

## THIRD DIVISION

[ G.R. No. 139961, May 09, 2001 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARSENIO TOLEDO SR., JOHN DOE AND PETER DOE, ACCUSED, ARSENIO TOLEDO SR., APPELLANT.**

### DECISION

**PANGANIBAN, J.:**

After carefully reviewing the records of this case and the arguments raised by the parties, this Court cannot fault the trial court for its assessment of the evidence and the credibility of the witnesses. However, it erred in convicting appellant of murder, because the qualifying circumstance of treachery had not been alleged in the Information. Without such qualifying circumstance, the crime committed was only homicide.

#### The Case

Arsenio Toledo Sr. appeals the July 23, 1999 Decision<sup>[1]</sup> of the Regional Trial Court of Midsayap, Cotabato, Branch 18, in Criminal Case No. 97-044, finding him guilty of murder and sentencing him to *reclusion perpetua*.

In an Information dated February 18, 1997, Assistant Provincial Prosecutor Rolando Y. Deiparine charged appellant with rape with homicide allegedly committed as follows:

"That on or about January 9, 1997, in the morning in the Municipality of Pikit, Province of Cotabato, Philippines, the said accused, in company with JOHN DOE and PETER DOE, whose real identities are still unknown and [who are] at large, [by] conspiring, confederating and mutually helping one another, did then and there [--] willfully, unlawfully and feloniously with the use of force and intimidation [-- succeed] in having carnal knowledge [of] LAILA ROSE B. ARCO, minor, five (5) years old, against her will[;] that on said occasion, the above-named accused, with intent to kill, choke[d] and thereafter threw her to the pond near the Purok, which is the direct and immediate cause of her death thereafter."

[2]

With the assistance of counsel,<sup>[3]</sup> appellant pleaded not guilty when arraigned on April 28, 1997. After trial, the RTC rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding ARSENIO TOLEDO, SR. guilty beyond reasonable doubt of the crime of [m]urder under Article 248 of the Revised Penal Code and therefore sentences him to suffer the penalty of reclusion perpetua with the accessories provided by law.

"The accused is further ordered to indemnify the heirs of victim Laila Rose Arco in the amount of P70,000.00; to pay them P50,000.00 moral damages and P30,000.00 exemplary damages; and to pay the cost.

"As the accused is presently under detention in the Provincial Jail, Amas, Kidapawan City, he is ordered committed to the Davao Penal Colony, Carmen, Davao del Norte."

Hence, this appeal.<sup>[4]</sup>

### The Facts

#### Version of the Prosecution

In its Brief,<sup>[5]</sup> the Office of the Solicitor General summarized the prosecution's version of the facts as follows:

"Sometime on the morning of January 9, 1997, Ronnie Cabamungan, then . . . a Grade (I)<sup>[6]</sup> pupil of Pikit Central Elementary School, Cotabato, was ordered by his teacher Mrs. Cabana to return some plates to her house. He was accompanied by Jerry Saac, also a pupil of the same school. (pp. 8-10, TSN, July 2, 1997). While on their way to return the plates, Ronnie saw Laila Rose Arco urinating near a coconut tree at the `bungtod' or a higher portion of a land or a small hill. While Laila Rose was urinating, Ronnie saw appellant grab Laila Rose by carrying her head with his left hand as her feet were held by appellant with his right hand (pp. 11-12, TSN, Ibid.). Appellant brought Laila Rose inside the `purok' or a small hut where Ronnie noticed two other unidentified companions of the appellant waiting. Laila Rose shouted `tabang' (meaning help) but to no avail because appellant strangled (`tuok') her and covered her mouth. Thereafter, appellant came out of the hut and threw her body into a pond, and, together with his companions, ran away (pp. 12-16, TSN, Ibid; 29-39, TSN, Ibid).

"On January 9, 1997, at around 11:00 o'clock in the morning, Jimmy Arco, who was then driving a `triscad', received information that his daughter (Laila Rose) was found drowned. He went to the Llaguno Medical Clinic where his daughter was being revived by nurses and attendants. The clinic personnel were pressing their hands over his daughter's breast to resuscitate her. Thinking that Laila Rose was still alive, he helped the nurses and the attendants in pressing his daughter's breast. While resuscitating Laila Rose, Jimmy noticed a blackened mark on her neck with what appeared to be three fingernail marks (pp. 12-16, TSN, July 1, 1997). After Laila Rose was pronounced dead, her body was

brought to the National Bureau of Investigation (NBI).

"Dr. Tammy Uy, Senior Medico Legal Officer of the NBI in Cagayan de Oro City, conducted a post mortem examination (Exhibit `F' to `F-9') at about 8:20 p.m. of January 9, 1997 on the cadaver. The results of her examination showed that the genital[ia] had fresh complete lacerations at 3:00 o'clock, 6:00 o'clock and 9:00 o'clock position[s] with fibrin and with edematous congested edges. The cause of death [was] asphyxia, secondary to strangulation. Her autopsy showed the following:

`fresh hymenal lacerations are noted on the subject at the time of examination, ages of which are compatible with the alleged date and time of death on January 9, 1997 between 7:30 a.m. and 11:00 a.m. (pp. 4-10, TSN, April 21, 1997).'

"Dr. Uy stated that the presence of fibrin [indicated] that the injuries were sustained by the victim while she was still alive. The abrasions and lacerations at the posterior could have been caused by a hard, blunt object like an erect penis or anything that was forcibly inserted on Laila Rose's vagina (pp. 4-23 TSN, July 21, 1997).

"Dr. Uy further testified that she found three abrasions, toughly linear with fresh scabs located at the right side, mid aspect and left side in the adam's apple. The first group of abrasions [were] found on the right side of the neck, the second group at the thyroid region of the neck and the other abrasion [was] .5 x .2 centimeter. The fourth abrasion [was] located at [the] right side of [the] chest below the nipple. The depressed fracture[d] body of the thyroid cartilage, anterior aspect, bilateral lined, [were] caused by strong pressure applied. Likewise, the application of strong pressure cause[d] the hemorrhages in the thyroid region.

"The doctor also noted `Tardieu spots' on the body of Laila Rose. This meant that there was petechial hemorrhage, extensive, subpleural, bilateral and subepicardial, which could have made it impossible for Laila Rose to breath[e] or inhale oxygen leading to hemorrhage on the surface of the lungs and of the heart. Laila Rose's heart chamber was likewise full of dark fluid and clotted blood, indicati[ng] that there was no external blood loss and no bleeding. Dr. Uy opined that Laila Rose's death was caused by manual strangulation because the abrasions on her neck were linear, and possibly caused by human fingernails.

"Baltazar Cabamungan, [who was] the older brother of Ronnie Cabamungan and who was 26 years old at the time of the trial, testified that sometime after lunch, in January, 1997, he accompanied his younger brother Ronnie [to] the 'cockpit'. Ronnie pointed to the appellant Antonio Toledo, Sr., as the person who killed Laila Rose. Ronnie emphatically stated `Kuya mao na Siya' (Kuya, this is the one). The two brothers then went to the police station where they reported the matter to police authorities. The chief of police conducted an on the spot investigation (Exhibit `I', pp. 32-35, TSN, Ibid.). During the trial, Baltazar identified appellant as the person his brother Ronnie earlier pointed to as the perpetrator of the crime (pp. 23-30, TSN, November

11, 1997).

"Later, two policemen went to Baltazar Cabamungan's residence to interview Ronnie Cabamungan. Ronnie told SPO2 [Rudolfo] Milagrosa that he and his classmate, Jerry Saac saw an old man carrying Laila Rose while she was urinating. Ronnie said that the old man brought Laila Rose to the cottage (purok). Ronnie stated that he frequently saw the old man in the cockpit arena in their place with his fighting cock. The next day, Milagrosa requested four people, namely Atty. Samuel Perenal, Mayor Ong, the Principal of Pikit Elementary School, Mr. Gomez and Atty. Roberto Mellendez to observe the conduct of the investigation. As a result, an affidavit was executed by Ronnie Cabamungan which was witnessed and signed by the four witnesses aforementioned (pp. 18-27, TSN, Ibid.)." [7]

### Version of the Defense

On the other hand, appellant's version of the facts, as summarized by the trial court in its Decision, is as follows:

"Accused Arsenio Toledo, Sr. denied having grabbed Laila Rose Arco, brought her to the purok, strangulated her, covered her mouth and thr[own] her into the pond. He denied also having raped her.

"He testified that on January 9, 1997, he left his house at 8:20 in the morning to go to his farm at Calawag, about 3 ½ kilometers or [a] 15-minute ride. He did not proceed because he passed by the house of Todo to buy [a] cock because Todo [was] also a cock breeder. However, he did not buy the cock because the classification of the cock [was] not suitable to him. At 9:30, a military man, Captain Leonardo Songcaya, with four men, arrived looking for Todo. At 10:30, M/Sgt. Pedro Cuisin arrived. He conversed with Capt. Songcaya who left at 11:00. He and Pedro Cuisin left the house of Todo at 12:00 noon. He went home because he was hungry. After taking his lunch, he slept and woke up at 1:00 and checked up his jeep until 5:00 o'clock in the afternoon (TSN, April 8, 1998, pp. 16-24).

"To buttress his denial that he had not grabbed Laila Rose, brought her to the purok, strangulated her, covered her mouth and thr[own] her into the pond, Jerry Saac was presented.

"While Jerry admitted that he and Ronnie Cabamungan were requested by their teacher to return the plates to her house, he, however, denied that he saw Laila Rose urinating, that Toledo, Sr. grabbed her, brought her to the purok, strangulated her, and threw her into the pond (TSN, December 17, 1997, pp. 22-23).

"Eleanor Toledo, Toledo Sr.'s wife, did not believe that the testimonies of the prosecution witnesses against her husband [were] true (TSN, April 6, 1998, p. 85). She testified that her husband [was] innocent of the crime

charged (Ibid., p. 89).

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"Witnesses Vena[n]cio Gabales, Joey Raul Unson, Florencio Mamites, Rosalina Saac and Remus Unson were presented by the defense to prove that the police framed-up Toledo, Sr.

"Vena[n]cio Gabales testified that the police forced him to testify against Arsenio Toledo, Sr. (TSN, January 6, 1998, pp. 11 and 16).

"Joey Raul Unson testified that Rudy Milagrosa wanted him to testify against Arsenio Toledo, Jr. as the person who raped and killed Laila Rose in the purok (TSN, February 18, 1998, p. 18).

"Florencio Mamites testified that Rudy Milagrosa requested him to testify against Arsenio Toledo, Jr. as the rapist of Laila Rose Arco (TSN, February 18, 1998, p. 39) and that he was offered [a] P70,000.00 reward if he [would] testify against Toledo, Jr. (Ibid., p. 41).

"Rosalina Saac testified that the police told her son, Jerry Saac, to point Arsenio Toledo, Sr. appearing in the picture shown to him as the person who raped Laila Rose (TSN, April 16, 1998, p. 7).

"Remus Unson testified that the police wanted his son, Joey Raul Unson, to testify against Arsenio Toledo, Jr. as the person responsible for the death of Laila Rose (TSN, April 6, 1998, p. 39)."

#### Ruling of the Trial Court

The trial court gave credence to the testimony of prosecution Eyewitness Ronnie Cabamungan, whom it found to have testified in a categorical, straightforward and spontaneous manner. It disregarded Jerry Saac's testimony after finding that aside from being radically contradictory to the Sworn Statement he had previously executed, it was rehearsed and fabricated.

The trial court ruled that the prosecution failed to prove the commission of rape beyond reasonable doubt. Finding only that Laila Rose Arco, then only five years old, was killed by strangulation, it convicted appellant of murder qualified by treachery.

#### Assignment of Errors

In his Brief, appellant imputes to the trial court the following alleged errors:<sup>[8]</sup>

"1. The trial court erred in finding appellant Arsenio Toledo, Sr. guilty [of] the crime of [m]urder under Article 248 of the Revised Penal Code of the Philippines;