

SECOND DIVISION

[G.R. No. 119352, June 08, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CELESTINO D. PAYOT, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21, finding accused-appellant Celestino D. Payot guilty of rape with homicide and sentencing him to suffer the penalty of *reclusion perpetua* with the accessory penalties provided by law and to indemnify the heirs of the victim Jocelyn Bosbos in the amount of P50,000.00. Two other accused, Reynaldo Fernandez and Ruben Cuico, were acquitted on the ground of reasonable doubt.

The information against accused-appellant Celestino D. Payot alias "Boy" and his co-accused, Reynaldo Fernandez alias "Baldo" and Ruben Cuico, alleged^[2] -

That at 8:00 o'clock, or thereabout, in the evening of January 29, 1991 at Sto. Niño, New Clarin, Bansalan, Davao del Sur, within the jurisdiction of this Court, the above-named male accused conspiring, confederating, helping one another and acting in concert did then and there wilfully, unlawfully and feloniously overpower, hold and employ force upon one Jocelyn Bosbos, a twelve (12) year old girl, by holding her, covering her mouth and choking her to stifle any resistance, and against her will while then being held by accused Fernandez and Cuico, accused Payot have carnal knowledge of the victim, and on the occasion of and by reason of the rape kill the same victim, to the great damage and prejudice of the victim and her legal heirs.

CONTRARY TO LAW.

Upon arraignment, all three accused entered a plea of not guilty, whereupon trial on the merits ensued.

The prosecution presented seven (7) witnesses: Arcadio Tagab, Lt. Filipinas F. Papa, Rolito Sirot, Dr. Annabelle Yumang, Ricarda Bosbos, SPO1 Rogelio Canillo, and Atty. Ernesto De la Cruz. Their testimonies follow:

Arcadio Tagab, farmer and resident of Sitio Sto. Niño, New Clarin, Bansalan, Davao del Sur, testified that he came to know accused-appellant sometime in December 1990 when the latter asked him for help to find work. Tagab and accused-appellant worked together for half a day in the construction of a fishpond owned by one Iking Enduro. Accused-appellant slept in Tagab's house and left the following morning, telling Tagab that he was going to Dadiangas.

At about 10:00 p.m. of January 29, 1991, accused-appellant came back. He was wearing short pants and had no shirt on. Accused-appellant was muddy and his right knee and right forearm were bloodied. Tagab observed that accused-appellant was agitated. Accused-appellant was shaking his head and making sounds with his tongue (*panakla*) while answering Tagab's questions. When asked why he had blood on his right knee and forearm, accused-appellant said he had fallen into a canal. According to Tagab, before he went to sleep, accused-appellant took money out of his wallet, gave it to Tagab's wife to be given to Tagab's 11-year old daughter, and then stroked the child's head. The next morning, accused-appellant went to a river nearby to wash his clothes. Tagab later found out that accused-appellant put the washed clothes in his bag which he hung on the fence of a certain Nida Cabales and went to Sitio Sta. Cruz to buy soap. Accused-appellant was in the house of one Fredo when Tagab arrived and said someone was looking for accused-appellant. Upon being thus told, accused-appellant said he was going to see his cousin Washington Talaboc in Lower Mabuhay. At that time, some policemen and members of a vigilante group called Tadtad were already looking for accused-appellant. Instead of going back to Nida Cabales' house to get his bag, accused-appellant fled towards Bansalan Poblacion. However, the Tadtads caught up with him in a sugarcane field and arrested him. Tagab declared that he had no previous quarrel nor any misunderstanding with accused-appellant.^[3]

The personal effects seized from accused-appellant, consisting of a Reebok black bag, a pair of "Canadian Club" denim pants, and the left back pocket taken from the said pants, were submitted to the Philippine National Police (PNP) Crime Laboratory , Region X, Camp Evangelista, Cagayan de Oro City for examination. The specimens were found positive for the presence of human blood. A "serological examination" conducted to determine the blood type showed that the stains belong to the AB type of blood group. The three (3) accused were subjected to blood typing. The results showed that accused-appellant had blood type A (Exh. Q), while Reynaldo Fernandez and Ruben Cuico both had blood type O (Exhs. R and S).^[4]

Rolito Sirot, resident of Upper Mabuhay, Bansalan, Davao del Sur and a member of the volunteer vigilante group called Tadtad, testified that in the early morning of January 30, 1991, Arcadio Tagab reported to him that the night before, accused-appellant went to his house bloody and wet. Later that morning, a child reported that somebody had been raped and killed and her body had been found near a canal. The hunt was, therefore, on for accused-appellant who was reported last seen in the house of a certain Gantuatco. But when accused-appellant saw the Tadtads, he jumped out of the house and ran towards the river. The tadtads, of whom there were 12, divided themselves into two groups and went after accused-appellant. Sirot was able to apprehend accused-appellant who, after being subdued, said, "What happened? Is it because of the girl being raped? I don't have anything to do with it." Sirot told him, "Because you did it, then you have to answer for it." Accused-appellant was then taken to the Bansalan Police Station.^[5]

Dr. Annabelle P. Yumang, rural health physician of Bansalan, Davao del Sur, conducted a post-mortem examination (Exh. Y) at 12:15 p.m. of January 31, 1991 on the cadaver. The results of her examination showed:

FINDINGS: (+) frothy secretions coming out from the nose and mouth

(+) swollen and cyanotic face

(+) lacerations of vaginal canal - on both sides extending up to the perineal area

(-) result for smear for the presence of spermatozoa

She testified that there was a hematoma on the left side of the face that must have been caused by a hard blunt object, a hard fist blow delivered upon the victim or the dropping of a stone on the body of the victim lying face up. There were frothy secretions in the mouth and nose of the victim which could have been caused by drowning. There were scratches on the neck of the victim, four (4) on the left side and one (1) on the right side, possibly inflicted by a person holding violently the neck while in the act of raping or having sexual intercourse with an unwilling victim. There were also some abrasions found on the wrists of the victim possibly caused by a struggle whereby the victim was forcibly held while attempting to free herself from her attacker. There was some blood on both legs of the victim.^[6]

Dr. Yumang found that the victim had no underwear and that there were some injuries on her private parts. There was dried blood around the genitalia. The bloodstains on the dress of the victim came from her vaginal canal. Bloodstains were also found on the anterior portion of the thigh. There were fresh lacerations on the hymen of the victim extending up to the vaginal canal and the perenium. Dr. Yumang claimed she found pubic hair of a man inside the vaginal canal of the victim. Both the minor and major labia were swollen which could have been caused by application of pressure such as sexual intercourse. Dr. Yumang said that the "absence of spermatozoa" (Exh. Y-3) was not an indication that there was no sexual intercourse. She said that the victim died because of massive bleeding from the vaginal canal. She theorized that the seminal fluid might have come out or that there was actually no ejaculation, but it did not necessarily follow that there was no penetration of the vagina.^[7] The certificate of death (Exh. T) gave the immediate cause of death of the victim as "asphyxia by drowning" (Exh. T-5) and the time of death to be 1:30 a.m. of January 30, 1991 at Sto. Niño, New Clarin, Bansalan, Davao del Sur.^[8]

Ricarda Bosbos, mother of the 12-year old victim, testified that she last saw her daughter at about 6:00 p.m. of January 29, 1991 at the basketball court of Sitio Sto. Niño where the victim was helping her sell "banana cues." She said she was so tired after selling "banana cues" that day, which was the fiesta of Sto. Niño, that she did not notice that her daughter was missing. It was only at about 5 o'clock in the morning of the next day, when there was a commotion following the discovery of a dead body of a child lying by the irrigation canal, that she learned that the victim was her child. After being informed that accused-appellant had admitted the commission of the crime, she went to the Bansalan Police Station and told accused-appellant, "It would not matter if you raped her. You did not kill her [You should have not killed her]." According to Ricarda Bosbos, accused-appellant said, "Forgive me, Nang, for I did not know what I was doing because I was drunk," to which she replied, "You ask forgiveness from the Lord because I could not forgive you."^[9]

SPO1 Rogelio Canillo of the PNP Head quarters at Camp Catitipan testified that in the morning of January 30, 1991, he and Station Commander Lt. Vicente Labiaga of the Bansalan Police Station, Pfc. Moreno, Cpl. Navarro of the Intelligence Section, and other members of the patrol team went to the ricefield of Patricio Cartena, following a report that the lifeless body of Jocelyn Bosbos had been found. They found the victim's mouth and lower jaw deformed, her tongue sticking out, indicating that she had been choked. There was a contusion on her neck. SPO1 Canillo said he and Cpl. Navarro stayed behind after the body had been taken to the funeral parlor. They were told by one Ondo Josol that a suspicious-looking person arrived at the house of Arcadio Tagab around 11:30 p.m. of January 29, 1991 and stayed there overnight. They were also told that the following morning, the person washed his clothes at the nearby river. SPO1 Canillo and Cpl. Navarro, therefore, went to the house of Tagab. They found a bag hung on the fence of the house of Elpidio Cabales (husband of Nida Cabales). The bag had bloodstains and contained a pair of denim pants and T-shirts. Cabales told them the bag belonged to accused-appellant and that the latter had left to buy some soap. SPO1 Canillo said he and his companion waited two (2) hours for accused-appellant to come back, but he never did. At around 11:30 a.m., they received information that accused-appellant was seen fleeing to New Talisay, a neighboring barangay, pursued by the barangay people and the Tadtad vigilante group. Accused-appellant was later captured and brought to the Bansalan Police Station. SPO1 Canillo claimed that accused-appellant confessed to him that he had raped the victim and that he had been assisted by two other persons. Canillo said that the following day, the Bansalan police presented a line-up of twenty (20) youths from Sto. Niño, New Clarin to accused-appellant, but he failed to identify his two (2) alleged companions.^[10]

According to SPO1 Canillo, on February 3, 1991, the authorities "invited" one Reynaldo Fernandez alias "Baldo," a resident of Lower Mabuhay, Bansalan. He was identified by accused-appellant as one of his companions in committing the crime. Reynaldo Fernandez allegedly admitted that he was with accused-appellant when the latter raped the victim. However, according to SPO1 Canillo, Fernandez claimed that he only held the victim's legs but did not rape her. SPO1 Canillo said Fernandez demonstrated how he spread the victim's legs while accused-appellant raped her. Fernandez pointed to Ruben Cuico as their companion on the night of the incident. Accused-appellant allegedly dragged the victim to the ricefield. He was the first to rape the victim. He was followed by their companion. Accused-appellant strangled the victim's neck and boxed her on the mouth. On the other hand, according to SPO1 Canillo, Ruben Cuico denied participation in the crime and claimed he lifted the victim out of the canal and put her on the dike after she had been abused. SPO1 Canillo prepared a written report (Exh. W) of the investigation they conducted.

Atty. Ernesto de la Cruz, then a practicing Attorney,^[11] testified that he assisted the accused-appellant in making a written confession (Exh. X) on February 7, 1991, at the request of a court aide of Judge Rogelio Narisma of the Metropolitan Circuit Trial Court of Bansalan and Magsaysay. He said he explained to accused-appellant in the Cebuano dialect the contents of the document (Exh. X), after which he asked if accused-appellant was willing to sign the document. Despite the fact that he informed the latter that the death penalty could be imposed on him if he was found guilty, accused-appellant said he was willing to sign. Accused-appellant signed the confession, after which Atty. De la Cruz affixed his signature as administering officer. But Atty. De la Cruz admitted he was not present when the extrajudicial confession

was prepared.^[12]

Accused-appellant Celestino D. Payot, and his co-accused, Reynaldo Fernandez and Ruben Cuico, took turns testifying in their defense.

Accused-appellant **Celestino D. Payot** testified that he was living in the mountains of Balutakay. On January 1, 1991, he went to Barangay Sto. Niño, New Clarin, Bansalan, Davao del Sur to look for a job and stayed for two (2) days in the house of Arcadio Tagab. He declared that Tagab was a good friend and he never had any misunderstanding with him. Because of the peace and order situation which forced people to leave Balutakay, he went back to Bansalan on January 29, 1991. He stayed at Bansalan Poblacion up to 5:30 p.m. He confirmed that he later spent the night in the house of Arcadio Tagab in Sitio Sto. Niño, New Clarin, Bansalan. He said, however, that he arrived there at around 8:00 p.m. and not at 10:00 p.m. as Tagab had said. He admitted he had blood on his pants but he said it was because he injured his arm while jumping over the fence surrounding Tagab's house. He described the fence as made of madre de cacao trees planted around the yard and crisscrossed with bamboo slats. But he denied that he was wearing short pants and that he did not have any shirt on when he arrived in Tagab's house. Accused-appellant said that upon arriving, he called out for Tagab and identified himself as Boy Payot. Tagab peeped through the window of his house. Accused-appellant said that instead of waiting for Tagab to open the gate, he (accused-appellant) jumped over the fence and hurt himself in the process. He rubbed his elbow on his right thigh twice and on his right waist once in order to wipe the blood away. The long pants found in his bag also had bloodstains. Accused-appellant claimed that the bloodstains on the front were caused by his wiping the blood off his elbow, but he did not know where the bloodstains on the back part of the pants came from. He explained that his pants were wet because he fell into the canal while on his way to the house of Tagab. Accused-appellant said he slept at about 9:00 p.m., woke up at 6:00 a.m. the following day, and then washed his clothes in the river about 300 meters from the house of Tagab. He put the clothes in his bag which he left by the fence of Nida Cabales' house because he was going to buy some soap in Sta. Cruz. Along the way, Tagab saw him and told him that some people were looking for him. He proceeded to the house of his cousin, Washington Talaboc, to get some soap, but before reaching the place, he was arrested. He was taken to the Bansalan Police Station where he was investigated at about 9:00 a.m. the following day by Patrolmen Moreno and Abagon. When he denied Knowledge of the rape-slay, the police officers threatened to cut off his penis. He claimed that police officer Florante Jabonero banged his (accused-appellant's) face against the iron bar of the cell which is why he has a scar on his left eyebrow. The police threatened him that if he did not sign a confession, he would be taken to the mountains of Balutakay and he would be accused of being an NPA. He complained that he was investigated without the assistance of counsel. He said police officers Moreno and Abagon prepared a sworn statement/affidavit and took him to one Atty. Paguican who explained to him in the Cebuano-Visayan dialect the contents of the affidavit. He declared that he did not sign the sworn affidavit because its contents were not true. He said he finally signed the affidavit before Atty. Ernesto de la Cruz because he could no longer endure the maltreatment of the police officers. Accused-appellant stated he did not know Reynaldo Fernandez and Ruben Cuico. He came to know them for the first time inside the Bansalan Municipal Jail. He only implicated the two because all of them had been arrested by the police officers.^[13]