

THIRD DIVISION

[G.R. No. 136012-16, September 26, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ULDARICO HONRA, JR., ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

This is an appeal from the decision,^[1] dated January 18, 1998, of the Regional Trial Court, Branch 52, of Sorsogon, finding accused-appellant Uldarico Honra, Jr. guilty of two counts of murder and three counts of rape with frustrated homicide and sentencing him as follows:

“WHEREFORE, in the light of the foregoing, the Court finds Uldarico Honra, Jr. guilty beyond reasonable doubt in Criminal Cases Nos. 3333, 3338, 3341, 3342, and 3343 and hereby sentences him to two (2) counts of Reclusion Temporal in the maximum period of twenty years for the murders of Pacita and Rustico Jerao and three (3) counts of Reclusion Perpetua for the Rape with Frustrated Homicide of Jocelyn Jerao and to indemnify in solidum the heirs of Pacita and Rustico Jerao in the amount of P50,000.00 as indemnity for each case or total of P250,000.00 without subsidiary imprisonment in case of insolvency and to pay` the cost. In the service of his imprisonment his detention at the Sorsogon Provincial Jail shall be fully credited.

SO ORDERED.”

Two informations for murder were filed against accused-appellant Uldarico Honra, Jr. along with three others, namely, Ronnie Gipaya, Cristobal Jintalan and Jose Jintalan for the deaths of Pacita Jerao and Rustico Jerao in the Regional Trial Court of Sorsogon, where the cases were docketed as Criminal Case Nos. 93-3333 and 93-3338. Except for the names of the victims, the informations uniformly alleged:

Criminal Case No. 93-3333 -

“That on or about the 9th of May, 1993 at barangay Guinlajon, municipality of Sorsogon, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns and bolos, conspiring, confederating and mutually helping each other, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Pacita Jerao,^[2] thereby inflicting upon the latter mortal wound which directly caused the death of said Pacita Jerao, to the damage and prejudice of her legal heirs.”

Contrary to law.”^[3]

The three informations for rape with frustrated homicide filed against the above-named accused before the same court were docketed as Criminal Case Nos. 93-3341, 93-3342 and 93-3343. The informations uniformly alleged:

“That on or about the 9th day of May, 1993, at sitio Lantik, barangay Guinlajon, municipality of Sorsogon, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with guns and bolos, conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously, by means of force, violence and/or intimidation have carnal knowledge of one Jocelyn Jerao, a fifteen year old girl against her will and consent and immediately thereafter, with intent to kill, attack, assault, and stab said Jocelyn Jerao, thereby inflicting upon her several serious injuries which could have caused her death, thus, accused performed all the acts of execution which would have produced the crime of Homicide, as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, because of the timely and able medical attendance rendered to said Jocelyn Jerao which prevented her death, to her damage and prejudice.

Contrary to law.”^[4]

Upon arraignment on July 19, 1993, the four (4) accused, with the assistance of a counsel de oficio, entered pleas of not guilty in Criminal Case Nos. 93-3333^[5] and 93-3343.^[6] On July 21, 1993, with the assistance of a counsel de oficio, the four (4) accused entered pleas of not guilty in Criminal Case Nos. 93-3338^[7] and 93-3341.^[8] On August 25, 1993, accused-appellant Uldarico Honra, Jr., together with accused Cristobal Jintalan and Jose Jintalan, each pleaded not guilty to Criminal Case No.93-3342.^[9] On September 7, 1993, the trial court entered a plea of not guilty in favor of accused Ronnie Gipaya in Criminal Case No. 93-3342^[10] on account of the fact that after entering a plea of guilty, he refused to sign the certificate of arraignment provided for the purpose. Joint trial of the cases thus ensued.

However, on May 5, 1997, accused Ronnie Gipaya, with the assistance of Atty. Manuel Fortes, Jr., withdrew his plea of not guilty and upon rearraignment pleaded guilty to all the crimes charged against him.^[11] On September 26, 1997, accused Cristobal Jintalan, likewise withdrew his previous plea and entered pleas of guilty to all charges.^[12] The trial court then conducted a searching inquiry into the voluntariness and full comprehension of the consequences of their pleas. Meantime, all the charges against Jose Jintalan were dismissed after the trial court granted his demurrer to evidence.^[13] Eventually, on October 8, 1997, the trial court rendered its judgment against accused Ronnie Gipaya and Cristobal Jintalan, finding them guilty beyond reasonable doubt in all the five (5) criminal cases.^[14]

Trial proceeded as to herein accused-appellant Uldarico Honra, Jr.

Jocelyn Jerao, Dr. Marlon Gapayao and Dr. Liduvina Dorion testified for the prosecution.

Jocelyn Jerao , a sixteen-year old third year high school student, testified that on May 9, 1993, while she was asleep with her parents, Pacita and Rustico Jerao in their house in the northern portion of Guinlajon, municipality of Sorsogon, somebody called for them at around 2 a.m. asking for water to drink but they did not open the door. Then she heard somebody fire a shot from a gun. Her parents opened the door and her mother gave the person outside the door water to drink. The person told her mother to drink first as he was afraid that the water was poisoned. So her mother drank the water. The person outside the door introduced himself as Eric and assured her mother that she will not be harmed then asked permission to leave. But according to Jocelyn, he did not leave, but only went around the house because "they" returned. Thereupon they knocked on the door and told them that somebody wanted to see her father in the northern portion of their place. Her parents opened the door and she saw three people whom she did not yet recognize as they were wearing masks. She described their masks as t-shirts covering their faces. Her mother, father and herself went out of the house and the three of them stood side by side each other. The person who introduced himself as Eric told her father to go to the northern portion of the place but the latter refused. She stated that only Eric was wearing a mask while the two other companions were not. Then, Eric pointed the barrel of his gun to her father and squeezed the trigger but the gun did not go off. Eric then commented , "Jesus Christ, it's good that it did not go off," and then laughed together with his two other companions. Eric took hold of the gun and squeezed it a second time and this time it went off hitting her father in the forehead. She shouted and tried to grab the gun from Eric but the latter boxed her twice. She then covered her father with her body. She heard another gun shot and saw her mother's body slumped on her father's body. Before she heard the gunshot, she saw Eric still holding the gun which was pointed towards her mother. She testified further that the two companions helped Eric as when she started shouting the two tried to cover her mouth with their hands and to lift her up. The person who introduced himself as Eric removed his mask then raped her. She narrated that Eric removed his pants and removed her clothes including her panty and performed sexual intercourse on her. He lay on top of her then inserted his penis in her vagina and moved his buttocks up and down. She felt pain and pretended to be unconscious. The other two companions were standing guard by her side. After Eric performed the sexual act on her, the other companion removed his clothes and did the same thing to her. She identified the second person as the one who had a tattoo on his forehead and goes by the name Cristobal Jintalan. He also placed himself on top of her and performed the sexual act. After he finished, the third companion took his turn. He also removed his pants and placed himself on top of her and did the same thing that Honra and Jintalan did. After this third companion was through with her, he took a very long "machite", but Eric shouted that he use a "luknit". Eric handed the luknit or bladed weapon to the third companion whom she later identified as Ronnie Gipaya. After Eric handed the latter the luknit, Ronnie Gipaya stabbed her on the stomach once. She turned to her side and she was stabbed three more times at her back. All this time, Eric and Cristobal Jintalan did not leave. After Gipaya delivered the third blow he said, "Let's go she is already dead." Then they left.

Dr. Marlon Gapayao, a resident physician of the Sorsogon Provincial Hospital, testified that he examined Jocelyn Jerao and her mother Pacita Jerao. Dr. Gapayao confirmed the findings he made on the injuries of Jocelyn in a medical report. His findings revealed the following:

- Stab wound peri umbilical area penetrating abdominal cavity with moderate intra-abdominal bleeding;
- Stab wound right chest penetrating thoracic cavity with intra thoracic bleeding moderate;
- Multiple stab wounds back.
- Alleged rape; positive for spermatozoa.
- Healing time barring complications - Three (3) weeks."^[15]

Dr. Gapayao likewise confirmed the findings he made in his medical report on Pacita Jerao. The medical report stated as follows:

- Gun shot wound right supra clavicular (point of entry) with bullet lodged at the right thoracic cavity;
- Stab wound left lumbar area non penetrating;
- Stab wound supra umbilical area left penetrating abdominal cavity non perforating with moderate intra abdominal hemorrhage.

Cause of death:

- Hypovolemic shock scc. To multiple stab wounds and gun shot wound."^[16]

Dr. Liduvina Dorion conducted the post mortem examination on Rustico Jerao. She testified that she found a single gunshot wound on the forehead of the victim.^[17] In the death certificate issued by the Office of the Civil Registrar, the cause of death was stated as intracranial hemorrhage caused by a gunshot wound.^[18]

On the other hand, herein accused-appellant and his brother Jose Honra testified for the defense.

Accused-appellant Uldarico Honra, Jr., a twenty-eight year old security guard denied participation in the crimes charged and offered an alibi as his defense. He testified that on May 9, 1993, at about 2 a.m., he was in the house of the barangay captain in barangay Casini, Irosin, Sorsogon. He testified that he was there to attend the birthday celebration of the barangay captain. He was there at 8 p.m. and stayed overnight in that place. He stated that this was on May 9, 1993 as this was the birthday of the barangay captain. He slept at one o'clock in the morning of May 9, 1993 on a bench because he was very drunk that night. The barangay captain was in the house with his family and the visitors already left. He woke up at 7 a.m. of the following day and returned home. He arrived home fifteen minutes later and ate his breakfast and took a bath. His brothers, nephews and nieces were home when he arrived. On May 10, 1993, at about 3 p.m., he heard on the radio that he was involved in a case and he went to the municipal building of Sorsogon to verify the matter. However, he found nothing there. The next day, on May 11, 1993 he went to the police station and was dumbfounded by the news relayed to him by a certain Major Uy that there was already a warrant for his arrest and a shoot to kill order against him. He also narrated that he was present when Jocelyn Jerao testified against him and that she did so only because she followed the statement of Gipaya. According to him, Ronnie Gipaya killed his mother and the former's brother raped her sister. He stated further that this Ronnie Gipaya is the same co-accused in the criminal cases. According to him, Ronnie Gipaya implicated him in his statement as a means of avenging his mother's death and his sister's rape. He does not

remember the date the statement was made but he was able to read the same which among others implicated him in the commission of the crimes.

Jose Honra, 17 years old, brother of accused-appellant recalled that on May 9, 1993, at about 2 a.m., his brother was sleeping in their home in Casini, Irosin, Sorsogon. They were then together with their sisters Soledad, Rosalina and her husband and the accused. According to him, no member of their family went out from the time they went to sleep at 9 p.m. up to early morning. He said that his brother, herein accused-appellant was still sleeping when he woke up at about 7 a.m. the following day.

The trial court convicted accused-appellant of two counts of murder and three counts of rape with frustrated homicide. In upholding complainant's testimony and rejecting accused-appellant's alibi, the trial court ruled:

"There is no doubt in the mind of the Court that Uldarico Honra Jr. did the crimes as charged against him. The victim, Jocelyn Jerao, positively identified "Eric" whom she later identified as Uldarico Honra Jr. as the one who pulled the trigger that killed her parents, Pacita Jerao and Rustico Jerao. She was also able to recognize Ronnie Gipaya and Cristobal Jintalan as among those present during the killing of her father and mother. The victim recognized accused Uldarico Honra Jr. when the latter took off his mask when the latter raped her. With respect to the two others, Gipaya and Jintalan, the accused was able to recognize them thru their tattoo marks. The victim cannot be mistaken as it was then a bright night. The Court likewise finds that all the aforesaid accused, including Uldarico Honra Jr. thru force and without Jocelyn Jerao's consent had carnal knowledge with her. The victim of these acts could not have imagined it as no young Filipina woman of decent repute could publicly admit that she had been criminally assaulted unless that it is the truth (People vs. Sambangan 125 SCRA 726). Conspiracy of accused Honra Jr. with the other accused in committing all the crimes charged against them was likewise shown in the prosecution's witness testimony. Jocelyn Jerao testified that when Uldarico Honra Jr. was shooting her parents the two companions of Honra Jr., Ronnie Gipaya and Cristobal Jintalan covered her mouth to prevent her from shouting and likewise tried to lift her. That later on when she was about to be stabbed by Gipaya, Uldarico Honra Jr. advised Gipaya to use a luknit instead of a machete, who then stabbed her once in the stomach and thrice at her back. These acts show that there was unity of purpose and unity of the execution among the accused of their unlawful objectives which are the murders of the parents of Jocelyn and the rape with frustrated homicide of the latter.

Anent Uldarico Honra Jr.'s defense of alibi, it cannot be sustained in the face of clear and positive identification of the accused (People vs. Gonzaga 77 SCRA 140). Likewise for alibi to be given merit the defense must prove it with probable evidence which would reasonably satisfy the Court of the truth of such defense (ibid). In the instant case, the Court finds the positive and clear identification by the victim herself of the three accused including Honra Jr. to be credible. The Court cannot believe the tale of accused that he was not present at the crime scene as his brother's testimony that he (Honra Jr.) was sleeping at their sister's