

EN BANC

[G.R. No. 131807, August 06, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSE B. CANICULA, ACCUSED-APPELLANT.**

DECISION

KAPUNAN, J.:

This is an automatic review of the Decision dated October 7, 1997 of the Regional Trial Court, Fifth Judicial Region, Branch 15, Tabaco, Albay, finding the accused-appellant guilty beyond reasonable doubt of the crime of Rape with Homicide and imposing upon him the supreme penalty of death.

The Information reads as follows:

That in the evening of December 25, 1996, at Barangay Jonop, Municipality of Malinao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of violence, force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with MERLINDA CALLADA, against her will and consent, and by reason and on the occasion thereof, accused with intent to kill, with treachery and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously assault, attack, wound, injure and box afore-named Merlinda Callada on the different parts of her body, which caused her death, to the damage and prejudice of her legal heirs.

ACTS CONTRARY TO LAW.^[1]

Upon arraignment on June 16, 1997, the accused-appellant pleaded not guilty. Trial thereby ensued where the prosecution presented seven (7) witnesses. The accused-appellant testified on his own behalf.

The facts as presented by the Office of the Solicitor General (OSG) are as follows:

At about 1:23 in the afternoon of December 26, 1996, Lorenzo Bongkingki, the barangay captain of Jonop, municipality of Malinao, Albay, was informed by Domingo Cierva that there was a body of a naked woman lying on her back in a canal. Lorenzo immediately proceeded to the place mentioned. There he saw the cadaver of the woman confirming Domingo Cierva's report. Lorenzo immediately reported the matter to the police department (TSN, pp. 3-8, July 30, 1997).

Accompanied by Barangay Captain Lorenzo Bongkingki, a police team was dispatched to Barangay Jonop to investigate. When the police arrived, they saw the cadaver of a woman lying on her back with her face up in the shallow waters of a river. SPO2 Salvador Cestina, a member of

the police team, conducted an ocular investigation at the scene. The cadaver was photographed. SPO2 Cestina observed that the dead woman had injuries and bruises on her arms and elbows. She wore a T-shirt which was rolled up to her neck. She had no panty. The police brought the cadaver to the ground. They later placed the cadaver inside the jeep and brought it to the Municipal Health Office of Malinao, Albay (TSN, pp. 7-11, July 14, 1997; TSN, pp. 6-9, July 30, 1997).

Meanwhile, at about 1:00 in the afternoon of December 26, 1996, while Manuel Callada was at home tending their store, he heard a commotion outside about a dead woman who was found naked in the river. Curious, Manuel went out and proceeded to the place where the dead woman was found. Manuel Callada was shocked by what he saw. The dead woman was his wife, Merlinda Callada. He recognized his wife because of the mole on the middle of her upper lip. After identifying his wife, Manuel proceeded to the police headquarters. A police team was dispatched to the crime scene (TSN, pp. 2-4, August 18, 1997).

The cadaver of Merlinda Callada was brought to a funeral parlor for autopsy. Dr. Dante B. Bausa, Municipal Health Officer of Malinao, Albay, conducted an autopsy on the cadaver of the victim. Dr. Bausa prepared an Autopsy Report (Exh. "A", p. 2, Record) which shows the following findings:

"xxx xxx xxx

EXTERNAL FINDINGS:

- cadaver clad in wet white T-shirt with blood stain over the anterior aspect, with no underwear.
- contusion and swelling located over the forehead, left and right periorbital area, nasal and perinasal area, perioral area and the chin; clotted and non-clotted blood noted to come out of the mouth and nostrils.
- nasal cavity was noted to be filled with clotted and non-clotted blood.
- oral cavity was noted to be filled with clotted and non-clotted blood, with lacerated wound 3 cm in length over the inner mucosal surface of the right side of the upper lip.
- lacerated wound 1 cm in length located 1.5 cm below the right lower eyelid.
- lacerated wound 2.5 cm in length located 2 cm below the left lower eyelid.
- linear abrasion 3 cm in length located over the lateral aspect, M/3rd of the right arm.
- linear abrasion 11 cm in length located over the posterior aspect, M/3rd of the right arm.

- linear abrasion 12 cm in length located over the posterior aspect of the right deltoid.
- abrasion 1.5 cm x 1 cm located over the medial aspect of the right elbow.
- abrasion 6 cm x 2 cm located over the lateral aspect of the left elbow.
- abrasion 1 cm in diameter located posteriorly over the knuckle area of the second finger, left hand.

GENITAL EXAMINATION:

- hyperemia with abrasion and minimal bleeding located from 6:00 o'clock to 9:00 o'clock of the vaginal vestibule.
- speculum exam: no vaginal seminal fluid secretion, no evidence of intravaginal bleeding.

LABORATORY EXAMINATION:

- vaginal smear and vaginal washing result: negative for spermatozoa
- skull x-ray result: Fracture of the inferior orbit of the left eyeball socket.
- chest x-ray result: unremarkable

CAUSE OF DEATH:

- ASPHYXIA SECONDARY TO UPPER AIRWAY OBSTRUCTION
SECONDARY TO TRAUMATIC INJURY, FACE.

On the basis of the genital examination conducted on the victim, Dr. Bausa concluded that the victim was raped because of the presence of "hyperemia with abrasion and minimal bleeding located from 6:00 o'clock and 9:00 o'clock of the vaginal vestibule" (TSN, p. 18, 1997; TSN, pp. 11-12, July 1, 1997). Dr. Bausa testified that at the time he examined the victim he found the wounds on her body still fresh with minimal bleeding. He found no seminal fluid inside the inner vaginal canal, i.e., it was negative for spermatozoa upon smear examination. Dr. Bausa opined that the sexual act might have been aborted and the suspect failed to ejaculate due to some distractions or disturbances by the presence of some passersby (TSN, p. 15, July 1, 1997).

On December 29, 1996, SPO4 Antonio Camano, a member of the investigating team, went home to Barangay Jonop, Malinao, Albay. SPO4 Camano learned from the people there that one Jose Canicula (i.e., appellant) had left the place carrying with him all his belongings, including household items. SPO4 Camano relayed the information to the police headquarters. SPO4 Camano and some policemen rushed to the house of appellant's wife in the nearby town of Malilipot. In Malilipot, appellant's wife told the police team that her husband was working in Basud, Tabaco, Albay. The police proceeded to Basud. When SPO4

Camano saw appellant, he (SPO4 Camano) alighted from the car and approached him. Upon seeing SPO4 Camano, whose wife was his (appellant's) relative, appellant told SPO4 Camano that he would go with him. Appellant was brought to the police station of Malinao, Albay, for investigation (TSN, pp. 14-17, July 30, 1997).

During the investigation, appellant broke down and confessed to the crime. SPO4 Salvador Cestina was assigned to take appellant's sworn statement. Before taking appellant's extra-judicial confession, SPO4 Cestina apprised him of his constitutional rights to remain silent, to be assisted by counsel of his choice and if he did not have any, to be provided with one. Since appellant did not have a lawyer of his choice, SPO4 Cestina propounded questions to appellant in the Bicolano dialect to which appellant answered in the same dialect. Atty. Brotamonte was present throughout the proceedings. The questions and answers were translated into the English language (TSN, pp. 14-17, June 14, 1997; TSN, pp. 23-24, August 18, 1997).

On October 7, 1997, the RTC rendered a decision with the following dispositive portion:

Premises considered, the Court having been convinced that proof beyond reasonable doubt has been established against the accused the Court finds him guilty of the crime of Rape with Homicide penalized under Article 335 of the Revised Penal Code as amended and hereby sentences him to suffer the penalty of DEATH and to pay the heirs of Merlinda Callada the amount of P50,000.00 as indemnity for her death.

SO ORDERED.^[2]

In this appeal, the accused-appellant raise the following assignment of errors:

1. The Court a quo gravely erred in finding the accused appellant guilty for the crime charge on the basis of unsupported suspicion of private complainant Manuel Callada.
2. The Court a quo gravely erred by holding the accused-appellant guilty based on his eight (8) uncorroborated circumstances.
3. The Court a quo gravely erred by imposing the capital penalty of death to the accused-appellant and to pay indemnity of P50,000.00 to the heirs of the deceased, based on the extrajudicial statement and admission by the appellant; and
4. The Court a quo gravely erred by disregarding totally appellant's defenses of denial of the crime charge.^[3]

Contrary to the accused-appellant's contention, the trial court did not merely rely on the testimonies of private complainant Manuel Callada and SPO4 Antonio Camano who allegedly pointed at the accused-appellant as the perpetrator of the crime because of his sudden flight from the place. While it is true that the accused-appellant's sudden flight was quite suspicious, there were other evidences considered which point to him as the author of the crime.