

EN BANC

[G.R. No. 129286, September 14, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERMIE BANTILAN, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

For automatic review by this Court is the Decision of Branch 32, Regional Trial Court, Surigao City finding accused-appellant Hermie Bantilan y Taganas guilty beyond reasonable doubt for the complex crime of rape with homicide and sentencing him to suffer the supreme penalty of death.

On February 17, 1995, the Provincial Prosecutor of Surigao del Norte filed with the Regional Trial Court, Surigao del Norte, an Information charging Bantilan with the crime of rape with homicide committed as follows:

That on December 27, 1994 at about 3:00 o'clock in the afternoon, in Bunyasan, Malimono, Surigao del Norte, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom, intelligence and voluntariness, did then and there willfully, unlawfully and feloniously, with lewd design, have sexual intercourse or carnal knowledge with one JITA QUINTO with force and intimidation and the employment of force caused several injuries on the victim thus resulting in the death of the victim to the damage and prejudice of the heirs, actual, moral and exemplary damages in amounts to be proven in court.

ACT CONTRARY TO ARTICLE 335, No. 3, par. 4 of the Revised penal Code.^[1]

Upon arraignment on March 29, 1995, accused Bantilan assisted by Atty. Ombra Benaning from the Public Attorney's Office (PAO) pleaded not guilty. Thus, trial ensued.

The facts as established by the prosecution are as follows:

In the early morning of December 27, 1994, Nestor Agapay and Bernabe Humanoy went to the store of Jita Quinto, at Barangay Bunyasan, Malimono, Surigao del Norte. They ordered and drank a glass of Tanduay Rhum. They were attended to by Rosie Balabala, younger sister of Jita Quinto who was then washing clothes. The store is located at the ground floor of Quinto's residence.

At twelve o'clock noon, the two sisters took their lunch. They invited accused and his companions who were still drinking to join them. Only accused accepted the offer.

After lunch, Jita went to her room at the second floor to rest. Shortly, thereafter Bernabe went home leaving behind accused Bantilan and Nestor Agapay who were still drinking Tanduay Rhum.

At about two o'clock in the afternoon, accused Bantilan ordered another bottle of liquor. Rosie refused to give him another bottle because he was already drunk. Accused Bantilan suddenly asked where her sister Jita was. Rosie responded that she was sleeping at her room upstairs. Accused Bantilan left without being noticed by Rosie and Nestor who were conversing with each other. Rosie heard some noise upstairs; she just ignored it. A few minutes later, accused Bantilan appeared and informed Rosie that her sister Jita wanted her upstairs. Rosie immediately went up. She was followed by accused. As she entered her sister's room, she was shocked to see her sister sprawled on the floor unconscious. The pillows and beddings were in disarray and were strewn around Jita. Rosie ran towards her sister and shouted for help. Nestor rushed upstairs and carried Jita. Accused Bantilan, however, did not help them.

Responding neighbors and barangay officials brought Jita to a nearby hospital. Accused Bantilan, on the other hand, was turned over by the barangay officials to the chief of police of Malimono, Surigao Del Norte, where he was detained at the municipal jail. The Police authorities took pictures of the scene of the crime. They found fresh bloodstains (Exh. "B") splattered and scattered all over. What caught their attention most was the victim's bloodied panty strewn on the floor.

At the police station, accused Bantilan denied any involvement in the killing of the victim. However, the investigating officer remembered the bloodied panty and thus, asked accused Bantilan to pull up his shirt. There were bloodstains at the edges of his shirt and his underwear (brief). He could not explain why and where he got those bloodstains.

That same afternoon, policemen brought accused Bantilan to the hospital to have the bloodstains found on his shirt and underwear (brief) examined. When accused Bantilan was asked to remove his pants, the investigators saw that the lower portion of his sexual organ contained several specks of fresh bloodstains, the size of a pinhead. What was even more noticeable were the bloodstains covering most of accused's brief (front portion) (exh. "H"). Likewise, he failed to explain why he had bloodstains on his genital organ.^[2]

On the other hand, the version of the defense is as follows:

xxx. At the time of the incident, he was in Surigao City buying a meterstick which he needed as a carpenter. Thereafter, he went home arriving at their house in Bunyaran, Malimono at around 4 o'clock in the afternoon. The barangay captain, however, fetched him and brought him to the police station. From there, he was taken to the emergency hospital

and then brought back to the police station and placed in jail (TSN, 10 July 1990, pp. 4-5).^[3]

On February 10, 1997, the trial court rendered a decision, the dispositive portion of which reads as follows:

Wherefore, premises considered, the Court finds the accused, Hermie Bantilan, guilty beyond reasonable doubt as a principal of the complex crime of rape with homicide as defined and penalized in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the mandatory penalty of DEATH by lethal injection as provided by law.

The accused is ordered to pay to the heirs of the victim, Jita Quinto, the sum of P14,000.00 as reimbursement of actual expenses for the burial of the deceased; the sum of P100,000.00 as indemnity for the rape and death of the said victim; and the costs.

SO ORDERED.^[4]

In this appeal, appellant made the following assignment of errors:

I. THE TRIAL COURT ERRED IN HOLDING THAT THE VICTIM JITA QUINTO WAS RAPED.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[5]

While the appellant concedes to the well-entrenched jurisprudential rule that in rape, it is sufficient to prove that there is penetration of the man's penis into the victim's sexual organ, no matter how slight, the fact of penetration of appellant's penis into the victim's vagina was not, however, established in the case at bar. The testimony of the examining doctor did not categorically state that the victim was indeed raped. She testified that the abrasions in the vaginal canal of the victim and the blood oozing from her vagina may have been caused by the insertion of some other objects and not necessarily by the forcible penetration of a man's penis. Thus, a reasonable doubt exists on the prosecution's theory of rape which should be considered in favor of the accused. Moreover, appellant avers that the trial court erred in convicting him based on circumstantial evidence which was not sufficient to prove his guilt beyond reasonable doubt.

In convicting the appellant for the crime charged, the trial court gave particular emphasis on the following unrefuted facts established by the evidence, to wit:

The evidence stands undisputed that at about three o'clock in the afternoon of December 27, 1994, the lifeless or unconscious body of Jita Quinto was found in the bedroom of her house in barangay Bunyasan, Malimono, Surigao del Norte. At a postmortem examination conducted later at the Malimono District Hospital by Dr. Adoracion Mantilla, her death was ascribed to cardiac arrest resulting from asphyxia or suffocation as stated in her certificate of death (Exhibit E) and the

medical findings of Dr. Mantilla (Exhibit D).

According to Rosie Balabala, the younger sister of the deceased victim, she found Jita lying on the floor where she had been sleeping. Present with her were the accused, Hermie Bantilan, and later Nestor Agapay. The sleeping mat, pillows, mosquito net and blanket of the deceased were in disarray as shown in the photographs (Exhibits A, A-1 and A-2). The victim's bloodied panties (Exhibit B) were found on top of the mat as appear in the photographs (Exhibit A-3 and A-1-A).

In her testimony, Dr. Adoracion Mantilla declared that upon making an internal examination of Jita Quinto, she found fresh abrasions in the latter's vaginal canal. Blood oozed from her vagina. The doctor opined that the abrasions were probably caused by a man having sexual intercourse forcibly with the deceased. For lack of the necessary laboratory equipment, she was unable to conduct an examination for the presence of spermatozoa.

The doctor further testified that she found marked bluish discolorations on the body, lips and fingernails of the deceased indicating a lack of oxygen in her blood. The eyes were dilated or open and bulging and there were various hematoma found around the victim's mouth, above her right nipple, at her extremities and her back, more specifically in the left and right scapular regions. The aforementioned findings showed that the deceased had to struggle for breath probably because of some object placed on her face by her assailant.^[6]

The trial court also found that the evidence inevitably and inescapably linked the accused to the offense charged based on the following facts and circumstances:

- (1) The accused, Hermie Bantilan, was in the house of the victim, Jita Quinto, at the time she was criminally assaulted. Earlier, Bantilan had been drinking liquor with two friends in the store at the ground floor of the victim's house;
- (2) There was a commotion in the upstairs bedroom where Jita Quinto was resting. About ten minutes later the accused came out into the store;
- (3) Bantilan was the one who informed Rosie Balabala that she was needed by her elder sister, Jita Quinto, thereby admitting that he had just came from the latter;
- (4) There was nobody else with Jita Quinto in her bedroom except the accused;
- (5) Upon immediately responding, Rosie Balabala found Jita Quinto lying unconscious or dead on the floor with her beddings in disarray and her bloody panties on top of the mat;
- (6) While Balabala and Nestor Agapay frantically tried to revive the victim, Hermie Bantilan just stood nearby doing nothing to help;
- (7) Bantilan was brought by barangay Kagawad Severino Sacro

escorted by two tanods in a jeepney from Bunyasan to the Malimono police station in the afternoon of December 27, 1994;

- (8) When Bantilan was physically examined by Chief of Police Eulogio Ferol, he saw bloodstains in the briefs and tiny specks of blood at the edge of the shirt of the said accused;
- (9) The foregoing findings of the Chief of police were confirmed and verified by Dr. Ramon D. Lafuente who found, in addition thereto, numerous specks of newly dried blood on the sexual organ of Hermie Bantilan; and,
- (10) The postmortem examination of Jita Quinto conducted by Dr. Adoracion Mantilla showed that the deceased sustained fresh abrasions in her vaginal canal and blood oozed from her vagina. In the doctor's opinion these were caused by someone having had forcible sexual intercourse with her.^[7]

The testimony of prosecution witness Rosie Balabala established how the crime was committed. On direct examination, she testified as follows:

Prosecutor:

Q: Do you recall where were you last December 27, 1994 at around 3:00 o'clock in the afternoon more or less?

A: Yes, Sir.

Q: Where were you at that time?

A: I was at the store, Sir.

Q: Where is that store located?

A: At the ground floor of her house where I stayed.

Q: What barangay is that house located?

A: At Barangay Buniasan, Malimono, Surigal del Norte.

Q: By the way, who is the owner of that store?

A: Jita Quinto.

Q: Your sister?

A: Yes, Sir.

Q: The victim in this case?

A: Yes, sir.

Q: At that time, what were you doing at the store of your sister?

A: I was tending the store.

Q: While you were tending that store of your sister, at that time, do you remember of incident that happened at that time?

A: They were drinking.

Court: (to the witness)