

## EN BANC

[ G.R. No. 137299, August 21, 2001 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO NANAS ALIAS "IKOT", ACCUSED-APPELLANT.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

For our review is the decision<sup>[1]</sup> of the Regional Trial Court of Iloilo City, Branch 31, dated July 31, 1998 finding the accused-appellant Francisco Nanas, alias "Ikot" guilty beyond reasonable doubt of the crime of rape with homicide in Criminal Case No. 43624 and sentencing him to the supreme penalty of death.

The accused-appellant Francisco Nanas was charged with the crime of rape with homicide in an information<sup>[2]</sup> dated May 23, 1994 which reads as follows:

"That on or about April 25, 1994, in the municipality of Miagao, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, armed with a knife, bolo, and a piece of bamboo, and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously had sexual intercourse with Edna Fabello without her consent and against her will and on the occasion of such rape, with deliberate intent and decided purpose to kill, did, then and there willfully, unlawfully and feloniously attack, assault and stab, hack and strike said Edna Fabello with the weapons which the accused was then provided, hitting the victim on the different parts of her body which caused her death."

On August 3, 1994, accused-appellant was arraigned whereupon he entered a plea of not guilty to the crime charged.<sup>[3]</sup>

The prosecution presented four (4) witnesses: Dr. Mary Joyce M. Faeldan, Bienvenido Beatisola, Serapion Feronilmo, and Primitivo Fabello. The case against the accused-appellant, as culled from the testimonial and documentary evidence presented by the prosecution, is as follows:

At about 8:00 in the evening of April 25, 1994, witness Bienvenido Beatisola and a certain Esteban Jumadron arrived at the dance hall in Barangay Tugara-ao, Miagao, Iloilo, where a dance was being held on the occasion of the fiesta of the barangay. Beatisola saw the victim Edna Fabello at the gate of the dance hall pinning ribbons on some of the revelers at the dance hall. As he was acquainted with the victim, he approached her and exchanged some pleasantries. Edna Fabello asked Beatisola to

help her sister who was a candidate in the fund raising contest but he replied that he has no money<sup>[4]</sup>.

After this brief conversation with the victim, Beatisola went out of the dance hall to urinate and there he saw accused-appellant Francisco Nanas, alias "Ikot", drinking beer at the store under a camachile tree located some six (6) arms length from him. The appellant offered him a drink but he declined and instead he went back to the dance hall<sup>[5]</sup>.

Beatisola noticed that Edna Fabello constantly went in and out of the dance hall. She had no companions. He last saw her going out of the dance hall and he was able to observe her passing the place where accused-appellant was drinking on her way to the rice paddies<sup>[6]</sup>.

Beatisola and his companion Esteban Jamadron left the dance hall at about 12:00 o'clock midnight and they proceeded to the house of a certain Elias Monsale, the brother-in-law of the witness. While walking thru the rice paddies, Beatisola paused to urinate by the bushes. He then heard a thudding sound and when he looked around, he saw a person lying face down on the ground. He surmised that the person was a girl as she had long hair tapering down to her shoulders. The girl was being beaten up by two other persons with the use of a wooden bamboo pole. From his vantage point, he was able to identify accused-appellant as one of the persons beating up the girl. He was able to identify him because of the moonlight and because during one instance, accused-appellant's companion pointed a flashlight at accused-appellant's face<sup>[7]</sup>.

The companion of accused-appellant apparently saw the witness hiding behind some cassava and banana plants and told accused-appellant about it. Instead of running away, accused-appellant allegedly drew his bolo and said "make them come because I will kill them." Accused-appellant then hacked the girl twice. Beatisola and his companion became scared and they ran to the house of his brother-in-law. When they reached the house, Beatisola immediately told his brother-in-law about what he witnessed and that accused-appellant had killed a person. However, he did not initially report the incident he witnessed to the authorities<sup>[8]</sup>.

It was only in June 1996 that Beatisola became aware that the person who was killed was Edna Fabello. She learned this from her sister Editha who apparently was the aunt of the victim. He decided to testify on what he had witnessed because of the pleas of his sister<sup>[9]</sup>.

Primitivo Fabello, the father of the victim, also attended the fund raising dance. He left the dance hall at around 3:00 in the early morning of April 26, 1994 and he began looking for Edna whom he noticed was missing. He proceeded to the cornfield and there he chanced upon the accused-appellant who was apparently searching for something. When Primitivo asked what he was doing, accused-appellant told him that he was looking for his knife. Primitivo then continued to search for his daughter<sup>[10]</sup>.

A short while later and while accused-appellant was still nearby, Primitivo found the shoes, hairpin and handkerchief of his daughter. The accused-appellant suddenly

became agitated and he immediately fled the scene. After appellant was gone, Primitivo continued looking for his daughter and he was able to see bloodstains on the dike and on a bamboo pole. He followed the trail of blood and this led him to the dead body of his daughter lying face down in a canal. Thereafter, he reported the incident to the Barangay Captain and later on he turned over the personal effects of his daughter to the police<sup>[11]</sup>.

Police Officer Serafin Feronilmo, who received the report about the crime, went to the crime scene and there he found the dead body of Edna Fabello in the canal. Edna's neck was slashed and her body bore stab wounds. Nearby, he found a bloodstained bamboo pole, a pair of slippers, the scabbard of a knife, a toy gun and a hair clip.

As Primitivo Fabello had earlier told him that he had chanced upon accused-appellant near the place where the body was found, he proceeded to the place of accused-appellant to continue his investigation. Accused-appellant was in his house and so the police officer invited the accused-appellant to the police station for questioning. In the station, accused-appellant allegedly admitted to the police officer that he owned the pair of red rubber slippers found at the crime scene but he denied responsibility for the crime<sup>[12]</sup>.

The body of Edna Fabello was retrieved and it was examined by Dr. Mary Joyce M. Faeldan, the acting Municipal Health Officer of Miag-ao, Iloilo. She identified her medico-legal report<sup>[13]</sup> in open court. However, she was deemed by the trial court as not qualified to be an expert witness and so she was not allowed to elaborate on her findings<sup>[14]</sup>. Her report showed that the witness died from avulsion of the parts of the brain and asphyxia secondary to a hack wound. Her body bore contusions and hematoma and she was found to have been stabbed and hacked twelve (12) times on different parts of her body. The speculum examination on her sex organ revealed that there were "positive multiple minute lacerations around the external (opening) of the cervix" and "positive hymenal lacerations at (the) 3 o'clock and 10 o'clock positions."<sup>[15]</sup>

For his part, accused-appellant denied the charge leveled against him. He admitted that on April 25, 1994, the date of the criminal incident, he was in Miag-Ao, Iloilo as he was taking part in the fiesta celebrations. He admitted further that he was at the dance hall of the barangay with his brother, sister, and daughter as his companions. He denied ever seeing witness Bienvenido Beatisola at the dance hall. He claimed that he was at the dancehall all night and that he only left the place at around 4:00 a.m. the following day as he was already sleepy and he had work that morning<sup>[16]</sup>. His companions stayed behind as the dance was still ongoing.

On his way home, accused-appellant passed through some corn paddies and when he was about fifty meters away from the dancehall, he saw Primitivo Fabello, the father of the victim. He denied, however, the testimony of Primitivo that he was looking for his knife and that he ran away when the shoes of Edna were found. He claimed that Primitivo only asked him whether he had seen his daughter Edna Fabello to which he replied that that he saw her earlier in the evening but he had not seen her since.<sup>[17]</sup> He then continued on his way home and he arrived there past 4:00 in the morning.

He woke up the following morning at around 8:00 a.m. He was then told by a barangay councilor that the policemen were looking for him and so he looked for the policemen on the road. When he met the policemen, he was asked whether he was Francisco Nanas to which he replied in the affirmative. The policemen then took him to his house where they proceeded to look for his clothes and bolo. They were able to find his clothes and bolo but there were no bloodstains on them. The policemen left the clothes and the weapon and instead they said that accused-appellant should accompany them to the police station for questioning. There he was placed inside a prison cell and since then he had not been released from detention.<sup>[18]</sup>

He denied that he raped and killed Edna Fabello and that he admitted in the police station that he owned the red rubber slippers found at the crime scene. He likewise denied the accusation of Bienvenido Beatisola that he beat up and hacked a girl in the corn paddies. He claimed that Beatisola was a planted witness who had a quarrel with him sometime in 1980.

Teresa Napilanga, the sister of the accused, corroborated the account of her brother regarding the incident which happened at their house in the morning of April 26, 1994, right after the body of Edna Fabello was found. She claimed that the police came to their house and questioned her brother about the death of Edna Fabello and that they also searched the house for evidence against the accused-appellant. They were not able to find any evidence linking his brother to the crime yet the policemen still brought accused-appellant to the police station for questioning and thereafter proceeded to detain him<sup>[19]</sup>. Teresa likewise corroborated the testimony of her brother on the long-standing enmity between him and the witness Bienvenido Beatisola<sup>[20]</sup>.

Romeo Famanila, the barangay captain of Calagtangan, Miag-Ao, Iloilo and a distant relative of accused-appellant, testified that there was a fight between accused-appellant and witness Bienvenido Beatisola in their barangay sometime in May 1980. The two of them were fighting with knives but they ran away when they saw him. According to him, Beatisola likewise assaulted accused-appellant the day after the fighting incident<sup>[21]</sup>. On cross-examination, Famanila admitted that the incident was never recorded in the barangay nor reported to the police<sup>[22]</sup>.

After trial on the merits, the court a quo convicted accused-appellant of the complex crime of rape with homicide and sentenced him to the supreme penalty of death. The dispositive portion of the decision dated July 31, 1998 reads:

"WHEREFORE, finding the accused Francisco Nanas guilty beyond reasonable doubt for the crime of Rape with Homicide, under Art. 355 of the Revised Penal Code as amended by Rep. Act No. 7659, judgment is hereby rendered sentencing the said accused to suffer the penalty of death, and further ordering the accused to pay the heirs of Edna Fabello the sum of P50,000.00 for civil indemnity and P100,000.00 for exemplary and moral damages. Costs against the accused.

SO ORDERED."<sup>[23]</sup>

Due to the imposition by the trial court of capital punishment, the case is now before us on automatic review.

In his Appellant's Brief, accused-appellant raises the following assignment of errors<sup>[24]</sup>:

A. THAT THE TRIAL COURT ERRED IN HOLDING THAT ALL THE ELEMENTS OF RAPE HAVE BEEN ESTABLISHED. THE ELEMENTS WHICH HAVE NOT BEEN ESTABLISHED BY THE EVIDENCE OF THE PROSECUTION ARE THE FOLLOWING:

A.1 THE ELEMENT OF CARNAL KNOWLEDGE OR SEXUAL INTERCOURSE AS NO EXPERT MEDICAL OPINION WAS PRESENTED TO PROVE SUCH FACT AND LACERATIONS REFLECTED IN THE MEDICAL REPORT, BY ITSELF, DO NOT CONCLUSIVELY ESTABLISH SEXUAL INTERCOURSE.

A.2 ASSUMING WITHOUT ADMITTING THAT THE PROSECUTION ESTABLISHED SEXUAL INTERCOURSE, IT FAILED TO ESTABLISH THE ELEMENT OF RAPE THAT THE INTERCOURSE IS ACCOMPLISHED BY THE FOLLOWING CIRCUMSTANCES, TO WIT:

- a) By using force or intimidation;
- b) When the woman is deprived of reason or otherwise unconscious; or
- c) When the woman is under 12 years of age;

A.3 ASSUMING THAT A SEXUAL INTERCOURSE HAS BEEN ESTABLISHED AND IT WAS ACCOMPLISHED UNDER THE ABOVE-ENUMERATED THREE CIRCUMSTANCES OF ACCOMPLISHING RAPE, THERE IS NO EXPERT TESTIMONY SHOWING THAT IT WAS MADE DURING THE DAY OF THE ALLEGED COMMISSION OF THE CRIME AND NO EVIDENCE THAT THE AUTHOR OF IT IS THE ACCUSED.

A.4 PROSECUTION WITNESS BIENVENIDO BEATISOLA, ASSUMING HIS TESTIMONY TO BE CREDIBLE, HAS ONLY WITNESSED CIRCUMSTANCES TO HOMICIDE AND NOT RAPE WHILE THE REST OF THE WITNESSES TESTIFIED ON CIRCUMSTANTIAL EVIDENCE ON HOMICIDE AND NOT RAPE.

B. THE TRIAL COURT ERRED IN RELYING IN THE TESTIMONY OF PROSECUTION WITNESS BIENVENIDO BEATISOLA AS HE IS NOT A CREDIBLE WITNESS, WITH UNREBUTTED CRIMINAL RECORDS AND HAS THE MOTIVE TO FABRICATE AGAINST THE ACCUSED.

C. THE TRIAL COURT ERRED IN RELYING ON THE ACCOUNT OF PROSECUTION WITNESSES WHICH IS INCREDIBLE AND FULL OF INCONSISTENCIES.

D. THE TRIAL COURT ERRED IN HOLDING THAT THE PROSECUTION ESTABLISHED THE CRIMINAL LIABILITY OF THE ACCUSED BEYOND