

EN BANC

[G.R. Nos. 121811-12, May 14, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON CAPARAS JR. Y TEMPORAS A.K.A. "JUN PUSA" AND JOSE SANTOS Y JORDAN A.K.A. JUN BALBON A.K.A. "JUN NARCOM", ACCUSED-APPELLANTS.

DECISION

MELO, J.:

Under review is the decision of the Regional Trial Court of the Third Judicial Region (Branch 25, Cabanatuan City) convicting accused-appellants Ramon Caparas, Jr. y Temporas and Jose Santos y Jordan of the crime of rape with homicide and imposing on them the extreme penalty of death. Inexplicably, the State Prosecutor who handled the case below filed two almost identical informations with the only variance that Caparas was named first in one, while Santos was mentioned earlier in the other, for one single complex crime committed on the same day. We quote the first information, to wit:

That on or about January 1, 1994, in Cabanatuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, RAMON CAPARAS, JR. Y TEMPORAS alias "JUN PUSA" conspiring and confederating with JOSE SANTOS Y JORDAN a.k.a. "JUN BALBON", a.k.a. "JUN NARCOM" by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one MARICRIS FERNANDEZ Y VICTORIA, a 13-year-old girl against her will and consent; and on the occasion thereof, said accused with intent to kill, and in conspiracy with accused JOSE SANTOS Y JORDAN a.k.a. "JUN BALBON", a.k.a. "JUN NARCOM" wilfully and unlawfully bashed her face with a piece of hollow block, thereby causing multiple and fatal intracranial injuries in the frontal area which were the direct and immediate cause of her death thereafter.

CONTRARY TO LAW.

(p. 13, Rollo.)

Upon arraignment, both accused-appellants entered not guilty pleas and a consolidated trial of the two cases was thereupon undertaken, following which, a decision dated August 14, 1995 was rendered, the dispositive portion of which reads :

PREMISES CONSIDERED, finding both accused Ramon Caparas, Jr. y Temporas and Jose Santos y Jordan guilty beyond reasonable doubt of the crime of rape with Homicide in Criminal Case No. 5878-AF both of

them are hereby sentenced to suffer the penalty of DEATH with all the accessories provided by law, and ordering them to compensate the heirs of Maricris Fernandez P50,000.00 by way of indemnity, P50,000.00 for burial and other expenses, plus costs.

Relative to Criminal Case No. 5879-AF, finding that only one crime of Rape with Homicide has been committed, both accused are hereby ACQUITTED of the second information, with costs *de officio*.

SO ORDERED.

Accused-appellants' conviction is based on circumstantial evidence, essentially on the testimony of two prosecution witnesses, namely, Arnulfo Esmino and Morimar Sandaan, whose declarations were condensed by the trial court as follows :

MORIMAR SANDAAN, 23 years of age, single, tricycle driver and a resident of Sanbermicristi, Cabanatuan City, testified that he is a tricycle driver; that the tricycle he drives is owned by his father; that on January 1, 1994 at about 7 o'clock and 8 o'clock in the evening, he was washing the buses at the Arayat terminal; that while he was washing, he saw Maricris Fernandez waiting for a tricycle; that Maricris Fernandez is a daughter of Aling Zeny; that Maricris Fernandez was wearing a white T-shirt and short pants; that Maricris Fernandez has waited for two (2) minutes; that he saw Maricris Fernandez rode in a tricycle; that the tricycle came from the direction of Manila and that it curved back to the direction going to Manila at the corner of Capitan Pepe Subdivision; that Maricris Fernandez was more or less fifteen (15) meters away from him when the former boarded the tricycle; that the area where he was cleaning Arayat buses and where Maricris Fernandez boarded the tricycle was lighted; that he knew that the person standing in place about fifteen (15) meters away from him was Maricris Fernandez because she is known to him; that Maricris Fernandez used to ride with him when he was driving a tricycle and Maricris Fernandez was known to him for a long time; that he said that the face of the driver of the tricycle which Maricris Fernandez boarded is familiar to him (*namukhaan lang*); that the hair of the driver if flat top and that was the only time he saw the driver (that at that juncture the witness stepped down from the witness stand and as directed by the Court he tapped the shoulder of a certain person who was seated at the bench of the Courtroom who when asked of his name answered Ramon Caparas, Jr.). In this regard, it is enlightening to quote:

Q What was the condition of the area where you were cleaning the bus and where you saw her (Maricris) actually boarded the tricycle, what was the condition of those area?

A It was lighted, ma'am.

Q How about the place where Maricris was?

A Also lighted, Your Honor.

Q And how do you know that the

person standing in place about fifteen (15) meters away from you was Maricris Fernandez?

A Because I know her previously (dati kong kakilala), Your Honor.

Q How did you come to know her or why did you claim to have known her?

A Because she used to ride with me or Maricris Fernandez used to ride with me, Your Honor, when I was driving the tricycle.

FISCAL CLAVE:

Q For how long have you known Maricris before?

A For a long time, ma'am.

COURT

Q You want to impress the Court that although she is far from you are sure that she is Maricris Fernandez?

A Yes, Your Honor.

x x x x x x x

FISCAL CLAVE:

Q If you see that person again whom you said "namukhaan" will you be able to identify him?

A Yes, ma'am.

Q Please look around if that person whom you "namukhaan" is in this Court?

A Yes, ma'am, he is here inside.

Q Please approach or point if he is around?

A At this juncture, the said witness stepped down from the witness stand and as directed by the Court tapped the shoulder of a certain person who was seated at the bench of the

Courtroom **who when asked gave his name as Ramon Caparas, Jr.**

(tsn, pp. 18, 20 & 21, August 2, 1994, L.C. Mendoza, underlining ours.)

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ARNULFO ESMINO, 31 years of age, married, cemetery caretaker and a resident of ACCFA, Cabanatuan City, testified that he has been a caretaker of the public cemetery since 1980; that aside from him, the other caretakers are Renato Esmino and Ricardo Nicolas; that their duties are to clean the pathways and to guard the cemetery; that his tour of duty is from 8 o'clock in the morning up to 5 o'clock in the afternoon; that he reports for work every Monday; that at about 8 o'clock in the evening of January 1, 1994, he was at the corner of the SV Orolfo Marble Store located in front of the cemetery at San Juan Accfa, Cabanatuan City, which is thirty (30) meters away from the cemetery; that he was there at that particular time looking for his cousin up to the place near NIA; that he could not find his cousin, so he went to the SV Orolfo Marble Store more or less at 9 o'clock that evening; that while he was in the place, he noticed a tricycle coming out from the cemetery; that the tricycle crossed the road which nearly bumped his wife if he was not only able to pull her away; that the tricycle crossed the road going towards Imelda; that the area at the time was alighted; that when he pulled his wife away from the tricycle, he saw a printed short pants at the floor of the sidecar of the tricycle and that he noticed the sky blue color of the tricycle and that when he raised his head, he saw the driver and that their eyes met; that the body of the tricycle driver is well built and he was wearing a white T-shirt; that he used to see the driver; that the last time he saw the said tricycle driver was one week before the incident; that because he often see him, he can recognize him (driver) and the witness pointed to accused Jose Santos who was wearing colored polo shirt; that he executed an affidavit in connection with this case; that he came to know the accused by the name of Jose Santos; (that the witness was shown the picture of the tricycle and confirmed that the said tricycle was the one which entered the cemetery that night of January 1, 1994).

(pp. 36-38, Rollo.)

On January 2, 1994, the day after the incident charged, Ricardo Nicolas, one of the caretakers of the public cemetery at ACCFA, Cabanatuan City went to the Cabanatuan City PNP to report a corpse found in the cemetery. When SPO2 Francisco Mateo II got to the cemetery, he saw the body of a woman lying face-up on the ground. He summoned a photographer who took several pictures (tsn, September 27, 1994, pp. 9-11). Exhibits "D", "D-1", "D-2" "D-3" and "D-4" show a female naked from the waist down; she is wearing a white T-shirt with the print "Ligaya Store" in front; her legs are parted with her panties underneath one of them; her genitals are full of dried blood; and her face is obscured by blood which had also congealed on a piece of concrete on which her head was resting (pp. 17-