

FIRST DIVISION

[G.R. No. 185709, February 18, 2010]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL A. HIPONA, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Michael A. Hipona (appellant) was convicted by Decision of September 10, 2002^[1] of the Regional Trial Court of Cagayan de Oro City, Branch 18 with "Rape with Homicide (and Robbery)" [*sic*]. His conviction was affirmed by the Court of Appeals by Decision of January 28, 2008.^[2]

The Second Amended Information charged appellant together with Romulo Seva, Jr. and one John Doe with Robbery with Rape and Homicide as follows:

That on or about June 12, 2000 at 1:00 o'clock dawn at District 3, Isla Copa, Consolation, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have **carnal knowledge** with the offended party (AAA) who is the Aunt of accused Michael A. Hipona, she being the younger sister of the accused's mother and against her will, that on occasion of the said rape, accused, with evident premeditation, treachery and abuse of superior strength, and dwelling, with intent to kill and pursuant to their conspiracy, **choked and strangled** said AAA which strangulation resulted to the victim's untimely death. That on the said occasion the victim's brown bag worth P3,800.00; cash money in the amount of no less than P5,000.00; and gold necklace were **stolen** by all accused but the gold necklace was later on recovered and confiscated in the person of accused Michael A. Hipona.^[3] (emphasis and underscoring in the original)

The following facts are not disputed.

AAA^[4] was found dead on the morning of June 12, 2000 in her house in Isla Copa, Consolation, Cagayan de Oro City. She was raped, physically manhandled and strangled, which eventually led to her death. Her furniture and belongings were found strewn on the floor. AAA's necklace with two heart-shaped pendants bearing her initials and handbag were likewise missing.

Upon investigation, the local police discovered a hole bored into the *lawanit* wall of

the comfort room inside AAA's house, big enough for a person of medium build to enter. The main electrical switch behind a "shower curtain" located at the "back room" was turned off, drawing the police to infer that the perpetrator is familiar with the layout of AAA's house.

SPO1 Bladimir Agbalog of the local police thus called for a meeting of AAA's relatives during which AAA's sister BBB, who is appellant's mother, declared that her son-appellant had told her that "Mama, I'm sorry, I did it because I did not have the money," and he was thus apologizing for AAA's death. BBB executed an affidavit affirming appellant's confession.^[5]

On the basis of BBB's information, the police arrested appellant on June 13, 2000 or the day after the commission of the crime. He was at the time wearing AAA's missing necklace. When on even date he was presented to the media and his relatives, appellant apologized but qualified his participation in the crime, claiming that he only acted as a look-out, and attributed the crime to his co-accused Romulo B. Seva, Jr. (Seva) *alias* "Gerpacs" and a certain "Reypacs."

A day after his arrest or on June 14, 2000, appellant in an interview which was broadcasted, when asked by a radio reporter "*Why did you do it to your aunt?*," answered "*Because of my friends and peers.*" When pressed if he was intoxicated or was on drugs when he "did it," appellant answered that he did it because of his friends and of poverty.

Appellant's co-accused Seva was later arrested on July 9, 2000, while "Reypacs" remained at large.

Appellant entered a plea of not guilty while Seva refused to enter a plea, hence, the trial court entered a "not guilty" plea on his behalf.

Post mortem examination of AAA revealed the following findings:

Rigor mortis, generalized, Livor mortis, back, buttocks, flanks, posterior aspect of neck and extremities (violaceous).

Face, markedly livid. Nailbeds, cyanotic. With extensive bilateral subconjunctival hemorrhages and injections. Petechial hemorrhages are likewise, noted on the face and upper parts of neck.

ABRASIONS, with fibrin: curvilinear; three (3) in number; measuring 1.1x0.4 cms., 0.8x0.3 cms., and 0.6x0.1 cm.; within an area of 2.8x1.1 cms. at the left side of the neck, antero-lateral aspect.

HEMATOMAS, violaceous; hemispherical in shapes, highly characteristic of bite marks: 3.5 x 0.4 cms. and 4.1x1.4 cms.; located at the right lower buccal region, lateral and medial aspects, respectively.

SOFT TISSUE DEFECT, with irregular edges; 2.5 x 2.7 cms.; left thigh, distal 3rd, medial aspect; involving only the skin and underlying adipose tissues; with an approximate depth of 1.6 cms.

ABRASIONS, with fibrin, curvilinear in shapes; 0.6x0.3 cm. and 0.5x0.3cm., right upper eyelid; 0.4x0.2 cms. and 0.3x 0.2 cms, right upper arm, distal 3rd, medial aspect; 0.5x0.3 cm., right forearm, proximal 3rd, medial aspect; 0.7x0.3 cm., left elbow; 0.5x0.2 cm., left forearm, middle 3rd, posterior aspect.

HEMATOMA, violaceous: 2.2x2.5 cms., right upper arm, middle 3rd, medial aspect

DEPRESSED FRACTURE, body of thyroid cartilage, lateral aspects, bilateral.

PETECCHIAL HEMORRHAGES, subpleural, bilateral, and sub-epicardial.

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GENITAL FINDINGS:

Subject is menstruating. Pubic hairs, fully grown, abundant. Labiae majora and minora, both coaptated. Vestibular mucosa, pinkish, smooth. Hymen, short, thin with COMPLETE, FRESH HYMENAL LACERATION (with fibrin and fresh reddish soft blood clot) at 6:00 o'clock position, and extending to the posterior aspect of vestibular mucosa up to the area of fourchette. Hymenal orifice originally annular, admits a glass tube of 2.5 cms. diameter with moderate resistance. Vaginal rugosities, prominent. Cervix, firm. Uterus, small.

VVVVVVVVVV

CAUSE OF DEATH: Asphyxia by strangulation (manual).

REMARKS: Genital injury noted, age of which is compatible with sexual intercourse(s) with man/men on or about June 11-12 2000.^[6]
(underscoring supplied)

Albeit appellant's mother BBB refused to take the witness stand, SPO1 Agbalog and Consuelo Maravilla, another relative of appellant, testified on BBB's declaration given during the meeting of relatives.

Appellant refused to present evidence on his behalf while Seva presented evidence to controvert the evidence on his alleged participation in the crime.

By Decision of September 10, 2002, the trial court, after considering circumstantial evidence, viz:

Based on the foregoing circumstances, specially of his failure to explain why he was in possession of victim's stolen necklace with pendants, plus his confession to the media in the presence of his relatives, and to another radio reporter "live-on-the-air" about a day after his arrest,

sealed his destiny to perdition and points to a conclusion beyond moral certainty that his hands were soiled and sullied by blood of his own Aunt.

[7] (underscoring supplied),

found appellant guilty beyond reasonable doubt of "Rape with Homicide (and Robbery)." [sic]. It acquitted Seva. Thus the trial court disposed:

WHEREFORE, in view of all the foregoing, the Court finds accused **MICHAEL HIPONA GUILTY beyond reasonable doubt** of a special complex crime of Rape with Homicide (and Robbery). punishable under Articles 266-A and 266-B, of the Revised Penal Code, as amended by R.A. 8353, and after taking into account the generic aggravating circumstance of dwelling, without a mitigating circumstance, accused **MICHAEL HIPONA is hereby sentenced and SO ORDERED to suffer the supreme penalty of DEATH by lethal injection**, plus the accessory penalties. He is hereby **SO ORDERED** to pay the heirs the sum of One Hundred Thousand (P100,000.00) Pesos, as indemnity. Another One Hundred Thousand (P100,000.00) Pesos, as moral damages. In order to further give accused Michael Hipona a lesson that would serve as a warning to others, he is also directed and **SO ORDERED** to pay another Fifty Thousand (P50,000.00) Pesos, as exemplary damages.

For failure on the part of the prosecution to prove the guilt of the accused Romulo Seva, Jr., beyond reasonable doubt, it is **SO ORDERED** that he should be acquitted and it is hereby ACQUITTED of the crime charged, and is hereby released from custody unless detained for other legal ground.

Pursuant to Section 22 of R.A. 7659, and Section 10 of Rule 122 of the Rules of Court, let the entire record be forwarded to the Supreme Court for automatic review." [8] (emphasis in the original; underscoring supplied)

On elevation of the records of the case, the Court, following *People v. Mateo*, [9] referred the same to the Court of Appeals.

Appellant maintains that his guilt was not proven beyond reasonable doubt. [10]

As stated early on, the Court of Appeals sustained appellant's conviction. It, however, modified the penalty [11] imposed, and the amount of damages awarded by the trial court. Thus the appellate court, by the challenged Decision of January 28, 2008, disposed:

WHEREFORE, the Decision of the lower court is hereby AFFIRMED with the following MODIFICATIONS: