

## TWENTIETH DIVISION

[ CA-G.R. CR-HC NO. 00679, November 11, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DIONESIO MENDOZA, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

This is an appeal on the Judgment<sup>[1]</sup> of the Regional Trial Court (RTC), Branch 42, Dumaguete City dated January 25, 2007 in Criminal Case No. 13807 finding accused-appellant Dionesio Mendoza guilty beyond reasonable doubt of rape with homicide and penalizing him with *reclusion perpetua* with all its accessory penalties and directing him to pay the heirs of the victim the amounts of P100,000 as civil indemnity, P50,000 as moral damages and P20,000 as nominal damages.

#### The Antecedents

Accused-appellant Dionesio Mendoza (appellant) was charged of rape with homicide for the killing of 9 year old girl, AAA, under the following Information,<sup>[2]</sup> viz. :

That on 31 January 1999 at about 5:30 o'clock in the afternoon in Daro, Nagbu-alao, Basay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs did then and there willfully, unlawfully and felon[i]ously have carnal knowledge with [AAA], nine [9 ] years of age against her will, and on the occasion thereof, said accused did and there willfully, unlawfully and felon[i]ously applied so much pressure and over-powering strength on said [AAA] which caused her death soon thereafter.

CONTRARY TO LAW.

When arraigned appellant pleaded not guilty.<sup>[3]</sup> Subsequently, trial ensued.

The version of the prosecution was comprehensively summarized<sup>[4]</sup> by the Office of the Solicitor General (OSG), to wit:

XXX is the father of AAA. AAA was born on March 21, 1989.<sup>[5]</sup> Their house was next to that of appellant Dionesio Mendoza. The appellant knew AAA, and would even send her to do errands for him like buying cigarettes or liquor. At six o'clock in the morning of January 31, 1999, Dionesio Gumahad saw the appellant buying cigarettes from the store near his house. Later, at three o'clock in the afternoon, Edwin Magbanua, a barangay councilor, saw appellant, who he knew, sitting at the same store near his house.<sup>[6]</sup>

Around five o'clock, the appellant, together with nine-year old AAA, went to the house of Mauricio Macahipay, also in Daro. The appellant borrowed Mauricio's slippers, telling him that he needed to go somewhere to collect payments. Mauricio refused. The appellant and AAA then headed towards Punta Bato.

On their way to Punta Bato, the appellant and AAA were seen together by Nicardo Telmo, a barangay tanod of Daro. Nicardo was fetching water near the land of Ricardo Cafayday.

Around the same time, Edwin Buenconsejo, a fisherman and neighbor of the appellant, fetched his carabao which was pastured on the land of Cafayday. While on his way home a few minutes later, he saw two persons lying on the ground. They were on top of and facing each other. Edwin was of the impression that they were making love, as he saw the person on top was naked. When this person turned his head, Edwin saw that it was the appellant. Edwin did not see who the other person was.

Around nine o'clock that night, XXX was surprised when AAA failed to come home. She would normally spend her evenings watching Betamax movies in the house of their neighbor. However, when the movie ended and she was not yet home, XXX got worried. He inquired from his neighbors and even asked them to help him search for AAA. He requested some to dive in the sea, thinking the child could have drowned. Despite all their efforts, they were unable to find her that night.

About two o'clock in the morning of the following day, AAA's grandparents BBB and CCC, went to the house of Mauricio to ask if he had seen the child. He related that he saw AAA with the appellant earlier in the afternoon of January 31, when the appellant dropped by his house to borrow his slippers. They immediately relayed this information to the *barangay tanod*.

PO3 Wilfredo Cardona of the Basay Police Station received the request for police assistance on February 1, 1999 at about three o'clock in the morning. Because the appellant was the last person seen with AAA, PO3 Cardona went to his house to invite him for questioning. When the appellant's parents protested, PO3 Cardona summoned Mauricio, who went to the Municipal Hall where the police were holding their investigation and identified the appellant as the person he saw together with AAA. However, as the appellant denied having anything to do with the missing girl, he was released from police custody.

The search for AAA was resumed on the morning of the next day, February 1, 1999. At around 10:00 a.m., *barangay tanod* Nicardo Telmo, Junior Carias, Edgar, Apad and Vicente found AAA's dead body lying face down in the muddy waters near a *nipa* trunk in Punta Bato. The body was partly submerged in the water, about a foot deep. Nicardo told XXX about it. Thereafter, the police arrested the appellant.<sup>[7]</sup>

When Nicardo went near the seashore later that night, he saw Edwin and told him that AAA was killed and the body was found at Punta Bato. They

went to the place where the body was discovered and Edwin realized that it was at the same place where he saw the appellant at around 5 p.m. The day before, making love to a person whom he did not recognize.

AAA's body was examined by Dr. Jacqueline Borja-Valencia, a medico-legal officer. She found that AAA died of asphyxia secondary to larygospasm and glottic close. She also found that there was forceful penetration of AAA's sex organ, which indicated sexual abuse. There was a laceration in the clitoris about 1.5 centimeters long, and hematoma on both sides of the vaginal wall. She also found a complete laceration at the six o'clock position and blood clots in the vaginal canal. However, she found no spermatozoa, which may have been washed out in the water where AAA's body was found. She indicated her findings in a Medical Certificate<sup>[8]</sup> and also signed AAA's Death Certificate.<sup>[9]</sup>

Dr. Rene E. Cam of the National Bureau of Investigation also conducted a post-mortem examination of AAA's body on February 10, 1999. He found that AAA sustained the following injuries: abrasion, hematoma, lacerations of the hymen, hematoma of the skull, fracture of the skull and haemorrhage intracranial. He clarified that the cause of death was traumatic head injury, as there was haemorrhage on the right side of the brain as a result of the linear fracture of the middle cranial fossa, which he surmised she could have sustained during a struggle when her head was pounded on the ground. He indicated his findings in a Necropsy Report.<sup>[10]</sup>

For the burial and embalming of his daughter, XXX spent P20,000.00.

Meanwhile, appellant interposed denial and alibi as his defenses. From the testimony of the defense witnesses, it could be gathered that appellant and his friend Felimon Carreon, Jr. arrived in *barangay* Daro, Nagbu-alao, Basay at around 5:50 o'clock in the evening on January 31, 1999. Appellant came from his residence in the mountain *barangay* of Sitio Apanangon, Minaba, Bayawan City. He went to Daro to visit his parents and deliver rice and corn to them.

Appellant and his friend took their supper at around 6:00 o'clock in the evening and an hour thereafter, they went to sleep in the unfinished house of Moroy Catid. It came as a surprise to them that at around 4:00 o'clock dawn on February 1, 1999 appellant was awakened by the police and brought to the municipal hall for questioning about AAA who was reported missing. Appellant denied knowing AAA but claimed that he knew the girl's father as his mother's enemy.

After the proceedings, the trial court found appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Decision reads, *viz*:

WHEREFORE, finding the accused Dionesio Mendoza GUILTY beyond reasonable doubt of the crime of rape with homicide, he is hereby sentenced to suffer a penalty of *reclusion perpetua* with all its accessory penalties. He is further directed to pay the following amounts to the heirs of [AAA]: P100,000 as civil indemnity, P50,000 as moral damages and P20,000 as nominal damages

SO ORDERED.<sup>[11]</sup>

Aggrieved, appellant brought the matter to us on a lone assignment of error, that:

THE LOWER COURT ERRED IN BELIEVING TOTALLY THE VERSION OF THE WITNESSES OF THE PROSECUTION AND NOT GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES OF THE DEFENSE WHICH ARE MORE BELIEVABLE AND CONSONANT WITH HUMAN EXPERIENCE.

### **This Court's Ruling**

The appeal is without merit.

The Supreme Court has had occasions to discuss the intrinsic nature of a rape case as one which involves only two parties, the rapist and the victim. Thus, conviction or acquittal in rape cases depends entirely on the credibility of the victim's testimony because only the participants to the crime can testify as to its occurrence.<sup>[12]</sup> Unfortunately in this case, the victim's testimony could no longer be heard for her lips had been sealed by death. The prosecution had to rely on the testimonies of its witnesses and what they proffered were not direct, but only circumstantial evidence.

It has been settled, however, that direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt.<sup>[13]</sup> Section 4, Rule 133 of the Rules on Evidence recognizes that circumstantial evidence is adequate for conviction, as follows:

SEC. 4. *Circumstantial evidence when sufficient.* — Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In the instant case, the circumstances testified to by the prosecution's witnesses, when pieced together, justify the conclusion that appellant was the one who raped and killed AAA. The circumstances are as follows, thus:

- (1) appellant was the last person seen by Mauricio Macahipay (Makahipay) together with AAA on January 31, 1999 at about 5:00 o'clock in the afternoon. Macahipay saw appellant and AAA go towards the direction of Punta Bato;
- (2) another witness, *barangay tanod* Nicardo Telmo, who was fetching water, also saw appellant and AAA on their way to Punta Bato;
- (3) Edwin Buenconsejo (Buenconsejo) saw appellant having sexual intercourse with somebody in Punta Bato;