

## FIRST DIVISION

[ G.R. No. 188705, March 02, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FEDERICO LUCERO, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

Before this Court on appeal is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00469-MIN dated December 17, 2008, which upheld the conviction of accused Federico Lucero in Criminal Case No. 10849, decided by the Regional Trial Court (RTC), Branch 30 in Tagum City on April 20, 2005.

Before the RTC, the accused was charged with the crime of Rape with Homicide in an Information dated July 31, 1997, which reads as follows:

That on or about June 7, 1997, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, armed with a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA,<sup>[2]</sup> an eighteen (18) year old girl, against her will, and on the occasion of said rape, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab the said AAA, thereby inflicting upon her wounds which caused her death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.<sup>[3]</sup>

On October 14, 1997, the accused, with the assistance of counsel, pleaded "not guilty" at his arraignment.<sup>[4]</sup>

#### **The Case for the Prosecution**

The prosecution presented Alejandro Jao (Jao); Anastacio Langgoy (Langgoy); Police Officer 2 Galileo Gurrea (PO2 Gurrea); Dr. Ricardo M. Rodaje (Dr. Rodaje), National Bureau of Investigation (NBI) Medico-Legal Officer; and Dimpna D. Bermejo-Dulay (Dulay), NBI Regional Chemist as witnesses.

Jao, *Purok* Leader of XXX in Tagum, Davao del Norte, testified that on June 6, 1997, at around 11:00 p.m., he saw the accused and a certain Digoy Tewok drinking outside the Olympic Battery Shop, along the National Highway, where the accused was employed as a cook. He noticed that the accused was wearing green short

pants.<sup>[5]</sup> About 10 meters from where the accused was drinking, Jao saw the victim, AAA, a certain May Laribas, and his daughter looking at pictures in an album, inside the *purok* hut.<sup>[6]</sup> He then told his daughter and her companions to go home, as there were people drinking in the area, especially since he knew that the accused was attracted to AAA. His daughter and her companions left after that, and Jao and his wife slept in their store.<sup>[7]</sup>

At around 2 o'clock the next morning, Jao was awakened by his daughter's shouting that someone had entered the room of AAA. He went outside the store and saw his daughter coming from the direction of AAA's house, followed by the accused being chased by a neighbor, Langgoy. Jao's daughter pushed him inside the store, and then the accused, wearing only white briefs, with something covering the top of his head, ran by, at a distance of six feet. The area was lighted by a 40-watt fluorescent lamp, which was about seven meters from accused. Jao did not join the chase, and instead went to check on AAA. AAA's uncle, BBB, also went into her house and shouted that AAA had a stab wound on her breast.<sup>[8]</sup> AAA was then brought to the Tagum Doctors Hospital where she was declared "dead on arrival."

At 3:00 a.m. on June 7, 1997, Jao saw the accused come out of the Patalinghug Funeral Homes, after which he proceeded to his room in his place of work. Jao said that the accused was barefoot, his feet were muddy, and he wore the same green short pants Jao saw him wearing the night before.<sup>[9]</sup> Later on, Jao peeped through a hole in the wall of the room of the accused, and he saw the latter washing his green short pants, all the while looking in different directions. At 11 o'clock that morning, in the Olympic Battery Shop, Jao, along with the police, saw scratches on the back of the accused when he took off his shirt. Half an hour later, Jao accompanied the police and a radio reporter to the room of the accused, where upon questioning, the accused said that the knife he used in killing AAA was at the left side of his bed's headboard. Jao recovered the knife, which he later identified during his testimony in court.<sup>[10]</sup>

Langgoy testified that, at around 2:30 a.m. on June 7, 1997, he was awakened by a voice calling for help, and that it was from AAA, who lived five meters from his house.<sup>[11]</sup> He rushed to her house, but when he tried to enter it, his hands were held by someone inside, so he stepped back. Then someone came out of the house, and Langgoy identified him as the accused, Lucero, who was clad only in his underwear, with his green short pants covering the top of his head and his forehead. Langgoy gave chase but was unable to catch the accused, so he went back to the house of the victim, who had by that time been brought to the hospital. Langgoy claimed to have recognized the accused by the light of the 40-watt fluorescent lamp nearby. He was also familiar with the accused and his particular green shorts, since they were close neighbors, with their houses being only four meters apart.<sup>[12]</sup>

PO2 Gurrea testified that at 8:00 a.m. on June 7, 1997, he was told to investigate an incident at XXX, Tagum, Davao del Norte. When he got to the area, the people he interviewed told him that there had been a commotion in AAA's house, and that the suspect was a short, stout, bowlegged man who wore only briefs and carried a knife. PO2 Gurrea went back to the police station, but told the witnesses to report to him at his office if they saw the suspect. At 11:00 a.m., PO2 Gurrea was told that the suspect had woken up. Along with Senior Police Officer 1 (SPO1) Judil Chavez, SPO1

Wenifredo Rivas, and SPO2 Eric Baloyo, PO2 Gurrea went to the Olympic Battery Shop and saw the accused paring vegetables. He invited the accused to the police station where the accused admitted killing AAA, but denied raping her. They then accompanied the accused back to XXX, where, in the house of the accused, he saw a bloodied white t-shirt. He asked the accused where he had placed the knife used in killing the victim, and the accused pointed to the bottom of his bed. They found the knife after turning the bed over. The accused was then told to take off his shirt, and when he did so, PO2 Gurrea and *Purok* Leader Jao saw scratches on the back and right thigh of the accused.<sup>[13]</sup>

Dr. Rodaje, NBI Medico Legal Officer, prepared the autopsy on the body of the victim, and found several stab wounds and contusions, with one stab wound penetrating the heart, causing her death.<sup>[14]</sup> His examination also found hymenal lacerations, after which he performed the vaginal swabbing to see if there was still seminal fluid in the vaginal canal.<sup>[15]</sup> The findings in the autopsy report indicated the following injuries:

Contusion, temporal region, left, 7.0 x 8.0 cm.

Contused-abrasions: nose, left side, 0.9 x 1.0 cm.; face, right side, 0.3 x 0.4 cm.; thigh, middle third, antero-lateral aspect, right, 9.5 x 10.0 cm.

Hematoma, frontal region, right, 2.0 x 2.4 cm.

Incised wound, hand, postero-lateral aspect, left, 4.0 cm.; palmar region, left, 2.3 cm.;

Hymenal laceration, complete at [4:00 and 7:00] position corresponding to the face of a watch, edges are edematous and with clotted blood.

STAB WOUNDS, modified by suturing and embalming.

1. Roughly spindle-shaped, 1.2 cm.; edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt located at the right, shoulder, 26.0 cm. above the right elbow, directed backward, downward and medially, involving the soft tissues only with an approximate depth of 3.0 cm.
2. Roughly spindle-shaped, 3.0 cm., edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt located at the infra-mammary region, 4.5 cm. from anterior median line, directed backward, upward, and medially, involving the soft tissues, cutting the sternum, penetrating the left ventricle with an approximate depth of 4.5 cm.
3. Roughly spindle-shaped, 1.5 cm. edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt. Located at the supra-mammary region, 20.0 cm. from anterior median line directed backward, upward, and laterally, involving the soft tissues only, with an approximate depth of 2.4 cm.

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CAUSE OF DEATH: STAB WOUNDS<sup>[16]</sup>

He then submitted the swab specimen to Dulay, NBI Regional Chemist, who found the specimen positive for the presence of seminal stains.<sup>[17]</sup>

### **The Case for the Defense**

The accused testified in his defense, saying that he had been a resident of XXX, Tagum, Davao del Norte since February 2, 1997, and that he had been invited by the police for questioning at 11:00 a.m. on June 7, 1997.<sup>[18]</sup> He had been slicing ampalaya in the kitchen when the police arrived, and when he asked what they wanted with him, he was told to just accompany them to the police station. He put down his knife, but PO2 Gurrea picked it up, and then the accused was brought to the police station. He was handcuffed and brought to the comfort room where he was told that if he did not admit to killing AAA, he would be beaten to death. He was also subjected to electric shock. He then confessed to the killing, even if he did not commit the crime. The accused stated that he was not informed of his right to remain silent or to be assisted by counsel. After his confession, he was mauled by AAA's brother and father. He was then brought back to his rented room, which PO2 Gurrea searched, finding a knife which he brought back to the police station, along with the accused. The accused was then locked in a prison cell where the other prisoners beat him up. The next day, he was visited by his elder brother, Dionisio Lucero, to whom he said that he wanted to be medically examined, but Dionisio was told by the police not to interfere in the case.<sup>[19]</sup>

Dionisio testified that he visited his brother, the accused, on June 8, 1997, and noticed that his brother's face was swollen. The accused told him to go to the Chief of Police so that Dionisio could bring him to a doctor, but Dionisio was not allowed to do so, and instead went home. On cross-examination, Dionisio testified that he did not believe his brother was tortured.<sup>[20]</sup>

### **The Ruling of the Trial Court**

The trial court found that there was no proof of maltreatment or torture on the part of the police to elicit the confession of the accused. It further held that enough circumstantial evidence was presented to prove the guilt of the accused.

After deliberating upon the evidence, the trial court rendered its Decision finding the accused guilty in Criminal Case No. 10849, the dispositive portion of which reads:

In View Of All The Foregoing, the Court finds accused **Federico Lucero guilty beyond reasonable doubt** of the crime of Rape with Homicide and he is hereby sentenced to suffer the penalty of **DEATH** and to pay the heirs of the victim AAA P75,000.00 civil indemnity; P50,000.00 moral damages and P25,000.00 exemplary damages.

Conformably with the Decision promulgated on 7 July 2004 in G.R. No.

147678-87, entitled People [v.] Efren Mateo y Garcia, upon finality of this Decision, let all the pertinent records of this case be forthwith forwarded to the Court of Appeals, Cagayan de Oro City for intermediate review.

SO ORDERED.<sup>[21]</sup>

### **The Ruling of the Appellate Court**

In his appeal to the CA, the accused questioned the identification of him made by witnesses Jao and Langgoy, and assailed the trial court's appreciation of the allegedly illegally-obtained evidence.

The CA found that enough circumstantial evidence was present to convict the accused. Even so, it held that the extrajudicial confession made by the accused to PO2 Gurrea was inadmissible since the accused was deprived of his right to counsel when he was questioned. The bloodied shirt and knife that were found in the room of the accused were also held to be inadmissible, being "fruits of the poisonous tree."<sup>[22]</sup> The CA followed the trial court in finding that there was no proof of maltreatment or torture, and that the brother of the accused did not believe the allegations of torture.<sup>[23]</sup>

Even as the CA upheld the accused's conviction, it found it proper to modify the award of damages. The amount of the award of civil indemnity was increased to PhP 100,000 and that of moral damages increased to PhP 75,000, in line with current judicial policy. Temperate damages were awarded, as there was no proof of the actual amount of loss. The dispositive portion of the CA decision reads as follows:

**WHEREFORE**, premises considered, the Decision dated April 20, 2005 of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 30, Tagum City, in Criminal Case No. 10849, is hereby **AFFIRMED with MODIFICATIONS**. As modified, appellant is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* with no possibility of parole. He is **ORDERED** to indemnify the heirs of AAA the amounts of P100,000.00 as civil indemnity; P75,000.00 as moral damages; P25,000.00 as temperate damages; and P25,000.00 as exemplary damages. Costs against appellant.

**SO ORDERED.**<sup>[24]</sup>

Hence, we have this appeal.

### **The Ruling of this Court**

In his appeal, Lucero questions the positive identification made by witnesses Jao and Langgoy. He insists that the witnesses were unable to see the face of the perpetrator, and identification was made solely on the basis of the green short pants worn by the suspect. He also claims that Jao did not immediately report the identity of the perpetrator to the police, and that this casts doubt on the witness' credibility. In his defense, he also claims that a DNA test should have been done to match the