

EN BANC

[G.R. No. 136253, February 21, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLEMENTE JOHN LUGOD, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

This is an automatic review of the Judgment^[1] dated October 8, 1998 of the Regional Trial Court (RTC) of Santa Cruz, Laguna, Branch 28 in Criminal Case No. SC-6670 finding the accused, Clemente John Lugod alias "HONASAN", guilty beyond reasonable doubt of the crime of rape with homicide.

On October 10, 1997, an Information^[2] for rape with homicide was filed against the accused as follows:

"That on or about September 16, 1997 in the municipality of Cavinti, province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused by means force and intimidation and with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge with one NAIRUBE J. RAMOS, an eight-year old girl, against her will and by reason or on the same occasion and in order to hide the crime he just committed, dump the victim in the grassy coconut plantation area, which resulted in her death due to shock secondary to vulvar laceration committed on her by the herein accused, to the damage and prejudice of the surviving heirs of the victim."

Upon arraignment, the accused with the assistance of counsel entered a plea of not guilty.^[3] Thereafter, trial ensued.

The prosecution presented the following witnesses in support of its charge against the accused:

EDILBERTO CASTILLO, the medico-legal officer who examined the cadaver of Nairube on September 19, 1997, testified that during the course of his examination of the cadaver, he discovered an 8 cm. wound penetration in her vagina which was probably caused by the insertion of a penis; that the cadaver was in an advanced state of decomposition; that more or less, the approximate time of death of the victim was three (3) days prior to his examination; and that the cause of death of the victim was hypovolemic shock secondary to the laceration.^[4]

RICARDO VIDA, the Task Force Chief of Cavinti, testified that on September 18, 1997, at around 4:35 p.m., the accused pointed out where the body of the victim was; that the accused pointed to a place inside Villa Anastacia which was two hundred (250) meters from the road; that at the time the accused pointed to the

place, he was handcuffed to the accused; that the accused used his left hand in pointing towards the direction; and that the father of the victim cried upon identifying the victim."^[5]

VIOLETA CABUHAT testified that on September 15, 1997, at around 10:00 p.m., she was weaving hats at her house. At that time, she was together with her three children, Joey, Jessica and Jovelin and Loreto Veloria. The accused suddenly entered her house and asked her if he could sleep there but she declined. After she declined, he suddenly forced her to move to one side of the place where she was seated by forcing his body against hers and held her chin. She noticed that he was drunk at that time because she smelt liquor on his breath. After he held her chin, she went upstairs and slept. She claims that the accused left her house at 10:20 p.m. since she looked at her watch when she went upstairs. She does not remember what happened next. In court, she identified that accused as the person who entered her house that night.^[6]

LORETO VELORIA testified that on September 15, 1997, at around 10:10 p.m., he was at the house of Violeta Cabuhat. While he was there, the accused, whom he identified in court, suddenly arrived. He noticed that the accused was wearing a pair of muddy rubber slippers the bottom of which was color red while the top was color yellow. Since the slippers of the accused were muddy, he asked him to remove them but the accused did not comply with his request. Veloria also noticed that the accused was wearing a black collared T-shirt. In court, he identified a pair of slippers (Exhibit "D") as the one he saw the accused wearing that night and on several other occasions. He also identified a black collared T-shirt in court (Exhibit "E") as the one he saw the accused wearing that night and on two other occasions. Veloria stated that the accused sat beside Violeta and tried to catch her chin; that he conversed with Violeta but did not hear the accused's request if he could stay overnight. After the accused left, he also left the house of Violeta.^[7]

PEDRO DELA TORRE testified that on September 15, 1997, at 10:30 p.m., the accused arrived at his house and joined the drinking session of his son. He noticed that the accused was wearing a black T-shirt and appeared to be drunk. Dela Torre claims that the accused left at around 11:45 p.m.^[8]

ROMUALDO RAMOS testified that at around 8:30 on the morning of September 16, 1997, he was driving his tricycle towards the poblacion of Cavinti. While driving towards the poblacion, he noticed the accused coming out of the gate of Villa Anastacia. Upon seeing the accused, he stopped his tricycle thinking that the accused would board the same but the accused did not mind him. He noticed that the accused was wearing only a pair of white short pants with a red waistline and was not wearing a T-shirt or any slippers. The accused also appeared to be drunk. Thereafter, he proceeded to the poblacion terminal where he discovered that Nairube was missing. He also learned that the accused was the suspect behind her disappearance. Upon learning this, he told Ricardo Vida, the Chief of the barangay tanod who was searching for the victim, to look for her at Villa Anastacia because it was the place where he saw the accused come out from. Ramos further testified that the house of the victim is about five hundred (500) meters away from the place where he saw the accused but if one passes through the coconut plantation, it is only two hundred (200) meters away.^[9]

ALMA DIAZ testified that around 2:00 to 3:00 p.m. of September 16, 1997, she went with the search party to look for Nairube. The search party was composed of around ten (10) persons including Violeta and Helen Ramos, the mother of the victim. They first searched the back portion of the victim's house. During the course of their search, she found a panty around three hundred (300) meters away from the house of the victim. Helen identified the panty as belonging to her daughter and cried upon seeing the same. The panty was laid behind a barb wire fence (the boundary of Villa Anastacia) and had a spot of blood and some mud on it. In court, she identified Exhibit "F" as the panty she saw but stated that it was already clean. Thereafter, they continued the search and found a black collared T-shirt with buttons in front and piping at the end of the sleeve hanging on a guava twig. The T-shirt appeared clean at the time. She picked up the T-shirt and brought it along with her to the house of the victim. Upon reaching the house, the T-shirt fell in mud and got dirty. Diaz further stated that the panty was found less than a hundred (100) meters away while the black T-shirt was fifty (50) meters away from the place where the body of the victim was found inside Villa Anastacia and that the panty and T-shirt were around thirty (30) meters away from each other. Diaz also claims that eight days after the death of the child, the mother of the accused, Irene Lugod, came to her house to ask her for help in seeking an amicable settlement of the case with the Ramos spouses. On cross-examination Diaz stated that she found the panty closer than the black T-shirt to the body of the victim.^[10]

HELEN RAMOS, the mother of the victim, testified that on September 15, 1997 at around 7:00 p.m., she was asleep in her house together with her husband and children, Nimrod, Neres and Nairube, the victim. Nairube slept close to her "on the upper part " of her body. At around 12:30 a.m., her husband woke her up because he sensed someone going down the stairs of their house. She noticed that Nairube was no longer in the place where she was sleeping but she assumed that Nairube merely answered the call of nature. After three minutes of waiting for Nairube's return, she stood up and began calling out for Nairube but there was no answer. Thereafter, she went downstairs and saw that the backdoor of their house was open. She went outside through the backdoor to see if Nairube was there but she was not. Helen also testified that Nairube's blanket was also no longer at the place she slept but that her slippers were still there. She further stated that she found a pair of rubber slippers on top of a wooden bench outside of her backdoor. The sole of the slippers was red while the strap was a combination of yellow and white. She assured the court that the slippers did not belong to any member of her family. In court, she identified Exhibit "D" as the slippers she found that night. Thereafter, she proceeded to the house of Alma Diaz to ask her for help. Then, in the morning of September 16, 1997, she went to the police station to report the loss of her child. She also reported the discovery of the pair of slippers. She then went home while the police began their search for Nairube. At around 12:30 p.m., Alma Diaz requested her to go with the searching team. During the search, Alma Diaz found a panty which she recognized as that of her daughter. After seeing the panty, she cried. She was thereafter ordered to go home while the others continued the search. On September 18, 1997, they found the dead body of her daughter in Villa Anastacia. Helen also testified on the amounts she spent in connection with the funeral of her daughter and produced a list which totaled P37,200.00. During cross-examination, Helen stated that the pair of slippers she found on top of the bench was muddy.^[11]

SPO2 QUIRINO GALLARDO testified that on September 16, 1997 at around 7:30 in

the a.m., Helen Ramos reported that her daughter, Nairube, was missing. He thereafter proceeded to the house of the victim together with members of the Crime Investigation Group, the PNP and some townspeople to conduct an ocular inspection. Helen Ramos gave him a pair of slippers and pointed to him the location where she found the same. Alma Diaz also gave him a black T-shirt which she found. Loreto Veloria informed him that the two items were worn by the accused when he went to the house of Violeta Cabuhat. At around 7:00 p.m., he apprehended the accused on the basis of the pair of slippers and the black T-shirt. He then brought the accused to the police station where he was temporarily incarcerated. At first, the accused denied that he did anything to Nairube but after he told him what happened to the girl. Gallardo claims that the accused told him that after the drinking spree on September 15, 1997, the accused wanted to have sexual intercourse with a woman. So after the drinking spree, the accused went to the house of Gemma Lingatong, the neighbor of Helen Ramos. Upon his arrival at the house of Gemma, he bumped pots which awakened the occupants of the house. Considering the commotion he caused, he left and went to the house of Nairube Ramos. After removing his slippers, he entered the house of Nairube and slowly went upstairs. He saw that Helen Ramos was sleeping beside her husband so he took Nairube instead. In court, Gallardo demonstrated how the accused claimed to have lifted the child by raising two of his hands as if he was lifting something off the ground. After taking Nairube, he brought her to the farm where according to the accused; he raped her three times. After successfully raping Nairube, the accused slept. When he woke up, he saw the lifeless body of Nairube which he wrapped in a blanket and hid in a grassy place. Then, he took a bath in the river. He then returned to Villa Anastacia and went out through its gate. Although he admitted to having raped and killed Nairube, the accused refused to make a statement regarding the same. After having been informed that the body of Nairube was in the grassy area, Gallardo together with other members of the PNP, the Crime Watch and the townspeople continued the search but they were still not able to find the body of Nairube. It was only when they brought the accused to Villa Anastacia to point out the location of the cadaver that they found the body of Nairube. Gallardo stated that the accused pointed to the location by using his lips.^[12]

PO2 ANTONIO DECENA's testimony corroborates the testimony of Ricardo Vida although he claims that the accused pointed to the location of the body of the victim by using his lips.^[13]

DANILO RAMOS, the father of Nairube, testified that on September 15, 1997 at around 7:00 in the evening, he was asleep in his house together with his wife, Helen and five children, Nimrod, Neres, Nairube, Nixon and Nerdami. At around 12:30 a.m., he felt someone going down the stairs of their house. He woke his wife up and checked if his children were all there. He noticed that Nairube was not there so his wife went downstairs and checked if she was downstairs. After three minutes, his wife returned and told him that Nairube was not downstairs. So, he went down to double check. Upon his return, his wife gave him a pair of red rubber slippers. He described the slipper as having a red sole but that he did not notice the color of the strap since the light was dim. In court, he identified Exhibit "D" as the pair of slippers he saw that night. In the early morning of September 16, 1997, they continued searching for Nairube. On September 18, 1997, a member of the bantay bayan went to their house informing them that the accused would be pointing out where the body of Nairube was. At around 4:00 p.m., the accused pointed out the

location of the body of Nairube inside Villa Anastacia by using his lips.^[14]

FLORO ESGUERRA, the Vice-Mayor of Cavinti, testified that on September 19, 1997 at around 3:30 p.m., he attended the funeral of Nairube. After the funeral, he visited the accused in his cell. In the course of his conversation with the accused, the accused confessed to the commission of the offense.^[15]

On October 8, 1998 the RTC rendered a decision finding the accused guilty beyond reasonable doubt of the crime of rape with homicide, the dispositive portion of the decision reads:

"WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, this Court finds the accused CLEMENTE JOHN LUGOD GUILTY BEYOND REASONABLE DOUBT of the special complex crime of RAPE WITH HOMICIDE under Section 11 of Republic Act No. 7659, otherwise known as the Death Penalty Law, amending Article 335 of the Revised Penal Code and hereby sentences him to suffer the SUPREME PENALTY OF DEATH. Accused is also ordered to indemnify the heirs of the victim, NAIRUBE RAMOS the sum of P50,000.00 as civil indemnity for her death and P37,200.00 as actual damages.

The accused is further ordered to pay the cost of the instant suit.

SO ORDERED."^[16]

In view of the imposition of the death penalty, the case is now before this Court on automatic review.

In his brief, the accused-appellant assigns the following errors committed by the RTC:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE WHICH DID NOT PROVE WITH MORAL CERTAINTY THAT HE WAS THE PERPETRATOR OF THE CRIME CHARGED.

THE COURT ERRED IN HOLDING THAT APPELLANT CONFESSED HIS GUILT BEFORE THE VICE-MAYOR, WHICH CONFESSION IS ADMISSIBLE AS IT WAS NOT MADE IN RESPONSE TO ANY INTERROGATION.^[17]

In support of his appeal, accused-appellant submits that the evidence presented by the prosecution fails to establish that he raped and killed Nairube Ramos beyond reasonable doubt. The prosecution did not present any direct evidence to inculcate him in the commission of the crime. Neither did the prosecution present circumstantial evidence sufficient to establish his guilt beyond reasonable doubt. Moreover, accused-appellant claims that the alleged confession he made to the vice-mayor was not a confession. He prays that the judgment of conviction of the RTC be reversed and that he be acquitted of the crime charged.

After a careful review of the case, we agree with the submission of accused-appellant and find that the prosecution failed to prove his guilt beyond reasonable