

FIRST DIVISION

[G.R. No. 133228-31, July 30, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GODOFREDO TIZON, JR. Y LADRILLO, RANDY UBAG Y DELA
ROSA, ARNOLD LADRILLO Y GARCIA AND NESTOR CRISOSTOMO
Y LAGO, ACCUSED-APPELLANTS.**

D E C I S I O N

KAPUNAN, J.:

Accused-appellants assail the decision of the Regional Trial Court (RTC) of Negros Occidental, Branch 47^[1] convicting them of four counts of rape and sentencing each of them to suffer the penalty of *reclusion perpetua*.

The victim, Cynthia Barena, was 38 years old, single and, as a result of a nervous breakdown, mentally imbalanced. Her mental condition made her the butt of jokes in the neighborhood store.^[2] On May 4, 1997, her body was found naked in the rice field at Hacienda Guanzon, Barangay Mansilingan, Bacolod City. She was dead.

Zenaida Ladrillo awoke that morning to the tragic news that her sister Cynthia had been raped and killed. Roused from her sleep by Ernesto Crisostomo,^[3] Zenaida quickly proceeded to the rice field where Cynthia's remains were discovered. Cigarette burns dotted the victim's body, her legs splayed over a rice paddy. Cynthia's blouse,^[4] overalls^[5] and panty^[6] were scattered alongside her remains. Also found in the field were a pair of slippers^[7] and a rubber sandal.^[8] Later, the police arrived and asked Zenaida some questions. A photographer took pictures^[9] of the crime scene.^[10]

The police also interviewed other people in the area, including one Myrna Bacosa. She said that her brother Nestor Crisostomo owned the pair of slippers found at the crime scene. From the investigation they conducted, the police were able to identify the suspects to the crime as Godofredo Tizon, Jr., Randy Ubag, Arnold Ladrillo and Nestor Crisostomo.

At around 11:30 that same morning, the police apprehended suspect Godofredo Tizon, Jr. The following day, May 5, 1997, Tizon, Jr., allegedly assisted by counsel and after being apprised of his rights, executed a statement admitting his presence at the crime scene and pointing to Nestor Crisostomo, Randy Ubag and Arnold Ladrillo as those who ravaged Cynthia Barena.^[11]

On May 6, 1997, the families of suspects Randy Ubag, Arnold Ladrillo and Nestor Crisostomo informed the police that the three were willing to surrender. After their arrest, the three also executed statements confessing that they, including Godofredo Tizon, Jr., all took turns raping Cynthia. They claimed that the crime was Tizon, Jr.'s idea.

Subsequently, the four suspects were charged with four counts of Rape with Homicide in four amended informations^[12] stating:

That on or about the 4th day of May, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse upon the person of CYNTHIA BARENA y LAMPREA against the will of the latter and by reason or on the occasion thereof, the herein accused with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, box and strangle the neck of CYNTHIA BARENA y LAMPREA, thereby inflicting upon her person the following injuries, to wit:

1. Contusion, right eye, with hematoma.
2. Strangulation mark at the neck.
3. Contusion in the mouth.
4. Contusions in the abdomen, thighs, front, hip, right, knees with hematoma.
5. Contusion-abrasion at the back.
6. Presence of cigarette burns in the chest and abdomen.

CAUSE OF DEATH:

Cardio-respiratory arrest, asphyxia, suffocation due to strangulation

which were the direct and immediate cause of her death.

When arraigned, all four accused pleaded not guilty.

PO3 Luvimin Lopez, who conducted the investigation at the crime scene, testified for the prosecution.^[13] Other prosecution witnesses included the deceased's sister Zenaida Ladrillo and brother Norberto Barena.

Zenaida said all the accused lived near their residence. In fact, she was related to two of them. Godofredo Tizon, Jr. is a cousin of her husband Romulo Ladrillo. Arnold Ladrillo, on the other hand, is Romulo Ladrillo's nephew, the son of another cousin.

Sometime in the months of July and August 1997, after the filing of the charges for rape with homicide, Zenaida was approached by relatives of the four accused to ask if they could settle the case. Each of them submitted written offers all dated August 19, 1997.

Violeta Ladrillo, the mother of Arnold Ladrillo, proposed to pay Zenaida the amount of P4,000.00 "for lowering the penalty of the case."^[14] Plesing Ubag, the mother of Randy Ubag, stated that she would pay Zenaida P8,000.00.^[15] Nestor Crisostomo's sister Delia wrote that she would "pay Zenaida [their] carabao valued [at] P8,000.00 on condition that the penalty of Nestor Crisostomo will be lowered."^[16] Jovito Tizon, Godofredo Tizon Jr.'s brother, also said he "will pay Zenaida...[,] for [his] brother[,] the amount of P8,000.00 provided that the penalty will be lowered."^[17] Zenaida did not accede to these offers.

Zenaida also averred that the pair of slippers found at the crime scene was owned by Nestor Crisostomo, who lived in the house behind theirs. She said she often saw him wearing them.^[18]

The victim's brother, Norberto Barena, makes a living delivering water to residents of Pagla-um Village, which is adjacent to Hacienda Guanzon. At around 9:00 p.m. of May 3, 1997, Norberto was on his way home, having finished delivering water to his customers. As he passed the house of Jovito Tizon, the brother of accused Godofredo, he noticed several people drinking outside the house. Present at the party were Rogelio Ladrillo, Leopoldo Tizon, and the four accused. They even invited Norberto to join them but he just stared at them and left.

The following day, at about 5:00 a.m., Norberto was awakened by the calls of Annalina Gardose, who told him that his younger sister Cynthia was found at the rice field. As Norberto walked towards the field, he again passed the house of Jovito Tizon and noticed Godofredo sweeping the backyard. Arriving at the field, he saw his sister's body lying face up, naked.

Norberto recalled that sometime in January 1997, around midnight, he heard Cynthia shout, "Daddy, help me." (Norberto and Cynthia's father was still alive then.) Norberto immediately raced to his sister's home and saw Godofredo running out of the house towards the river. Randy Ubag, Nestor Crisostomo and Arnold Ladrillo, who were previously standing outside the house, ran with Godofredo. Norberto asked his sister what happened. She said that Godofredo had entered the house and "invited her to go out." Norberto never confronted Godofredo or the others about the incident because he (Norberto) was afraid of them.^[19]

Dr. Johnnie Aritao, a medico-legal officer, conducted the post-mortem examination on the victim's remains. He reduced his findings^[20] in writing as follows:

1. Contusion, right eye, with hematoma.
2. Strangulation mark at the neck.
3. Contusion mouth.
4. Contusions abdomen, thighs, front, hip, right, knees, with hematoma.
5. Contusion-abrasion, back.
6. Vaginal introitus admits two fingers with ease.
7. No hymenal lacerations noted.
8. Presence of particles of soil in the vaginal introitus.
9. Presence of cigarette burns chest and abdomen.

Cause of death:

Cardio - respiratory arrest Asphyxia, suffocation due to strangulation.

Expounding on his findings, Dr. Aritao testified that a blunt object, such as a clenched fist, could have caused the contusion with hematoma in the right eye, while the assailant's hand or fingers probably caused the strangulation mark around the neck. He also attributed the contusions in the mouth, abdomen, front thighs and knees to a blunt object. The contusions and abrasions at the victim's back could have been a result of the body rubbing against the ground. Perhaps, he said, the victim was dragged.

That the vaginal introitus easily admitted two fingers meant that the victim had engaged in sexual intercourse, possibly even before the date of the victim's death

on May 4, 1997. While there were no lacerations in the hymen, the doctor explained that there are women with thick hymens that could not be easily lacerated by sexual intercourse. In this case, however, the doctor could not determine if the victim's hymen was thin or thick. Dr. Aritao also revealed that it was "not highly possible" that sexual abuse committed on bare ground accounted for the soil particles in the vaginal opening. He agreed, though, that the soil particles could have been introduced into the vagina intentionally. The doctor noted that there were no sperm cells in the vagina but that the soil particles inside the vagina could have contaminated any sperm.^[21]

To prove that the accused's extra-judicial statements adhered to constitutional requirements, the prosecution offered the testimonies of SPO2 Virgilio Q. Pachoro,^[22] who took down the statements of Godofredo Tizon, Jr. and Nestor Crisostomo, PO3 Lorenzo Rios,^[23] who took down Randy Ubag's statement, and PO3 Levy Pangue,^[24] who recorded Arnold Ladrillo's confession. The police officers invariably testified that they informed the accused of their rights and of the consequences of their acts before their statements were taken down.

The prosecution also called to the stand Atty. Serafin Guinalon, who purportedly acted as counsel for all the suspects at the time their statements were taken down. Sometime in May 1997, Police Senior Inspector Pedro Laza, the Station Commander of Mansilingan, informed Atty. Guinalon that the suspects to the killing of Cynthia Barena had already been arrested and needed a lawyer. Known to the four as a leader in the community, Atty. Guinalon was requested to assist in the execution of their extra-judicial statements. The lawyer asked the suspects why they requested him in particular. They replied that they knew him and that he, in turn, knew all of them.

Atty. Guinalon conferred with the suspects, who expressly signified their intention to put into writing what happened that fateful night. He explained to them that by making a confession, they would be admitting to the commission of a grave crime, which carried with it a severe penalty. After Atty. Guinalon apprised them of their constitutional rights, the four proceeded to execute their respective statements. Atty. Guinalon was in front of the suspects when they gave their statements and was present during the entire investigation. During the trial, Atty. Guinalon readily identified the affidavits executed by the four and affirmed that they were read and signed by each of them voluntarily.^[25]

Manuel Cardinal, Jr., Assistant City Prosecutor of Bacolod City, subscribed the extra-judicial statements of the four accused. He testified that before he signed the statement of Godofredo Tizon, Jr. on May 6, 1997, he explained to the suspect the consequences of his action, making sure that the latter understood the contents of his statement. The Assistant City Prosecutor told Tizon, Jr. that the same could be used against him and that he could be severely punished for his crime.

On May 8, 1997, Asst. City Prosecutor Cardinal also subscribed the extra-judicial confessions of Randy Ubag, Arnold Ladrillo and Nestor Crisostomo. Prior to the signing of these statements, he asked the suspects if the police threatened them or forced them to sign the statements. They answered that they were not. To avert any compulsion, the prosecutor even asked the police officers to leave his cubicle before asking the suspects any question. He also examined their hands and bodies for any injuries and asked them whether they were promised any reward. He found no signs

of injury on the suspects, who categorically declared that they were not threatened and that no reward was promised them. Assistant City Prosecutor Cardinal then instructed them to examine every page of the documents and to sign the statements in the presence of their counsel.^[26]

The four accused pleaded denial and alibi, and disowned their respective statements.

Godofredo Tizon, Jr., 27, years old, an elementary graduate, and a member of the CAFGU, testified that he was with his brother Jovito in Hacienda Guanzon when the alleged rape and killing took place. On May 3, 1997, Godofredo, Jovito and Rodolfo Tizon celebrated Jovito's birthday. They started drinking at around 3:00 in the afternoon. None of his co-accused, admittedly his friends, were at the party.

At around 8:00 in the evening, Godofredo asked leave to retire for the night as he had to report for duty early the following day. He awoke at around 5:00 the next morning and promptly proceeded to his station in Barangay Minoyan.

At around 12:30 in the afternoon, Police Senior Inspector Pedro Laza arrived, accompanied by several policemen. They asked Godofredo to go with them and brought him to BAC-UP 7 in Mansilingan then to the headquarters in Taculing. Godofredo was put in a cell, where he was detained for two days.

On May 6, 1997, Senior Police Inspector Laza and Atty. Guinalon visited Godofredo in his cell and told him to sign something so he could leave immediately. Godofredo complied, and affixed his signature on a document. He denied that SPO2 Pachoro asked him the questions contained in his affidavit before he signed it. Neither was he shown the contents thereof. The accused maintained that he was not informed of his constitutional rights.

Godofredo also denied that he requested Atty. Guinalon to be his counsel during the taking of his statement. He claimed he did not know Atty. Guinalon personally, having met the lawyer only on the day of the investigation. The lawyer told him just to sign the document, assuring him that he "would have no problem with it."

Godofredo refuted Asst. City Prosecutor Cardinal's testimony that the latter explained to him the consequences of signing his statement. He claimed the prosecution did not say anything to him and merely affixed his (Cardinal's) signature on the affidavit.^[27]

Jovito Tizon, brother of accused Godofredo, testified that on his birthday on May 3, 1997, he was in his house in Barangay Mansilingan, Bacolod City. He caught a chicken to serve his guests, who included his elder brother Leopoldo, his brother-in-law Juan Celix and his younger brother Godofredo, who lived with him. The four started the celebration, drinking and singing, at about 2:30 in the afternoon. The party ended at 8:00 in the evening and Godofredo went to sleep. Jovito followed him to bed soon after.

At about 1:00 a.m., Jovito was awakened by the barking of dogs. He went outside but not seeing anything suspicious he returned to the house. Inside, Godofredo was throwing up, drunk from the revelry. Jovito gave Godofredo some warm water, which the latter drank, and the brothers then went back to bed. Jovito awoke at about 4:30 in the morning. At about 5:00 a.m., he woke up Godofredo because the latter had to report for duty.^[28]