

## THIRD DIVISION

[ G.R. No. 106833, December 10, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME  
QUISAY Y IGNACIO, ACCUSED-APPELLANT.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

Before us is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 41, finding accused-appellant Jaime Quisay guilty of rape with homicide and sentencing him to suffer the penalty of *reclusion perpetua* with the accessories provided by law and to indemnify the heirs of the victim in the amount of P50,000.00 as damages.

The accusatory portion of the Information dated December 12, 1990 states that -

"that at about 8:00 o'clock in the evening of October 21, 1990, at Barangay Suba, Bayawan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the victim AINNESS MONTENEGRO, a 2 years and 11 months old baby girl; that on the occasion of the said rape, and taking advantage of superior strength and with intent to kill, treacherously and attack, assault and use personal violence upon victim Ainness Montenegro, thereby inflicting upon her the following physical injuries, thus:

1. Hematoma forehead middle part;
2. Multiple abrasions forehead;
3. Hematoma nose with bloody discharges;
4. Hematoma submadibular area, right;
5. Multiple abrasions nose and face;
6. Hematoma left iliac area;
7. Hematoma thigh right upper 3<sup>rd</sup>;
8. Depressed fracture, right supra-orbital area, 3-4 cm. length;
9. Multiple confluent Hematoma Right and Left leg, posterior aspect;
10. Multiple confluent hematoma and abrasions, neck both side;
11. Contusion, labia minora;
12. Hematoma, labia Majora, right aspect;

Which injuries caused the instantaneous death of said Ainness Montenegro."<sup>[2]</sup>

The accused, when arraigned, pleaded not guilty to the charge. Thereafter trial on the merits ensued.

As synthesized by the Solicitor General in the People's brief, the evidence of the prosecution is as follows:

"Prosecution presented seven (7) witnesses. First witness presented was Dr. Lydia Villaflores, 45 years of age and a resident physician of Bayawan District Hospital. She testified that she was the one who examined a child by the name of Ainess Montenegro on October 21, 1990 (tsn, June 10, 1991, p. 7). She claimed that in connection with her examination, she issued a medical certificate dated October 29, 1990 (marked as Exhibit "A" for the prosecution) stating the following findings:

1. Hematoma forehead middle part;
2. Multiple abrasions forehead;
3. Hematoma nose with bloody discharges;
4. Hematoma submadibular area, right side;
5. Multiple abrasions nose and face;
6. Hematoma left iliac area;
7. Hematoma thigh right upper 3<sup>rd</sup>;
8. Depressed fracture, right supra-orbital area, (tsn, Ibid, p. 8);
9. Multiple confluent Hematoma Right and Left leg, posterior aspect;
10. Multiple confluent hematoma and abrasions, neck both side;
11. Contusion, labia minora;
12. Hematoma, labia majora, right aspect;

She further testified, however, that findings No. 9 up to 12 in the medical certificate were not her findings but that of Doctor's Aurelia and Calo-oy (tsn, Ibid, p. 10). On re-direct, Dr. Villaflores admitted that before she signed the medical certificate with the additional findings, consultation with Drs. Aurelia, Calo-oy and Flores, the latter being the Chief of the Hospital, was conducted and that she agreed on the additional findings (tsn, Ibid, p. 20). She testified that during her examination on the body of the victim, including its genital organ, she did not notice any damage although she admitted that the hematoma may have developed later (tsn, Ibid, p. 28).

Second prosecution witness was Dr. Arnold Calo-oy, Municipal Health Officer of Bayawan, Negros Oriental. Dr. Calo-oy testified that he had been a Municipal Health Officer of Bayawan, Negros Oriental, since April 1987 up to the present time. As Municipal Health Officer, it is one of his duties to conduct post mortem examination. On October 22, 1990, he and two other doctors, Dr. Aurelia, a senior resident physician of Bayawan District Hospital and Dr. Felimon Flores, Chief of the Bayawan District Hospital conducted a post mortem examination on the dead body of Ainess Montenegro at the residence of Alejandro Montenegro, father of the victim (tsn, June 10, 1991, pp. 32-34). In connection with the examination, four (4) additional findings were added to the findings of Dr. Lydia Villaflores. These findings are:

1. Multiple confluent hematoma, right and left leg, posterior aspect;
2. Multiple confluent hematoma and abrasions, neck both sides;

3. Contusion, labia minora;
4. Hematoma, labia majora, right aspect, (tsn, Ibid, p. 35).

Dr. Calo-oy added that these injuries may have been caused by a hard object applied with force (tsn, Ibid, pp. 36-37). He also testified that these injuries may not be found prominently right after the application of the force because hematomas or any defect of this nature develop slowly and thus, may not immediately be seen after the cause of the hematoma (tsn, Ibid, p. 37). On cross-examination, Dr. Calo-oy admitted that there was already a post mortem examination on the body of the victim conducted by Dr. Lydia Villaflores but since the father of the victim requested for another examination, he, together with Dr. Aurelia and Dr. Flores conducted another one (tsn, Ibid, p. 41). Witness Dr. Calo-oy testified that the second examination was done in the residence of the victim and that upon observing the additional findings, they conferred with Dr. Villaflores and they (all four doctors) signed the medical certificate (tsn, Ibid, p. 53). Dr. Calo-oy added that with the injuries sustained by the victim, it was a possibility that there was sexual assault (tsn, ibid, p. 56). He added that even if the second examination occurred after twenty hours from the initial examination, no amount of tampering of the cadaver could have resulted any hematoma since any blow on any part of the body when such body is already dead is not possible inasmuch as there is no more blood circulation (tsn, Ibid, p. 58). He further added that the hematoma that developed were those acquired at the time the victim was still alive and may have developed at the time of the first examination but cannot be seen by naked eye and became prominent only during the time the second examination was conducted (tsn, ibid, pp. 58-59).

Third prosecution witness Alejandro B. Montenegro, [Jr.] testified that he is the father of the victim, Ainness Montenegro. He claimed to have known accused-appellant Jaime Quisay because the latter lived in his mother-in-law's house for the past seven months. The house of his mother-in-law is just adjacent to his house (tsn, June 18, 1991, p. 3). When witness Montenegro was asked whether he knows the accused-appellant, he answered in the affirmative and pointed to a man in the courtroom who answered to the name of Jaime Quisay. Witness Montenegro further testified that at past 7:00 in the evening of October 21, 1990, right after having his supper, he went to look for his daughter, Ainness. His daughter was "borrowed" by accused-appellant Quisay from his wife allegedly to bring the little girl out to the store to buy candies (tsn, Ibid, pp. 4-5). When accused-appellant Quisay and his daughter Ainness did not come back. Witness Montenegro went looking for them. Having failed in his search, witness decided to go home and on his way, he saw a police car coming (tsn, ibid, p. 5). Together with the police, they searched the place and a neighbor by the name of Mrs. Ong told the search party to check the area of Mr. Maypa as she heard something from that area, thus, the search party focused their search thereon (tsn, Ibid, p. 6).

The search party found Ainness Montenegro in a dark area of Maypa compound lying flat on her back on the ground (tsn, Ibid, p. 6). Ainness

clothes were pulled up to cover her face. Upon seeing his daughter, witness Montenegro went to his daughter and discovered that the child was already dead (tsn, Ibid, p. 7).

On cross-examination, witness Montenegro claimed that he went back to the site of the crime after the incident and found a piece of slipper of a child, a pair of slippers of accused-appellant Jaime Quisay and a brief (tsn, Ibid, p. 11). When asked why these facts were never stated in his affidavit executed on November 5, 1990, witness Montenegro claimed that the items found at the site of the crime were turned over to the police for safekeeping (tsn, Ibid, p. 17).

Fourth prosecution witness Leo Magbanua testified that he knows accused-appellant Jaime Quisay since 1990 because they were neighbors (tsn, June 18, 1991, p. 25). When asked to identify accused at the courtroom, he pointed to a man who answered by the name of Jaime Quisay. On October 21, 1990, at around 8:00 in the evening while witness was at home having arrived from a friend's house watching betamax movie, he heard a baby crying from outside their house (tsn, Ibid, p. 27). He peeped through the window and saw a person carrying a crying child going to the Maypa compound (tsn, Ibid, p. 38). Upon seeing what he saw, witness Magbanua called his grandfather who wanted to go out and check but was stopped by his (witness) grandmother for fear that the man carrying the child might be armed (tsn, Ibid, pp. 28-29). Witness Magbanua further testified that he heard somewhat like a pounding sound coming from the place where the child was crying and that he heard a very loud cry as if in pain (tsn, Ibid, pp. 30-31). After the pounding sound, witness Magbanua saw the accused-appellant go toward the dancing place with a child (tsn, Ibid, p. 31). Having witnessed all these, witness Magbanua and his grandfather asked help from a neighbor, Mrs. Mary Joy Ong, who has a telephone and who immediately called the police (tsn, Ibid, p. 33). A patrol car came and, thus, searched for Ainess Montenegro (tsn, Ibid, p. 34). The next thing witness saw was the dead body of the child, Ainess Montenegro, when found at the Maypa compound by the police (tsn, Ibid, p. 35).

Fifth prosecution witness was Dr. Filemon B. Flores, Chief of Hospital II, Bayawan District Hospital, Bayawan, Negros Oriental. Dr. Flores testified that on October 22, 1990, he reported for work at the hospital and learned about the death of one of the daughters of one of the hospital nurses, Mr. Alejandro Montenegro. He, together with two (2) other doctors, Dr. Calo-oy and Dr. Aurelio, went to the house of the nurse to pay their respect. Upon arrival at the house of the nurse, the father of the victim requested that the three doctors take a look at the dead child. Out of curiosity, they gave into the request and was able to find four more injuries on the body of the victim not found by Dr. Lydia Villaflores, the doctor who examined the dead child when brought to the hospital on the night of October 21, 1990. With the additional findings witness Flores instructed the two doctors, Dr. Calo-oy and Dr. Aurelia to coordinate with Dr. Lydia Villaflores as regards the new findings (tsn, July 2, 1991, p. 4). He further testified that injury No. 11 which is contusion, labia minora, could have been caused by any object applied with

pressure on the area, while injury No. 12 which is hematoma, labia majora, right aspect, could have been caused by blunt object that was presented on the area too. When asked whether such injuries could have been caused by sexual abuse, witness Dr. Felimon Flores answered "possible" (tsn, Ibid, p. 7).

Sixth prosecution witness Raymundo Cebumit testified that he knew accused-appellant as they are neighbors (tsn, July 3, 1991, p. 3). When asked to identify the accused, witness Cebumit pointed to a man in court who answered to the name of Jaime Quisay, in the evening of October 21, 1990, while he was attending to his pig at its pig pen, a patrol car arrived. Curious as to what was happening, he inquired from the policemen what was wrong and was informed that they were searching for a missing child. Upon hearing the news, he joined in the search and was one of those who found the child by the palm and acacia trees (tsn, Ibid, p. 5). He further testified that at the time he saw the child/victim, her dress was raised up to her face and that she was no longer breathing (tsn, Ibid, p. 7).

Last prosecution witness Pablo Tagacan testified that he knows accused-appellant Jaime Quisay because their houses are just near each other. When asked to identify accused-appellant in court, witness pointed to a person sitting on the accused bench who answered the name of Jaime Quisay. According to witness Tagacan, on the evening of October 21, 1990, he was in his house when Jaime Quisay passed by carrying a child (tsn, August 7, 1991, pp. 5-6). Witness claimed that he recognized the child as the daughter of Mrs. Montenegro. According to witness Tagacan, he saw accused-appellant carrying the child going towards the inside place of Moring Maypa. When inside the area, accused-appellant sat near the banana plants, perhaps trying to hide and checking whether people were watching him.

While accused-appellant was sitting near the banana plant, the baby was crying (tsn, Ibid, pp. 6-7). Witness claimed that he did not try to go near the accused-appellant for fear that he might be armed. A neighbor, however, telephoned the police, when the police came and found the baby, the child was already dead (tsn, Ibid, p. 8). Witness Tagacan further testified that he saw accused-appellant leave the place where the baby was found prior to the discovery of the body of the victim. Witness saw accused-appellant walk towards the house of the Montenegro. An hour after, the body of the child was discovered (tsn, ibid., p. 10)."<sup>[3]</sup>

On the other hand, accused-appellant interposed the defense of denial and claims that the death of Ainness was accidental. His version is as follows:

"On October 21, 1990, more or less six months after he first entered Toledo's abode, at around 7:00 o'clock in the evening, accused-appellant came home from watching a movie and saw little Ainness crying. Ardiocena Montenegro, mother of Ainness, gave accused-appellant a peso and ordered him to bring Ainness to the store to buy some candies for the child. Accused-appellant carried the little girl. (Ibid., pp. 8-10)