

EN BANC

[G.R. No. 150224, May 19, 2004]

**PEOPLE OF THE PHILIPPINES, appellee, vs. JOEL YATAR alias
"KAWIT", appellant.**

D E C I S I O N

PER CURIAM:

On automatic review is a Decision of the Regional Trial Court of Bulanao, Tabuk, Kalinga, Branch 25, sentencing appellant Joel Yatar alias "Kawit" to *Death* for the special complex crime of Rape with Homicide, and ordering him to pay the heirs of the victim, Kathylyn D. Uba, civil indemnity in the amount of P75,000.00, moral damages in the amount of P200,000.00, exemplary damages in the amount of P50,000.00, actual damages in the amount of P186,410.00, or total damages amounting to P511,410.00, and costs of litigation.^[1]

Appellant was charged with Rape with Homicide under the following Information:

That on or about the afternoon of June 30, 1998 at Liwan West, Rizal, Kalinga, and within the jurisdiction of this Honorable Court, the accused, in order to have carnal knowledge of a certain KATHYLYN D. UBA, did then and there wilfully, unlawfully, and feloniously, and with use of a bladed weapon stab the latter inflicting upon her fatal injuries resulting in the death of the victim, and on the occasion or by reason thereof, accused, wilfully, unlawfully and feloniously, and by means of force and violence had carnal knowledge of said Kathylyn D. Uba against her will.

CONTRARY TO LAW.^[2]

The facts are:

On June 30, 1998, at 8:30 a.m., Judilyn Pas-a and her first cousin, seventeen year old Kathylyn Uba, were on the ground floor of the house of their grandmother, Isabel Dawang, in Liwan West, Rizal, Kalinga. They were talking about the letter sent by their aunt, Luz Yatar, to her husband, appellant Joel Yatar, through Kathylyn's friend, Cecil Casingan. Kathylyn handed the letter to appellant earlier that morning.^[3]

At 9:00 a.m. of the same day, Judilyn and her husband, together with Isabel Dawang, left for their farm in Nagbitayan some two kilometers away. Before Judilyn and her husband departed, Kathylyn told Judilyn that she intended to go to Tuguegarao, but in the event she would not be able to leave, she would just stay home and wash her clothes or go to the house of their aunt, Anita Wania. Kathylyn was left alone in the house.^[4]

Later, at 10:00 a.m., Anita Wania and fifteen year old Beverly Deneng stopped by the house of Isabel. They saw appellant at the back of the house. They went inside the house through the back door of the kitchen to have a drink of water. Anita asked appellant what he was doing there, and he replied that he was getting lumber to bring to the house of his mother.^[5]

At 12:30 p.m., while Judilyn was on her way home from Nagbitayan, she saw appellant descend the ladder from the second floor of the house of Isabel Dawang and run towards the back of the house.^[6] She later noticed appellant, who was wearing a white shirt with collar and black pants, pacing back and forth at the back of the house. She did not find this unusual as appellant and his wife used to live in the house of Isabel Dawang.^[7]

At 1:30 p.m., Judilyn again saw appellant when he called her near her house. This time, he was wearing a black shirt without collar and blue pants. Appellant told her that he would not be getting the lumber he had stacked, and that Isabel could use it. She noticed that appellant's eyes were "reddish and sharp." Appellant asked her where her husband was as he had something important to tell him. Judilyn's husband then arrived and appellant immediately left and went towards the back of the house of Isabel.^[8]

In the evening of the same day, Isabel Dawang arrived home and found that the lights in her house were off. She called out for her granddaughter, Kathylyn Uba. The door to the ground floor was open. She noticed that the water container she asked Kathylyn to fill up earlier that day was still empty. She went up the ladder to the second floor of the house to see if Kathylyn was upstairs. She found that the door was tied with a rope, so she went down to get a knife. While she groped in the dark, she felt a lifeless body that was cold and rigid.^[9]

Isabel moved her hand throughout the entire body. She found out that it was the naked body of her granddaughter, Kathylyn. She called for help. Judilyn and her husband arrived. Isabel was given a flashlight by Judilyn. She focused the beam and saw Kathylyn sprawled on the floor naked, with her intestines protruding out of her stomach. Meanwhile, neighbors had arrived to offer assistance. A daughter of Isabel, Cion, called the police.^[10]

At 9:00 that evening, SP04 Melchor Faniswa received a report that a dead woman was found in Isabel Dawang's house. Together with fellow police officers, Faniswa went to the house and found the naked body of Kathylyn Uba with multiple stab wounds.

The people in the vicinity informed the police officers that appellant was seen going down the ladder of the house of Isabel Dawang at approximately 12:30 p.m.

The police discovered the victim's panties, brassiere, denim pants, bag and sandals beside her naked cadaver at the scene of the crime, and they found a dirty white shirt splattered with blood within 50 meters from the house of Isabel.

When questioned by the police authorities, appellant denied any knowledge of Kathylyn's death,^[11] however, he was placed under police custody.

On July 3, 1998, appellant asked the police officers if he could relieve himself. Police Officer Cesar Abagan accompanied him to the toilet around seven to ten meters away from the police station. They suddenly heard someone shout in the Ilocano dialect, "*Nagtaray!*" (He's running away!). Police Officer Orlando Manuel exited through the gate of the Police Station and saw appellant running away. Appellant was approximately 70 meters away from the station when Police Officer Abagan recaptured him.^[12] He was charged with Rape with Homicide. When he was arraigned on July 21, 1998, appellant pleaded "not guilty."

After trial, appellant was convicted of the crime of *Rape with Homicide*, defined and penalized under Article 266-A of the Revised Penal Code, as amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997, and was accordingly, sentenced to *Death*.

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code, as amended. In his Brief, appellant assigns the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING MUCH WEIGHT TO THE EVIDENCE PRESENTED BY THE PROSECUTION NOTWITHSTANDING THEIR DOUBTFULNESS.

II

THE TRIAL COURT SERIOUSLY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE SERIOUS CRIME CHARGED DUE TO REASONABLE DOUBT.

Appellant's contentions are unmeritorious.

The issue regarding the credibility of the prosecution witnesses should be resolved against appellant. This Court will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.^[13] Well-entrenched is the rule that the findings of the trial court on credibility of witnesses are entitled to great weight on appeal unless cogent reasons are presented necessitating a reexamination if not the disturbance of the same; the reason being that the former is in a better and unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude.^[14] Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, the trial judge's assessment of credibility deserves the appellate court's highest respect.^[15] Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their testimonies are entitled to full faith and credit.^[16]

The weight of the prosecution's evidence must be appreciated in light of the well-settled rule which provides that an accused can be convicted even if no eyewitness is available, as long as sufficient circumstantial evidence is presented by the

prosecution to prove beyond doubt that the accused committed the crime.^[17]

Reference to the records will show that a total of eleven (11) wounds, six (6) stab and five (5) incised, were found on the victim's abdomen and back, causing a portion of her small intestines to spill out of her body.^[18] *Rigor mortis* of the victim's body was complete when Dr. Bartolo examined the victim at 9:00 a.m. on July 1, 1998. According to him, the time of death may be approximated from between nine (9) to twelve (12) hours prior to the completion of *rigor mortis*.^[19] In other words, the estimated time of death was sometime between 9:00 a.m. to 12:00 p.m. on June 30, 1998. This was within the timeframe within which the lone presence of appellant lurking in the house of Isabel Dawang was testified to by witnesses.

It should also be noted that, although the Postmortem Report by the attending physician, Dr. Pej Evan C. Bartolo, indicates that no hymenal lacerations, contusions or hematoma were noted on the victim,^[20] Dr. Bartolo discovered the presence of semen in the vaginal canal of the victim. During his testimony, Dr. Bartolo stated that the introduction of semen into the vaginal canal could only be done through sexual intercourse with the victim.^[21] In addition, it is apparent from the pictures submitted by the prosecution that the sexual violation of the victim was manifested by a bruise and some swelling in her right forearm indicating resistance to the appellant's assault on her virtue.^[22]

Significantly, subsequent testing showed that the Deoxyribonucleic acid (DNA) of the sperm specimen from the vagina of the victim was identical to that of the appellant's gene type.

DNA is a molecule that encodes the genetic information in all living organisms.^[23] A person's DNA is the same in each cell and it does not change throughout a person's lifetime; the DNA in a person's blood is the same as the DNA found in his saliva, sweat, bone, the root and shaft of hair, earwax, mucus, urine, skin tissue, and vaginal and rectal cells.^[24] Most importantly, because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins.^[25]

DNA print or identification technology has been advanced as a uniquely effective means to link a suspect to a crime, or to exonerate a wrongly accused suspect, where biological evidence has been left. For purposes of criminal investigation, DNA identification is a fertile source of both inculpatory and exculpatory evidence. It can assist immensely in effecting a more accurate account of the crime committed, efficiently facilitating the conviction of the guilty, securing the acquittal of the innocent, and ensuring the proper administration of justice in every case.

DNA evidence collected from a crime scene can link a suspect to a crime or eliminate one from suspicion in the same principle as fingerprints are used.^[26] Incidents involving sexual assault would leave biological evidence such as hair, skin tissue, semen, blood, or saliva which can be left on the victim's body or at the crime scene. Hair and fiber from clothing, carpets, bedding, or furniture could also be transferred to the victim's body during the assault.^[27] Forensic DNA evidence is helpful in proving that there was physical contact between an assailant and a victim.

If properly collected from the victim, crime scene or assailant, DNA can be compared with known samples to place the suspect at the scene of the crime.^[28]

The U.P. National Science Research Institute (NSRI), which conducted the DNA tests in this case, used the Polymerase chain reaction (PCR) amplification method by Short Tandem Repeat (STR) analysis. With PCR testing, tiny amounts of a specific DNA sequence can be copied exponentially within hours. Thus, getting sufficient DNA for analysis has become much easier since it became possible to reliably amplify small samples using the PCR method.

In assessing the probative value of DNA evidence, courts should consider, *inter alia*, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.^[29]

In the case at bar, Dr. Maria Corazon Abogado de Ungria was duly qualified by the prosecution as an expert witness on DNA print or identification techniques.^[30] Based on Dr. de Ungria's testimony, it was determined that the gene type and DNA profile of appellant are identical to that of the extracts subject of examination.^[31] The blood sample taken from the appellant showed that he was of the following gene types: vWA 15/19, TH01 7/8, DHFRP2 9/10 and CSF1PO 10/11, which are identical with semen taken from the victim's vaginal canal.^[32] Verily, a DNA match exists between the semen found in the victim and the blood sample given by the appellant in open court during the course of the trial.

Admittedly, we are just beginning to integrate these advances in science and technology in the Philippine criminal justice system, so we must be cautious as we traverse these relatively uncharted waters. Fortunately, we can benefit from the wealth of persuasive jurisprudence that has developed in other jurisdictions. Specifically, the prevailing doctrine in the U.S. has proven instructive.

In *Daubert v. Merrell Dow*,^[33] it was ruled that pertinent evidence based on scientifically valid principles could be used as long as it was relevant and reliable. Judges, under *Daubert*, were allowed greater discretion over which testimony they would allow at trial, including the introduction of new kinds of scientific techniques. DNA typing is one such novel procedure.

Under Philippine law, evidence is relevant when it relates directly to a fact in issue as to induce belief in its existence or non-existence.^[34] Applying the *Daubert* test to the case at bar, the DNA evidence obtained through PCR testing and utilizing STR analysis, and which was appreciated by the court a quo is relevant and reliable since it is reasonably based on scientifically valid principles of human genetics and molecular biology.

Independently of the physical evidence of appellant's semen found in the victim's vaginal canal, the trial court appreciated the following circumstantial evidence as being sufficient to sustain a conviction beyond reasonable doubt: (1) Appellant and his wife were living in the house of Isabel Dawang together with the victim, Kathylyn Uba; (2) In June 1998, appellant's wife left the house because of their frequent