and circumstances which constitute an unbroken chain leading to one fair and reasonable conclusion that the appellant was the author of the crime.

Marlene’s friend, Dyna Depliyen, who was 17 years old already by the time she took the witness chair, testified that on the fateful day of September 18, 1986 at 11:45 in the morning she and Marlene Borro were on their way home from school. They were walking by the river bank when they saw the accused Arthur Develles standing behind some banana plants. He called Marlene Borro, so she went near him.

Arturo Develles used to fish by means of hook and line on the river bank. That morning, he was wearing blue short pants without a polo shirt. He was half-naked.

Dyna mentioned that Marlene knew the appellant well, that was why she approached him without hesitation when he called her. The accused used to ask Marlene Borro to sell his fish and he used also to go to the house of Ponso Borro, Marlene’s father (tsn, December 7, 1989).

Dioscoro Dorado, Jr., a neighbor of Marlene Borro, corroborated Dyna. He passed by the river bank at around

11:45 on September 18, 1986 on his way home from the market. He saw Arturo Develles holding Marlene's hand near the banana plants. He was about 3 arms length from them. Develles was wearing a pair of short pants colored blue and nothing else.

Alfonso Borro, the father of the victim, knew the accused. They were friends. Develles used to come to his house twice a week whenever he caught fish in the Panay River. He would tease Marlene and put his arm around her.

Marlene's body was recovered only a few meters from the spot where she was last seen alive by Dyna and Dioscoro, with the appellant.

Dr. Encarnacion G. Belvis, the Rural Health Physician of Panitan, Capiz, who conducted an examination and autopsy of the cadaver of Marlene, testified that Marlene was killed more than six (6) hours before her body was discovered at around 7:00 o'clock in the evening of September 18, 1986, or between the hours of 12:00 o'clock noon and 1:00 o'clock in the afternoon, about the time that Marlene was last seen alive with the appellant.

Appellant's defense was an alibi. He alleged that in the morning of September 18, 1986, he was in Barangay Ilaya, Panitan, Capiz, fishing. He began fishing at about 10:00 o'clock in the morning and stopped in the afternoon. He sold his catch to his neighbors and ate the rest.

The trial court however did not believe his story.

"x x x the court is convinced and believes the testimonies of Dyna Depliyen and Dioscoro Dorado, Jr. that the victim Marlene Borro, was last seen being held by the hands by the accused Arturo Develles alias 'Turing.' The court also believes that the accused engaged the victim to a conversation about sweet-nothings taking advantage of the closeness of the child of tender age to him. After being aware that no other passer-by were taking the same pathway where they (accused and victim) were, the accused with malice and lewd designs aforethought bestially and brutally struck the victim with his fist hitting her on the left lower jaw. The victim became half-dazed. She started to cry out. To muffle her, the accused strangled her until she was no longer resisting. The accused then proceeded to do his thing. The victim was not yet dead. However, when the accused forced his rigid organ into her vagina and causing lacerations on the hymen the already weakened condition of the victim was aggravated and she died of shock.

"The accused after consummating his savage sexual desires, began to soothe the child. After all he had been very fond of her. Alas, he found out, that she was already lifeless. With the devil still in him he became cain and his first impulse was to conceal his misdeed." (pp. 18-19, RTC Decision.)

Although no one saw the appellant rape and kill the victim, the following circumstances point unerringly to him as the culprit:

1. Dyna Depliyen identified him as the person who was standing beside some banana plants at the river bank, the scene of the crime, when she and Marlene Borro, 11 years old, were passing by;
2. He was half-naked at the time;
3. He called her and detained her at the river bank by engaging her in conversation.
4. Dioscoro Dorado, Jr. also saw the appellant talking with Marlene at the riverside. He was holding her by the hands presumably to detain her or prevent her from leaving;
5. The autopsy examination performed by Dr. Encarnacion Belvis on the cadaver of Marlene Borro revealed that she was raped, beaten up, and strangled to death by a full grown adult male;
6. The autopsy examination also disclosed that the victim died some six (6) hours before her cadaver was discovered at 7:00 p.m., September 18, 1986, or between 12:00 and 1:00 o'clock p.m. of September 18, 1986

which was shortly after Dyna left her in the company of the appellant. That was mere minutes after Dioscoro Dorado, Jr. had passed by and also saw her in conversation with the appellant who held her hands;

7. The appellant being a family friend, the victim had no reason to be afraid of him and had no premonition of evil when she went toward him; and

8. The appellant having been positively identified as the person who was with the victim on or about the time she was killed, his alibi that he was fishing elsewhere the whole day on September 18, 1986 was a bare-faced lie which pushed him deeper in the pit of his guilt.

These bits of evidence, pieced together, point to the accused as the rapist-murderer of the 11-year-old Marlene Borro. The witnesses who testified for the prosecution were credible witnesses and the circumstances they testified on are consistent with truth, human nature, and the natural course of things, which, taken together, point unerringly to the appellant as the rapist-killer (People vs. Agan, 181 SCRA 856).

WHEREFORE, finding no reversible error in the appealed decision of the trial court, we affirm its finding that the appellant, Arturo Develles alias Turing Develles, is guilty beyond reasonable doubt as principal of the crime of rape with homicide. The Court hereby sentences him to suffer the penalty of reclusion perpetua (the term used in Art. 335 of the Revised Penal Code, not “cadena perpetua” nor “life imprisonment,”) with the accessory penalties provided by law. In other respects the decision is AFFIRMED. Costs against the appellant.

SO ORDERED.

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.
Bellosillo, J., on leave.

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