

## EN BANC

[ G.R. No. 121176, May 14, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARLON PARAZO Y FRANCISCO, ACCUSED-APPELLANT.  
D E C I S I O N**

**PER CURIAM:**

Before Us for automatic review is the Joint Decision<sup>[1]</sup> dated March 24, 1995 rendered by the Regional Trial Court of Cabanatuan City, Branch 27, convicting appellant for Rape and Frustrated Homicide, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of Rape and Frustrated Homicide and therefore sentences him to suffer the penalty of:

"1. Death in Criminal Case No. 6167-AF and to indemnify the offended party in the amount of P50,000.00 as moral and exemplary damages (People vs. Perez, 175 SCRA 203);

"2. Eight (8) years and one (1) day to ten (10) years of prision mayor in its medium period in Criminal Case No. 6168-AF, and pay damages to the offended party in the amount of P30,000.00, and

"3. To pay the costs.

"SO ORDERED."

We find on record the following facts:

On January 7, 1995, Cristina Capulong filed with the RTC of Cabanatuan City, a complaint accusing Marlon Parazo y Francisco of the crime of rape, committed as follows:

"That on or about the 6th day of January 1995, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lewd design and by means of threat, force and intimidation and with the use of a knife, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, against the latter's will and consent and to her damage and prejudice.

"CONTRARY TO LAW."<sup>[2]</sup>

Also on January 7, 1995, an Information was filed by Asst. City Prosecutor Marius L. Abesamis accusing Marlon Parazo y Francisco of the crime of Frustrated Homicide,

committed as follows:

"That on or about the 6th day of January, 1995, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one CRISTINA CAPULONG y AROCENA, by stabbing the latter with the use of knife, thereby inflicting upon her stab wounds on the different parts of her body that would ordinarily cause her death, and said accused having thus performed all the acts of execution which would produce the crime of Homicide, as a consequence thereof, but which nevertheless did not produce it by reason independent of his will, that is, by the timely medical assistance rendered unto the aforesaid Cristina Capulong y Arocena.

"CONTRARY TO LAW."<sup>[3]</sup>

Upon arraignment on January 25, 1995, the accused pleaded not guilty in Crim. Case No. 6167 for Rape. Meanwhile, on January 30, 1995, the Judge handling Crim. Case No. 6168 for Frustrated Homicide, granted the Asst. City Prosecutor's motion for consolidation of Crim. Case No. 6168 with Crim. Case No. 6167. On February 1, 1995, the accused pleaded not guilty in Crim. Case No. 6168 for frustrated homicide.

Complainant Cristina Capulong y Arocena, 21 years old, single, a 4th year college student of Araullo University at Cabanatuan City, testified that: On January 6, 1995, at around 3:30 o'clock in the morning, she was sleeping in her room in a boarding house in Mabini Extension, Cabanatuan City, when she was suddenly awakened because someone was ransacking her things near her feet. The man whom she identified in court as the accused, then pointed a knife at her and motioned to her to keep quiet. She pleaded with him for mercy and to spare her life but the accused suddenly boxed her twice in her stomach, poked the knife at her neck, and forcibly undressed her. Then, the accused, still pointing the knife at her neck, forcibly inserted his private part on her private part and she felt pain. While she was being raped by the accused, the latter dropped the knife on the table. She managed to grope for the knife and was able to stab him. The accused got up, took the knife from her and in turn stabbed her on her right side. While they were struggling near the door, the accused stabbed her again, this time, in her breast. After the accused had left thinking that she was already dead since she lay slumped on the floor, she was able to stand up even though blood was spurting from her wounds. She went to the adjoining room and knocked at the door. She felt she was going to die because of her stab wounds. Her boardmate Josie Martinez, a nurse at the P.J.G. Hospital, and her landlady brought her to the Good Samaritan Hospital. While she was at the x-ray room of the hospital, a policeman came to investigate about the incident. There she made a statement to the police. She was operated on and stayed in the hospital for eight (8) days.<sup>[4]</sup>

Another prosecution witness, SPO2 Nemensio Atendido, 41 years old, a police investigator, recounted that: On January 6, 1995, at about 4:00 o'clock in the morning, he was in the Police Station at General Luna, when an unidentified nurse at Good Samaritan Hospital informed their station through telephone that they have a victim of a stabbing incident. He was immediately dispatched to said hospital. He

found the victim (complainant) inside the emergency room of the hospital. Upon questioning her, he found out that aside from having been stabbed, she was also raped. He also found out that the assailant was showing her an ATM card which bears the name of a certain Ariel Parungao. The victim supplied to him Ariel Parungao's address at 106 Barangay Rizdeliz of Cabanatuan City. When he brought Ariel Parungao before the victim, the latter told him that he was not the one. So, he went to the victim's boarding house but he failed to gather information therefrom. He went back to the victim and talked to her some more. He thought it strange that the assailant who was unable to talk would identify himself through an ATM card. From the owner of the ATM card, he learned that on January 2, 1995, an unidentified person forcibly entered their house and took away personal property belonging to him, such as ATM card, camera and P800.00 cash. He was able to determine that the accused was the perpetrator of the crime because the victim told him that she was able to stab the accused once or more than once. So, he sounded off an alarm to all the hospitals in Cabanatuan City telling them that if a male person with stab wounds will be admitted to the hospital, to please inform him so he can conduct the proper investigation. At around 6:00 o'clock on the same morning, an information was given to him through telephone by a nurse and a doctor at the P.J.G. that there was a male patient bearing stab wounds who was admitted thereto. He immediately went to the P.J.G. hospital and there he saw the accused. The reason why he zeroed in on accused Marlon Parazo was that this person has previous records in their office that he was always accused of breaking and entering other people's home for purposes of thievery from 1991 up to 1994 and as a matter of fact, last August 1994, he went out from jail. On that particular morning there were no other incidents regarding a male person who sustained stab wounds as far as other hospitals are concerned. Since he could not bring the accused to the complainant nor the complainant to the accused as both were in critical condition, he brought a photographer to the hospital where the accused was confined and had the latter's photograph taken. When he showed to the victim, the accused's photo, the former identified the latter as her assailant. On cross-examination, this witness said that it took only one or two hours to develop the pictures,<sup>[5]</sup> that he asked her why she was certain that the man in the photo was her assailant; and that the victim said the room was lighted.<sup>[6]</sup>

Another prosecution witness, Dr. Ricardo Gavino, 38 years of age, married, a doctor by profession, testified that: He is connected with the Nueva Ecija Good Samaritan Hospital as a Consultant in the department of Surgery. In the early morning of January 6, 1995, he was called to the hospital as a certain patient with stab wounds was admitted and said patient needs immediate operation. He did the operation on said patient. Based on their examination, he found out that the two stab wounds caused injuries which penetrated the pleural cavity, hitting the lung and the edge of the liver causing sanctioning of air and causing malfunctioning and collapsing of the left lung. He issued a medical certificate after performing the operation with respect to the victim Cristina Capulong. Prior to the operation, while he was interviewing the patient at the emergency room about her medical history, the patient told him that she was stabbed by the accused while she was being sexually abused by the same man. With respect to the physical examination of the victim, the doctor made the following findings:

"Finding: Internal examination admits one finger with ease, meaning to say, that the vaginal opening admits one finger with ease, with no resistance at all, positive with fresh laceration at 7 o'clock position, no

bleeding was noted. With whitish male secretion from the vaginal canal."

[7]

He also testified that from the findings he had that morning, and in his experience, he thinks that the patient was really raped.[8]

For his part, accused Marlon Parazo, 24 years old, single, jobless and a resident of Palayan City, denied complainant's accusations and interposed the defense of alibi. He testified that from the early evening of January 5, 1995 up to the early morning of January 6, 1995, he was in his father's house in Palayan City. His companions therein were his father Terry, his mother Shiela, Loida and Naty Parungao. On cross-examination, he testified that he knows how to ride a motor vehicle and he frequently visited Cabanatuan City to buy clothes. In the morning of January 6, 1995, he was admitted in the P.J.G. hospital with stab wound which was caused by a woman whom he did not know. When asked in what particular place he was stabbed, the accused replied it was in Palayan City. No other defense witnesses were presented.

After trial, a joint decision was rendered by the trial court in the two cases, which as heretofore mentioned, convicted accused of both crimes of rape and frustrated homicide.

In this appeal, accused-appellant raises the sole error that:

"The lower court erred in not appreciating the defense of the accused-appellant that he was not at the scene of the crime when the alleged incident took place, a defense sufficient to overcome and destroy the evidence presented by the prosecution which would have warranted the acquittal of the accused-appellant."<sup>[9]</sup>

The lower court's decision should be affirmed.

This Court will not interfere with the trial court's judgment on the trustworthiness of witnesses unless there appears on record facts and circumstances of real weight which might have been overlooked or misapprehended.<sup>[10]</sup> In the case at bar, there appears no such facts and circumstances which the trial court might have overlooked or misapprehended.

The test to determine the value of the testimony of a witness is whether or not such is in conformity with knowledge and consistent with the experience of mankind.<sup>[11]</sup> All the witnesses for the prosecution testified in a simple, straightforward manner and their declarations jibed in such a way that nobody could doubt the truthfulness of all their testimonies which are consistent with common experience and the natural course of things. More specifically, the complainant herein who testified in a categorical, candid, spontaneous and frank manner, is a credible witness.<sup>[12]</sup> On cross-examination by the defense counsel, she remained unshaken.

On the other hand, accused-appellant's claim that he was sleeping in their house at the time of the incident, remained unsubstantiated and uncorroborated. As aptly pointed out by the trial court, and the Court quotes with approval, viz: