Supreme Court E-Library

jurisprudence.[63] The heirs are entitled to moral damages in the amount of ₱50,000, considering the pain and anguish the victim's family suffered. The said heirs are, likewise, entitled to exemplary damages in the amount of ₱25,000.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court, Urdaneta City, Pangasinan, Branch 46, in Criminal Case No. U-9340, is *AFFIRMED* with *MODIFICATION*. Appellants Maximo Aquinde and Mario Gansenia are found guilty beyond reasonable doubt of murder qualified by treachery, defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659. There being no aggravating or mitigating circumstance attendant in the commission of the crime, the appellants are sentenced to suffer the penalty of *reclusion perpetua*. They are directed to pay, jointly and severally, the heirs of the victim Ricardo Rosario, Jr. ₱50,000 as civil indemnity; ₱50,000 as moral damages; ₱35,050 as actual damages; and ₱25,000 as exemplary damages. Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Azcuna and *Tinga, JJ.*, concur.

Corona and *Carpio-Morales, JJ.*, on leave.

EN BANC

[G.R. No. 136299. August 29, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ZOILO MAGALLANES**, *appellant.*

---

[63] *Ibid.*

Supreme Court E-Library

SYNOPSIS

Appellant was sentenced to suffer the extreme penalty of death for raping and killing one Nelida. Except for the damages awarded, the Court found no reason to disturb the decision of the trial court.

Eyewitness to the crime testified what happened on that fateful day. The victim was drinking juice from a coconut fruit when appellant boxed her to unconsciousness. Appellant then removed the victim's jogging pants and his *maong* short pants. Appellant laid on top of the victim and performed the pumping motion. Thereafter, appellant dragged and placed the victim beneath the eggplants and sliced her throat with a scythe. Thus, appellant was guilty beyond reasonable doubt of the complex crime of rape with homicide punishable by death. Further, the heirs of the victim should be awarded ₱100,000 as civil indemnity, ₱75,000 as moral damages and ₱25,000 as temperate damages in lieu of actual damages which was not sufficiently established.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; ALLEGED CONJECTURES OF THE TRIAL COURT, NOT USED AS BASIS TO ESTABLISH CONVICTION.**— A thorough review of the decision of the trial court reveals that the alleged conjectures referred to by appellant under the first assigned error are observations of the trial court in disregarding appellant's defense of alibi, although corroborated by defense witness Bienvenido Cataag. Based on the fact that appellant's house is only three kilometers away from Bienvenido's house and twenty meters away from the house of Deodelfa, the trial court correctly concluded that appellant's alibi did not pass the test of physical impossibility. It is a well-settled rule that for the defense of alibi and denial to prosper, appellant must prove by positive, clear and satisfactory proof that it was physically impossible for him to have been physically present at the scene of the crime or its immediate vicinity at the time of its commission. Clearly, the trial court did not use

Supreme Court E-Library

said observations to establish the crime of rape with homicide or as basis for the verdict of conviction.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, GENERALLY RESPECTED.**— Confronted with the conflicting versions of the prosecution and the defense at the core of which is the issue of credibility of witnesses, we generally defer to the determination of the trial court on the matter. This is so because the evaluation of the testimonies of witnesses must be left to the trial court as the agency in the best position to observe the witnesses' demeanor on the stand. The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Absent any showing that the trial court has overlooked, misapprehended, or misapplied some facts of weight and substance which, if properly considered would have altered the result of the case, the assessment of the trial court regarding the credibility of witnesses deserves to be sustained on appeal.

3. **ID.; ID.; ID.; MINOR INCONSISTENCIES; FINDINGS ON CREDIBILITY IS UPHELD WHERE WITNESS TESTIFIED IN A CATEGORICAL MANNER AND FLAWS, IF ANY, REFER TO MINOR DETAILS.**— Indeed, there is nothing in her testimony that would suggest that Deodelfa was merely fabricating tales or embellishing her story to implicate the appellant. The flaws, if any, refer only to minor or inconsequential details which do not affect her credibility or the veracity of her declarations. We cannot imagine how Deodelfa was able to give a consistent and categorical narrative of how the crime was perpetrated if she did not see the actual incident herself. It is axiomatic that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness.

4. **ID.; ID.; ID.; TESTIMONY OF PROSECUTION WITNESS ENTITLED TO FULL FAITH AND CREDENCE IN THE ABSENCE OF IMPROPER MOTIVE.**— [T]here is no

Supreme Court E-Library

showing of any improper motive on the part of Deodelfa to testify falsely against the appellant or to implicate him falsely in the commission of so heinous a crime. The logical conclusion, then, is that no such improper motive exists and that her testimony is worthy of full faith and credence.

5. **ID.; ID.; ID.; MEDICAL FINDINGS; TESTIMONY OF PROSECUTION WITNESS CREDIBLE WHEN CORROBORATED BY MEDICO-LEGAL REPORT.**— [T]he findings of the medical examination and report reveal injuries or circumstances supportive of sexual assault which strengthen the testimony of Deodelfa that Nelida was raped before she was killed. A witness' testimony which is corroborated by the medico-legal report is credible.

6. **ID.; ID.; ID.; CREDIBILITY, NOT AFFECTED BY ALLEGED INDIFFERENT REACTION AT THE TIME OF THE COMMISSION OF THE CRIME.**— [T]he fact that Deodelfa did not think of going near the body of Nelida after appellant had left her does not render her testimony incredible. It should be remembered that different people react differently to an unusual event and there is no standard of behavior when a person becomes a witness to something so shocking or gruesome as rape with homicide especially if the assailant is near. The sight of the killing must have unnerved Deodelfa and her reluctance to get involved while the crime is being committed is not an unnatural reaction of some individuals.

7. **ID.; ID.; RULES OF ADMISSIBILITY; TESTIMONY GENERALLY CONFINED TO PERSONAL KNOWLEDGE; HEARSAY UTTERANCE EXCLUDED.**— We agree with appellant that the testimony of Prescillano to the effect that Benjie, the son of the appellant, said to him that his father had raped Nelida, should not have been considered by the trial court at all. The alleged utterance of Benjie is indeed hearsay and lacks probative value because Benjie was never presented in court. It is of no moment that no timely objection was raised during the trial in the face of such evidence. A conviction can never be rooted thereon because it is not grounded on the personal knowledge of the witness but on the knowledge of some other person who was not cross-examined on the witness stand.

8. **ID.; ID.; ALIBI; ALIBI CANNOT PREVAIL OVER POSITIVE TESTIMONIES.**— [A]ppellant's guilt was proven by Deodelfa's

Supreme Court E-Library

positive and categorical testimony, buttressed by the physical evidence. It is for this reason that appellant's defense of denial and alibi must fail. Absent any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi.

9. **ID.; ID.; ID.; ALIBI IS NOT APPRECIATED, ABSENT EVIDENCE OF PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THAT TIME.**— [A]ppellant's alibi is weak since he failed to establish that he could not be at the vicinity of the *locus criminis* when the rape and killing took place. For the defense of alibi to prosper, the requirements of time and place must be strictly met. The accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be impossible for him to be at the scene of the crime when it was committed.

10. **CRIMINAL LAW; RAPE WITH HOMICIDE; PROPER PENALTY IS DEATH.**— Appellant is found guilty beyond reasonable doubt of the complex crime of rape with homicide, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, *viz.*: Art. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances: x x x 2. When the woman is deprived of reason or otherwise unconscious; When by reason or on occasion of the rape, a homicide is committed, the penalty shall be death. It having been established beyond any shadow of a doubt that appellant raped Nelida and killed her on the occasion of the rape, the mandatory penalty of death is inescapable.

11. **ID.; ID.; CIVIL DAMAGES; PROPER CIVIL INDEMNITY.**— With regard to the civil indemnity, the trial court erred in awarding ₱50,000.00 only. We rule that the heirs of the victim of rape with homicide should be awarded the amount of ₱100,000.00. Current judicial policy has authorized the mandatory award of ₱50,000.00 in case of death, and ₱50,000.00 upon the finding of the fact of rape. Thus, if homicide is committed by reason or on the occasion of the rape, indemnity in the amount of ₱100,000.00 is fully justified and properly commensurate with the seriousness of the said complex crime.

Supreme Court E-Library

12. **ID.; ID.; ID.; PROPER MORAL DAMAGES.**— As to moral damages, the Court deems it just and reasonable that in cases of rape with homicide, the heirs of the victim should be awarded the amount of ₱75,000.00.

13. **ID.; ID.; ID.; AWARD OF TEMPERATE DAMAGES PROPER IN LIEU OF ACTUAL DAMAGES WHICH WERE NOT AWARDED FOR FAILURE OF PROSECUTION TO PROVE ANY AMOUNT THEREOF.**— No actual damages were awarded by the trial court since the prosecution failed to prove any amount thereof. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party. However, in accordance with our recent ruling in the case of *People vs. Abrazaldo*, we hereby grant temperate damages in the amount of ₱25,000.00 on the ground that it was reasonable to expect that the family of the victim incurred expenses for the coffin, burial and food during the wake.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PER CURIAM:

Zoilo Magallanes was sentenced to suffer the extreme penalty of death by the Regional Trial Court of Ormoc City (Branch 35) in Criminal Case No. 4728-0 for raping and killing Maria Nelida Ulan-Ulan (Nelida for brevity). Hence, herein automatic review under Article 47 of the Revised Penal Code, as amended.

In an Information dated November 10, 1995, appellant was charged of Rape with Homicide, committed as follows:

That on or about the 21st day of September, 1995, at Sitio Avocado, Brgy. Aguiting, Municipality of Kananga, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then

Supreme Court E-Library

and there wilfully, unlawfully and feloniously boxed offended party and after rendering her unconscious have carnal knowledge of the herein offended party, MARIA NELIDA ULAN-ULAN, 32 years old, against her will and without her consent, and after accomplishing his evil motive, with the use of a scythe, did then and there wilfully, unlawfully and feloniously attack, assault and wound the above-named victim, thereby inflicting upon her the following wounds, to wit:

. . . . . .

a) Incised wound, 14 cm. long muscle deep traversing from the (L) infra-auricular area down and across the superior portion of the anterior neck to the (R) infra-mandibular area of the head.

b) Contusion — hematoma over the midsurface of the abdomen.

c) Contussions/abrasions over the distal 3rd postero-medial surface of both arm and both elbow.

d) Abrassions on both hand with lacerated wound, 1.5 cm. superficial loover the dorsum surface of the (L) hand.

e) Contusion — hematoma over the anterior-medial surface of the middle 3rd on both thigh.

. . . . . .

which caused her death.

CONTRARY TO LAW.[1]

Upon arraignment, appellant pleaded not guilty to the crime charged.[2] Trial ensued thereafter.

The prosecution evidence established the following facts:

Around 7:40 in the morning of September 21, 1995, in Zone Avocado, Barangay Aguiting, Kananga, Leyte, Deodelfa Ulan-Ulan was inside her house together with her two small children, aged two and three years old. Through the window of their house, she witnessed the following: Appellant climbed a coconut tree. When he came down, he called Nelida who was in a nearby

---

[1] Original Records, pp. 1-2.

[2] Original Records, p. 28.

Supreme Court E-Library

ricefield cutting weeds, and borrowed her bolo so he could bore a hole on the coconut fruit. Nelida gave him the bolo. After he drank the water of the coconut fruit, Nelida got the bolo and likewise bored a hole on a coconut fruit for herself to drink. While Nelida was drinking, appellant boxed her abdomen and the lower portion of her body causing her to fall to the ground with her face up. While she was lying on the ground unconscious, appellant removed her jogging pants and his *maong* short pants. He laid on top of her and performed the pumping motion. Then, after the sexual act, appellant dragged and placed Nelida beneath the eggplants. There, he sliced her throat with a scythe. Nelida was unconscious from the time appellant delivered the fist blows on her stomach and lower portion of her body. After the sexual act and the killing, appellant left Nelida in the field. All the while, Deodelfa could not do anything as she had menstruation and was profusely bleeding. Besides, she was afraid because there were no males in the neighborhood for they all had gone to work. When her bleeding subsided in the early evening, she was able to walk to Nelida's house.[3]

Prescillano Ulan-Ulan, husband of Nelida, arrived in his house from work at about 7:30 in the evening of that day. He was approached by his godson Benjie, the ten-year old son of appellant, who said: "Pa, Mama Nelida is in the ricefield and she was raped by my father Zoilo." When he and the child were going towards the place of incident, he met Deodelfa who informed him that Nelida was raped by appellant and that she was already dead. When they arrived at the scene of the incident, they found the dead body of Nelida. Prescillano went to the *Barangay* Captain for assistance who called the police. The police went to the crime scene, took the cadaver and conducted an investigation.[4]

The next day, September 22, 1995, Dr. Pedro A. Delmonte, Municipal Health Officer of the Rural Health Unit of Kananga,

---

[3] TSN, May 7, 1997, pp. 8-22.

[4] TSN, June 2, 1997, pp. 6-9.

Supreme Court E-Library

Leyte, conducted the autopsy on the cadaver of Nelida. The autopsy revealed the following:

PHYSICAL EXAMINATION:

- Incised wound, 14 cm. long muscle deep traversing from the (L) infra-auricular area down and across the superior portion of the anterior neck to the (R) infra-mandibular area of the head.
- Contusion – hematoma over the midsurface of the abdomen.
- Contussions/abrasions over the distal 3rd postero-medial surface of both arm and both elbow.
- Abrassions on both hand with lacerated wound, 1.5 cm. superficial loover the dorsum surface of the (L) hand.
- Contusion – hematoma over the anterior-medial surface of the middle 3rd on both thigh.

EXTERNAL GENITALIA:

- Pubic hairs abundant.
- Labia majora slightly gaping with whitish discharge noted in the entroitous.
- Positive for microscopic examination for determination of presence Spermatozoa.[5]

Dr. Delmonte stated that sexual contact or penetration of a penis caused the gaping of the labia majora of Nelida and a "whitish discharge" found on the external area of her genitalia was positive for spermatozoa.[6] He concluded that death was due to the 14 cm. long incised wound inflicted on Nelida's neck which almost cut off her neck causing massive bleeding and hypovolemic shock.[7]

Appellant denied the accusations against him and offered alibi as his defense. He testified that on the evening of September

---

[5] Original Records, p. 6.

[6] TSN, May 6, 1997, pp. 16-19.

[7] *Id.*, at pp. 7-8 and 20.

Supreme Court E-Library

20, 1995, after a day's drinking spree with Bienvenido Cataag and the latter's cousin, he slept in Bienvenido's house which is about three kilometers away from his house, located in the same *barangay*. He said he arrived home at about 8:00 in the morning of September 21, 1995, and his wife, children and a neighbor, Roland, were in his house. The houses of Nelida and Deodelfa are just near, about 30 meters and 20 meters away, respectively, from his house. After arrival, he gathered *tuba* in the land owned by Felix Eamiguel some 300 meters away from his house. He finished gathering *tuba* at about 9:00 in the morning and he did not see or hear of any unusual incident that had happened. Appellant claims that while he was going to gather *tuba*, he saw Deodelfa pasturing a carabao about 100 meters away from him. After gathering *tuba*, he went home and asked permission from his wife to go to Cebu in order to ask money from their son. He then left the place on that morning of September 21, 1995. It was only upon his return when he went to the place of his older sister in Barangay Rizal, Ormoc City that he came to know of the incident and his being a suspect. He was arrested and turned over to the police of Kananga, Leyte.[8]

Bienvenido Cataag corroborated the testimony of appellant that the latter spent the evening of September 20, 1995 at his house until the morning of September 21, 1995.[9]

The trial court sustained the evidence presented by the prosecution and disregarded appellant's defense of denial and alibi. It found appellant guilty beyond reasonable doubt of the crime of rape with homicide and imposed upon him the death penalty. Appellant was ordered to indemnify the heirs of Nelida the amount of ₱50,000.00 and another ₱50,000.00 as moral damages.[10]

In his Brief, appellant imputes to the trial court the following errors:

---

[8] TSN, February 23, 1998, pp. 7-26.

[9] TSN, April 30, 1998, pp. 8-13.

[10] Penned by Judge Fortunito L. Madrona, *Rollo*, p. 16.

Supreme Court E-Library

I

THE COURT *A QUO* ERRED IN ASSUMING THAT IT WAS BUT NATURAL FOR THE ACCUSED-APPELLANT, WHO WAS PREVIOUSLY DRUNK, TO PARTAKE OF THE JUICES OF THE COCONUT FRUIT, ALLEGEDLY, IN THE COMPANY OF THE LATE VICTIM, AND IN IMPLYING THAT THE ACCUSED-APPELLANT COULD HAVE PERPETRATED THE OFFENSE CHARGED SINCE HE WAS WITHIN THE VICINITY AT AROUND THE FATEFUL HOUR, GIVEN THAT THESE ARE MERE SPECULATIONS AND CONJECTURES THAT CANNOT SUBSTITUTE FOR PROOF BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* ERRED IN FINDING THAT THE ACCUSED-APPELLANT HAD CARNAL KNOWLEDGE OF THE LATE VICTIM ALTHOUGH THE EVIDENCE ON RECORD, PARTICULARLY THE TESTIMONY OF KEY PROSECUTION WITNESS DEODELFA ULAN-ULAN, DOES NOT ESTABLISH THIS WITH MORAL CERTAINTY.

III

THE COURT *A QUO* ERRED IN ACCORDING WEIGHT AND CREDENCE TO THE ALLEGED EYEWITNESS TESTIMONY OF DEODELFA ULAN-ULAN INSPITE OF IT BEING PREGNANT AND REPLETE WITH MATERIAL FLAWS.

IV

THE COURT *A QUO* ERRED IN CONSIDERING THE UTTERANCE MADE BY THE ACCUSED-APPELLANT'S SON, BENJIE, TO PRESCILLANO ULAN-ULAN, IMPLICATING HIS FATHER AND "ADDING TO THE OVERALL CONSIDERATION OF FACTS", ALTHOUGH THE SAME IS PATENTLY HEARSAY.

V

THE COURT *A QUO* ERRED IN DISCARDING THE TWIN DEFENSES OF DENIAL AND ALIBI INTERPOSED BY THE ACCUSED-APPELLANT DESPITE THE APPARENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[11]

---

[11] *Rollo*, pp. 50-51.

Supreme Court E-Library

We find no cogent reason to disturb the decision of the trial court except as to the damages it awarded in favor of the heirs of the victim.

In support of the first assigned error, appellant argues that the finding of the trial court: (a) that it was but natural for the appellant, having come from a drinking spree, to partake of the refreshing juice of a coconut fruit, and (b) that appellant most probably perpetuated the offense at the alleged time of 7:40 in the morning on his way home since he admitted that he arrived at his home located in the same barangay where Nelida resided at around 8:00 in the morning, are mere speculations and conjectures. He submits that these facts do not establish a link whatsoever between the crime charged and him as the author thereof, since such insinuations are not grounded on proof beyond reasonable doubt.

As to the second and third assigned errors, appellant submits that not only was the fact of rape not proved by the testimony of Deodelfa but the latter's testimony should be disregarded altogether for being replete with material flaws and inconsistencies that render the same not credible at all.

Anent the fourth assigned error, appellant contends that the testimony of Prescillano to the effect that Benjie, the son of the appellant, said to him that his father raped Nelida, should not have been considered by the trial court as "adding to its over-all consideration" of the case since said utterance by Benjie is hearsay.

As to the fifth assigned error, appellant concedes that his defense of denial and alibi may be weak but just the same it should be sufficient to acquit him considering that the evidence for the prosecution is intrinsically weak.

We are not convinced.

A thorough review of the decision of the trial court reveals that the alleged conjectures referred to by appellant under the first assigned error are observations of the trial court in disregarding appellant's defense of alibi, although corroborated by defense witness Bienvenido Cataag. Based on the fact

Supreme Court E-Library

that appellant's house is only three kilometers away from Bienvenido's house and twenty meters away from the house of Deodelfa, the trial court correctly concluded that appellant's alibi did not pass the test of physical impossibility. It is a well-settled rule that for the defense of alibi and denial to prosper, appellant must prove by positive, clear and satisfactory proof that it was physically impossible for him to have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.[12] Clearly, the trial court did not use said observations to establish the crime of rape with homicide or as basis for the verdict of conviction.

The resolution of the case hinged on the assessment of the testimony of eyewitness Deodelfa as against the testimony of the appellant. The trial court gave more credence to the positive and direct testimony of Deodelfa, an eyewitness to the crime and discarded the denial and alibi of the appellant.

Confronted with the conflicting versions of the prosecution and the defense at the core of which is the issue of credibility of witnesses, we generally defer to the determination of the trial court on the matter.[13] This is so because the evaluation of the testimonies of witnesses must be left to the trial court as the agency in the best position to observe the witnesses' demeanor on the stand.[14] The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full

---

[12] *People vs. Espino,* 326 SCRA 753, 764 (2000); *People vs. Blaco,* 324 SCRA 280, 387 (2000).

[13] *People vs. Julian-Fernandez,* 372 SCRA 608, 622 (2001); *People vs. Guzman,* 372 SCRA 344, 350 (2001).

[14] *People vs. Ombreso,* 372 SCRA 675, 685 (2001); *People vs. Digma,* 345 SCRA 185, 199 (2000).

Supreme Court E-Library

realization of the solemnity of an oath, the carriage and mien.[15] Absent any showing that the trial court has overlooked, misapprehended, or misapplied some facts of weight and substance which, if properly considered would have altered the result of the case, the assessment of the trial court regarding the credibility of witnesses deserves to be sustained on appeal.[16]

Enlightening is her candid and unequivocal narration of how the appellant raped the helpless and unconscious Nelida and killed her by slicing her throat with a scythe, thus:

PROS. BELETA

Q: From that distance, did you actually see Zoilo Magallanes climbing the tree?
A: Yes, Ma'am.

Q: After he came down, what happened?
A: He called up Maria Nelida because he was trying to borrow a bolo.

Q: Now, where was Maria Nelida then at that time when she was called by the accused, Zoilo Magallanes?
A: She was at the ricefield cutting weeds.

Q: And how far was she to you from the window where you were?
A: Ten (10) meters away or a little bit farther from the coconut tree which was then climbed by Zoilo Magallanes.

Q: When Zoilo Magallanes called Maria Nelida Ulan-Ulan to borrow her bolo, what did this Maria Nelida do?
A: Maria Nelida approached Zoilo Magallanes and gave the bolo to the latter.

Q: And what did Zoilo Magallanes do with the bolo?
A: He used that bolo to bore a hole on the coconut fruit.

Q: What did he do with the coconut fruit?
A: Zoilo Magallanes put down the bolo and started drinking the water of the coconut.

---

[15] *People vs. Abella*, 339 SCRA 129, 144-145 (2000).

[16] *People vs. Del Valle*, 372 SCRA 297, 304 (2001); *People vs. Benoza*, 371 SCRA 165, 171 (2001).

Supreme Court E-Library

Q: What did Nelida do after Zoilo Magallanes put down the bolo?
A: She got the bolo and she herself also bore a hole on a coconut fruit for drinking purposes.

Q: Did she in fact drink water from the coconut?
A: Yes, Ma'am.

x x x x x x x x x

Q: And while drinking the water from the coconut, what happened?
A: When Nelida was in the process of drinking water from the coconut fruit, Zoilo Magallanes boxed her abdomen (witness demonstrated to the Court) and also on the lower portion of her body.

Q: Now, what happened to Maria Nelida after she received that several fist blows all over her body from the accused.

. . . . . .

A: She fell to the ground face up.

PROS. BELETA

Q: Could you see her still moving when she fell down?

COURT

She fell down to the ground on her back. (Witness demonstrated to the Court bringing both her arms on level with her head and her hands at her back.)

PROS. BELETA

Q: Was she still moving when she fell down with her hands at her back?
A: No more, she suddenly fell to the ground.

Q: She was lying on the ground. Did you see that she was no longer moving? What did this fellow, Zoilo Magallanes, do?
A: Zoilo Magallanes removed the jogging pants of Nelida.

Q: And after removing the pants, what did he do?
A: Zoilo Magallanes also removed his *maong* short pants.

Supreme Court E-Library

Q: And after removing his *maong* short pants, what did he do next?
A: Zoilo Magallanes lay on top of her and performed the push and pull motion.

COURT

Pumping motions.

PROS. BELETA

Q: After that, what did he do with Maria Nelida after he gained his bestial desire in raping the victim?
A: He cuddled Nelida and dragged her to the place where eggplants were and placed her beneath it. And then and there he cut Nelida's throat. (Witness stands up from the witness stand and made some gestures showing to the Court motions as if she was slicing somebody.)

Q: To what portion did the accused carry Maria Nelida, nearer to your house or farther from your house?
A: To the portion nearer to our house, Ma'am.

Q: So how far was that from the place where you were to the place where Maria Nelida was carried and later on inflicted that fatal injury on the neck? How far?
A: Less than thirty (30) meters but more than twenty (20) meters.

Q: And what instrument did the accused use in cutting ("got-got") off the neck of the victim?
A: A scythe.

. . . . . .

PROS. BELETA

Q: You said previously, a few minutes ago, that after Zoilo Magallanes delivered fist blows on the stomach and down to the leg, you saw Nelida unconscious already. You mean to say that she was already lifeless when the accused performed the sexual act on the victim?
A: She was already unconscious.

Q: And after she was carried to the lower portion underneath the eggplant, did she regain her consciousness?
A: No more, she was still unconscious.

Supreme Court E-Library

Q: So after Zoilo Magallanes sliced or inflicted that fatal wound on the neck of Nelida, what did he do?
A: He left Nelida.[17]

Deodelfa Ulan-Ulan remained constant and steadfast despite intense grilling by defense counsel on cross-examination:

Q: So it was early morning and your husband already left for work. Were you then not preparing breakfast for you and your children?
A: Not yet, Sir. I was just preparing milk for the children.

Q: So you were then busy attending to your children inside your house?
A: Yes, Sir.

Q: So since you were busy attending to your children, you had no time to see for yourself what was happening outside your house?

. . . . . .

A: I had the occasion to see, because the incident happened at that time when my attention was focused on him.

ATTY. BORGUETA

Q: Was your attention called by Zoilo Magallanes at that time?
A: No, Sir, because I could not even shout. But he was then facing our house.

Q: So without Zoilo Magallanes calling your attention, you simply saw him outside. Is that what you mean?
A: Yes, Sir, I saw him.[18]

. . . . . .

Q: After you made mention that Nelida was hit by several blows coming from Zoilo Magallanes and in fact she fell down. Is that correct?
A: Yes, Sir.

---

[17] TSN, May 7, 1997, pp. 11-18.

[18] TSN, May 7, 1997, pp. 35-37.

Supreme Court E-Library

Q: From a distance, Ms. Witness, you actually saw Nelida fall down?

A: Yes, Sir, because the place was a clearing and there was no obstruction. And in fact the land where they were situated had carabao grasses.

Q: So ordinarily, when the person received those blows coming from Zoilo Magallanes, of course, that person would be weakened. Is that what you mean?

A: Yes, Sir, because the woman was smaller than me. (Witness demonstrating to the Court bringing her arm at her breast level.)

Q: So because Nelida was weakened, she fell down, but not necessarily that she was unconscious, because you have no knowledge whether she was unconscious, because you were far away. Thirty (30) meters away from the place where Nelida fell down?

A: I knew it that she was then unconscious because she was immobilized. She was not moving. And I presumed that the water of the coconut fruit which she drank was still within her throat (witness demonstrated to the Court by bringing her both arms upward and she even tilted and moved her back towards the bench.)

Q: Do you agree with me, Ms. Witness, that since you were far apart, you have no personal knowledge whether she was unconscious or not?

A: She was unconscious, Sir.

Q: How come that you have that personal knowledge? And why are you sure that she fainted on that particular incident?

A: She was motionless while Zoilo Magallanes was then stepping on both legs of Nelida and pushing her to the ground, pinning her down to the ground.

. . . . . .

ATTY. BORGUETA

Q: After you have seen that Zoilo Magallanes was pushing down Nelida, what did Zoilo Magallanes do next?

A: He removed the pants of Nelida, Sir.

Q: So therefore Nelida was wearing *maong* long pants?

A: No, sir, it was a pair of jogging pants.

Supreme Court E-Library

Q: How about Zoilo Magallanes, after that, what did Zoilo Magallanes do?
A: He also removed his *maong* short pants.

Q: So that is what you have seen that Zoilo Magallanes removed the pants of Nelida, as well as he removed his pants?
A: Yes, Sir.

Q: And that's all you have seen as regards to that particular situation?
A: Zoilo Magallanes lay on top of her and performed the pumping motion.

Q: That's all what you have seen as regards that pumping situation?
A: Until the time when he cut the throat of the victim, Sir.

Q: So therefore those were the only things that you have seen? You have seen that Zoilo Magallanes has removed the panty of Nelida?

. . . . . .

COURT

Let the witness clarify. The Court will ask the question on that.

Q: Did you see the accused take off the panty of Nelida, aside from the jogging pants?
A: I only saw the taking off of the jogging pants. I am not sure whether the panties were taken off because Nelida was already covered by himself.

Q: Did you also see the accused taking off his entire underwear?
A: Everything was removed when he removed his short pants. Nothing was left on his body.

Q: So he was entirely naked?
A: Yes, Your Honor.

COURT

Proceed.

Supreme Court E-Library

ATTY. BORGUETA

Q: Have you seen the sex organ of Zoilo Magallanes since he was already totally naked? Did you see the male organ of Zoilo Magallanes out in the open?

A: No, Sir, I only saw his buttocks because his back was towards me. (Witness demonstrated to the Court by standing up and ducking, as is she was removing something from her body.)

Q: For how long did it take Zoilo Magallanes to do the sexual thing against the victim, Nelida?

A: That was for a short moment, for about six or ten minutes.

Q: From then on, he dragged the body of Nelida to what place, Mrs. Witness?

A: He dragged the body of Nelida towards her house.

Q: To what particular portion, grassy portion or there were a lot of trees standing there?

A: To the place where the eggplants were situated, as tall as my hips. (Witness again demonstrated to the Court.)

Q: So is that what you are trying to say, Ms. Witness, that he dragged the body of Nelida to that portion where the eggplants were located?

A: Yes, Sir.

Q: So what then do you think was the position of Zoilo Magallanes in dragging Nelida to that particular place?

A: He tried to hide the body of the victim, Sir. (Witness demonstrated by standing up and making gestures using her left hand as the side where the eggplants are.) To the right is the place where the body of Nelida was situated and to the left is her house.

Q: And all these things took place in broad daylight, early morning? Is that what you are trying to impress, Ms. Witness?

A: Yes, Sir.

Q: When all these things were happening, did you ever attempt to call the attention of Zoilo, perhaps by telling him not to proceed with his evil acts?

A: I was afraid of him, Sir. Because if I will tell him to refrain from doing something, he might go to the house and threaten to kill us.

Supreme Court E-Library

Q: So you are trying to say, Ms. Witness, that you did nothing, perhaps to call the attention of Zoilo Magallanes that someone was looking for him and perhaps to prevent also the things to happen?

A: No, Sir, because he was armed with a scythe. I was frightened and scared.[19] (Italics supplied)

Indeed, there is nothing in her testimony that would suggest that Deodelfa was merely fabricating tales or embellishing her story to implicate the appellant. The flaws, if any, refer only to minor or inconsequential details which do not affect her credibility or the veracity of her declarations. We cannot imagine how Deodelfa was able to give a consistent and categorical narrative of how the crime was perpetrated if she did not see the actual incident herself.

It is axiomatic that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness.[20]

Moreover, there is no showing of any improper motive on the part of Deodelfa to testify falsely against the appellant or to implicate him falsely in the commission of so heinous a crime. The logical conclusion, then, is that no such improper motive exists and that her testimony is. worthy of full faith and credence.[21]

Quite unfortunately for appellant, we see no justification to reverse the trial court's appreciation of the testimony of Deodelfa. The trial court's assessment of the credibility of Deodelfa, finding her testimony to be "a positive, straightforward, and natural narration of facts",[22] deserves our highest respect.

---

[19] TSN, May 7, 1997, pp. 47-56.

[20] *People vs. Torres*, 366 SCRA 408, 424 (2001); *People vs. Dayuha*, 342 SCRA 561, 566 (2000).

[21] *People vs. Dizon*, 368 SCRA 383, 394-395 (2001); *People vs. Gayomma*, 315 SCRA 639, 648 (1999).

[22] *Rollo*, p. 19.

Supreme Court E-Library

Contrary to appellant's protestations, the fact of rape was convincingly proved by the testimony of Deodelfa and the physical evidence. Deodelfa testified that she saw appellant took off the victim's jogging pants, then his own *maong* short pants, leaving him entirely naked.[23] She saw appellant lay on top of the victim and the bare buttocks of appellant doing the pumping motion on the victim for about six to ten minutes.[24]

Dr. Delmonte, who conducted the autopsy on Nelida's body, confirmed that Nelida's sex organ had been penetrated by a penis.[25] He stated that the "whitish discharge" found on the external genitalia of Nelida was spermatozoa.[26] Upon cross-examination, he explained that the owner of the sperm cells found in Nelida's genitalia could be the person who had the "most recent contact" with her.[27] Deodelfa saw appellant rape Nelida just before she was killed.

Furthermore, the findings of the medical examination and report reveal injuries or circumstances supportive of sexual assault which strengthen the testimony of Deodelfa that Nelida was raped before she was killed. A witness' testimony which is corroborated by the medico-legal report is credible.[28]

Appellant insists that Deodelfa is not a credible witness because the fact that she was profusely bleeding while menstruating at that time, and thus, could not leave her home due to excruciating pain, militates against her capacity for telling the truth for it is amazing that despite the agony she was going through, she was still able to visually focus on what was going on outside. Also, he faults her for two reasons: (a) she never

---

[23] TSN, May 7, 1997, pp. 15, 49-53.

[24] TSN, May 7, 1997, pp. 15, 51-54.

[25] TSN, May 6, 1997, p. 16.

[26] TSN, May 6, 1997, pp. 16-19.

[27] TSN, May 6, 1997, p. 29.

[28] *People vs. Doctolero, Sr.*, 363 SCRA 404, 410 (2001); *People vs. Molina*, 312 SCRA 130, 134 (1999).

Supreme Court E-Library

helped Nelida and (b) she never went to the place where Nelida was dragged despite opportunity to do the same.

Appellant is grasping at straws. The fact that Deodelfa was having her menstrual period at the time of the incident does not affect her credibility as a witness. As she clearly clarified on the witness stand, her physical discomfort did not prevent her from being a keen observer to the gruesome acts perpetuated by appellant upon Nelida. She had likewise sufficiently explained that while she may have had opportunity to stop appellant and help the victim, her physical discomfort and, more importantly, the fear of death for herself and her two young children, if appellant knew that she was witnessing what he was doing to Nelida, prevented her from trying to rescue Nelida by at least making known her presence to appellant. Besides, the fact that Deodelfa did not think of going near the body of Nelida after appellant had left her does not render her testimony incredible. It should be remembered that different people react differently to an unusual event and there is no standard of behavior when a person becomes a witness to something so shocking or gruesome as rape with homicide especially if the assailant is near.[29] The sight of the killing must have unnerved Deodelfa and her reluctance to get involved while the crime is being committed is not an unnatural reaction of some individuals.[30]

We agree with appellant that the testimony of Prescillano to the effect that Benjie, the son of the appellant, said to him that his father had raped Nelida, should not have been considered by the trial court at all. The alleged utterance of Benjie is indeed hearsay and lacks probative value because Benjie was never presented in court. It is of no moment that no timely objection was raised during the trial in the face of such evidence.[31] A conviction can never be rooted thereon because it is not grounded

---

[29] *People vs. Morial, 363* SCRA 96, 119 (2001); *People vs. Naredo*, 276 SCRA 489,496 (1997).

[30] *Ibid., Naredo* case.

[31] *People vs. Parungao*, 265 SCRA 140, 147 (1996).

Supreme Court E-Library

on the personal knowledge of the witness[32] but on the knowledge of some other person who was not cross-examined on the witness stand.[33]

Nevertheless, as we have found earlier, appellant's guilt was proven by Deodelfa's positive and categorical testimony, buttressed by the physical evidence. It is for this reason that appellant's defense of denial and alibi must fail. Absent any showing of ill motive on the part of the eyewitness testifying on the matter, a categorical, consistent and positive identification of the accused prevails over denial and alibi.[34]

Moreover, appellant's alibi is weak since he failed to establish that he could not be at the vicinity of the *locus criminis* when the rape and killing took place. For the defense of alibi to prosper, the requirements of time and place must be strictly met. The accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be impossible for him to be at the scene of the crime when it was committed.[35]

Thus, between the positive identification made by Deodelfa and the bare denial and alibi of appellant, there is scarcely any serious doubt but that decisive weight must be given to the positive testimony of Deodelfa.

Appellant is found guilty beyond reasonable doubt of the complex crime of rape with homicide, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, *viz.*:

---

[32] Section 36, Rule 130, Revised Rules of Court.

[33] *People vs. Canlas*, 372 SCRA 401, 416 (2001); *People vs. Cui*, 314 SCRA 153, 166 (1999).

[34] *People vs. Villaver*, 370 SCRA 618, 622 (2001); *People vs. Basquez*, 366 SCRA 154, 170 (2001).

[35] *People vs. Viernes*, 372 SCRA 231, 250 (2001); *People vs. Mosende*, 371 SCRA 446, 451 (2001).

Supreme Court E-Library

Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. . . . .
2. When the woman is deprived of reason or otherwise unconscious; and
3. . . . .

. . . .

When by reason or on occasion of the rape, a homicide is committed, the penalty shall be death.

. . . .

It having been established beyond any shadow of a doubt that appellant raped Nelida and killed her on the occasion of the rape, the mandatory penalty of death is inescapable.

Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[36] that R.A. No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

With regard to the civil indemnity, the trial court erred in awarding ₱50,000.00 only. We rule that the heirs of the victim of rape with homicide should be awarded the amount of ₱100,000.00. Current judicial policy has authorized the mandatory award of ₱50,000.00 in case of death, and ₱50,000.00 upon the finding of the fact of rape.[37] Thus, if homicide is committed by reason or on the occasion of the rape, indemnity in the amount of ₱100,000.00 is fully justified and properly commensurate with the seriousness of the said complex crime.

---

[36] 267 SCRA 682 (1997).

[37] *People vs. Tablon,* G.R. No. 137280, March 13, 2002; *People vs. Salonga*, 329 SCRA 468, 490. (2000).

Supreme Court E-Library

As to moral damages, the Court deems it just and reasonable that in cases of rape with homicide, the heirs of the victim should be awarded the amount of ₱75,000.00.

No actual damages were awarded by the trial court since the prosecution failed to prove any amount thereof. To be entitled to such damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[38] However, in accordance with our recent ruling in the case of *People vs. Abrazaldo*,[39] we hereby grant temperate damages in the amount of ₱25,000.00 on the ground that it was reasonable to expect that the family of the victim incurred expenses for the coffin, burial and food during the wake.[40]

WHEREFORE, the Decision, dated October 15, 1998, of the Regional Trial Court of Ormoc City (Branch 35) in Criminal Case No. 4728-0 finding accused Zoilo Magallanes guilty beyond reasonable doubt of rape with homicide and imposing upon him the *DEATH PENALTY* is *AFFIRMED* with *MODIFICATION* that he is ordered to pay the heirs of Maria Nelida Ulan-Ulan, the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity in addition to Seventy Five Thousand Pesos (₱75,000.00) as moral damages and Twenty Five Thousand Pesos (₱25,000.00) as temperate damages.

Upon the finality of this decision, and pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, let the records of this case be forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

---

[38] *People vs. Delos Santos*, G.R. No. 135919, May 9, 2003; *People vs. Alcodia*, G.R. No. 134121, March 6, 2003.

[39] G.R. No. 124392, February 7, 2003.

[40] *People vs. Caritativo*, G.R. No. 145425-53, June 10, 2003; *People vs. Tumulak*, G.R. No. 112459, March 28, 2003.

Supreme Court E-Library

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, and *Tinga, JJ., concur.*

Corona and *Carpio-Morales, JJ.*, on leave.

SECOND DIVISION

[G.R. No. 142383. August 29, 2003]

ASIAN TRANSMISSION CORPORATION, *petitioner, vs.* **CANLUBANG SUGAR ESTATES,** *respondent.*

SYNOPSIS

Respondent Canlubang Sugar Estates (CSE) is the owner of a parcel of land with an area of fifty thousand square meters located within the Canlubang Industrial Park in Canlubang, Laguna. On May 30, 1978, the CSE and the Asian Transmission Corporation (ATC) executed a deed, denominated as an Adoption of Lease Agreement, over the subject property under which the parties agreed, *inter alia*, that the lease shall be for a period of twenty-five years effective July 1, 1973, subject to renewal at the option of the lessee for another term of twenty-five years under the same terms and conditions except only as to the annual rental payable. The parties also agreed as part of the Memorandum of Agreement that the annual rental shall be reviewed by the parties, and if reasonably adjusted by their mutual agreement, every five (5) years during the effectivity of the lease. Sometime in 1993, CSE proposed a reduction of the leased area by 14.4% or seven thousand five hundred (7,500) square meters and the increase of the annual rental to ₱15,000,000. ATC wrote CSE, objecting to the reduction of the area of the leased property and the increase of the annual rental by 500% or to ₱15,000,000. Negotiations forthwith ensued, but the parties failed to arrive at a compromise. On October 25, 1993, the CSE notified the