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[G.R. No. 127154, July 30, 2002]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLDAN A. OCHATE ALIAS "BOY," ACCUSED-APPELLANT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

On automatic review is the decision of the Regional Trial Court of Sindangan, Zamboanga del Norte (Branch 11) dated September 20, 1996 in Criminal Case No. S-2504 finding accused Roldan A. Ochate guilty beyond reasonable doubt of rape with homicide, sentencing him to suffer the penalty of death and ordering him to indemnify the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00).

The facts of the case:

Around 5:15 in the afternoon of September 26, 1994, Rowena Albiso and her older brother Roseller were walking together on their way home from school at Tampilisan, Zamboanga del Norte. Upon reaching the house of the barangay captain, which is about twenty (20) meters from their school, Rowena stopped and went to the communal water pump to wash her food container and her slippers. Roseller went home ahead of her sister. [1] On his way home, he passed by the hut of accused Roldan Ochate where he saw the latter in the yard tucking a scythe on his waist. [2] When Roseller arrived home, their father, Romulo, asked for the whereabouts of Rowena. Roseller told Romulo that his sister was not yet home. Romulo then went to meet Rowena. However, he was unable to find her. Romulo and Roseller thereafter went to the house of the accused who is their neighbor but finding no one there, they proceeded to report the incident to barangay councilman and acting barangay captain Crisanto Montano. [3] Montano, in turn, sought the assistance of some of the men in the barangay in order to find Rowena. The search was conducted the whole evening of September 26, 1994 to no avail. It was only around eight o'clock the following morning that the group found Rowena in a ricefield about fifty meters from Ochate's house. [4] She was already dead. The medico-legal officer who later examined the cadaver reported that the cause of death was hemorrhagic shock due to deep and penetrating incised wounds in the neck and abdomen. [5] Suspecting that Ochate was the culprit, police officers as well as other members of the barangay went to see Ochate at his house but they were not able to find him. It was only on September 29, 1994 that a certain Bienvenido Pantallano, a member of the CAFGU, was able to locate Ochate and he took Ochate in his custody and brought him to the Chief of Police of Tampilisan. [6]

> On January 9, 1995, an Information for Rape with Homicide was filed against Ochate, to wit:

"The undersigned, Provincial Prosecutor, accuses ROLDAN A. OCHATE @ Boy of the crime of RAPE WITH HOMICIDE, committed as follows:

"That, in the afternoon, on or about the 26th day of September, 1994, in the municipality of Tampilisan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a scythe, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation, have carnal knowledge with one ROWENA ALBISO, 8 year old child, against her will and without her consent; that in the pursuance of his evil motive and to better accomplish his evil purpose the said accused, did then and there willfully, unlawfully and feloniously attack, assault and hack said ROWENA ALBISO, thereby inflicting upon her injuries on the vital parts of her body which caused her instantaneous death; that as a result of the commission of the crime the heirs of the herein victim suffered the following damages, viz:

a) Indemnity for victim's death	P50,000.00
b) Loss of earning capacity	P20,000.00
	P70,000.00

"CONTRARY TO LAW."[7]

Ochate entered a plea of "not guilty."

After trial, the lower court found the accused guilty beyond reasonable doubt of the crime of rape with homicide and meted the penalty of death.

Hence, this automatic review.

Accused-appellant raises the following Assignment of Errors:

"I

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON ALLEGED INCRIMINATORY CIRCUMSTANTIAL EVIDENCE.

"II

"THE TRIAL COURT ERRED IN TAKING AGAINST THE ACCUSED VERBAL ADMISSIONS ALLEGEDLY MADE DURING CUSTODIAL INVESTIGATION IN VIOLATION OF HIS RIGHT TO REMAIN SILENT AND TO COUNSEL.

"III

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WITH HOMICIDE."[8]

Appellant contends that he knew nothing about the rape and the killing of Rowena Albiso; that around three o'clock in the afternoon of September 26, 1994, he was at his residence, sleeping; that upon waking up at three-thirty in the same afternoon he went to gather tuba then proceeded to his copra drier which is approximately

100 meters from his house; that he went back home at four o'clock and later went to sleep at six o'clock in the evening; that he did not notice any unusual incident on the night of September 26, 1994; that on September 29, 1994, he was arrested without warrant for reasons he was not aware of; that it was only after he was brought to the public market where he was informed that he was the suspect in the killing of a certain person, the identity of whom he only knew when he was already brought to the municipal building.

As to the first assigned error, we agree with accused-appellant that the trial court erred in convicting him based on circumstantial evidence. The requisites to sustain a conviction of an accused based on circumstantial evidence are: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.[9] And in the appreciation of circumstantial evidence, there are four basic guidelines: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every other theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense. [10]

Prosecution evidence established the following circumstances: (1) in the afternoon of September 26, 1994, when the victim was last seen alive by her brother Roseller, appellant was seen near his house located along the road where the victim and Roseller pass on their way home;[11] (2) the road passing through accused-appellant's house is the only path coming from the school going to the house of the victim's family;[12] (3) appellant was the only person seen by Roseller on his way home;[13] (4) appellant, who was alone at that time, appeared to Roseller as if he was waiting for somebody;[14] (5) upon waking up in the morning of September 27, 1994 and noticing that people in their barangay were gathering and looking for somebody, appellant did not bother to inquire about the reason for such activity; [15] (6) he did not participate in the search for the missing girl;[16] (7) the victim's cadaver was found about 50 meters from appellant's hut;[17] (8) when he was informed by his wife that the victim's cadaver was found near their house, he showed no surprise and he did nothing;[18] (9) on two occasions, when he was informed by the police that someone was killed in their barangay and that he is a suspect in the killing, he did not bother to ask who the victim was.[19]

After a careful review of the entire evidence presented, we find that a combination of the foregoing circumstances is insufficient to convict appellant of rape with homicide. Said circumstances do not lead to a fair and reasonable conclusion that accused-appellant, to the exclusion of all others, is the person guilty of the offense charged. Appellant's indifference to the events that happened in their barangay beginning September 26, 1994 up to the time of his arrest on September 29, 1994 may lend support to the suspicion of the barangay and police authorities that he is the author of the crime. But then, mere suspicion, no matter how strong it may be, is not sufficient to sustain conviction.[20] Law and jurisprudence demand proof beyond reasonable doubt before any person may be deprived of his life, liberty, or even property.[21] Enshrined in the Bill of Rights is the right of the accused to be presumed innocent until the contrary is proved, and to overcome the presumption

nothing but proof beyond reasonable doubt must be established by the prosecution.[22] The constitutional presumption of innocence requires courts to take "a more than casual consideration" of every circumstances or doubt proving the innocence of the accused.[23]

In his testimony, Crisanto Montano admitted that accused-appellant was considered a suspect because he did not join the search for the missing girl.[24] Appellant testified that he did not participate in the search because he was busy drying copra.[25] It cannot be contradicted that such passive reaction is susceptible to different interpretations. Indeed, it may be construed as an indication of guilt; but, it may also be interpreted as mere indifference or even downright insensibility.

Moreover, there was no evidence presented to show that after Roseller left his sister to wash her food container and slippers at the communal water pump, appellant was seen with her. Furthermore, the testimony of Roseller that he saw appellant along the road on his way home is not sufficient to support the conclusion that it was appellant who committed the crime. At best, it is mere conjecture or speculation which the Court will not subscribe to.

Jurisprudence instructs that where the circumstances obtaining in a case are capable of two inferences, one of which is consistent with the presumption of innocence while the other may be compatible with the finding of guilt, the court must acquit the accused because the evidence does not fulfill the test of moral certainty and, therefore, is insufficient to support a judgment of conviction.[26]

Doubtless, accused-appellant's defenses of alibi and denial are weak. Nevertheless, it is a settled principle in criminal law that a finding of guilt must rest on the strength of the prosecution's own evidence and not on the weakness or absence of evidence for the defense.[27] In the present case, the circumstantial evidence presented by the prosecution is not sufficient to establish the guilt of the accused beyond reasonable doubt.

As to the second assignment of error, we agree with appellant that his confessions to Bienvenido Pantallano, Dr. Henry Cawley, and before the barangay captain may not be used in evidence against him as they are in violation of his constitutional right to remain silent and to counsel while under custodial investigation.

Custodial investigation, as defined in Miranda vs. Arizona[28] is any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

Pantallano and Cawley are law enforcement officers, the former being a CAFGU member and the latter, an NBI officer. With respect to Pantallano, accused-appellant's confession was made when the former was pointing his gun at the latter;[29] thus, effectively depriving accused-appellant of his freedom of action. On the other hand, accused-appellant's confession to Dr. Cawley was made when the former is already under detention.[30] Both Pantallano and Cawley elicited questions that prompted accused-appellant to confess his guilt in the absence of a counsel and without being informed of his constitutional rights. Hence, it is clear that his confessions are inadmissible in evidence having been obtained in violation of the provisions of Section 12, Article III of the 1987 Constitution, to wit: