

FIRST DIVISION

[G.R. No. 205307, January 11, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. EDUARDO GOLIDAN Y COTO-ONG, FRANCIS NACIONALES Y FERNANDEZ, AND TEDDY OGSILA Y TAHIL, ACCUSED, EDUARDO GOLIDAN Y COTO-ONG AND FRANCIS NACIONALES Y FERNANDEZ, ACCUSED-APPELLANTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before this Court is an appeal of the April 25, 2012 **Decision**^[1] of the Court of Appeals in **CA-G.R. CR.-H.C. No. 02430**, which affirmed with modification the August 18, 1999 **Decision**^[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, in **Criminal Case Nos. 13971-R, 13972-R and 13973-R** finding accused-appellants **Eduardo Golidan (Golidan)** and **Francis Nacionales (Nacionales)**, and their co-accused **Teddy Ogsila (Ogsila)** guilty beyond reasonable doubt of the crimes of rape with homicide, murder, and frustrated murder.

Records show that on September 5, 1995 Assistant City Prosecutor Elmer M. Sagsago filed three separate Informations, approved by City Prosecutor Erdolfo V. Balajadia, before the Regional Trial Court (RTC) of Baguio City against appellants Golidan, Nacionales, Ogsila, and a certain "John Doe," for rape with homicide, murder, and frustrated murder of AAA, BBB, and CCC, respectively. The pertinent portions of said Informations are quoted below:

1. Rape With Homicide

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, entered the house of [AAA] and by means of force, violence and intimidation, that is, by beating her on her head and different parts of her body, did then and there willfully, unlawfully, and feloniously lie and succeeded in having carnal knowledge of said [AAA] and on the occasion of said forcible carnal knowledge and by reason of the same force and violence applied on the person of [AAA], the said [AAA] suffered intracranial hemorrhage as a result of skull fracture which directly resulted to her death.^[3]

2. Murder

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, by means of treachery and with intent to kill, did then and there

willfully, unlawfully and feloniously attack, assault and hit [BBB], a one-year old baby boy, with a hard object on his head, thereby inflicting upon the latter: Intracranial hemorrhage as a result of skull fracture which directly caused his death.^[4]

3. Frustrated Murder

That on or about the 20th day of January, 1995, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, being then armed with solid object and with intent to kill and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and strike with a weapon [CCC], a girl ten (10) years of age, thereby inflicting upon the latter severe injuries, which could have caused her death were it not for the timely medical attendance extended to her, thus performing all the acts of execution which could have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, the aforesaid timely medical assistance extended to [CCC].^[5]

In the August 18, 1999 Decision, the RTC quoted the undisputed facts from the People's Memorandum, which we reproduce below:

Based upon the evidence submitted in Court, both by the Prosecution and by the defense, certain facts and propositions are not disputed and may therefore be considered as admitted. These include the circumstances of the persons of the victim, the time and place of the commission of the crime, and those antecedent to the commission of the crime.

Thus, it is undisputed that the deceased Namuel Aniban was the one-year-old son of Jennyline Aniban who is in turn the daughter of Muriel Bantiway. The baby Namuel and his mother Jennyline Aniban live in a house some distance away from that of Muriel Bantiway. Cherry Mae, who was then 8 years old at the time of incident, is a granddaughter of Muriel Bantiway. Cherry Mae had been living with her grandmother since she was 2 years old. Cherry Mae suffers from cerebral palsy which affects her movements which is why her grandmother Muriel Bantiway hires a babysitter to watch over her. At the time of the incident, the baby sitter was one named [AAA].

At about 7:30 in the morning of January 20, 1995, Muriel Bantiway left her house and walked to the house of her daughter Jennyline Aniban in order to fetch her grandson Namuel. This was because Jennyline was then studying. She brought the baby Namuel to her residence. At about 8:00 she went to work and left behind inside the house her two grandchildren, the baby Namuel, Cherry Mae, and the baby sitter [AAA].

Jennyline Aniban did not however go to school but studied her lessons. At past 10:00, Jennyline Aniban decided to proceed to her mother's house in order to breast feed her baby Namuel. When she entered the house, she went straight to the sala and saw Cherry Mae lying on her side facing the wall of a room. Cherry Mae turned to her and tried to tell her

something. It was then she saw, through the transparent curtain separating the bedroom from the sala, the exposed legs of [AAA].

She entered the bedroom and saw [AAA] lying naked on her back. There was blood on the head and vagina of [AAA] and her nipples were cut. Beside [AAA] was the baby Namuel who was lying face down. When Jennyline turned him over, she saw his exposed brains and blood oozing from his nose. It was then that she screamed and ran out of the house to call for her husband.

She passed by the house of [appellant] Nacionales, located just 15 meters above the house of Muriel Bantiway. She was screaming and continued running until she found her husband and relayed what she saw. Her husband then ran towards the house of Muriel Bantiway with Jennyline following him. Jennyline was still screaming. When they reached the house, Jennyline continued screaming for help. Two of their neighbors whose houses were some 50 meters away arrived and they were those who called for the police who arrived around 11:00 A.M.

The responding policemen found and recovered a bottle of [C]oke *litro* and wooden ashtray from the bed where [AAA] and the baby Namuel were found. Both were stained with blood. Human semen was also found at the tip of the bottle.

Autopsy was conducted on the bodies of [AAA] and Namuel Aniban. The results of the autopsy on [AAA] showed that she suffered a total of 13 external injuries on her head and different parts of her body. Of the 13 injuries, it was determined that 10 were fatal. All were inflicted by a blunt instrument, such as a bottle of [C]oke *litro*. The cause of her death was determined to be [I]ntracranial Hemorrhage.

The autopsy further revealed that she was raped as seminal fluid was found inside the vaginal canal and that the one litro Coca-Cola bottle was forcibly jabbed inside her vagina. It was ascertained that the sexual intercourse could have occurred while she was still alive.

As for the baby Namuel, he sustained a total of seven external injuries located on the face and head caused possibly by a blunt object or instrument. He died due to Intracranial [H]emorrhage as a result of skull fracture.

The child Cherry Mae was rushed to the hospital due to her own injuries. She suffered two external injuries on her head which were fatal. She was confined for 13 days and was discharged on [February] 2, 1995.^[6]

EVIDENCE FOR THE PROSECUTION

Jennyline Aniban (Jennyline) testified that at the time of the incident, the babysitter had only been hired for five days. Her mother, Muriel Bantiway (Muriel), would regularly fetch her grandson Namuel from Jennyline's house so that the babysitter could take care of him while Jennyline was in school. Jennyline's house in San Carlos Heights, Baguio City is about 60 meters away from Muriel's house. On the day of the incident, Jennyline thought of going to school but instead decided to study at home.

At around 10:00 a.m., she dropped by Muriel's house to check on her son, and that was when she discovered the crime.^[7]

Muriel, the grandmother of the victims Namuel and Cherry Mae, corroborated Jennyline's testimony. Muriel testified that before the incident, at around 7:30 in the morning of January 20, 1995, Muriel went to Jennyline's house to fetch her grandson in order for the babysitter, [AAA], to take care of him because Jennyline had to attend school. When Muriel left her house for work, she saw four men in front of the house of the appellant Francisco Nacionales (Nacionales), who is her neighbor, with Edgar Loma-ang (Loma-ang), and the other appellant, Teddy Ogsila (Ogsila), who were drinking and laughing. At around noontime, her other grandson Domingo went to her workplace and informed her that [AAA] had been found dead. She rushed home to discover that her grandson Namuel was also killed. She looked for Cherry Mae and was informed that the child had been brought to the hospital. When asked about the physical condition of Cherry Mae, Muriel answered that Cherry Mae was impaired by polio and could not walk, but had found a way to be mobile by using her right hand to support her body and her legs and buttocks to move forward. Muriel testified that prior to the incident, Cherry Mae could communicate with her through words and utterances. After the tragedy, however, Cherry Mae had to be brought to the Baguio General Hospital where she was confined for three weeks, and her condition had considerably changed. Cherry Mae could not move her body because her arms had been twisted, aside from being strangled and hit on the head. Muriel said she did not know the appellants until the police was able to piece together their investigation with the help of Cherry Mae, who was the lone eyewitness to the crimes.

Muriel stated that she witnessed how Cherry Mae identified the persons who had killed and raped Elizabeth Leo, murdered Namuel, and wounded her, on three occasions: February 10, 1995; February 21, 1995; and June 10, 1995. On February 10, 1995, Cherry Mae identified appellants Nacionales and Ogsila at the Baguio Police Station. On June 10, 1995, 13 photographs were presented to Cherry Mae at the Child and Family Services (CFS) and she was able to identify Nacionales, Ogsila, and Golidan. When asked what the appellants did, Cherry Mae answered, pointing to the picture of Golidan, "*paatong auntie*" and then pointing to the picture of Nacionales, "*pakpak bote coke pipit auntie*" and lastly, pointing to the picture of Ogsila, "*pakpak kayo ashtray baby*."^[8]

Sharon Flores, a resident of San Carlos Heights, Baguio City, testified that at about 10:00 in the morning of January 20, 1995, appellant Golidan peeped at their door and asked where her husband was. Golidan appeared to be drunk as his eyes were red, and he left after Sharon told him that her husband was not around. Sharon further testified that she heard loud music coming from the house of appellant Nacionales the night before the incident.^[9]

Senior Police Officer (SPO) 3 Pablo Undalos (SPO3 Undalos) testified that when Cherry Mae saw appellant Nacionales at the police station on February 10, 1995, Cherry Mae mumbled the word "uyong" and pressed her head on her grandmother's abdomen. He observed that Cherry Mae showed fear and hatred against Nacionales. Ogsila was presented to Cherry Mae, and she had the same reaction and mumbled the same word. On February 21, 1995, the date scheduled for the second line-up, Cherry Mae tried to lift her right hand, trembling, and again mumbled the word "uyong" upon seeing the pictures of Nacionales and Ogsila.^[10]

SPO3 Ray Ekid (SPO3 Ekid) of the Baguio City Police testified that on the same morning after the discovery of the incident, he responded to the incident after he received a call from the base operator. When he investigated the surrounding area, he knocked on the door of Nacionales and asked if the latter had heard any sound or commotion from the Bantiway's residence, and who was with him in the house. Nacionales answered "*wala po kaming naririnig*" and said that his father was with him. SPO3 Ekid testified that he observed that Nacionales smelled of liquor. SPO3 Ekid then saw Nacionales's father hanging clothes outside. SPO3 Ekid asked Nacionales's father if the latter heard any sound or commotion from his neighborhood and the father answered that he had heard shouts and a cry of a woman earlier.^[11]

Dr. Francisco Hernandez, Jr. (Dr. Hernandez), a medical doctor specializing in neurosurgery and the treatment of injuries or illnesses of the central nervous system, was presented as a prosecution witness regarding the frustrated murder case involving Cherry Mae. Dr. Hernandez testified that Cherry Mae had a glasgou-coma scale of eight, which meant a severe head injury; that he noted a large contusion hematoma in the left occipital area of the child, which could have caused Cherry Mae's death if not properly treated; and that he observed that when he first saw Cherry Mae on January 20, 1995, she was in a fearful state and was non-communicative.^[12]

Dr. Vladimir Villasenor (Dr. Villasenor), the Medico-Legal Officer of the Philippine National Police Crime Laboratory who conducted the autopsy on the cadavers of Elizabeth and Namuel, testified that Elizabeth sustained 13 external injuries, all of which were caused by a blunt instrument. There were multiple injuries on the head which caused her death. Her left kidney was likewise ruptured. Dr. Villasenor also noted an extensive injury on the hymen of the victim which could have been caused by a large object inserted into the hymen, like a one-liter Coca-Cola bottle. As there were no previous lacerations, it was confirmed that Elizabeth was still a virgin when she was raped and killed. Regarding Namuel, Dr. Villasenor noted that the one-year-old victim had seven injuries on the head resulting to fractures in the skull and lacerations of the brain.^[13]

Dr. Divina R. Martin Hernandez (Dr. Divina Hernandez), a neurologist, was presented as a prosecution witness to show Cherry Mae's competence to testify in court and on what the latter would be able to recall regarding the incident where she herself was a victim. She said that Cherry Mae was brought to her office by an aunt and a social worker for her to examine Cherry Mae's ability and adequacy to testify in court. Dr. Divina Hernandez said that cerebral palsy is a disease of the brain characterized by non-progressive motor impairment and that persons afflicted with this disease usually walk with an abnormality, but they are fairly intelligent, can perceive and make known their perception. Dr. Divina Hernandez conducted a neurological examination of Cherry Mae consisting of an evaluation of her capacity to talk and to identify common objects, a cerebral function test, an examination of her cranial nerves, and an examination of her motor and sensory system and other cerebral functions. Dr. Divina Hernandez said that "Cherry [Mae] can talk but with much difficulty; she has only the tendency to say the last syllables of words; she could express with very much difficulty (although) it takes her a long time to say the words; she can identify common objects in the clinic x x x; she can identify people around her like her social worker and she was able to recognize me."^[14] Dr. Hernandez said that Cherry Mae recalled that she had a playmate, a young boy, and remembers that he was hit on the head and described it by saying "*napakpak sa*