

EN BANC

[G.R. No. 130612, May 11, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDINO DOMANTAY, @ "JUNIOR OTOT," ACCUSED-
APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This case is here on appeal from the decision^[1] of the Regional Trial Court of Dagupan City (Branch 57), finding accused-appellant guilty of rape with homicide and sentencing him to death, and to indemnify the heirs of the victim in the amount of P480,000.00, and to pay the costs.

The facts hark back to the afternoon of October 17, 1996, at around 4 o'clock, when the body of six-year old Jennifer Domantay was found sprawled amidst a bamboo grove in Guilig, Malasiqui, Pangasinan. The child's body bore several stab wounds. Jennifer had been missing since lunch time.

The medical examination conducted the following day by Dr. Ma. Fe Leticia Macaranas, the rural health physician of Malasiqui, showed that Jennifer died of multiple organ failure and hypovolemic shock secondary to 38 stab wounds at the back. Dr. Macaranas found no lacerations or signs of inflammation of the outer and inner labia and the vaginal walls of the victim's genitalia, although the vaginal canal easily admitted the little finger with minimal resistance. Noting possible commission of acts of lasciviousness, Dr. Macaranas recommended an autopsy by a medico-legal expert of the NBI.^[2]

The investigation by the Malasiqui police pointed to accused-appellant Bernardino Domantay, a cousin of the victim's grandfather, as the lone suspect in the gruesome crime. At around 6:30 in the evening of that day, police officers Montemayor, de la Cruz, and de Guzman of the Malasiqui Philippine National Police (PNP) picked up accused-appellant at the Malasiqui public market and took him to the police station where accused-appellant, upon questioning by SPO1 Antonio Espinoza, confessed to killing Jennifer Domantay. He likewise disclosed that at around 3:30 that afternoon, he had given the fatal weapon used, a bayonet, to Elsa and Jorge Casingal, his aunt and uncle respectively, in Poblacion Sur, Bayambang, Pangasinan. The next day, October 18, 1996, SPO1 Espinoza and another policeman took accused-appellant to Bayambang and recovered the bayonet from a tricycle belonging to the Casingal spouses. The police officers executed a receipt to evidence the confiscation of the weapon.^[3]

On the basis of the post-mortem findings of Dr. Macaranas, SPO4 Juan Carpizo, the Philippine National Police chief investigator at Malasiqui, filed, on October 21, 1996, a criminal complaint for murder against accused-appellant before the Municipal Trial

Court (MTC) of Malasiqui. On October 25, 1996, Dr. Ronald Bandonill, medico-legal expert of the NBI, performed an autopsy on the embalmed body of Jennifer. The result of his examination of the victim's genitalia indicated that the child's hymen had been completely lacerated on the right side. Based on this finding, SPO4 Carpizo amended the criminal complaint against accused-appellant to rape with homicide. Subsequently, the following information was filed:^[4]

That on or about the 17th day of October, 1996, in the afternoon, in barangay Guilig, Municipality of Malasiqui, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and armed with a bayonnete, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Jennifer Domantay, a minor of 6 years old against her will and consent, and on the same occasion, the said accused with intent to kill, then and there, wilfully, unlawfully and feloniously stab with the use of a bayonnete, the said Jennifer Domantay, inflicting upon her multiple stab wounds, which resulted to her death, to the damage and prejudice of her heirs.

At the trial, the prosecution presented seven witnesses, namely, Edward, Jiezl, Lorenzo, all surnamed Domantay, Joselito Mejia, Antonio Espinoza, Celso Manuel, and Dr. Ronald Bandonill, to establish its charge that accused-appellant had raped and killed Jennifer Domantay.

Edward Domantay testified that in the morning of October 17, 1996, accused-appellant and his two brothers-in-law, Jaime Caballero and Daudencio Macasaeb, had a round of drinks in front of the latter's house in Guilig, Malasiqui, Pangasinan. Edward Domantay said that he was in front of Macasaeb's house, tending to some pigeons in his yard.^[5] After the group had consumed several bottles of San Miguel gin, accused-appellant gave money to Edward Domantay and asked him to buy two bottles of gin and a bottle of Sprite.^[6] Edward said he joined the group and sat between Daudencio Macasaeb and accused-appellant.^[7] Edward said that accused-appellant, who, apparently had one too many then, rolled up his shirt and said: "*No diad Antipolo tan L[i]pa et walay massacre, diad Guilig wala, walay massacren kod dia, walay onakis-akis*" ("In Antipolo and Lipa, there were massacres; here in Guilig, there will also be a massacre. I will massacre somebody here, and they will cry and cry"). Edward Domantay saw that tucked in the left side of accused-appellant's waistline was a bayonet without a cover handle.^[8] It was not the first time that Edward had seen accused-appellant with the knife as the latter usually carried it with him.^[9]

Jiezl Domantay, 10, likewise testified. She said that, at about 2 o'clock in the afternoon on October 17, 1996, she and four other children were playing in front of their house in Guilig, Malasiqui, Pangasinan. Jiezl saw accused-appellant and Jennifer Domantay walking towards the bamboo grove of Amparo Domantay where Jennifer's body was later found. Accused-appellant was about two meters ahead of Jennifer. The bamboo grove was about 8 to 10 meters from the house of Jiezl Domantay.^[10]

Lorenzo Domantay, a relative of the victim, corroborated Jiezl's testimony that accused-appellant had gone to Amparo Domantay's bamboo grove in the afternoon

of October 17, 1996. Lorenzo said that that afternoon, on his way to his farm, he saw accused-appellant about 30 meters away, standing at the spot in the bamboo grove where Jennifer's body was later found. Accused-appellant appeared restless and worried as he kept looking around. However, as Lorenzo was in a hurry, he did not try to find out why accused-appellant appeared to be nervous.^[11]

Prosecution witness Joselito Mejia, a tricycle driver, said that, in the afternoon of October 17, 1996, he was about to take his lunch at home in Alacan, a neighboring barangay about half a kilometer from Guilig, when accused-appellant implored Mejia to take him to Malasiqui at once. Mejia told accused-appellant that he was going to take his lunch first, but the latter pleaded with him, saying they will not be gone for long. Mejia, therefore, agreed. Mejia noticed that accused-appellant was nervous and afraid. Accused-appellant later changed his mind. Instead of going to the town proper, he alighted near the Mormon's church, outside Malasiqui.^[12]

In addition, the prosecution presented SPO1 Antonio Espinoza and Celso Manuel who testified that, on separate occasions, accused-appellant had confessed to the brutal killing of Jennifer Domantay.

SPO1 Espinoza testified that he investigated accused-appellant after the latter had been brought to the Malasiqui police station in the evening of October 17, 1996. Before he commenced his questioning, he apprised accused-appellant of his constitutional right to remain silent and to have competent and independent counsel, in English, which was later translated into Pangasinense.^[13] According to SPO1 Espinoza, accused-appellant agreed to answer the questions of the investigator even in the absence of counsel and admitted killing the victim. Accused-appellant also disclosed the location of the bayonet he used in killing the victim.^[14] On cross-examination, Espinoza admitted that at no time during the course of his questioning was accused-appellant assisted by counsel. Neither was accused-appellant's confession reduced in writing.^[15] Espinoza's testimony was admitted by the trial court over the objection of the defense.

Celso Manuel, for his part, testified that he is a radio reporter of station DWPR, an AM station based in Dagupan City. He covers the third district of Pangasinan, including Malasiqui. Sometime in October 1996, an uncle of the victim came to Dagupan City and informed the station about Jennifer Domantay's case.^[16] On October 23, 1996, Manuel went to Malasiqui to interview accused-appellant who was then detained in the municipal jail. He described what transpired during the interview thus:^[17]

PROS. QUNIT:

Q Did you introduce yourself as a media practitioner?

A Yes, sir.

Q How did you introduce yourself to the accused?

A I showed to Bernardino Domantay alias "Junior Otot" my I.D. card and I presented myself as a media practitioner with my tape recorder [in] my hand, sir.

Q What was his reaction to your request for an interview?

A He was willing to state what had happened, sir.

Q What are those matters which you brought out in that interview with the accused Bernardino Domantay alias "Junior Otot"?

A I asked him what was his purpose for human interest's sake as a reporter, why did he commit that alleged crime. And I asked also if he committed the crime and he answered "yes." That's it.

. . . .

PROS. QUINIT:

Q You mentioned about accused admitting to you on the commi[ssion] of the crime, how did you ask him that?

A I asked him very politely.

Q More or less what have you asked him on that particular matter?

A I asked "Junior Otot," Bernardino Domantay, "Kung pinagsisisihan mo ba ang iyong ginawa?" "Opo" sabi niya, "Ibig mo bang sabihin Jun, ikaw ang pumatay kay Jennifer?", "Ako nga po". The [l]ast part of my interview, "Kung nakikinig ang mga magulang ni Jennifer, ano ang gusto mong iparating?", "kung gusto nilang makamtan ang hustisya ay tatanggapin ko". That is what he said, and I also asked Junior Otot, what was his purpose, and he said, it was about the boundary dispute, and he used that little girl in his revenge.

On cross-examination, Manuel explained that the interview was conducted in the jail, about two to three meters away from the police station. An uncle of the victim was with him and the nearest policemen present were about two to three meters from him, including those who were in the radio room.^[18] There was no lawyer present. Before interviewing accused-appellant, Manuel said he talked to the chief of police and asked permission to interview accused-appellant.^[19] On questioning by the court, Manuel said that it was the first time he had been called to testify regarding an interview he had conducted.^[20] As in the case of the testimony of SPO1 Espinoza, the defense objected to the admission of Manuel's testimony, but the lower court allowed it.

Dr. Bandonill, the NBI medico-legal who conducted an autopsy of the victim on October 25, 1996, testified that Jennifer Domantay died as a result of the numerous stab wounds she sustained on her back,^[21] the average depth of which was six inches.^[22] He opined that the wounds were probably caused by a "pointed sharp-edged instrument."^[23] He also noted contusions on the forehead, neck, and breast

bone of the victim.^[24] As for the results of the genital examination of the victim, Dr. Bandonill said he found that the laceration on the right side of the hymen was caused within 24 hours of her death. He added that the genital area showed signs of inflammation.^[25]

Pacifico Bulatao, the photographer who took the pictures of the scene of the crime and of the victim after the latter's body was brought to her parents' house, identified and authenticated the five pictures (Exhibits A, B, C, D, and E) offered by the prosecution.

The defense then presented accused-appellant as its lone witness. Accused-appellant denied the allegations against him. He testified he is an uncle of Jennifer Domantay (he and her grandfather are cousins) and that he worked as a janitor at the Malasiqui Municipal Hall. He said that at around 1 o'clock in the afternoon of October 17, 1996, he was bathing his pigs outside the house of his brother-in-law Daudencio Macasaeb in Guilig, Malasiqui, Pangasinan. He confirmed that Daudencio was then having drinks in front of his (Macasaeb's) house. Accused-appellant claimed, however, that he did not join in the drinking and that it was Edward Domantay, whom the prosecution had presented as witness, and a certain Jaime Caballero who joined the party. He also claimed that it was he whom Macasaeb had requested to buy some more liquor, for which reason he gave money to Edward Domantay so that the latter could get two bottles of gin, a bottle of Sprite, and a pack of cigarettes.^[26] He denied Edward Domantay's claim that he (accused-appellant) had raised his shirt to show a bayonet tucked in his waistline and that he had said he would massacre someone in Guilig.^[27]

Accused-appellant also confirmed that, at about 2 o'clock in the afternoon, he went to Alacan passing on the trail beside the bamboo grove of Amparo Domantay. But he said he did not know that Jennifer Domantay was following him. He further confirmed that in Alacan, he took a tricycle to Malasiqui. The tricycle was driven by Joselito Mejia. He said he alighted near the Mormon church, just outside of the town proper of Malasiqui to meet his brother. As his brother did not come, accused-appellant proceeded to town and reported for work. That night, while he was in the Malasiqui public market, he was picked up by three policemen and brought to the Malasiqui police station where he was interrogated by SPO1 Espinoza regarding the killing of Jennifer Domantay. He denied having owned to the killing of Jennifer Domantay to SPO1 Espinoza. He denied he had a grudge against the victim's parents because of a boundary dispute.^[28] With respect to his extrajudicial confession to Celso Manuel, he admitted that he had been interviewed by the latter, but he denied that he ever admitted anything to the former.^[29]

As already stated, the trial court found accused-appellant guilty as charged. The dispositive portion of its decision reads:^[30]

WHEREFORE, in light of all the foregoing, the Court hereby finds the accused, Bernardino Domantay @ "Junior Otot" guilty beyond reasonable doubt with the crime of Rape with Homicide defined and penalized under Article 335 of the Revised Penal Code in relation and as amended by Republic Act No. 7659 and accordingly, the Court hereby sentences him to suffer the penalty of death by lethal injection, and to indemnify the heirs of the victim in the total amount of Four Hundred Eighty Thousand