631 Phil. 335

FIRST DIVISION

[G.R. No. 178063 [Formerly G.R. No. 149894], April 05, 2010]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIRSO SACE Y MONTOYA, ACCUSED-APPELLANT.

D E C I S I O N

VILLARAMA, JR., J.:

This is an appeal from the Decision [1] dated November 20, 2006 of the Court of Appeals in CA- G.R. CR-H.C. No. 02324 which affirmed the June 1, 2001 Decision [2] of the Regional Trial Court (RTC) of Boac, Marinduque, Branch 94 convicting appellant Tirso Sace y Montoya of the crime of rape with homicide.

Appellant was charged in an Information [3] which reads,

> That on or about the 9th day of September 1999, at around 7:00 o'clock in the evening, at barangay Tabionan, municipality of Gasan, province of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there by means of force and intimidation, willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA] [4] against her will and consent and thereafter, the accused did then and there, with intent to kill, stab with a sharp bladed weapon, said victim, inflicting upon her fatal injuries causing her death, to the damage and prejudice of her legal heirs represented by her mother....
>
> CONTRARY TO LAW.

At the arraignment, appellant entered a plea of not guilty. Trial thereafter ensued.

The prosecution presented the following as witnesses: BBB, CCC, Rafael Motol, Bonifacio Vitto, Maribeth Mawac (Maribeth), Carmelita Mawac, Dr. Erwin Labay, SPO2 Praxedo Seño and Domingo Motol. On the other hand, appellant testified for his own behalf.

The prosecution's evidence established the following version:

On September 9, 1999, at around seven (7) o'clock in the evening, AAA was inside their house with her 10-year-old brother BBB and a nephew, who was still a toddler, when appellant suddenly showed up. As admitted by appellant, he came from a drinking spree that began at about eleven (11) o'clock in the morning. AAA told appellant to leave and go home, but he did not heed her. Appellant then made

sexual advances on AAA. AAA was able to evade appellant when he tried to embrace her, but appellant pulled a bladed weapon from his pocket. Sensing danger, AAA ran upstairs to the second level of their house. Appellant followed AAA, leaving BBB and the toddler in the first floor of the house. BBB heard appellant ordering AAA to remove her clothes, otherwise, he will stab her. [5] Scared with the turn of events, the two (2) children hid at the lower portion of the house for around twenty (20) minutes, and came out only when CCC, the mother of AAA and BBB, arrived.

CCC, together with her elder daughter DDD and a certain Abelardo Motol (Abelardo), was on her way home when she and her companions heard AAA scream. They hurried towards the house and searched it but found it to be empty. As they searched further, appellant came out from somewhere in the kitchen area of the house. They noticed that he was bloodied and he told them that he was chasing someone. Appellant then joined in the search for AAA. Before long, Abelardo found the lifeless body of AAA lying on the ground nearby. AAA was half-naked and she appeared to have been ravished when they found her. Immediately, Abelardo called the barangay officials and the police.

Barangay *Kagawad* Carmelita Mawac (Carmelita) and other barangay officials and *tanods*, including Rafael Motol and Bonifacio Vitto, arrived. Upon arrival, they noticed the bloodstains on appellant's clothing. Carmelita asked appellant what he did, but appellant denied any knowledge of what happened. Carmelita then went to the half-naked body of AAA and again asked appellant why he did such a thing to his cousin. At that point, appellant admitted to the barangay officials and *tanods* that he was the one (1) who committed the crime. He admitted that he raped and killed AAA. [6] Barangay *Tanod* Rafael Motol also obtained the same confession from appellant when he interviewed him infront of other people, namely, Abelardo, Carmelita, and Bonifacio Vitto, as well as Arnaldo Mawac, Conchita and Iboy Serdeña, and Salvador and Julieta Motol. Appellant was then photographed by the police and Maribeth, who at that time had a camera on hand.

Dr. Erwin M. Labay examined AAA's body. He found stab wounds and lacerations on the body, and also found irregular corrugations and lacerations of the hymenal ring. [7]

On the part of the defense, appellant denied participation in the crime. Appellant claimed that he was on his way home from a drinking spree when he passed by AAA's house. As he was walking, appellant saw AAA who was bloodied and lying on the ground. He held his cousin to determine whether she was still alive. He then saw in the vicinity of AAA's house, two (2) men whom he allegedly chased. Appellant could not identify nor remember what the two (2) men were wearing because it was dark at the time. Convinced that AAA was already dead, appellant did not any more call for help. Instead, appellant went to the house of his aunt and slept. When CCC and her companion arrived, he relayed to them how he had chased two (2) men who may have been responsible for AAA's death. Appellant denied that he confessed to the crime. [8]

On June 1, 2001 the RTC found appellant guilty beyond reasonable doubt for the rape and killing of AAA, to wit:

> WHEREFORE, premises considered and finding the accused Tirso Sace y Montoya GUILTY beyond reasonable doubt of the crime of Rape with Homicide defined and punished under Article 335 of the Revised Penal Code, as amended by RA No. 7659 and RA No. 8353, he is hereby sentenced to suffer the supreme penalty of DEATH and to indemnify the heirs of [AAA] the amount of P100,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 for exemplary damages.
>
> The body of said accused is committed to the custody of the Bureau of Corrections, Muntinlupa City through the Provincial Jail Warden of Marinduque.
>
> Let the entire records of this case be forwarded to the Supreme Court, Manila for automatic review.
>
> SO ORDERED.

The trial court did not give credence to appellant's alibi since he even categorically admitted that he was at the crime scene and saw AAA's lifeless body. Because the crime occurred more or less around the time appellant left the drinking session, the trial court held that it was not impossible for appellant to accomplish his bestial act shortly after he left the drinking session as he had to pass by AAA's house on his way home. Also, other than his bare denial, appellant did not offer any evidence to support his alibi.

The trial court further pointed out that during the trial, appellant was positively identified by the 10-year-old brother of AAA, BBB, as the culprit who chased AAA with a bladed weapon and threatened to kill her if she would not remove her clothes. BBB, who was only an arm's length away from AAA and appellant, was able to describe vividly the appearance of appellant that night, his attire, and how appellant tried to embrace and chase AAA. The trial court found no improper motive on the part of BBB to testify falsely against appellant. BBB's testimony was notably straightforward and spontaneous and considering his age, the trial court held that it was improbable for him to concoct such a terrifying story against his own cousin. [9]

The RTC found appellant's defense as not only incredible and incredulous but also innately false and fatuous. Appellant never bothered to ask for help nor made an outcry when he found his cousin AAA dead. Instead, he claimed to have left the area and proceeded to the house of his aunt to sleep. When asked why he was bloodied, appellant merely said that he was chasing someone without disclosing that he carried the dead body of AAA. Appellant also disclaimed any knowledge on what happened to AAA when the others asked him. [10]

Lastly, the RTC also took into consideration the confession of appellant that he was the one (1) who raped and killed AAA. The trial court noted that the confession was made voluntarily and spontaneously in public, and witnessed by prosecution's witnesses, who were not shown to have any ill motive against appellant. Thus, appellant's declaration was admissible as part of *res gestae*, his statement concerning the crime having been made immediately subsequent to the rape-slaying before he had time to contrive and devise. [11]

On November 20, 2006, the Court of Appeals upheld the decision of the RTC, thus:

> WHEREFORE, premises considered, the ***Decision*** dated 1 June 2001 of the Regional Trial Court of Boac, Marinduque is **AFFIRMED**, except insofar as Republic Act No. 9346 retroactively reduces the penalty for heinous crimes from death to *reclusion perpetua*.
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> The death penalty imposed by the trial court is consequently **REDUCED** to *reclusion perpetua* and herein judgment may be appealed to the Supreme Court by notice of appeal filed with this court.
>
> IT IS SO ORDERED.

The appellate court ruled that while appellant's bloodied shirt and pants alone do not establish that he committed the crime, his version is too perforated with inconsistencies to be believable. Appellant claimed to have previously located and embraced the corpse of AAA then left her at the crime scene before he went to the house of his aunt to sleep but he pretended to look for AAA with the others. And assuming that he took pity and wanted to help AAA, who was wounded and half-naked, appellant's behavior was inconsistent with human nature when he went to his aunt's house to sleep instead of asking for assistance. Likewise, the Court of Appeals found appellant's testimony to be too evasive and vague. Moreover, the appellate court noted that, while flight oftentimes denotes guilt, the failure of the accused to flee does not per se establish his innocence. It held that appellant was in all probability too drunk to think of escape in the darkness of the night. [12]

Hence this appeal.

Appellant had assigned an error in his appeal initially passed upon by the Court of Appeals, to wit: whether the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape with homicide. [13]

Appellant claimed that the circumstantial evidence relied upon by the RTC did not prove his guilt beyond reasonable doubt. The fact that appellant was wearing a bloodstained shirt did not mean that he committed the crime charged. Appellant had explained that when he saw AAA he held her in his arm to see if she was still alive; thus, his shirt was stained with blood. Moreover, if indeed he was guilty of the crime, he would not have assisted in the search for AAA's body as he could have just escaped or at least changed his clothing. He stressed that it was not impossible that the two (2) unidentified men he chased had committed the crime.

We affirm appellant's conviction.

It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. [14] While it is established that nothing less than proof beyond reasonable doubt is required for a conviction, this exacting standard does not preclude resort to circumstantial evidence when direct

evidence is not available. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under conditions where concealment is highly probable. If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove. [15]

In this case, as found by the RTC, the following chain of events was established by prosecution's evidence: (a) a drunken appellant came to AAA's house; (b) appellant tried to embrace AAA but when the latter resisted and ran away, he chased her with a knife; (c) when appellant caught up with AAA at the upper portion of the house, he was heard uttering the words "*Pag hindi daw po naghubad ay asaksakin*"; (d) appellant was hiding when CCC and her companion searched the house for AAA, then he suddenly appeared from his hiding place with bloodied apparels; (e) when asked by CCC, appellant denied any knowledge of the whereabouts of AAA and what happened to her; and (f) appellant voluntarily confessed to having committed the rape with homicide infront of many witnesses then he submitted himself to police custody. [16]

BBB's candid and unequivocal narration, which positively identified appellant as the culprit who tried to force himself on AAA, debunks appellant's denial of any participation in the crime. BBB testified,

> Fiscal Balquiedra : x x x On September 9, 1999 at around seven o'clock in the evening, where were you?
>
> Witness : At our house.
>
> Fiscal Balquiedra : Who were your companion at that time?
>
> Witness : My sister and my "pamangkin".
>
> Fiscal Balquiedra : How old is that "pamangkin" of yours?
>
> Witness : Four (4) years old.
>
> x x x x
>
> Fiscal Balquiedra : What happened during that time?
>
> Witness : Manong Tirso came to our house, sir.
>
> Fiscal Balquiedra : That Manong Tirso of yours who came to your house, where is he now?
>
> Witness (Interpreter): Witness pointing to a man who identified himself as Tirso Sace.
>
> Fiscal Balquiedra : What happened when Tirso Sace arrived?