

## EN BANC

[ G.R. No. 122485, February 01, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY MAHINAY Y AMPARADO, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

A violation of the dignity, purity and privacy of a child who is still innocent and unexposed to the ways of worldly pleasures is a harrowing experience that destroys not only her future but of the youth population as well, who in the teachings of our national hero, are considered the hope of the fatherland. Once again, the Court is confronted by another tragic desecration of human dignity, committed no less upon a child, who at the salad age of a few days past 12 years, has yet to knock on the portals of womanhood, and met her untimely death as a result of the "intrinsically evil act" of non-consensual sex called rape. Burdened with the supreme penalty of death, rape is an ignominious crime for which necessity is neither an excuse nor does there exist any other rational justification other than lust. But those who lust ought not to lust.

The Court quotes with approval from the People's Brief, the facts narrating the horrible experience and the tragic demise of a young and innocent child in the bloody hands of appellant, as such facts are ably supported by evidence on record:

[1] \*

"Appellant Larry Mahinay started working as houseboy with Maria Isip on November 20, 1993. His task was to take care of Isip's house which was under construction adjacent to her old residence situated inside a compound at No. 4165 Dian Street, Gen. T. de Leon, Valenzuela, Metro Manila. But he stayed and slept in an apartment also owned by Isip, located 10 meters away from the unfinished house (TSN, September 6, 1995, pp. 5-10).

"The victim, Ma. Victoria Chan, 12 years old, was Isip's neighbor in Dian Street. She used to pass by Isip's house on her way to school and play inside the compound yard, catching *maya* birds together with other children. While they were playing, appellant was always around washing his clothes. Inside the compound yard was a septic tank (TSN, August 22, 1995, pp. 29-31; September 6, 1995, pp. 17; 20-22).

"On June 25, 1995, at 8 o'clock a.m., appellant joined Gregorio Rivera in a drinking spree. Around 10 o'clock in the morning, appellant, who was already drunk, left Gregorio Rivera and asked permission from Isip to go out with his friends (TSN, September 6, 1995, pp. 9-11).

"Meantime, Isip's sister-in-law, Norgina Rivera, who also owned a store fronting the compound, saw Ma. Victoria on that same day three to four times catching birds inside Isip's unfinished house around 4 o'clock in the afternoon. The unfinished house was about 8 meters away from Rivera's store (TSN, September 18, 1995, pp.9-11).

"On the other hand, Sgt. Roberto Suni, also a resident of Dian Street, went to his in-law's house between 6 to 7 o'clock p.m. to call his office regarding changes on the trip of President Fidel V. Ramos. The house of his in-laws was near the house of Isip. On his way to his in-law's house, Sgt. Suni met appellant along Dian Street. That same evening, between 8 to 9 o'clock p.m., he saw Ma. Victoria standing in front of the gate of the unfinished house (TSN, September 27, 1995, pp. 3-7; 14-17).

"Later, at 9 o'clock in the evening, appellant showed up at Norgina Rivera's store to buy lugaw. Norgina Rivera informed appellant that there was none left of it. She notice that appellant appeared to be uneasy and in deep thought. His hair was disarrayed; he was drunk and was walking in a dazed manner. She asked why he looked so worried but he did not answer. Then he left and walked back to the compound (TSN, September 18, 1995, pp. 4-8; 12-14).

"Meanwhile, Elvira Chan noticed that her daughter, Ma. Victoria, was missing. She last saw her daughter wearing a pair of white shorts, brown belt, a yellow hair ribbon, printed blue blouse, dirty white panty, white lady sando and blue rubber slippers (TSN, August 23, 1995, pp. 22, 33).

"Isip testified that appellant failed to show up for supper that night. On the following day, June 26, 1995, at 2 o'clock in the morning, appellant boarded a passenger jeepney driven by Fernando Trinidad at the *talipapa*. Appellant alighted at the top of the bridge of the North Expressway and had thereafter disappeared (TSN, September 20, 1995, pp. 4-9; September 27, 1995; pp. 14-17).

"That same morning, around 7:30, a certain Boy found the dead body of Ma. Victoria inside the septic tank. Boy immediately reported what he saw to the victim's parents, Eduardo and Elvira Chan (TSN, September 6, 1995, p. 13).

"With the help of the Valenzuela Police, the lifeless body of Ma. Victoria was retrieved from the septic tank. She was wearing a printed blouse without underwear. Her face bore bruises. Results of the autopsy revealed the following findings:

Cyanosis, lips and nailbeds,

Contusions, supra pubic area, 6.0 x 3.0 cm., thigh right,

Anterior aspect, middle third, 4.5 x 3.0 cm.

Contused-abrasions on the forehead, 5.0 x 5.0 cm, angle of the left eye, lateral aspect, 2.5 x 1.5 cm. left jaw, 13.5 x 7.0

cm. neck, antero-lateral aspect, right, 2.0 x 1.0 cm. and left, 7.0 x 6.0 cm., left iliac area, 9.0 x 5.5 cm. intraclavicular area, left, posterior aspect, 4.0 x 2.0 cm. scapular area, right 4.0 x 4.0 cm. subscapular area, left, 1.5 x 1.5 cm. lumbar area, left 7.0 x 8.0 cm. arm, left, posterior aspect, middle third, 11.00 x 4.0 cm. elbows, right, 4.0 x 3.0 cm. and left 6.0 x 5.0 cm. forearms, left, posterior aspect, lower rd, 5.2 x 4.0 cm. hand, left, dorsal aspect, 0.8 x 0.9 cm. thighs; right antero-lateral aspect, upper 33<sup>rd</sup>, 12.0 x 10.0 cm. right anterior aspect, lower 3<sup>rd</sup> 5.0 x 2.0 cm. and left antero-lower 3<sup>rd</sup> , 5.5 x 2.5 cm. knee, right, lateral aspect, 1.5 x 1.0 cm. lateral malleolus, left, 3.0 x 3.5 cm. foot, left, dorsal aspect 2.2 x 1.0 cm.

Hematoma, forehead, and scalp, left, 3.5 x 3.0 cm.

Hemorrhage, interstitial, underneath nailmarks, neck, subepicardial, subpleural petechial hemorrhages.

Hemorrhage, subdural, left fronto-parietal area.

Tracheo-bronchial tree, congested.

Other visceral organs, congested.

Stomach, contain 1/4 rice and other food particles.

CAUSE OF DEATH - Asphyxia by Manual Strangulation; Traumatic Head Injury, Contributory.

REMARKS: Hymen: tall, thick with complete lacerations at 4:00 and 8:00 o'clock position corresponding to the face of a watch edges congested with blood clots. (TSN, August 18, 1995; p. 4; Record, p. 126)

"Back in the compound, SPO1 Arsenio Nacis and SPO1 Arnold Alabastro were informed by Isip that her houseboy, appellant Larry Mahinay, was missing. According to her, it was unlikely for appellant to just disappear from the apartment since whenever he would go out, he would normally return on the same day or early morning of the following day (TSN, September 6, 1995, pp. 6-11-27).

"SPO1 Nacis and SPO1 Alabastro were also informed that a townmate of appellant was working in a *pancit* factory at Barangay Reparo, Caloocan City. They proceeded to said place. The owner of the factory confirmed to them that appellant used to work at the factory but she did not know his present whereabouts. Appellant's townmate, on the other hand, informed them that appellant could possibly be found on 8<sup>th</sup> Street, Grace Park, Caloocan City (TSN, August 14, 1995, pp. 8-9).

"The policemen returned to the scene of the crime. At the second floor of

the house under construction, they retrieved from one of the rooms a pair of dirty white short pants, a brown belt and a yellow hair ribbon which was identified by Elvira Chan to belong to her daughter, Ma. Victoria. They also found inside another room a pair of blue slippers which Isip identified as that of Appellant. Also found in the yard, three arm's length away from the septic tank were an underwear, a leather wallet, a pair of dirty long pants and a pliers positively identified by Isip as appellant's belongings. These items were brought to the police station (TSN, August 14, 1995, pp. 10-13; August 18, 1995, pp. 3-8; August 23, 1995, pp. 21-25).

"A police report was subsequently prepared including a referral slip addressed to the office of the Valenzuela Prosecutor. The next day, SPO1 Virgilio Villano retrieved the victim's underwear from the septic tank (TSN, August 23, 1995, pp. 3-8; 14-17).

"After a series of follow-up operations, appellant was finally arrested in Barangay Obario Matala, Ibaan, Batangas. He was brought to Valenzuela Police Station. On July 7, 1995, with the assistance of Atty. Restituto Viernes, appellant executed an extra-judicial confession wherein he narrated in detail how he raped and killed the victim. Also, when appellant came face to face with the victim's mother and aunt, he confided to them that he was not alone in raping and killing the victim. He pointed to Zaldy and Boyet as his co-conspirators (TSN, August 14, 1995, pp. 13-21)."

Thus, on July 10, 1995, appellant was charged with rape with homicide in an Information which reads:<sup>[2]</sup>

"That on or about the 26<sup>th</sup> day of June 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, by means of force and intimidation employed upon the person of MARIA VICTORIA CHAN y CABALLERO, age 12 years old, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with said MARIA VICTORIA CHAN y CABALLERO against her will and without her consent; that on the occasion of said sexual assault, the above-named accused, choke and strangle said MARIA VICTORIA CHAN y CABALLERO as a result of which, said victim died.

"Contrary to law."<sup>[3]</sup>

to which he pleaded not guilty. After trial, the lower court rendered a decision convicting appellant of the crime charged, sentenced him to suffer the penalty of death and to pay a total of P73,000.00 to the victim's heirs. The dispositive portion of the trial court's decision states:

"WHEREFORE, finding accused Larry Mahinay y Amparado guilty beyond reasonable doubt of the crime charged, he is hereby sentenced to death by electricution (sic). He is likewise condemned to indemnify the heirs of the victim, Ma. Victoria Chan the amount of P50,000.00 and to pay the further sum of P23,000.00 for the funeral, burial and wake of the victim.

"Let the complete records of the case be immediately forwarded to the Honorable Supreme Court for the automatic review in accordance to Article 47 of the Revised Penal Code as amended by Section 22 of Republic Act No. 7659.

"SO ORDERED."<sup>[4]</sup>

Upon automatic review by the court *en banc* pursuant to Article 47 of the Revised Penal Code (RPC), as amended,<sup>[5]</sup> appellant insists that the circumstantial evidence presented by the prosecution against him is insufficient to prove his guilt beyond reasonable doubt. In his testimony summarized by the trial court, appellant offered his version of what transpired as follows:

"(T)hat on June 25, 1995, around 9:30 a.m. on Dian Street, Gen. T. de Leon, Valenzuela, Metro Manila, he joined Gregorio Rivera and a certain Totoy in a drinking spree. Gregorio Rivera is the brother of Maria Isip, appellant's employer. After consuming three cases of red horse beer, he was summoned by Isip to clean the jeepney. He finished cleaning the jeepney at 12 o'clock noon. Then he had lunch and took a bath. Later, he asked permission from Isip to go out with his friends to see a movie. He also asked for a cash advance of P300.00 (TSN, October 16, 1995, pp. 4-5).

"At 2 o'clock in the afternoon, appellant, instead of going out with his friend, opted to rejoin Gregorio Rivera and Totoy for another drinking session. They consumed one case of red horse beer. Around 6 o'clock p.m., Zaldy, a co-worker, fetched him at Gregorio Rivera's house. They went to Zaldy's house and bought a bottle of gin. They finished drinking gin around 8 o'clock p.m. After consuming the bottle of gin, they went out and bought another bottle of gin from a nearby store. It was already 9 o'clock in the evening. While they were at the store, appellant and Zaldy met Boyet. After giving the bottle of gin to Zaldy and Boyet, appellant left (TSN, October 16, 1995, pp. 6-7).

"On his way home, appellant passed by Norgina Rivera's store to buy *lugaw*. Norgina Rivera informed him that there was none left of it. He left the store and proceeded to Isip's apartment. But because it was already closed, he decided to sleep at the second floor of Isip's unfinished house. Around 10 o'clock p.m., Zaldy and Boyet arrived carrying a cadaver. The two placed the body inside the room where appellant was sleeping. As appellant stood up, Zaldy pointed to him a knife. Zaldy and Boyet directed him to rape the dead body of the child or they would kill him. He, However, refused to follow. Then, he was asked by Zaldy and Boyet to assist them in bringing the dead body downstairs. He obliged and helped dump the body into the septic tank. Thereupon, Zaldy and Boyet warned him that should they ever see him again, they would kill him. At 4 o'clock the following morning, he left the compound and proceeded first to Navotas and later to Batangas (TSN, October 16, 1995, pp. 4-13).

"Subsequently, appellant was apprehended by the police officers in Ibaan, Batangas. The police officers allegedly brought him to a big house somewhere in Manila. There, appellant heard the police officer's plan to