

## SECOND DIVISION

[ G.R. No. 114812, June 19, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL Z. SAHAGUN @ "ROD SAKSAK", ERNESTO F. VILLAREAL @ "WONG" AND FERNANDO BONIFACIO @ "KISKIS" (AT LARGE), ACCUSED-APPELLANTS.**

### DECISION

**PUNO, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated January 31, 1994, of the Regional Trial Court, Branch 121, Caloocan City, convicting RODEL Z. SAHAGUN @ "ROD SAKSAK" and ERNESTO F. VILLAREAL @ "WONG" of the crime of Murder under an Information which reads as follows:

"That on or about August 1, 1993, in the city of Kalookan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused,<sup>[2]</sup> conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously, with intent to kill and taking advantage of superior strength and with evident premeditation, attack, assault and use personal violence upon the person of one Michelle Avendaño y Agapito, by then and there suddenly dropping a concrete slab on her face and thereafter stabbing her with a bladed weapon on different parts of her body, thereby inflicting upon her mortal wounds which were the direct and immediate cause of her death.

CONTRARY TO LAW."

When arraigned, accused Villareal and Sahagun pleaded not guilty. Trial ensued and the two accused were convicted principally on the basis of the testimony of eyewitness Joselito dela Cruz. They were sentenced to suffer the penalty of reclusion perpetua and ordered to pay jointly and severally the heirs of Michelle Avendaño the following amounts: a) fifty thousand pesos (P50,000.00) as indemnity for her death; b) twenty thousand pesos (P20,000.00) as moral damages and c) eighteen thousand eight hundred pesos (P18,800.00) as actual damages.

The prosecution evidence shows that in the afternoon of August 1, 1993, Ernesto Villareal alias "Wong" and Fernando Bonifacio alias "Kiskis" were having a drinking spree in the house of Rodel Sahagun alias "Saksak". At about 2:30 p.m., Joselito dela Cruz joined the three accused after he was invited by them. During their drinking spree, dela Cruz heard the three talked about their plan to get a girl whose name was not mentioned. At about 5 o'clock p.m., they all left Sahagun's house and decided to go to the Caltex gasoline station, some twenty (20) meters away. They boarded a tricycle owned by the brother of Bonifacio. While inside the tricycle, Sahagun confided to dela Cruz that they (the three accused) would abduct, rape and

kill Michelle Avendaño.<sup>[3]</sup> Sahagun revealed to dela Cruz that he had a long standing feud with Michelle. It started when she drove him away when he parked his tricycle in front of the Santos School Supply where she was then working as a saleslady. Dela Cruz thought of breaking away from the group but he was warned by Sahagun that he would be implicated if he did not join their plan. Dela Cruz was struck by fear for he knew that Sahagun would carry out his threat.<sup>[4]</sup> After three hours at the gasoline station, they saw Michelle arrive at the Santos School Supply. They proceeded to Basilio Street, some thirty (30) meters from the store, on board the tricycle driven by Bonifacio. Bonifacio positioned the tricycle in the parking lot for tricycles. Sahagun posted himself near the store of Aling Binay, Villareal stayed near the parking lot for tricycles while dela Cruz stood beside a jeep parked at the Petron gasoline station. Bonifacio continued to serve as driver of the tricycle.<sup>[5]</sup>

Michelle Avendaño came out of the Santos School Supply at about 8:30 in the evening. She saw that the other tricycles in the parking area had no drivers so she chose to take the tricycle driven by Bonifacio. As soon as she got inside the tricycle, Sahagun, Villareal and dela Cruz boarded it. Sahagun sat beside her while Villareal and dela Cruz sat behind Bonifacio. Michelle protested but Sahagun threatened her with harm. The tricycle sped off and stopped at Maria Clara Elementary School on 8th Avenue, Caloocan City. Sahagun covered Michelle's mouth with her left hand and bodily carried her. Bonifacio and Villareal entered the school premises through a hole in the concrete wall. Sahagun passed Michelle to Bonifacio and Villareal before passing through the hole. Dela Cruz joined them but Sahagun ordered him to act as their look-out. Once inside, the three accused forcibly laid down Michelle on the ground; Villareal held her legs while Bonifacio held her arms. Michelle shouted and struggled. Irritated by Michelle's scream, Sahagun picked up an adobe rock and dropped it on her head. Thereafter, Villareal and Bonifacio stabbed Michelle on different parts of her body. Dela Cruz, who was then five (5) meters away from the scene, hurriedly left as he could not endure the sight of the crime being perpetrated by the accused.<sup>[6]</sup>

On August 3, 1993, the body of Michelle was found inside the premises of Maria Clara Elementary School. Michelle's mother, Ursula Avendaño, testified that her family incurred P12,000.00 for the funeral services (Exhibits "N" and "O"). They also paid P4,000.00 to International Funeral Homes (Exhibit "P"). During the wake, they spent P75.00 for the tape (Exhibit "Q"), P2,325.00 for the chairs (Exhibit "R") and P400.00 for the mass (Exhibit "S"). She further testified that when she learned of her daughter's death, she became nervous and cried a lot. Her husband also suffered a shock when he saw the place where Michelle was killed. He underwent medical treatment and had to stay in his sister's house in Navotas to recover.<sup>[7]</sup>

Joselito dela Cruz voluntarily surrendered to the Malabon Police on August 17, 1993. He gave two sworn statements dated August 18, 1993 and August 20, 1993, respectively, to the National Bureau of Investigation (NBI) regarding the murder of Michelle. He implicated Villareal, and Villareal was arrested on August 18, 1993. Villareal and dela Cruz pointed to Sahagun as one of their companions in the brutal slaying of Michelle. Sahagun was investigated on August 20, 1993.

The defense was one of denial. Villareal testified that on August 1, 1993, he was in the house of Aling Tessie, a jeepney operator, fixing the jeep he was assigned to drive. Said house was 30-minute drive from Maria Clara Elementary School, 2-

minute walk from his house, 5-minute drive from Bayan-bayanan, Malabon, and 5-minute drive from Santos School Supply. After working on the jeep from 9 o'clock in the morning to 5 o'clock in the afternoon, he went home. He was already asleep in his house at about 9 o'clock in the evening. He admitted knowing Sahagun and Villareal for they were his neighbors but denied being their close friend. He likewise admitted knowing dela Cruz, the latter being the son of the godchild of his mother. He denied knowing Michelle. He only learned of Michelle's death from the newspapers.

He was brought to the NBI office on August 18, 1993. There, he learned that he was implicated by dela Cruz. The NBI agents started torturing him on August 18 at 7 o'clock in the evening during which he was not blindfolded. He was told by the NBI agents to admit killing Michelle and cooperate with them. He was brought to the rooftop of the NBI office on August 19, where he was tortured from 10 o'clock in the evening until 5 o'clock in the morning of the following day. He was blindfolded when he was slapped, kicked, placed under water ("tinubig"), and bullets were inserted between his fingers by the NBI agents. They spat inside his mouth. He lost consciousness until a doctor arrived and examined him. He was then allowed to rest. After torturing him, he was made to sign a document which turned out to be his extra-judicial confession. Atty. Florante Dizon was not present at that time. Five hours later, he was presented to the press people who failed to notice any sign that he was mauled. On August 20, 1993, at about 10 o'clock in the morning, he met Atty. Dizon for the first time. He told Atty. Dizon that he signed the document because he could no longer endure the torture. Atty. Dizon then advised him of his constitutional rights. He agreed to have Atty. Dizon to be his lawyer for the meantime as it was necessary during the investigation. Atty. Dizon later on accompanied him to the Department of Justice (DOJ) building. State Prosecutor Macapagal asked him if Atty. Dizon was his counsel of choice and he answered that Atty. Dizon was just given to him by the NBI agents on August 20, 1993. When he informed State Prosecutor Macapagal that he was tortured by the NBI agents, he saw her and the agents present thereat wink their eyes. On August 21, 1993, he was brought to the Maria Clara Elementary School by the NBI agents for the re-enactment of the crime upon their order. Atty. Dizon was not with them at that time.

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Sahagun testified that on August 1, 1993, at about 8 o'clock in the morning, he brought his youngest child to his mother in Buendia, Pasig. They spent the rest of the day at the Grand Central, Caloocan City. They went home at about 6 o'clock in the evening and had dinner at about 7 o'clock. Thereafter, he watched the television with his wife and children and some of his tenants. At about 8 o'clock, he went to sleep. He admitted knowing Villareal, Fernando and dela Cruz but denied being their close friend. He was arrested by the Caloocan police on August 5, 1993. The policemen asked him about the killing of a child whose name he did not even know. They handcuffed him, ordered him to lie flat on the bench, tied him, kicked him on his face, boxed his chest, put a cloth inside his mouth, poured water on his face and threatened to kill him if he did not admit the killing of Michelle. He refused to admit anything saying they could shoot him in the head because he was already tired. They also asked about his tricycle which he sold to Arthur Esteban on May 22, 1993 for P22,000.00 (Exh. "14") and which was alleged by the policemen to have been used by him in committing the crime. They tortured him again. Subsequently, he was brought to the warrant section of the police station where his brother's criminal case was imputed to him. He was detained from August 5 to August 12, 1993.