

THIRD DIVISION

[G.R. No. 181493, August 28, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO NOTARION Y ZANORIA, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR HC No. 02103, dated 24 August 2007,^[1] affirming with modifications the Decision of the Masbate Regional Trial Court (RTC), Branch 49, in Criminal Case No. 1511,^[2] finding accused-appellant Ricardo Notarion y Zanoria guilty of the special complex crime of rape with homicide and sentencing him to suffer the penalty of death.

The facts gathered from the records are as follows:

On 28 November 2001, an Information^[3] was filed with the RTC charging appellant with the special complex crime of rape with homicide. The accusatory portion of the information reads:

That on or about the 25th day of July, 2001, in the afternoon thereof, at XXX, Barangay XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA^[4] against the latter's will and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab said AAA with the use of a hunting knife, hitting the latter on the different parts of her body which caused her death.^[5]

When arraigned on 7 March 2002, appellant, assisted by his counsel *de officio*, pleaded "Not guilty" to the charge.^[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses Dionilo Cabague (Cabague), BBB (AAA's husband), and Dr. George Galindez (Dr. Galindez). Their testimonies are summarized as follows:

Cabague, neighbor of appellant, testified that on 25 July 2001, at about 4:30 p.m., he and his wife arrived at their house in Barangay XXX, Municipality of XXX, Province of XXX. He noticed that the *buri* leaves which served as the door's lock was untied. Thereupon, he heard a noise coming from inside the house. He pushed the door and saw appellant and AAA. Appellant was then putting on his shorts, while AAA was sprawled and motionless on the floor near appellant. Appellant approached and pointed a knife at him. Appellant warned him not to tell anyone of what he saw

or he would kill him, his wife and his relatives. Frightened, Cabague and his wife immediately left their house and proceeded to his brother's house where they spent the whole night.^[7]

In the morning of the following day, he and his wife returned to their house and learned that AAA was already dead, and that the latter's cadaver was found 10 meters away therefrom.^[8]

BBB, husband of AAA, recounted that in the early morning of 25 July 2001, he went out fishing. Upon arriving home at about 4:00 p.m., he noticed that AAA was not around. He went out of the house to look for AAA. At around 8:00 p.m. of the same day, he met appellant who asked him where he came from. He replied that he was looking for AAA. Appellant became nervous, dropped his torch and hurriedly left. Later that evening, he and some relatives and neighbors found AAA's lifeless body several meters away from Cabague's house.^[9]

Dr. Galindez, Municipal Health Officer of Placer, Masbate, declared that he conducted a post-mortem examination on AAA's corpse. His findings are as follows^[10]

POSTMORTEM EXAMINATION FINDINGS:

1. (+) Hematoma frontal area.
2. (+) lacerated wound 2 cm. x 0.5 cm left upper eyelid.
3. (+) lacerated wound 3 cm. x 1 cm right upper eyelid.
4. (+) Hematoma periorbital area.
5. (+) Hematoma right cheek.
6. (+) lacerated wound 2 cm. x 0.5 cm left upper lip.
7. (+) lacerated wound 1 cm. x 0.5 cm right upper lip.
8. (+) avulsed teeth 2 upper central incisor.
9. (+) avulsed tooth 1 left lateral incisor.
10. (+) avulsed tooth 1 left canine.
11. (+) confluent hematoma surrounding the neck and shoulder.
12. (+) confluent hematoma chest.
13. (+) hematoma left wrist.

14. (+) hematoma hypogastric area with abdominal distention.
15. (+) 2nd degree burns both labia majora.
16. (+) 2nd degree burns circular left thigh.
17. (+) 2nd degree burns circular right thigh.
18. (+) multiple nail marks both buttocks lateral area.
19. (+) multiple abrasion right elbow.

SPECULUM EXAMINATION DONE:

- (+) cystocele.
- Collected 1 ml. whitish fluid in the vaginal canal.

SPERM ANALYSIS AT CATAINGAN DISTRICT HOSPITAL:

(+) spermatozoa

CONCLUSION:

1. Asphyxia 2^o strangulation
2. Rape^[11]

Dr. Galindez stated that the *confluent hematoma* (wound no. 11) around AAA's neck and shoulder indicated suffocation. He said that AAA died of asphyxia secondary to strangulation.^[12]

He also concluded that AAA was raped as shown by the following observations: (1) enlargement of AAA's cervical area; (2) second-degree burns in AAA's *labia majora* (wound no. 15); (3) second-degree burns in AAA's left and right thighs (wound nos. 16 and 17); (4) multiple nail marks in AAA's buttocks (wound no. 18); and (5) the presence of human spermatozoa in AAA's vagina.^[13]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (a) affidavit of Cabague (Exhibit A);^[14] (2) affidavit of BBB (Exhibit B);^[15] and (3) post-mortem examination report signed and issued by Dr. Galindez (Exhibit C).^[16]

For its part, the defense presented the testimonies of appellant and Maricar Notarion (Maricar). Appellant denied the foregoing accusation and pointed to a certain

Solomon Monsanto (Monsanto) as the real perpetrator.

Appellant testified that on 25 July 2001, at about 4:30 p.m., he was at his farm tending his carabao. Later, he saw Monsanto standing beside the lifeless body of AAA which was lying on the ground. Monsanto approached him, poked a gun at him, and threatened to kill him and his family if he would report what he saw. Subsequently, appellant was arrested and charged with raping and killing AAA.^[17]

Maricar, daughter of appellant, narrated that on 25 July 2001, at about 4:30 in the afternoon, she and appellant went to their farm to fetch their carabao. Thereafter, she and appellant saw Monsanto hack and shoot AAA. Monsanto approached appellant and poked a gun at the latter. Monsanto warned appellant not to tell anyone of the incident or he and his family would be killed. She and appellant then hurriedly went home.^[18]

After trial, the RTC rendered a Decision on 23 January 2006 convicting appellant of the special complex crime of rape with homicide. Appellant was sentenced to death. He was also ordered to pay the heirs of AAA the amounts of P100,000.00 as civil indemnity, P50,000.00 as moral damages, and P5,000.00 as exemplary damages. The dispositive portion of the Decision reads:

WHEREFORE, beyond reasonable doubt, the Court finds the accused, RICARDO NOTARION, guilty of the special complex crime of Rape with Homicide falling under Article 335 of the Revised Penal Code as amended by RA 4111 and RA 7659 and accordingly sentences him to suffer the SUPREME PENALTY OF DEATH.

Accused is ordered to pay the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS as civil indemnity; FIFTY THOUSAND (P50,000.00) pesos as moral damages and exemplary damages of FIVE THOUSAND (P5,000.00) PESOS to the heirs of the victim.^[19]

Appellant appealed to the Court of Appeals. On 24 August 2007, the appellate court promulgated its Decision affirming with modifications the RTC Decision. It held that the death penalty imposed by the RTC on appellant should be reduced to *reclusion perpetua* pursuant to Section 2(a) of Republic Act No. 9346 with appellant not eligible for parole under the said law. It also ruled that although the heirs of AAA were not entitled to actual damages because they did not present proof thereof, such as receipts for funeral and burial expenses, they were, nonetheless, entitled to temperate damages in the amount of P25,000.00, since it was reasonable to expect that the heirs of AAA incurred funeral and burial expenses. Further, it increased the amount of moral damages to P75,000.00 and exemplary damages to P25,000.00.

^[20] Thus:

WHEREFORE, in view of the foregoing, the assailed Decision dated January 23, 2006 of the Regional Trial Court of Cataingan, Masbate, Branch 49 finding the accused-appellant guilty beyond reasonable doubt of the crime of Rape with Homicide is hereby AFFIRMED with MODIFICATION in that (a) the death penalty imposed by the trial court is reduced to *reclusion perpetua* and (b) the judgment on the civil liability is modified by ordering the accused-appellant to pay the amounts of P100,000.00 as civil indemnity, P75,000.00 as moral damages,

P25,000.00 as exemplary damages and P25,000.00 as temperate damages to the heirs of the victim.^[21]

Appellant filed a Notice of Appeal on 11 September 2007.^[22]

Before us, appellant assigned the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[23]

Apropos the first issue, appellant maintains that his testimony pointing to Monsanto as the one who raped and killed AAA is more credible than the testimony of Cabague.^[24]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.^[25]

We have gone over the testimony of Cabague and found no cogent reason to overturn the RTC's ruling finding Cabague's testimony credible. Cabague testified in a clear and truthful manner that he saw appellant and AAA inside his house on the day and time of the incident. Appellant then was putting on his shorts while AAA was slumped motionless on the floor near appellant. Appellant approached him and pointed a knife at him. Appellant warned him not to tell anyone of what he saw or he would kill him, his wife and his relatives. Terrified, Cabague and his wife immediately left their house and proceeded to his brother's house where they spent the whole night.^[26]

BBB and Dr. Galindez corroborated the testimony of Cabague on its relevant points.

Further, the above-mentioned testimonies are consistent with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Cabague, BBB and Dr. Galindez to be consistent and honest. Both courts did not find any ill motive on the part of the prosecution witnesses.

In stark contrast, the testimony of appellant and Maricar composed of denial and