

EN BANC

[G.R. Nos. 133796-97, August 12, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNANDINO
ALAJAY Y MANGHINAYON, APPELLANT.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us on automatic review is the joint decision^[1] dated February 27, 1998 of the Regional Trial Court of Cagayan De Oro City (Branch 37)^[2] finding Bernandino Alajay y Manghinayon guilty beyond reasonable doubt of the separate crimes of murder and rape and imposing upon him the penalty of death for each crime.

The facts of the case as established by the prosecution are as follows:

Around 8:30 in the evening of January 29, 1994, lovers AAA and Dorotheo Gabilan were promenading in the premises of the Nestle Philippines factory at Purok 7, Tablon Cagayan de Oro City. While they were sitting in a place within the vicinity of the factory compound, AAA saw a male individual wearing maong pants without any shirt on looking at them with his hands at his back. AAA saw the face of the individual when the latter was walking towards them because of the lighted electric post that illuminated the place. After five minutes, AAA and Dorotheo walked farther away as they noticed said man looking at them. Having settled in the place where they transferred, Dorotheo and AAA started to engage in romantic interlude by kissing each other. While kissing, they again noticed the same male individual approach them. They stood up. The man went near them and then demanded that Dorotheo hand AAA over to him but Dorotheo refused. When Dorotheo faced AAA, the man suddenly struck him twice with a piece of wood hitting him on the back of his head. Dorotheo embraced AAA and they both fell to the ground. Dorotheo was rendered unconscious by the impact of the blows on his head. While Dorotheo and AAA were lying on the ground, the man again hit Dorotheo on the back of his head. Thereafter, he grabbed AAA and pulled her up. AAA fought back. She shouted and tried to box the man but the latter choked her causing her to lose consciousness. When she regained consciousness, the man was already on top of her. He was kissing her on the lips and was holding her breast. He forced open her thighs. AAA tried to kick him but found it difficult to struggle because of the weight of the man pinning her down. The man then pulled her left leg up and placed it on his shoulder; after which, he inserted his penis in her vagina. After having carnal knowledge with AAA, the man stood up and warned her not to scream because he will be leaving. After the man left, AAA ran and asked for help. Dorotheo was brought to the hospital where he died four days later, or on February 2, 1994. On the same date, AAA went to the police authorities to seek help. A subsequent surveillance conducted by the police with the help of AAA led to the arrest of appellant.^[3]

On February 17, 1994, appellant was formally charged for the murder of Dorotheo Gabilan under an Information which reads:

"The undersigned Asst. City Prosecutor II accuses BERNANDINO ALAJAY y MANGHINAYON (Detained) of the crime of MURDER, committed as follows:

That on or about January 30, 1994 at more or less 1:30 o'clock early dawn at Riverside Purok 7, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with treachery and evident premeditation, and with intent to kill with the use of a 2X2 cocolumber, 95 centimeters long, which he was then conveniently provided with, did then and there willfully, unlawfully and feloniously attack, assault and struck the head of the victim Dorotheo Gabilan twice with the said cocolumber thereby inflicting serious and mortal wound or injuries upon the latter which is the direct and immediate cause of his death, to the great damage and prejudice of his heirs.

Contrary to and in Violation of Article 248 of the Revised Penal Code.

City of Cagayan de Oro, February 16, 1994.

MANUEL A. NOLASCO

Prosecutor II^[4]

and for the rape of AAA on the basis of a Complaint, to wit:

The undersigned Complainant, after having been duly sworn to an oath, hereby accuses BERNANDINO ALAJAY y MANGHINAYON (Detained) of the crime of RAPE, committed as follows:

That on or about January 30, 1994, at more or less 1:30 o'clock early dawn at Riverside Purok 7, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the use of force and violence did then and there willfully, unlawfully and feloniously have carnal knowledge or sexual intercourse with complainant-victim, AAA, a 16 year old minor, against her will.

Contrary to and in Violation of Article 335 of the Revised Penal Code.

City of Cagayan de Oro, February 16, 1994.

AAA

Complainant

ASSISTED BY:



Mother^[5]

Appellant was arraigned on September 5, 1994 and pleaded not guilty to both charges.^[6]

After a joint trial, the court *a quo* rendered a decision dated February 27, 1998, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, this Court finds the accused Bernandino Alajay guilty beyond reasonable doubt of the two crimes of murder and rape defined and penalized under Arts. 248 and 335 of the Revised Penal Code, as amended, and said accused is hereby sentenced to suffer the penalty of death in Criminal Case No. 94-311 for the murder of Dorotheo Gabilan and said accused is also hereby sentenced to suffer the penalty of death in Criminal Case No. 94-312 for the rape of AAA.

In addition, in Criminal Case No. 94-311 for murder, the accused is hereby sentenced to pay the heirs of the victim Dorotheo Gabilan (a) the sum of Fifty Thousand Pesos (P50,000.00) by way of Civil indemnity; (b) the sum of Sixty Thousand Pesos (P60,000.00) as actual or compensatory damages; and (c) the sum of One Hundred Thousand Pesos (P100,000.00) as moral damages.

In Criminal Case No. 94-312 for rape, the accused is further sentenced to pay the parents of the victim AAA the sum of Fifty Thousand Pesos (P50,000.00) as moral damages and to pay to the said victim the sum of One Hundred Thousand Pesos (P100,000.00) also as moral damages.

In accordance with the law, let the records of the two cases, including the exhibits and the transcripts of the stenographic notes of the witnesses be transmitted and elevated to the Supreme Court for the automatic review of this Decision.

SO ORDERED.^[7]

In his Brief, appellant does not assail his conviction but merely questions the penalties imposed on him by the trial court, thus:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE OFFENSE (CRIMINAL CASE NO. 94-311) THUS QUALIFYING THE CRIME CHARGED TO MURDER.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH ON THE APPELLANT WHEN THE INFORMATION UNDER CONSIDERATION (CRIMINAL CASE NO. 94-312) CHARGES ONLY A CRIME OF SIMPLE RAPE PUNISHABLE BY RECLUSION PERPETUA.^[8]

which boil down to the following issues: (1) whether or not in Criminal Case No. 94-311, the qualifying circumstance of treachery and evident premeditation attended

the killing of Dorotheo Gabilan; and (2) whether or not in Criminal Case No. 94-312, the crime committed is simple rape.

Before proceeding to resolve the issues raised by appellant, it behooves us to determine, at the outset, whether or not the trial court erred in finding appellant guilty beyond reasonable doubt of the separate crimes of murder and rape and in disregarding appellant's defense of alibi. This is consistent with the principle that an automatic appeal of a death sentence opens the entire record open for review.^[9]

We have examined the records of the case and we find no cogent reason to disturb the finding of the trial court that appellant is guilty beyond reasonable doubt of the separate crimes of murder and rape. Victim AAA positively and categorically identified appellant as the person who dealt the fatal blows on the head of Dorotheo and as the one who raped her. Absent any evidence of ill motive on the part of AAA, the trial court did not err in giving her testimony the full faith and credit it rightfully deserves.

The prosecution had established that appellant committed the crimes around 1:30 in the early morning of January 30, 1994 within the premises of the Nestle factory located at Purok 7, Tablon, Cagayan de Oro City.

In raising the defense of alibi, appellant testified that he arrived at his house around 11:30 in the evening of January 29, 1994 and that he immediately went to bed and slept until 7:00 the following morning. ^[10] He admitted that his house is located in the same Purok 7.^[11]

For the defense of alibi to prosper, the following must be established: the presence of the appellant in another place at the time of the commission of the crime and the physical impossibility for him to be at the scene of the crime at the time of its commission. ^[12] As his residence is located in the same Purok 7, appellant's alibi fails. Weak as it is, alibi becomes all the more ineffectual when the accused fails to demonstrate that it was physically impossible for him to be at the scene of the crime at the time it was committed. ^[13]

Moreover, it is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law. ^[14]

Thus, in the face of the positive identification of appellant by AAA which was categorical and consistent, and absent any showing of ill motive on her part in testifying on the matter, her testimony prevails over the alibi of appellant which was not substantiated by clear and convincing evidence. Appellant failed to present clear and convincing evidence to prove his claim that he never left his house between the hours of 11:30 in the evening of July 29, 1994 and 7:00 in the morning of July 30, 1994.

And even if corroborated, it is axiomatic that an alibi cannot stand in the face of the positive identification of an eyewitness, who is not shown to have any ill motive for

testifying falsely against the accused. [15]

Thus, the trial court is correct in brushing aside appellant's defense of alibi.

We now come to the issues raised by appellant.

Is there treachery in Criminal Case No. 94-311?

There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make. [16] Two elements must therefore concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) that said means of execution were deliberately or consciously adopted by the assailant [17]

After a careful examination of the evidence presented, we find that the trial court did not err in appreciating the qualifying circumstance of treachery. The elements of treachery are present in the instant case.

AAA recounted that when appellant approached them for the second time, he went near them and demanded that Dorotheo hand AAA over to him. [18] At this point, AAA sensed fear and held on to her boyfriend, Dorotheo. [19] However, evidence does not show that Dorotheo was forewarned of appellant's attack. It can be gathered from the testimony of AAA that the piece of wood that was used by appellant in hitting Dorotheo was not seen by them the two times they noticed appellant. AAA merely saw appellant approach them with his hands behind his back. There was no apparent reason for AAA and Dorotheo to think that they would be viciously attacked. Appellant suddenly hit Dorotheo twice at the back of his head with a piece of wood after the latter refused to give AAA to appellant and when the latter was facing AAA with his back towards the appellant. At this point, Dorotheo was absolutely caught by surprise. He was not in a position to defend himself; more so, when appellant hit him again while he was already lying on the ground after being rendered helpless and had no means to defend himself or to retaliate. [20] In addition, the fact that appellant had concealed the weapon he was clutching is evidence to show that he consciously adopted his means of attacking Dorotheo to prevent the latter to protect himself from the attack. Hence, the elements of treachery are present in the killing of Dorotheo.

Is there evident premeditation in Criminal Case No. 94-311?

To constitute evident premeditation, the following requisites must be proven: (1) the time when the accused decided to commit the crime; (2) the overt act manifestly indicating that he clung to his determination; (3) a sufficient lapse of time between the decision and the execution, allowing the accused to reflect upon the consequences of his act. [21]

In *People vs. Biso*, we held that:

"The prosecution is burdened to prove that the malefactors had decided to commit a crime and performed an `act manifestly indicating that the