

EN BANC

[G.R. No. 142774, July 03, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CASTOR "JOJO" JULIAN, JR., ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

No grief surpasses that of a parent whose child lost not only her innocence, but also her life, in the most gruesome of circumstances. Finding his missing daughter submerged in a pond--- lifeless, and with all the indications of sexual abuse--- all courage escaped Estanislao Domingo. Elenalyn was only eight years old,^[1] an honor student,^[2] and the youngest of the Domingo siblings.^[3]

Estanislao did not have enough strength to retrieve Elenalyn's body from the filthy pond.^[4] The burden fell upon his wife, Alejandra, who immediately noticed her daughter's torn pantsuit and missing underwear and slippers.^[5]

All fingers pointed to accused-appellant Castor "Jojo" Julian, Jr.--- a resident of the same Barangay and was last seen with the victim.

The Domingo family knew the accused-appellant for a long time. Estanislao Domingo worked as a helper of Clemente Balguna, accused-appellant's father-in-law for three (3) years. He started working for Balguna when Elenalyn was only about four (4) or five (5) years old and used to bring her along when he reports for work. On the other hand, accused-appellant and his son would often visit and spend the night at Balguna's house, as his wife was then abroad. Due to their frequent encounters, Elenalyn and the accused-appellant developed a friendship and treated each other as siblings.^[6]

On August 30, 1996, an Information for Rape with Homicide was filed against accused-appellant with the Regional Trial Court of Laoag City, Branch 11, viz:

"That on or about 5:00 o'clock in the afternoon of 29 July 1996, in the municipality of Piddig, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge with ELENALYN DOMINGO, a minor, eight (8) years of age and on the occasion thereof the said victim died as a consequence of the injuries she suffered.

CONTRARY TO LAW. "^[7]

Upon arraignment, accused-appellant entered a plea of not guilty.^[8] During the trial, spouses Estanislao and Alejandra Domingo took the witness stand together with Eleanor, the victim's older sister. Neighbors Arlene Barsolaso and Eduardo Agustin corroborated their testimonies, while Investigating Officer PO3 Santiago Esteban and Municipal Health Officer Dr. Diophantos Acob narrated their findings. The defense, on the other hand, presented the accused-appellant, Ceferino Julian and Clemente Balguna.

Prosecution evidence can be summarized as follows:

In the morning of July 29, 1996, Elenalyn Domingo went to school with her two elder siblings at the Estancia Elementary School, Estancia, Piddig, Ilocos Norte. Her mother dressed her with a pantsuit and underneath, a white underwear.^[9]

At noon, the three of them returned home and joined their parents for lunch. After which, they went back to school for their afternoon subjects. Their parents, on the other hand, proceeded to the "luslusong" to plant rice.^[10]

At around 4 p.m., Elenalyn and elder sister Eleanor walked home together. On their way home, they passed by a waiting shed near their house. Eleanor saw the accused-appellant standing near the waiting shed located on a "hilly portion." He was wearing a jacket.^[11]

When they reached their home, Eleanor saw an orange. She asked Elenalyn to inquire from their parents who brought the fruit. Elenalyn complied and proceeded to the "luslusong" to see her parents. Eleanor went out of the house and watched her younger sister head towards the "luslusong." She saw the accused-appellant at the waiting shed, still wearing his jacket. He followed Elenalyn and caught up with her. When they were no longer in sight, Eleanor went back in to prepare food.^[12]

In the same afternoon, at about 3:00 p.m., Arlene Barsolaso and her mother, Cecilia Agustin went to the fields of Estancia to uproot rice seedlings. They walked for about forty-five (45) minutes to reach the fields. They stayed there for some time and finished uprooting the rice seedlings at past four o'clock.^[13] While uprooting rice seedlings, Arlene saw Elenalyn's mother washing clothes in a nearby river at a distance of approximately 200 meters.^[14]

On their way home, they passed through a barangay road and met accused-appellant and Elenalyn.^[15] The former was wearing a T-shirt and violet pants while the latter was wearing "something like a raincoat colored violet." The "raincoat" was big, covering Elenalyn's whole body. Only her face was showing.^[16]

Arlene asked Elenalyn where she was going but the latter only smiled and did not answer. It was the accused-appellant who told her that Elenalyn was looking for her parents. Arlene informed Elenalyn that her mother is "in the north." Thereafter, Arlene and her mother proceeded home while accused-appellant and Elenalyn proceeded northeast leading to the ricefields. After about ten minutes, Arlene looked back and saw them still walking together.^[17]

During her testimony, Arlene claimed that she had seen the accused-appellant wear

that same "violet raincoat" several times before. She identified in court a parka jacket labeled "Winner large" with a violet collar, which is the dominant color, as the same "raincoat" worn by Elenalyn on July 29, 1996.^[18] Clemente Balguna allegedly surrendered the jacket, marked Exhibit "J", to the police authorities.

In the same afternoon, at about 2:00 p.m., Eduardo Agustin together with Abe Matute and two other persons from barangay Claveria, went to the fields of Calauag to plant rice. At about 5:00 p.m., they moved north of the Estancia Elementary school.^[19]

Along their way, Agustin saw the accused-appellant in the company of a child. At a distance of 80 meters, Agustin easily recognized accused-appellant, being a long-time neighbor. However, he did not recognize accused-appellant's companion as the child was wearing a violet jacket and the head was covered. He was also not able to determine if the child was a male or a female. He just assumed that the companion of the accused-appellant was a child because "he was small," and "about 46-3/4 inches tall."^[20] In court, Agustin identified the parka jacket with violet as the dominant color, marked as Exhibit "J", as the jacket worn by the child.^[21]

Agustin noticed that the couple came from the west and were proceeding east. The two were following a canal, north of the school. He called to the accused-appellant but the latter did not respond. The accused-appellant and the child continued walking along the canal. After a while, the two jumped over the canal to the other side, went eastward, then stopped and stood at the edge of the canal. It was about 5:30 p.m.^[22]

Agustin and his companions continued planting rice and finished at about 6:00 p.m. At that time, it started raining and they ran home. They never saw the accused-appellant and the child again.^[23]

It was about 7:00 p.m. when Alejandra noticed that Elenalyn was missing. She asked Estanislao to look for their daughter so that they could have dinner together.^[24] Thinking that Elenalyn was only watching television, Estanislao went to their relatives and neighbors who have television sets, among them, Leonida Agustin and Tiburcio Agustin. But his neighbors told him that they had not seen Elenalyn. Worried, he knocked at Romeo Agustin's door to borrow a flashlight but he was not able to borrow one. He went home hoping that his daughter was already there. He was wrong.^[25]

Estanislao's search continued. He asked several neighbors for any information on Elenalyn's whereabouts. His first clue came from Lita Pablo who told him that she met his daughter at the waiting shed that afternoon. During that chance meeting, the girl had informed her that she going to the "luslusong" to see her parents. With this information, Estanislao proceeded to the "luslusong" but Elenalyn was nowhere to be found.^[26]

Desperate, Estanilao again knocked at the house of Romeo Agustin at about 12:00 o'clock midnight. He told him that Elenalyn was missing and he needed the flashlight to aid him with his search. Hearing this, Romeo's wife, Cecilia, told him that Elenalyn might be at the accused-appellant's house. She and her daughter,

Arlene Barsolaso, had seen the accused-appellant with Elenalyn that afternoon in Cabaruan.^[27]

With this information, Estanilao asked his brother Patrocinio to accompany him to the house of Clemente Balguna. He told Balguna that his daughter was missing and that somebody saw her in the company of his son-in-law. Accused-appellant, coming from the rest room, told Balguna that he met Elenalyn that afternoon but they parted ways in the grassy portion of Cabaruan. Together with Clemente Balguna, Patrocinio and Nelson Agustin, Estanislao went to the place described by the accused-appellant. Not seeing Elenalyn, they formed two teams to conduct a thorough search of the area. However, their efforts proved futile.^[28]

In the morning of July 30, 1996, when they were about to go home, they met Eduardo Agustin at the "luslusong." Eduardo Agustin told Estanislao that he met Elenalyn and the accused-appellant the day before in a place called "Pagngalagaan." Estanislao and company, now including his wife Alejandra, searched the place where Eduardo Agustin last saw the two together. They noticed that the "grasses were depressed."^[29]

Eduardo Agustin went to a waterlily-covered pond, locally known as "palibtok" or "kubkub". The pond was east of where he had last seen Elenalyn and the accused-appellant standing the day before, and about three-arms length away from the flattened area. He noticed something and called Estanislao's attention. Using his foot, Estanislao was able to touch a dead body. He pulled it up and immediately recognized it to be his missing daughter, Elenalyn.^[30] Shocked, he lacked the strength to continue and it was Alejandra who pulled out the body from the water.

Estanislao reported the discovery of his daughter's body to Clemente Balguna, who told him to immediately inform officers of the Philippine National Police (PNP), Pidding, Ilocos Norte. Together with one of the Kagawads, Benjamin Hilario, Jr., Estanislao proceeded to the municipal hall of Piddig.^[31]

On the same day, Dr. Diophantos Acob conducted a post-mortem examination on the cadaver of Elenalyn. His findings show that:

"Victim in flexed upper extremity with extended wrist and partially flexed and abducted left lower extremity, attired in a dirty short pantsuit with floral prints in green, light green and pink color, body wet, with soil and leaves.

Height: 127.3 cm

No injuries on the scalp, fracture of the cervical vertebrae, with contusion hematoma and linear abrasion on the zygomatic area, left linear multiple abrasions noted on the anterior aspect of the neck, multiple abrasions on both lower and upper lips, tongue partially protruded clenched by both upper and lower teeth with blood coming from the lateral left side of the mouth, pupils equal and fully dilated.

Abdomen flat and soft, no external physical injuries noted on the anterior and posterior aspect of the body.

No pubic hair, vulva edematous, vaginal opening admits 2 fingers with resistance, hymenal lacerations noted at 3:00 and 6:00 positions measuring 1 cm and 1.5 cm respectively, blood clots noted at the vaginal opening.

Multiple contusions on both lower extremities and right upper extremity, washerwoman's feet and hands."

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Conclusions: There were signs of extragenital injuries noted on the body of the victim at the time of the examination. Genital injury present showing that rape act had been committed on the alleged date of commission.

CAUSE OF DEATH: FRACTURE OF THE CERVICAL VERTEBRAE."^[32]

On the witness stand, Dr. Acob explained that when he removed Elenalyn's jumpsuit, he immediately noticed clotted blood in her vagina. There were lacerations at the three and six o'clock positions. Her whole labia majora was swollen, indicating forceful introduction of an object. Her vaginal opening admits two fingers with resistance. All these circumstances were consistent with the crime of rape.^[33]

Although there were no vaginal smear, Dr. Acob explained that the result of the test could have been altered due to the victim's immersion in water. It was also possible that the perpetrator of the offense did not have an ejaculation.^[34]

The contusion hematoma and linear abrasions found on the right cheek of the victim could have been caused by "forceful friction with a smooth object like a hand." Dr. Acob opined that the perpetrator could have forcefully twisted the victim's head by placing one hand on the chin and the other on the top of the head, thereby causing cervical fracture. This explains why the victim's tongue partially protruded. He stressed that the fracture in the victim's cervical vertebrae caused her instantaneous death.^[35]

After Elenalyn's interment, a reenactment was conducted at the crime scene. Among those who were present where: (1) then Provincial Governor of Ilocos Norte, Atty. Rodolfo Fariñas; (2) PNP Provincial Director Oscar Valenzuela; (3) then Provincial Prosecutor Dionisio Caoili; (4) PO3 Santiago Esteban; (5) Estanislao Domingo; (6) Alejandra Domingo; (7) Arlene Barsolaso; (8) Atty. Felix Salvador of the Public Attorney's Office; and (9) the accused-appellant.

Photographs of the accused-appellant pointing certain places were taken during the reenactment.^[36]

For the wake and burial of Elenalyn Domingo, the Domingos claimed to have spent a total amount of P104,036.00.^[37]

For his part, accused-appellant interposed a defense of denial and alibi. He claimed that in the morning of July 29, 1996, he went to the house of his in-laws at Sitio