

EN BANC

[G.R. No. 147671, November 21, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENANTE MENDEZ AND BABY CABAGTONG, ACCUSED-
APPELLANT.**

DECISION

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 22, Laoang, Northern Samar, finding accused-appellants Renante Mendez and Rene "Baby" Cabagtong guilty of the crime of rape with homicide and sentencing each of them to death and to indemnify the heirs of victim Candy Dolim in the amount of P100,000.00 as damages. Because the record of this case is replete with numerous instances of procedural and evidentiary lapses, we are constrained to reverse the judgment of the trial court and acquit accused-appellants on the basis of reasonable doubt.

The prosecution in this case began with the filing of an information by Prosecutor Napoleon C. Lagrimas on March 5, 1997. The information alleged —

That on or about the 8th day of December, 1996, at about 7:30 in the evening, more or less, at Sitio Tinotogasan, Brgy. Burabud, Gamay, Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, by means of force and intimidation, and with lewd design did, then and there willfully, unlawfully and feloniously have sexual intercourse with the private offended party named CANDY DOLIM, which is against her will and consent; and that on the occasion of said incident, the above-named accused with intent to kill and without any justifiable cause, did then and there, willfully, unlawfully and feloniously attack, assault and stab said CANDY DOLIM, on the different parts of her body, which wounds caused the instantaneous death of the latter.

CONTRARY TO LAW.^[2]

Accused-appellants, assisted by counsel, pleaded not guilty to the crime charged, whereupon trial ensued.

The prosecution presented six witnesses: Rico Dolim, Aurea Cabagtong, Ronnie Cabagtong, SPO2 Noli Cernio, Zosimo "Mager" Mejica and Dr. Santiago M. Engo, Medical Officer III of Gamay District Hospital, Gamay, Northern Samar.

Rico Dolim is the father of the victim. (It appears that he and his wife, Erma Ada, were estranged.) He testified that, in the morning of December 8, 1996, Candy Dolim, then 13 years old, left their house to collect bets on the PBA ending games

from the local residents. When she did not return home that evening, Rico asked his father Ambrosio and his daughter Jinky to look for Candy, but they did not find her. Information that Candy was in Mapanas with her mother proved wrong. On December 12, 1996, word reached Rico that a young girl was found dead in Sitio Tinotogasan. Rico immediately went to the place and found the lifeless body of Candy. Her panty and shorts were hanging from an ankle, while her shirt was rolled up to her throat. She had wounds in different parts of her body.

Rico sought the help of the police and Barangay Captain Pedro Gomba.^[3] Having heard that a certain Ronnie Cabagtong^[4] was involved in the killing of his daughter, Rico filed a complaint against Ronnie, who was then investigated by the police. While Ronnie was under investigation at the police headquarters, his mother, Aurea Cabagtong, came to the station. She told Rico Dolim that she knew what actually happened to Candy and offered to be a witness.^[5] Aurea Cabagtong pointed to accused-appellants Baby Cabagtong^[6] and Renante Mendez as the perpetrators of the crime.

Rico Dolim's statement, as well as that of his father, was taken by the police, as were those of Aurea Cabagtong, Dimas Pugnit, and Ronnie Cabagtong. Rico said he knew accused-appellant Renante Mendez because he was their neighbor. He was acquainted with accused-appellant Baby Cabagtong because the latter was also from Barangay Burabud.^[7] Rico Dolim claimed he had suffered unbearable loss as a result of his daughter's death and that he had incurred burial and other incidental expenses which he estimated to be ₱7,000.00.

For her part, Aurea Cabagtong claimed that, on the night of December 8, 1996, accused-appellants Renante Mendez and Baby Cabagtong went to her house. They were soaked from the rain. She said that her son Ronnie, who was already about to sleep, asked her to let the two inside. She said her son talked with accused-appellants, but she did not understand what they had been discussing. Aurea Cabagtong said she saw accused-appellants washing their clothes to remove bloodstains on them. The two spent the night in her house with her son Ronnie. When she woke up the following morning, she found they had already left.^[8]

Aurea said she was able to talk to her son about accused-appellants' visit only when she went to the police headquarters while Ronnie was being investigated. She gave a statement, which was reduced in writing, before SPO2 Noli Cernio.^[9] On cross-examination, Aurea said that Ambrosio Dolim had asked her to testify in this case. According to her, Ambrosio went to her house and paid for her expenses in attending court sessions.^[10]

Ronnie Cabagtong, the third witness for the prosecution, claimed to be an eyewitness to the crime. He said that, on the night of December 8, 1996, he watched a Betamax show in Kagawad Tesoro's house in Occidental II, poblacion of Gamay. Several people were there, including accused-appellants Renante Mendez and Baby Cabagtong and the victim Candy Dolim. He said that Candy Dolim left after the first show to solicit bets for the PBA ending games. Accused-appellants Renante Mendez and Baby Cabagtong followed. Ronnie said he left Kagawad Tesoro's house five minutes later and met Dimas, who told him that he had seen accused-appellants with a girl. According to Ronnie, he was about three meters away when he later saw accused-appellants. Renante Mendez was on top of Candy, having sexual intercourse with her, while Baby Cabagtong was holding the victim's

hands. It was raining and there was no moonlight, but Ronnie said he recognized Renante and Baby because of a lantern which illuminated the place. According to Ronnie, he proceeded home and, at about 9 o'clock that night, he heard someone calling from the outside. It was accused-appellants Renante Mendez and Baby Cabagtong. Ronnie said he asked his mother to let the two inside their house. He noticed that they had bloodstains on their shirts. He said the two washed their clothes to remove the stains and later slept in his room. They warned Ronnie not to tell anyone about what he saw or else they would kill him and his family. Ronnie said that he and accused-appellants then went to sleep. The next morning, accused-appellants left.^[11] Ronnie said he later learned that Candy had been killed and she was buried on December 12, 1996.

That same day, December 12, 1996, Ronnie, together with Renante Mendez, was apprehended by SPO2 Noli Cernio. Ronnie testified that he did not immediately tell the police or SPO2 Cernio what he knew about the case because Renante had a cousin who was a policeman. SPO2 Cernio did not put his statement in writing. Ronnie was later released by the police. In February 1997, he went to Manila to avoid involvement in this case and to look for a job.^[12] He was fetched from Manila by his mother on April 29, 1997 and was later taken to Catbalogan, where he was investigated by the NBI.^[13] According to Ronnie, he finally decided to talk about this case because he was bothered by his conscience. He said he had been acquainted with accused-appellants for a long time, particularly Renante Mendez, whom he had known since he was a boy. He denied any relation to Baby Cabagtong and claimed that he had no grudge against accused-appellants.^[14]

On cross-examination, Ronnie reiterated that, at around 8 o'clock in the evening of December 8, 1996, he saw accused-appellant Renante Mendez raping Candy. He recognized Renante because of the light from a lantern. He did not stay long in the area because it was drizzling. Ronnie could not remember what Candy and Renante were wearing at that time. Neither did he hear cries from the victim. He said he did not tell his mother about the incident because he went to sleep immediately after eating dinner. When Renante and Baby went to his house at around 10 o'clock in the evening, Ronnie asked his mother to let them in because they were his acquaintances. He claimed he agreed to testify in this case because Candy was his cousin.^[15]

Dr. Santiago M. Engo performed the autopsy on Candy Dolim. He found the body of Candy in a state of decomposition. In his report,^[16] he stated he found five (5) wounds on different parts of Candy's body: (1) a hack wound on the neck, which, according to him, was fatal; (2) an incised wound, 5 inches long, gaping and 1 1/2 inches deep, located at the anterior upper third of the left arm; (3) an incised wound, 3 inches long, gaping and 2 inches deep, located at the lateral 3rd of the right forearm; (4) an incised wound, 7 inches long, gaping and 2 inches deep, located at the anterior upper 3rd of the right forearm extending up to the lower 3rd of the arm of said side; and (5) a lacerated vaginal wound, 2 inches long, located at the 6 o'clock position of the vaginal orifice.^[17]

Dr. Engo stated that wounds no. 1, 2, 3 and 4 were caused by a sharp bladed instrument, with the victim facing his assailant, and that wound no. 4, the vaginal laceration, was caused by a blunt instrument. Only wound no. 1 (the hack wound in the neck) was serious and could have caused the instantaneous death of the victim.

It was possible that the assailant was on top of the victim and that he was right-handed. By Dr. Engo's estimate, Candy Dolim could have died either on December 7 or December 8, 1996. Due to the decomposition of the body, Dr. Engo was not able to extract or take any semen samples from the vagina, although he was able to examine the wound found on it. He said he could not be certain if the victim had been sexually assaulted.^[18]

Farvesio Banawis, also testifying for the prosecution, declared that he owned a coconut plantation in Barangay Bato, Gamay, Northern Samar. On December 8, 1996, while he was on his way home to Barangay Burabud from Barangay Bato, where his plantation was situated, he met three persons, one of whom was Candy Dolim. He knew her to be the granddaughter of a certain "Bokoy." He identified accused-appellants in court as the persons in the company of Candy that night. He said he even talked with Candy Dolim. He asked her what she was doing, and she answered she was looking for the winner of the PBA ending games. He did not talk with accused-appellants Renante Mendez and Baby Cabagtong.^[19]

The following day, Farvesio said, he left for Manila. A week later, he learned from his townmates, who had come from the province, that a little girl had been found dead in Gamay. He thought it might be the girl he had met near his property. But he stayed long in Manila and only went home to Gamay in May. After he had verified the news about Candy Dolim, he went to Ambrosio Dolim and told him that he was willing to testify in this case.

Farvesio was investigated by SPO2 Noli Cernio. He executed a sworn affidavit^[20] before the clerk of court of the Municipal Court of Gamay, Gil Ada. He said that it was possible that accused-appellants raped and killed Candy because they were the ones following her. He claimed he had no grudge against accused-appellants. He volunteered to be a witness in this case, but, according to him, his affidavit was executed only when this case was already filed in court because he stayed in Manila for a long time.^[21]

The next witness for the prosecution, SPO2 Noli Cernio, testified that he was a member of the PNP of Gamay assigned as an investigator in the Intelligence Section. In the morning of December 8, 1996, he was informed that a dead body had been found in Sitio Tinotogasan. For this reason, he went to Barangay Burabud with Chief of Police Peter Longcop and Dr. Santiago Engo to conduct an investigation. When they arrived in Sitio Tinotogasan, Barangay Burabud, they found the lifeless body of Candy Dolim. Candy's grandfather identified her body.^[22]

SPO2 Cernio found the victim to have been stabbed several times. She was lying on a grassy area with her panty pulled down to her feet and her upper dress raised up to her neck. Her body was already in a state of decomposition. The right side of Candy's face was unrecognizable. SPO2 Cernio took pictures of the dead body, which were marked as Exhibits G, G-1 and G-2.

SPO2 Cernio said he questioned Ronnie Cabagtong and accused-appellant Renante Mendez. Ronnie told him that accused-appellants Renante Mendez and Baby Cabagtong went to his house at around 10 o'clock in the evening on the day of the incident. SPO2 Cernio said he did not take the sworn affidavit of Ronnie Cabagtong because the latter denied involvement in the case and claimed that he was in their house on the night of the incident.^[23]

SPO2 Cernio said that Ronnie Cabagtong was released from custody after he had informed the Chief of Police that he was innocent. Accused-appellant Renante Mendez remained in custody for investigation, while the Chief of Police ordered accused-appellant Baby Cabagtong to be arrested. SPO2 Cernio investigated accused-appellant Baby Cabagtong, who denied participation in the incident. The investigation was not put in writing. Cernio said he also investigated Aurea Cabagtong, Rico Dolim and Ambrosio Dolim. He testified that he knew accused-appellant Renante Mendez because there were several cases filed against the latter, including a rape charge which was dismissed after Renante married the complainant. With respect to accused-appellant Baby Cabagtong, SPO2 Cernio said he too had several complaints against him, but not all were filed in court. SPO2 Cernio claimed that accused-appellant Baby Cabagtong was a trouble-maker. He also said that Ronnie Cabagtong and accused-appellants Renante Mendez and Baby Cabagtong were always seen together.^[24]

On cross-examination, SPO2 Noli Cernio testified that he filed the case against accused-appellants Renante Mendez and Rene "Baby" Cabagtong because he had been informed that they had watched a Betamax show together with the victim. From other sources, he had learned that the victim and accused-appellants were in Barangay Burabud on the date and time in question. He investigated Ronnie Cabagtong, but he did not take down the latter's affidavit because he believed his claim that he was at home at the time of the incident.^[25]

The defense then presented its evidence. Its theory is that the crime was committed by one Randy Gomba, and not by accused-appellants, as charged by the prosecution. The first witness, Josefina Bernas, testified that, on the day of the crime, she and her husband were in Sitio Tinotogasan making copra. While they were working, they heard a woman crying. When Josefina went to see what it was, she saw a girl being raped by a man. Josefina recognized the assailant to be Randy Gomba. The girl was lying on her back with her legs raised, her shorts were at her ankle and her blouse was around her neck. She saw Randy Gomba holding the girl in his arms. She was bleeding profusely. Randy warned her: "No such story would come out, otherwise, [I will] kill [you]." Frightened, Josefina ran fast until she reached her husband. After she had told her husband what she had witnessed, they hurriedly went home, passing through another route because they were afraid they might encounter Randy Gomba.^[26]

Upon reaching home, Josefina wrote the date and time of the incident and told her husband to watch out as Randy Gomba might come to their house. Randy in fact went to their house and threatened to harm them if they told anybody about the incident. Josefina said Randy even asked ₱20.00 from them for his fare, but they had no money at that time.^[27]

After Randy had left their house, Josefina and her husband went to the house of her in-laws. A few days later, they asked a neighbor to seek the help of the barangay captain. It was the barangay captain's son, July Gobatana, who came and brought them to his house. They stayed there for almost three weeks, and left the barangay captain's house only when they were informed that Randy had gone to Manila.^[28] Josefina said she gave the note she had made to Eladio Cabagtong. She then sought the help of Isabelo Lucero, a barangay captain in Laoang and a godfather of the victim. Isabelo Lucero wrote a letter to Erma Ada, the victim's mother. Josefina went with Isabelo Lucero to deliver the letter to Erma, but she did not know its contents.