

FIRST DIVISION

[G.R. No. 250649, March 24, 2021]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO CABORNAY Y BATULA, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, C.J.:

On appeal is the June 28, 2019 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02537, which set aside the April 20, 2017 Decision^[2] of Branch 33, Regional Trial Court (RTC) of Calbiga, Samar, in Criminal Case No. C-2012-1870, finding accused-appellant Leonardo Cabornay y Batula (*Cabornay*) guilty beyond reasonable doubt of Attempted Rape with Homicide.

In the Information filed on November 5, 2012, Cabornay was charged with the crime of Rape with Homicide, committed as follows:

That on or about the 30th day of July 2012 at about 11:00 o'clock in the morning, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, threats and intimidation, and lewd designs, lustful intent, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with private offended party [AAA],^[3] a five-year-old minor, without her consent and against her will, and during and on the occasion of the sexual assault, accused attack, assault and stab with the use of a bladed weapon the said minor [AAA] as a result of which minor-victim sustained a stab wound on her abdominal region and injuries on the different parts of her body, which wound/injuries caused her instantaneous death.

CONTRARY TO LAW.^[4]

Upon arraignment on January 8, 2013, the accused-appellant pleaded *not guilty*^[5] to the crime charged. Thereafter, the pre-trial conference was conducted and the trial on the merits ensued.

Version of the Prosecution

As summarized by the Office of the Solicitor General, the People's factual version is as follows:

[BBB] testified that: she was a classmate in Kindergarten, friend and neighbor of the victim, five-year-old [AAA], who was fondly called Angel; she knows that Angel is now dead; the last time she saw Angel was when she and Angel played with mud forming it into objects, underneath their house in [REDACTED], Samar at noontime

after class; thereafter, they went to pick santol; they also went biking; then they went to the pathway going to Angel's house; while she (witness) went to [REDACTED], Angel went to a place where there was a gemelina plant with Totoy [the nickname of Cabornay]; she knows Totoy who is from *Barangay* Atigawan because he was often seen in the house of Nay Goring, the grandmother of Angel; their house and the house of Nay Goring are just near without any house in between; she kept on looking at them (Totoy and Angel) headed to the direction of Brgy. Nabong, until they disappeared from her view; she tried to pull Angel away from Totoy, but Angel was heavy; she ran going to [REDACTED] because she was afraid, she might be made to go with them; she went home, played some more and ate lunch; and, next time she saw Angel, Angel was already inside their house, dead.

In the course of her testimony, BBB identified Totoy in open court and he is the accused herein. She also identified the affidavit she signed during the police investigation.

Conceso Abonge y Ocenar (*Abonge*) testified that: she knows the victim as Angel and [BBB] being residents also of [REDACTED], Samar; on July 30, 2012 at about 11 o'clock in the morning, he was in his farm about to go home when he met Angel, [BBB] and Leonardo Cabornay alias Totoy; Totoy was a little bit ahead of the two children; he went home and at about 3 o'clock in the afternoon, he helped look for Angel and Angel was found, already dead.

Oscar Nabong y Tabontabon testified that: he is the father of [BBB]; he knows Angel because their houses are near; on July 30, 2012, around noontime, he was at home sleeping; he woke up around 2 o'clock in the afternoon to go to his farm, but he was prevailed upon by [BBB] to look for Angel, because Angel was brought by a man and Angel may not be able to go to school; [BBB] and Angel are classmates; they went to that portion of the bridge; residents of the *barangay* who were also looking for Angel and [BBB] told them all that "she saw Angel and the man going to the direction of a gemilina tree"; it was him that found the dead body of Angel through flattened grasses near coconut trees at the side of the road covered with "*hantatabako*" leaves; Angel was lying face-up with both legs spread apart and her head is to lower portion, while both legs were elevated to the higher level of the ground (*natutuwad*); Angel's white dress was lifted up, her panty was about a meter away from her dead body; and, police officers arrived around 5 o'clock in the afternoon.

Nabong identified his affidavit and the accused in open court.

On cross-examination, he testified that [BBB] told him that the drunk person who took Angel was Totoy; he knows Totoy because he is a barkada of his two teen-aged sons and he would oftentimes come to their house; when he arrived from his farm, he saw Totoy drinking with the uncle of Angel and one Julito Macasabiang.

Julito Almaden y Ocenar testified that: he had been a *barangay tanod* of [REDACTED] for more than ten years; in 2012, he and Jesus Saboco were still serving as *barangay tanod*; he helped look for Angel around 2 o'clock in the afternoon; when the dead body of Angel was found in the grassy area, policemen came and examined the scene, and then the dead body was brought to [REDACTED] proper; upon hearing the information relayed by [BBB], he and Jesus

Saboco looked for Totoy and found him in the house of Mana Goring; Totoy was somewhat drunk and uneasy "*nagkakalisang*"; [BBB] pointed at Totoy that he was a suspect, but Totoy said that he will answer the question at the police station; however, Totoy was silent at the police station and did not say anything.

Dr. Cornelio Solis testified that: he is the Municipal Health Officer of Pinabacdao, Samar; he conducted the Post-Mortem Examination on the victim around 6:08 in the afternoon of July 30, 2012, he found the victim to be in the state of *rigor mortis* with no post mortem lividity, which means that the victim had already been dead for around six (6) hours; he estimated the time of death to be 1 o'clock in the afternoon of the same day; the perpetrator could have been trying his best to rape the victim because of the hematomas in the periphery of the vaginal area; he took samples from the vaginal internal oritis of the victim for examination at the Philippine National Police (PNP) Crime Laboratory, but the examination was not conducted because the laboratory wanted their doctor to be the one to get the sample; he found a stab wound in the navel of the victim which caused the intestine to be eviscerated, incised wound at the back; hematomas in the right buttocks; and, near the vaginal area, left knee and inner base near the left wrist.

PO3 Joey Zartiga (*PO3 Zartiga*) testified that: he is a member of the PNP who had been assigned continuously at the Pinabacdao Municipal Police Station since 2009; he was the duty investigator on July 30, 2012; around 4:30 o'clock in the afternoon, Jesus Saboco and Julito Almaden, both from [REDACTED], Pinabacdao, Samar, came to the station and turned over Leonardo Cabornay for allegedly stabbing AAA; he was one of the police officers who went to [REDACTED] to conduct an investigation on the incident; the group was with Dr. Cornelio Solis; he took pictures of the crime scene; they brought the dead body to her house for the conduct of post-mortem examination; he had custody of the evidence gathered consisting of the slippers, the dress and underwear of the victim, the bladed instrument which was turned-over and the t-shirt of the suspect; and, he brought these pieces of evidence to court. He also identified the accused in open court.^[6]

Version of the Defense

The accused-appellant testified that: at around 7 o'clock in the morning of July 30, 2012, he was inside the house of Apoy Goring, the grandmother of Angel, where he was repairing four (4) electric fans with Jovito, the son of Apoy Goring, and Julito Almaden *a.k.a.* Juling. At around 11 o'clock in the morning, Cabornay was just seated at the bench when he saw Angel inside the house. She just dropped her bag there and then went outside the house. Cabornay did not see [BBB] playing with Angel on that day. Cabornay was inside the house with Apoy Goring, Jovito, Eddie (the father of the child), and Juling, and never left the house until 1 o'clock in the afternoon when he was asked to accompany them to look for Angel. When they did not find Angel, they returned to the house of Apoy Goring at around 3 o'clock in the afternoon. Cabornay noticed that there were many people who were already there, including Angel's mother, Denden, and [BBB], the child who is a friend of Angel. At that time, Denden was asking the child who was the person whom Angel went with and the child answered that she does not know the person but he is as tall as Totoy. Thereafter, the *barangay* captain and a *barangay kagawad* fetched Cabornay at the house of Apoy Goring and brought him to the police station. Cabornay admitted that at the time of his arrest, a bladed weapon was confiscated from him by the *barangay* captain and a *barangay kagawad*. He testified that apart from being a

repair man, his livelihood is selling of root crops. Twice a week, he would pass by [REDACTED], which is adjacent to Brgy. Catigawan, where he lives, and delivered crops and vegetables to the family of the victim. However, he denied that there was blood present in the bladed weapon. Likewise, he denied that the blue *sando* that he was wearing at that time was stained with blood.^[7]

RTC Ruling

In a Decision^[8] dated April 20, 2017, the RTC found the accused-appellant guilty beyond reasonable doubt of rape with homicide. The trial court relied on *People v. Develles*,^[9] stating that in said case, this Court upheld the conviction for rape with homicide where the accused was positively identified to be the last person seen with the victim on or about the time she was killed at the place where the latter was found dead.^[10] The dispositive portion of the RTC reads:

WHEREFORE, premises considered, accused LEONARDO CABORNAY y BATULA is hereby found GUILTY beyond reasonable doubt of the crime of RAPE WITH HOMICIDE defined under Article 266-A(d) and penalized under Article 266-B as amended. He is hereby sentenced to suffer the penalty of *reclusion perpetua*.

He is also ordered to pay the heirs of the victim the amounts of P100,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000 as exemplary damages and P25,000.00 as temperate damages.

SO ORDERED.^[11]

CA Ruling

In a Decision dated June 28, 2019, the CA set aside the Decision promulgated on April 20, 2017 and new one was entered finding the accused-appellant guilty beyond reasonable doubt of **attempted rape with homicide**. The CA found that the circumstances in this case, taken together, lead to no other conclusion than that the accused-appellant, to the exclusion of others, had attempted to rape AAA and then killed her. It did not sustain the findings of the RTC, which relied on Dr. Solis' conclusion that the victim was raped. The doctor did not declare that there was the slightest penile penetration of the victim's vagina and the whitish discharge found by the doctor on the victim's vaginal canal was not tested for chemical analysis. In fact, the doctor testified that the perpetrator could have been trying his best to rape the victim.

The dispositive portion of the CA decision reads, thus:

WHEREFORE, in view of the foregoing, the *Decision* promulgated on April 20, 2017 of Branch 33, Regional Trial Court of Calbiga, Samar, in Criminal Case No. C-2012-1870 is hereby SET ASIDE and a new one entered finding accused-appellant Leonardo Cabornay y Batula GUILTY beyond reasonable doubt of attempted Rape with Homicide and SENTENCES him to suffer the penalty of *reclusion perpetua*. Likewise, accused-appellant Leonardo Cabornay y Batula is ORDERED to PAY the victim's heirs the sum of Php75,000.00 as moral damages, Php75,000.00 as civil indemnity and Php75,000.00 as exemplary damages. In addition, We impose