

EN BANC

[G. R. No. 172326, January 19, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO PASCUAL Y ILDEFONSO, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Under review is the Decision^[1] dated December 9, 2005 of the Court of Appeals (CA) in *CA-G.R. CR.-HC No. 01493* finding accused-appellant **Alfredo Pascual y Ildefonso alias "BOYET"** guilty beyond reasonable doubt of the crime of Rape with Homicide and sentencing him to suffer the penalty of death. Said decision affirmed that of the Regional Trial Court (RTC), Branch 211, Mandaluyong City, albeit with the modification that granted an additional award of P100,000.00 as civil indemnity to the heirs of the deceased-victim.

The conviction of accused-appellant stemmed from an Amended Information^[2] dated February 23, 2001, filed with the RTC for the crime designated as Rape with Homicide and Robbery, the accusatory portion of which reads:

That on or about the 25th day of December 2000 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by the use of force and intimidation, did then and there willfully, unlawfully and feloniously, lie and have carnal knowledge of one LORELYN PACUBAS y TAMAYO, against the latter's will and consent.

During the occasion or by reason of the rape with intent to kill and taking advantage of superior strength, covered the face of said victim with a pillow, thus suffocating her which ultimately led to her instantaneous death. Likewise, during or on occasion of the rape with intent to gain and by means of force, violence and intimidation employed upon the person of Lorelyn Pacubas y Tamayo, did then and there willfully, unlawfully and feloniously take, steal and carry away the following, to wit:

- a). one (1) gold necklace with pendant
- b). one (1) pair of gold earring
- c). college ring
- d). Seiko lady's wristwatch

all in the total amount of P10,000.00 more or less, belonging to victim Lorelyn Pacubas y Tamayo, to the damage and prejudice of the latter.

When arraigned, appellant pleaded not guilty to the charge. Trial thereafter ensued.

During trial, the prosecution presented seven (7) witnesses; namely, Rodolfo

Jundos, Jr. and Arlene Gorospe, both neighbors of the victim; Eduardo Velasco, a friend of the victim's sister; Police officers (PO)2 Fernando Aguilan and Police Inspector (P/Insp.) Russel Leysa; Dr. Felimon Porciuncula, Jr., the Philippine National Police (PNP) medico-legal officer; and Lorenza Pacubas, the victim's mother. The prosecution's version of the facts, as narrated in the decision under review, follows:

The incident xxx happened in a room at the second floor of House No. 724, Ballesteros St., Barangay New Zaniga, Mandaluyong City. The sketch of the house (Exh. A, p. 148 Records) shows it has three (3) rooms; on the first floor, one occupied by Arlene Gorospe and family (exh. A-1); the second, by Alfredo Pascual and his family (Exh. A-2); and the third is the residence of Rodolfo Jundos, Jr. and his family. On the second floor is another room occupied by the family of the victim Lorelyn Pacubas y Tamayo (alias Ling-Ling) and her siblings.

Last December 24, 2000, at around 10:00 o'clock in the evening, Rodolfo Jundos, Jr. was preparing to celebrate *noche buena* with his son and the accused-appellant, Alfredo Pascual who was with Christopher, his 2-year old youngest child. Alfredo Pascual appeared to have had liquor already. For three (3) instances, the accused would ask permission to go inside the house as he was already sleepy and drunk but nonetheless will return 10 to 15 minutes later, twice still with the child and only to continue drinking every time he returned. On the third time, he was without the child anymore and partake (sic) of liquor until 1:00 o'clock a.m. when he left, leaving Rodolfo Jundos, Jr. alone just outside the aforesaid house at 724 Ballesteros St. (Exh. A-8). Twenty (20) minutes later, Divina Pascual, appellant's wife, came out the house looking for her husband. When informed that the latter had already left, Divina started looking for him inside the house and later in the billiard hall 10 or 15 minutes away. Moments later, Divina went passed (sic) the place where Rodolfo Jundos, Jr. was drinking, rushing upstairs to the second floor of the house. Soon after, Jundos saw Divina chasing Alfredo running out towards the gate at the same time asked (sic) Jundos for help saying "Kuya, tulungan mo ako, si Boyet" (referring to Alfredo Pascual)). Thinking that Alfredo Pascual was making trouble, Rodolfo Jundos, Jr. joined the chase but could not catch up as Alfredo was running very fast. So Divina told him to instead go upstairs as the accused might have done something wrong to Ling-ling (Lorelyn) [T.S.N. pp. 4-11, October 24, 2002]. Rodolfo Jundos, Jr. is the husband of appellant's older sister, Laarni.

Together, Jundos and Divina rushed to the second floor. As the place was dark, they switched on the light and there they saw Ling-ling (Lorelyn Pacubas) flat on her back on the floor almost naked with arms and legs open, her panty and shorts down to her ankle and t-shirt pulled up above the breast with blood on the right breast. They tried to wake up Ling-ling but the latter was already dead. Rodolfo Jundos, Jr. was shocked at what he saw. Divina got hysterical and repeatedly told Arlene Gorospe what happened (T.S.N., supra, pp. 11-14). It did not take long before policemen from the Southern Command (SOCO) arrived.

That same morning Rodolfo Jundos, Jr. gave his statement before PO2 Fernando Aguilan (Exh. C, p. 150 Records) and so did Divina Gorospe

Pascual (Exh. D, p. 151). Arlene Gorospe likewise executed his Sinumpaang Salaysay that same day, December 25, 2000, before Police Inspector Efren Pascua Jugo. (Exh. B, p. 149, Records) It was this witness Arlene Gorospe who prepared the sketch (Exh. A, p. 148, Records). Later in (sic) that fateful morning, police investigators appeared in (sic) the scene of the incident and took pictures of the place and the victim while still lying on the floor (Exhs. E, E-1 to E-7 and F-1 to F-5 xxx, p. 152, Records).

After proper police investigation and coordination, the victim, Lorelyn Pacubas, was brought to the PNP Crime Laboratory, for autopsy and the examination of the blood found in the place of the incident (Medico Legal Report No. S 056 00, Exh. M, p. 162, Records). The printed underwear with suspected seminal stains was likewise examined. Medico-Legal Report No. R-007-00 (Exh. N, p. 163, Records) reveal absence of semen. In Medico-Legal Report No. M 932 00 (Exh. O, p. 164, Records), it was determined that the cause of death was asphyxia by smothering. The same report gave the following postmortem findings on the injuries sustained by the victim:

POSTMORTEM FINDINGS

Fairly developed, fairly nourished, female cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD

- 1) Lacerated wound, upper lip, measuring 0.8 x 0.5 cm, along the anterior midline.
- 2) Contusion, right cheek, measuring 5 x 4 cm, 7 cm from the anterior midline.

TRUNK

- 1) Contusion, right pectoral region, measuring 3 x 2 cm, 11 cm from the anterior midline.
 - 2) Lacerated wound, right nipples, measuring 0.6 x 0.1 cm.
 - 3) Contusion, right pectoral region, measuring 5 x 4 cm, 10 cm from the anterior midline.
 - 4) Contusion, sternal region, measuring 3 x 1 cm, along the anterior midline.
 - 5) Contusion, left inguinal region, measuring 5 x 3.5 cm, 10 cm from the anterior midline.
- The stomach is full of partially digested food particles.

EXTREMITY

- 1) Contusion, proximal 3rd of the right forearm measuring 4 x 2 cm, 4 cm lateral to its posterior midline.
- 2) Contusion, right ring finger, measuring 0.5 x 0.3 cm.

LARYNX, TRACHEA AND ESOPHAGUS

The larynx, trachea and esophagus are markedly congested and cyanotic with petechial hemorrhages.

GENITAL

There is abundant growth of pubic hair, labia majora are full, convex and co-aptated with pinkish brown labia minora presenting in between. On separating the same disclosed a fleshy type **hymen with deep healed lacerations at 3, 6 and 9 o'clock positions with an abraded posterior fourchette, measuring 1 x 0.4 cm. Vaginal and peri urethral smears are POSITIVE for spermatozoa.**

XXX XXX XXX

CONCLUSION:

Cause of death is Asphyxia by smothering. (p. 164, Records)

with the corresponding location of the said wounds on the attached sketches of the head (Exh. P, p. 165, Records) and the human body in the anatomical sketch (Exh. Q, p. 166, Records).^[3] (Emphasis ours)

Accused-appellant denied the charges against him. He alleged that on December 24, 2000, he was drinking with Rodolfo Jundos, Jr. and the latter's son outside their residence from 10:00 p.m. until 1:00 a.m. of December 25, 2000. When he came home, he had a fight with his wife Divina Pascual (Divina) because the latter allegedly wouldn't permit him to go to a friend's house in Sta. Mesa, Manila, as he was already drunk. Nonetheless, so accused-appellant claims, he still went to Sta. Mesa and stayed at his friend's house for more or less six days.^[4] Upon learning from his wife that Lorelyn Pacubas was raped and killed and that he was the suspect therein, he requested his wife to contact and coordinate with Major Peñalosa for his voluntary surrender. On cross-examination, accused-appellant admitted that he knew Lorelyn Pacubas was staying alone on the second floor of the house on that fateful night, as her two (2) other siblings had already gone home to the province.^[5] Moreover, he admitted having called his wife on December 25, 2000, and was then told about the crime which happened to Lorelyn Pacubas and that he was the suspect thereof.^[6]

Defense witness Carlito Santos (Carlito) corroborated accused-appellant's testimony of having stayed in his house for six (6) days. Carlito testified that at about 2:00 o'clock in the early morning of December 25, 2000, accused-appellant arrived at his (Carlito's) house and told the witness that he (accused-appellant) had a fight with his wife, Divina.^[7]

Another defense witness, Aida Vilorio-Magsipoc, forensic chemist of the National Bureau of Investigation (NBI), testified on the result of the DNA analysis which she conducted on the specimens submitted by the trial court consisting of the victim's vaginal smear and panty. According to her, no DNA sample from the suspect was present on the aforesaid specimens.^[8] On cross-examination, she declared that based on DNA testing, she could not determine if a woman was raped or not. She further declared that in this case, it was possible that the stained vaginal smear prevented a complete and good result for the DNA profiling. Upon being questioned by the court, the forensic chemist confirmed that DNA testing on the subject specimens was inconclusive and that the result was not good, as the specimens submitted, i.e., the stained vaginal smear and the dirty white panty, had already

undergone serological analysis.^[9]

In a decision^[10] dated March 11, 2004, the trial court rendered judgment, as follows:

WHEREFORE, finding accused, ALFREDO PASCUAL Y ILDEFONSO alias "BOYET" GUILTY beyond reasonable doubt of the crime of Rape with Homicide, under the circumstances prescribed in Article 266-A of the Revised Penal Code, as amended, absent any modifying circumstance to aggravate or mitigate criminal liability, the court hereby sentences him to suffer the penalty of DEATH.

He is also ordered to pay the heirs of the victim the amount of Php63,000.00 as actual damages; the amount of Php50,000.00 as moral damages; the amount of Php25,000.00 as exemplary damages; Php28,000.00 as burial expenses and the amount of Php250,000.00 for loss of earnings. Additional actual expenses incurred not supported by receipts are denied pursuant to Article 2199 of the Civil Code.

In so far as the charge of robbery is concerned, the same is hereby ordered DISMISSED, it appearing that the valuables and other personal belongings of the victim are intact.

The accused is likewise ordered to pay the costs of the suit.

SO ORDERED.^[11]

The case was directly elevated to this Court for automatic review. However, in a Resolution^[12] dated July 26, 2005 and pursuant to our ruling in *People v Mateo*^[13] the case was transferred to the CA.

In its Decision^[14] dated December 9, 2005, the CA affirmed with modification the trial court's decision. Dispositively, the CA decision reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby **AFFIRMED** with the **modification** that the heirs of Lorelyn Pacubas is further awarded the amount of P100,000.00 as civil indemnity, in addition to the other damages in the lower court's judgment. Costs *de officio*.

SO ORDERED.

In view of the foregoing, accused-appellant comes again to this Court for a final review of his case.

In a Resolution^[15] dated June 13, 2006, the Court required the parties to file their respective supplemental briefs, if they so desired. In their respective Manifestations,^[16] the parties waived the filing of supplemental briefs and instead merely adopted their earlier briefs before the CA.

Two (2) questions present themselves for resolution in this case. *First*, was the circumstantial evidence presented against the accused-appellant sufficient for his