

SECOND DIVISION

[G.R. No. 144886, April 29, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO SILVANO, ACCUSED-APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision,^[1] dated June 26, 2000, of the Regional Trial Court, Branch 18, Midsayap, Cotabato, finding accused-appellant Antonio Silvano guilty of the crime of rape with homicide and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim Maramanay Tomas P50,000.00 as civil indemnity and P50,000.00 as moral damages.

The crime was committed on October 7, 1991 in Inudaran, Mapurok, Alamada, Cotabato. On March 9, 1993, more than a year after the commission of the crime, a criminal complaint for attempted rape with homicide was filed in the Municipal Circuit Trial Court of Pigcawayan-Alamada, Cotabato^[2] against accused-appellant. On March 16, 1993, accused-appellant was arrested.

After appropriate preliminary investigation, Acting Judge Charito Untal-de Guzman of the Municipal Circuit Trial Court found probable cause and accordingly remanded the case to the Provincial Prosecutor. In a resolution dated January 25, 1994, Rolando Y. Deiparine, of the Provincial Prosecution Office in Kidapawan, Cotabato, modified Judge de Guzman's findings and recommended the filing of consummated rape with homicide against accused-appellant.^[3] His recommendation was approved and the following information was filed, alleging —

That on or about October 7, 1991 in the Municipality of Alamada, Province of Cotabato, Philippines the said accused, armed with a bladed weapon, did then and there, willfully, unlawfully and feloniously and by means of force and intimidation, succeeded in having carnal knowledge with one MARAMANAY TOMAS against her will, that after the occasion the said accused, with intent to kill, stabbed the victim hitting her on the different parts of her body, which is the direct and proximate cause of her death thereafter.

CONTRARY TO LAW.^[4]

Upon being on August 23, 1994, accused-appellant entered a plea of not guilty, whereupon he was tried.^[5]

Four witnesses were presented by the prosecution: namely Constancio Jimenez, accused-appellant's nephew; Samotor Polayagan, the person who found the body of the victim at the crime scene; Onotan Tomas, the victim's father; and Dr. Ebenezer

Demetillo, who conducted the necropsy.

The prosecution evidence shows: The body of Maramanay Tomas, a Muslim girl, was found by a certain Margarito near the river at Sitio Inudaran, Barangay Mapurok, Alamada, Cotabato at around 1 o'clock in the afternoon of October 7, 1991.^[6] Upon receipt of the information, prosecution witness Samotor Polayagan said he proceeded to the crime scene and found the dead body of a girl. He saw a turban (*tubao*) ten meters, more or less, from the cadaver. Polayagan said that he did not move the cadaver and waited for the police to arrive at the scene.^[7]

One policeman arrived, who then made a sketch and a report of the crime. The body of Maramanay Tomas was subsequently brought to her home.^[8] At the request of Alamada Mayor Wenceslao dela Cerna, a necropsy examination was conducted by Dr. Ebenezer Demetillo on the same day. In describing the injuries sustained by and the examination conducted on the victim, Dr. Demetillo testified:

PROS. LUMANG:

. . . There are how many serious wounds in these 21 stab wounds which will cause the instantaneous death of the victim?

A The serious stab wound is the first stab wound which is 2 cms. in width x 6 cms. depth supracelanicular area penetrating the upper right lung. This wound is more than enough to cause the hypovolemia of the victim. Also the number 2 stab wound is fatal. It is 2 cms. in width x 4 cms. in depth by medial active of the right neck cutting the jugular vein. So, this is more than enough to cause the hypovolemia of the patient and the rest are minor, sir.

Q When you say hypovolemia, you mean to say the loss of blood of the victim?

A Yes, sir.

Q So, in other words, even if only these two wounds that were inflicted it will cause the immediate death of the victim?

A Yes, sir.

. . . .

Q So, in totality Doctor, what was then therefore the cause of death of the victim?

A The cause of death of the victim is cardio-respiratory arrest and the second is hypovolemia then the multiple stab wounds.

. . . .

Q Aside from the injuries inflicted on the cadaver of Maramanay Tomas, did you ever try to conduct any

examination?

A Yes, I examined the different parts of her body from head to foot sir.

Q Did you conduct an examination on the genitalia of the victim?

A Yes, sir.

Q Do you still remember what was your findings on the genitalia of the cadaver of the victim when you conducted a necropsy examination?

A Based on that report, I did not put any findings on the genitalia because I did not find any.^[9]

More than a year after Maramanay Tomas' death, accused-appellant allegedly confessed to his nephew, Constancio Jimenez, at a birthday party that he had raped and killed the victim. On the basis of this alleged confession, Jimenez gave a statement on March 3, 1993 incriminating his uncle, accused-appellant Antonio Silvano. The statement was given to the Philippine National Police of Alamada, Cotabato. Testifying on the alleged confession of accused-appellant, Jimenez said that on December 3, 1992, accused-appellant came to his house in Kapayawi, Libungan, Cotabato for his son's birthday party. While they were having drinks with three other persons (Garcio Payot, Donita Payot and Orlando Mojado), accused-appellant allegedly told Jimenez he was not going back to Alamada because the police were looking for him as he had raped and killed a Muslim girl. Accused-appellant allegedly killed the child after raping her for fear that she would testify against him.^[10] Jimenez testified that accused-appellant had in fact transferred residence many times to escape from the police. From Alamada, Cotabato, accused-appellant transferred to Malamote, Midsayap, Cotabato, and then to Kapayawi, Libungan, Cotabato.^[11]

On cross-examination, however, Jimenez admitted that there was bad blood between him and accused-appellant. He said:

ATTY. ERAMIS:

. . . . Is it not [true] that on May 4 in Kapayawi you have stated that your house and the house of the accused is near [to] each other, and is it not [true] that there was a conflict between you and the accused in connection with your dogs and your chickens?

A Yes, sir. When he is drunk he stabbed our dogs.

Q And you do not like the behavior of the accused?

A Yes, sir.

Q And as neighbor you do not like the behavior of the accused?

A Yes, sir.

Q Even if he is your uncle?

A Yes, sir.

Q And in fact you are harboring hatred against the accused?

A Yes, sir.

Q You did not see the commission of the crime in this case?

A Yes, sir. I am not an eyewitness of the incident and I am only telling to this court the words which was told by the accused to me during the birthday party of my son.

Q And what is the reason why you said you do not like the behavior of the accused and in fact you harbored hatred [against] him. Why is it that you invited him to the birthday party of your son[?] What is the reason?

. . . .

A Because we are [close to] each other sir and our closeness [ended] when he chased my son, sir.

Q And because of that hatred you decided to testify against him in this case?

A Yes, sir.

Q As an act of vengeance?

A Yes, sir.^[12]

Testifying in his turn, Onotan Tomas, the victim's father, said he came to know the identity of the person who allegedly killed his daughter only after more than a year since her death. He claimed to have spent more than P25,000.00 for his daughter's wake and another P25,000.00 for his daughter's 40 days and first year death anniversary.^[13] These amounts, however, were not supported by receipts.

At the conclusion of its case, the prosecution failed to make a formal offer of its evidence. This was construed by the trial court as a waiver of the formal offer of evidence.^[14]

The defense then presented its only witness: accused-appellant Antonio Silvano. He denied going to the birthday party of Constancio Jimenez's son on December 3, 1992. He denied having told Jimenez that he had raped and killed a Muslim child in Alamada, Cotabato. Nor did he leave a *tubao* and knife at the crime scene. He said that on October 7, 1991, when the crime was committed, he was in his house in Brgy. Kapayawi, Libungan, Cotabato. Accused-appellant said he and Jimenez had altercations because accused-appellant hit Jimenez's cows for feeding in his corn land and Jimenez's dogs devoured his chickens. Said accused-appellant:

Q You were charged [with] rape with Homicide before this Honorable Court which happened on October 7, 1991 at Sitio Mapurok, Alamada, Cotabato based on the testimony

of Constancio Jimenez who testified in court that on December 3, 1992 you were invited to his house and you attended this party and on that occasion you admitted that you allegedly killed a girl and allegedly you left a knife and tubao in the crime scene, what can you say about this?

A That is not true, sir.

Q Why do you say that this is not true?

A Because I and Constancio Jimenez used to have a quarrel, sir.

Q Could you tell this Honorable Court when did this first quarrel start?

A 1990, sir.

Q Could you tell this Honorable Court what was your quarrel with Constancio Jimenez?

A It pertains to his cow, sir.

Q Do you know . . . where . . . this Constancio Jimenez live[s]?

A Yes, sir.

Q Where?

A In Kapayawi, sir.

Q You mean to tell us that he is your neighbor?

A Yes, sir.

Q You said you have a quarrel arising from a cow, could you tell us what happened to the cow?

A This Constancio Jimenez had 10 heads of cows and sometimes some of these cows [go] to my corn land.

Q And what did you do to those cows [which go] to your farm?

A I drove [away] the other cows and there was one cow left. I [hit] that cow, sir.

Q After hitting that cow what was the reaction of Constancio Jimenez if any?

A That was the root of our quarrel, he sided with these cows who destroyed my plants.

Q And you said you have your first quarrel arising from a cow, did you have any [more] quarrel with this Constancio Jimenez?