

EN BANC

[G.R. No. 139697, June 15, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LITO HERNANDEZ,
APPELLANT.**

DECISION

CALLEJO, SR., J.:

Before us on automatic appeal is the Decision^[1] of the Regional Trial Court of Lemery, Batangas, Branch 5, in Criminal Case No. 13-95, convicting the appellant of the special complex crime of robbery with homicide, and sentencing him to suffer the penalty of "reclusion perpetua to death."

The Information charging the appellant with the aforesaid offense alleges as follows:

That on or about the 19th day of December, 1994, at about 12:00 noon, at Brgy. Mahabang Parang, Municipality of San Luis, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo (gulukan) and a knife (balisong), conspiring and confederating together acting in common accord and mutually helping each other, with intent to gain and by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously take, rob and carry away from one Natividad Yuzon Mendoza pieces of jewelry and cash money in the total amount of Thirty Thousand Pesos (P30,000.00), Philippine Currency, to the damage and prejudice of the said owner in the aforementioned amount; and that on the occasion of and by reason of the said robbery, the said accused did then and there wilfully, unlawfully and feloniously attack, assault and strangle to death said Natividad Yuzon Mendoza.

Contrary to law.^[2]

The accused Nestor Catapang and the appellant, assisted by counsel, were arraigned for the crime charged and pleaded not guilty. Thereafter, trial on the merits ensued. During the trial, accused Catapang was shot dead while attempting to escape from the Batangas Provincial Jail. Trial continued as against the appellant Lito Hernandez.

The Case for the Prosecution

At about 7:00 a.m. on December 19, 1994, Cesar Yuzon, a forty-four-year-old sweepstakes ticket vendor, went to the Rural Health Center of Banoyo, San Luis, Batangas, to seek medical treatment for his ailment. After receiving his daily medication from the nurse, he left the health center and went to a nearby store to wait for a ride back to his house in Barangay Mahabang Parang, San Luis, Batangas.

When no public utility jeepney passed by, he started walking towards the direction of Barangay Mahabang Parang. It was about 11:00 a.m.^[3] Upon reaching the boundary of Banoyo and Mahabang Parang at around 12:00 noon, he saw his cousin-in-law, the appellant,^[4] and Catapang dragging his seventy-two-year-old auntie, Natividad Yuzon Mendoza,^[5] in the direction of a forested area where there were also mango and coconut trees.^[6]

Cesar shouted, "*Hoy, bakit ninyo kinakaladkad ang aking tiya?*" Catapang and the appellant approached and told him not to interfere. Then Catapang pointed a knife at Cesar and, with the appellant, warned him not to reveal what he saw to anyone; otherwise, they would kill him and his family, including his children.^[7]

The appellant and Catapang then returned to the place where Natividad was. Cesar followed them and concealed himself behind a mango tree about ten arm's length away, and saw them forcibly taking money, a pair of earrings and a necklace from the bag of his aunt, who was lying prostrate on the ground. Catapang and the appellant positioned themselves at Natividad's right and left side, and strangled her with the use of a white rope made of buri or vine string.^[8] She pleaded, "*Huwag po, huwag po,*" to no avail.^[9]

Cesar hurriedly left the place on foot and went home. He kept the gory incident to himself for fear of retaliation from the accused and the appellant.

That afternoon, Natividad's son, Nemensio Mendoza, had already started looking for his mother. Cesar joined the search at 5:00 p.m. together with the barangay captain and some of the barangay folks. The cadaver of Natividad was found at about 11:00 p.m.^[10]

SPO3 Ronald C. Macatangay and other police officers of the San Luis Police Station arrived at the scene of the crime and found the cadaver of Natividad wrapped in a piece of cloth. After taking pictures of the cadaver at different angles, it was brought to the De Guia Funeral Parlor.^[11]

Dr. Antonio S. Vertido, the NBI Medico-Legal Officer, performed an autopsy on the cadaver of the victim and found injuries on the face, neck, and index finger. He also found a hematoma on the victim's chin, possibly caused by a bladed instrument,^[12] and a ligature mark on her neck. He concluded that the victim died because of asphyxia by ligature strangulation.^[13]

Cesar's fear was heightened when Catapang and the appellant warned him anew on Christmas Eve that if he divulged to anyone what he had witnessed on December 19, 1994, they would kill him and his children.^[14] However, on February 7, 1995, Cesar finally decided to tell his cousin, Nemensio, how Natividad died and who the perpetrators were. He narrated how he saw Catapang and the appellant rob Natividad of her money and jewelry, and then strangled her to death. He and Nemensio forthwith went to the police station where they gave their respective sworn statements to SPO3 Macatangay.^[15] Cesar and Nemensio also informed the barangay captain that Catapang and the appellant were the culprits in the killing of

Natividad.

The Defense of the Appellant

The appellant denied killing Natividad and divesting her of her money and jewelry. He testified that he eked out a living as a sweepstakes ticket vendor, while his wife, Natividad's niece, earned a living as a sewer of baby dresses. He also revealed that his wife's father was the brother of Natividad.

December 19, 1994, a Sunday, was his birthday. At 12:00 noon, he had lunch at the Fresh Food restaurant in Parañaque. The following day, December 20, 1994, Juanito Yuzon informed him of Natividad's death. He then attended Natividad's wake, for two nights and two days. He only learned that Cesar had implicated him in the crime charged when he was arrested by policemen on April 18, 1995.^[16]

On February 8, 1999, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Finding the accused LITO HERNANDEZ GUILTY beyond reasonable doubt of the complex crime of Robbery With Homicide and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA to DEATH, considering the presence of aggravating circumstances of abuse of superior strength, disregard of age, sex of the victim and the absence of any mitigating circumstance.
2. Ordering Lito Hernandez to indemnify the heirs of the deceased:
 - P50,000.00 – Death of Natividad Yuzon
 - 61,000.00 – Actual damages, jewelries (sic) and money
 - 75,000.00 – Attorney's fees
 - 50,000.00 – Moral damages
3. Cost of suit.

SO ORDERED.^[17]

On automatic appeal before this Court, the appellant contends as follows:

I

THE LOWER COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE SPECIAL COMPLEX CRIME OF RAPE (SIC) WITH HOMICIDE DESPITE THE UNCORROBORATED, INCONSISTENT AND CONTRADICTORY TESTIMONY OF THE ALLEGED EYEWITNESS CESAR YUZON.

II

ASSUMING SANS ADMITTING THAT ACCUSED-APPELLANT PERPETRATED THE SUBJECT OFFENSE, THE LOWER COURT GRAVELY ERRED IN APPRECIATING AGAINTS HIM THE GENERIC AGGRAVATING

CIRCUMSTANCES OF ABUSE OF SUPERIOR STRENGTH, DISREGARD OF AGE AND SEX OF THE VICTIM.

III

THE LOWER COURT GRAVELY ERRED IN FAILING TO APPRECIATE IN ACCUSED-APPELLANT'S FAVOR THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.^[18]

The appellant avers that the trial court's reliance on the testimony of Cesar Yuzon in convicting him of the crime charged is erroneous, because the latter failed to immediately report the incident to the barangay and police authorities and to his cousin, Nemensio, without any valid justification therefore. Cesar even joined Nemensio and the barangay officers in searching for Natividad in the afternoon of December 19, 1994; yet, he failed to reveal to them that he saw Catapang and the appellant strangle the victim and rob her of her jewelry and money. According to the appellant, Cesar's conduct after witnessing the crime is contrary to human experience; hence, his testimony is barren of probative weight. The appellant furthers that Cesar could not have seen the killing from a distance of thirteen or fourteen meters, as his view was blocked by tall grasses, as well as the leaves of a mango tree. Furthermore, the appellant points out that the testimony of Cesar is inconsistent on material points. Thus, the appellant concludes, the prosecution failed to prove that he and Catapang brought the victim's money and jewelry with them when they left the crime scene.

We agree with the appellant that the natural reaction of one who witnessed the commission of a crime, especially if the victim is his kin, is to immediately and spontaneously report the case to the police authorities so that the perpetrators are charged, prosecuted and punished if found guilty.^[19] The principle, however, is not iron-clad.

Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting the crime to the authorities.^[20] Such failure in making a prompt report to the proper authorities does not destroy the truth per se of the complaint.^[21] Likewise, the natural hesitance of the witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved or dragged into a criminal investigation is common, and has been judicially declared not to affect their credibility.^[22]

In this case, Cesar testified that when he shouted at the appellant and Catapang to stop dragging his aunt Natividad, the two confronted him and ordered him not to interfere. Then, Catapang pulled out his balisong and pointed it at Cesar. He was then warned not to reveal what he had just seen; otherwise, he and his family would be killed. Afraid for his life and those of his family, he kept the horrid crime to himself:

Q- Did you not inform them of what you saw?

A- I did not mention to anybody what I have seen or witnessed.

Q- Why?

A- For fear that if they will know about it, my family would be

killed.

Q- What do you mean when you say that?

A- Because I was threatened that if I will tell that to anybody, I and my family would be killed.

Prosecutor:

Q- Who actually threatened you to kill you and your family?

A- The two (2) of them.

Court:

Q- Are you afraid of those words uttered to you?

A- Why should I not be afraid of the two (2) when my family, including me, threatened us (sic) to be killed.

Q- For how long have you known these two (2)?

A- I have known these two (2) for a long time.

Q- What is your relation to the two?

A- Lito Hernandez is married to a first cousin of mine.

Q- So what?

A- "Tinakot akong papatayin ang aking pamilya."

Q- Until now you are afraid?

A- No more, Sir, because they are handcuffed, even [if] they are handcuffed, I can fight them now.^[23]

...

Q- So, you will confirm that you allegedly witnessed the incident took place on December 19, 1994?

A- Yes, Sir.

Q- After having allegedly witnessed that incident, you reported the matter to the police because you are a nephew of Natividad Yuzon?

A- Ay, hindi po.

Q- Why?

A- Because, Sir, they threatened to kill my family.

Q- Who threatened to kill your family?

A- These two, Sir.

Q- When did they threaten your family?

A- That very exact time, Sir.

Q- On December 19, they already threatened you?

A- Yes, Sir.

Q- You were there on December 19 at the scene of the incident?

A- Yes, Sir.