Supreme Court E-Library

property in question was owned and controlled by Abellera, and anyone who enters the same without her consent shall be properly dealt with under the law.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit. The decision dated May 15, 1998 of the Court of Appeals in CA-G.R. CR No. 16015, and the Orders of the Regional Trial Court of Balayan, Batangas, Branch 14, declaring petitioner in contempt of court, are *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and *Azcuna, JJ.*, concur.

EN BANC

[G.R. No. 147200. December 17, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPHERE TAJADA @ Tata,** *accused-appellant.*

SYNOPSIS

In convicting appellant for the crime of rape with homicide, and sentencing him to death, the trial court relied heavily on the string beans and the 2 pieces of blue laundry soap found scattered on the ground near where the victim's body was discovered. It concluded that since appellant was seen walking on the same road traversed by the victim and carrying string beans and some blue laundry soap, he must be responsible for the rape-slay of the victim.

The Court was not convinced. The pieces of circumstantial evidence relied upon by the trial court are insufficient to prove the guilt of appellant beyond reasonable doubt. They did not pass the requisite moral certainty as they admit the alternative

Supreme Court E-Library

inference that other persons, not necessarily the appellant, may have perpetrated the crime. The pieces of laundry soap and string beans are not enough to pinpoint the appellant, to the exclusion of all others, as the author of the crime. Mere suspicions and speculations cannot be the bases of conviction in a criminal case, especially so in the instant case involving the supreme penalty of death.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—** A judgment of conviction based on circumstantial evidence may be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; *i.e.*, the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.

2. **ID.; ID.; BURDEN OF PROOF IN CRIMINAL CASES.—** Mere suspicions and speculations cannot be the bases of conviction in a criminal case, especially so in the instant case involving the supreme penalty of death. In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense he is charged — *ei incumbit probatio non qui negat.* Though the defenses of denial and alibi are inherently weak, the conviction of accused-appellant must rest not on the weakness of his defense but on the strength of the prosecution's evidence. This applies with more vigor in the case at bar where the evidence of the prosecution is purely circumstantial. A judgment of conviction must rest on nothing less than moral certainty.

3. **ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED IN CASE AT BAR.—** While we strongly condemn the senseless and gruesome crime and sincerely commiserate with the suffering and emotional stress suffered by the bereaved family of the victim, nevertheless, we find the pieces of circumstantial evidence insufficient to prove the guilt of accused-appellant beyond reasonable doubt. They do not pass the requisite moral certainty,

Supreme Court E-Library

as they admit of the alternative inference that other persons, not necessarily the accused-appellant, may have perpetrated the crime. Where the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be acquitted. Indeed, it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.

APPEARANCES OF COUNSEL

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

DECISION

YNARES-SANTIAGO, *J.*:

This is an automatic review of the decision[1] of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, finding accused-appellant Josephere Tajada @ Tata guilty of the crime of Rape with Homicide, and sentencing him to suffer the penalty of death and to pay the heirs of the victim, Sabina Ejalon, the amounts of ₱100,000.00 as civil indemnity and ₱50,000.00 as moral damages.

The Information charging accused-appellant of the crime of Rape with Homicide, reads:

That, in the afternoon on or about the 15th day of September, 1997, in the municipality of Leon B. Postigo, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge with one SABINA EJALON, a 13 year old child, against her will and without her consent; that in pursuance of his evil motive and to better accomplish his evil purpose the said accused, did then and there attack, assault, box, drag and beat one said SABINA EJALON, thereby inflicting upon her injuries on the vital parts of her body which caused her instantaneous death; that as a result of the crime the heirs of herein victim suffered the following damages, *viz.*:

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[1] Penned by Judge Wilfredo G. Ochotorena.

Supreme Court E-Library

a) Indemnity for victim's death..... ₱50,000.00

b) Loss of earning capacity..... ₱20,000.00

CONTRARY TO LAW.[2]

Upon arraignment on May 8, 1998, accused-appellant pleaded not guilty.[3] Trial on the merits ensued.

The facts as presented by the prosecution are as follows:

At around 5:00 in the afternoon of September 15, 1997, accused-appellant Josephere Tajada @ Tata, who appeared intoxicated, went to the store of Lydia Lapuag Arenda in Barangay Manil, Leon Postigo, Zamboanga del Norte. Lydia noticed that accused-appellant was carrying two bundles of string beans and a plastic bag containing 6 pieces of blue laundry soap. Accused-appellant asked Lydia if he can barter his string beans and laundry soap for some cigarettes, but the latter refused and told accused-appellant to go home.[4]

At about the same time, Benedicto Casipong (Benedicto) met the victim, 13 year old Sabina Ejalon, along the Barangay Manil Road, Leon Postigo, Zamboanga del Norte. Benedicto was then headed to the beach and carrying a sack of copra, while the victim, who was wearing a green girl scout uniform, green hat, and slippers, was on her way home from school.[5]

Benedicto continued walking on the same road. Fifty meters from where he chanced upon the victim, Benedicto met accused-appellant. He saw the latter carrying string beans and a plastic bag containing blue laundry soap.[6]

The following day, September 16, 1997, Sherlita Ejalon went looking for her daughter, Sabina, who had not come home.

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[2] *Rollo*, p. 8.

[3] Records, p. 22.

[4] TSN, July 23, 1999, pp. 2-7.

[5] TSN, November 27, 1998, pp. 2-7.

[6] *Ibid.*

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She met Benedicto, who told her that he saw the victim the previous day on her way home from school.[7]

On September 17, 1997, at around 8:00 in the morning, Benedicto and his companion were on their way back to the farm and traversing the same Barangay Manil Road when Benedicto saw the victim's green girl scout hat near the place where he met her two days ago. Benedicto immediately ordered his companion to fetch Barangay Captain Mario Langan.[8] Mario and others came and searched the area. They started to walk downhill and about 15 meters from the place where the green hat was found, they discovered the bruised lifeless body of the victim on a dry creek, lying face up with a back pack on her back.[9] She was wearing a school uniform consisting of a white polo-blouse and a sky blue skirt raised to her waist, exposing her panties which were lowered to her thighs.[10] Likewise found at the crime scene were the slippers of the victim, 2 pieces of blue laundry soap, and string beans scattered on the ground.[11]

Dr. Jane L. Jaug came and examined the cadaver of the victim right at the crime scene. Her examination yielded the following results:

* Examined the dead body with her left arm at the back with plenty of flies.

HEAD AND NECK	: Hematoma with contusion about a fist in size of the Right eye. : Lacerated wound about an inch in length just below the Right eye. : Contusion of the Right face about 4 cm. in width x 5 cm. in length with hematoma at the

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[7] TSN, November 27, 1999, p. 4.

[8] *Ibid.*

[9] TSN, July 24, 1998, p. 13; October 15, 1999, p. 2; February 5, 1999, p. 6.

[10] TSN, July 24, 1998, p. 15 and February 5, 1999, p. 6.

[11] TSN, July 24, 1998, p. 14.

Supreme Court E-Library

	zygomatic area of the Right face about a fist in size. : Fracture of the nasal bone, with blood clots on both nostrils. : Multiple abrasions at the surrounding area of the mouth, swollen and contuded. : Lacerated wound about an inch in length at the upper lip.
CHEST & BACK	: Multiple contusions variable in sizes reddish to greenish in color.
ABDOMEN	: Distended with contusions at the Epigastric area about 2 cm. x 2 cm. in size.
GENITALIA	: Presence of white underwear worn invertedly. : Absence of pubic hair. : Presence of grayish-white to yellowish in color seminal fluids at the labia, no laceration nor blood was noted at the perineum.
ANUS	: Presence of hard to soft yellowish stools.
Extremities	: Fracture of the left arm with multiple linear abrasions. : Abrasions at the left lower extremity, multilinear.[12]

In the meantime, Benedicto informed the Barangay Captain that he saw accused-appellant carrying string beans and a plastic bag of blue laundry soap while following the victim at around 5:00 p.m. of September 15, 1997. Hence, accused-appellant was arrested and, on the basis of the medical findings, charged of the crime of rape with homicide.[13]

Accused-appellant, on the other hand, vehemently denied the accusation against him. He claimed that at around 12:00 noon of September 15, 1997, he and his wife, Mercy Tajada, together with their child, Jomar, were selling chicken at the public market of Sindangan, Zamboanga del Norte. At about 4:00 p.m. of the same day, they went home and arrived at Manil, Leon Postigo, Zamboanga del Norte at 5:00 in the afternoon.

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[12] Records. p. 54.

[13] TSN. July 24. 1998. pp. 16-17.

Supreme Court E-Library

While walking along the *barangay* road, they met Benedicto Casipong who was carrying a basket containing string beans. He greeted him but was ignored. On September 17, 1997, Domingo Egot, a member of *Bantaybayan* together with two others, arrested accused-appellant for raping and killing Sabina Ejalon.[14]

Accused-appellant's testimony was corroborated by his wife Mercy Tajada, who testified that they did not meet the victim on their way home from the public market.[15]

On November 24, 2000, the trial court found accused-appellant guilty beyond reasonable doubt of Rape with Homicide, the dispositive portion of which states:

> WHEREFORE, in view of all the foregoing facts and consideration, the Court hereby finds the herein accused, Josephere Tajada guilty beyond reasonable doubt of the crime of Rape with Homicide charged in the above-entitled case as defined and penalized under Article 335 of the Revised Penal Code in relation to and as amended by Republic Act No. 7659 and accordingly, he is hereby sentenced to suffer the penalty of *death* and ordered to indemnify the heirs of the victim ₱100,000.00 plus moral damages of ₱50,000.00 (*People vs. Payot*, G.R. No. 119352, June 8, 1999)
>
> COSTS *de officio*.
>
> SO ORDERED.[16]

In view of the imposition of the death penalty, the case is before us on automatic review, pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

Accused-appellant raises the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

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[14] TSN, August 25, 2000, pp. 2-11.

[15] TSN, April 7, 2000, pp. 2-18.

[16] *Rollo*, pp. 35-36.

Supreme Court E-Library

DOUBT OF THE CRIME OF RAPE WITH HOMICIDE DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

II

THE TRIAL COURT GRAVELY ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY APPELLANT DESPITE THE WEAKNESS OF THE PROSECUTION'S ALLEGED 'CIRCUMSTANTIAL' EVIDENCE.[17]

A judgment of conviction based on circumstantial evidence may be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person; *i.e.,* the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[18]

In the case at bar, the prosecution was able to establish the following circumstantial evidence:

(1) In the afternoon of September 15, 1997, accused-appellant was carrying two bundles of string beans and a plastic bag containing 6 pieces of blue colored laundry soaps.

(2) At around 5:00 p.m. of September 15, 1997, Benedicto Casipong met the victim at the Barangay Manil road, Leon Postigo, Zamboanga del Norte. She was wearing a green hat, green girl scout uniform and a pair of slippers.

(3) Benedicto Casipong continued walking and met accused-appellant more or less 50 meters from where he met the victim. Accused-appellant was carrying string beans and a plastic bag containing blue colored laundry soaps.

(4) The next day, Benedicto Casipong met Sherlita Ejalon the mother of the victim who was looking for the latter.

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

[18] *People v. Quitorio, et al.*, 285 SCRA 196, 208 [1998], citing *People v. Tiozon,* 198 SCRA 368, 381 [1991]; *People v. Alvero, Jr.*, 224 SCRA 16, 27 [1993]; *People v. Genobia*, 234 SCRA 699, 706 [1994].

Supreme Court E-Library

(5) At around 8:00 in the morning of September 17, 1997, Benedicto Casipong found the green hat of the victim near the place where he met her 2 days ago.

(6) Minutes latter, the searching team discovered the lifeless body of the victim downhill in a dry creek about 15 meters from the place where her green hat was found. She was wearing a school uniform consisting of a white polo-blouse and a sky blue skirt raised to her waist, thus, exposing her panties lowered to her thighs. Scattered near the body of the victim were string beans and 2 pieces of blue laundry soap.

In convicting accused-appellant, the trial court relied heavily on the string beans and the 2 pieces of blue laundry soap found scattered on the ground near where the victim's body was discovered. It concluded that since accused-appellant was seen walking on the same road traversed by the victim and carrying string beans and some blue laundry soap, he must be responsible for the rape-slay of the victim.

We are not convinced. First it was not established that accused-appellant was at any time in the company of the victim. Neither was it established that accused-appellant was purposely following the victim who walking about 50 meters ahead of him, nor was it proven that he proceeded to the scene of the crime. We note that the Barangay Manil Road is the usual and customary route traversed by the inhabitants of Barangay Manil, Leon Postigo, Zamboanga del Norte from their homes to the market, to the nearby beach, and vice-versa. Hence, the testimony of Benedicto Casipong to the effect that accused-appellant was following the victim on purpose is grounded on conjectures and speculations.

Second, the pieces of laundry soap and string beans is not enough to pinpoint the accused-appellant, to the exclusion of all others, as the author of the crime. These items are without any distinguishing mark to prove accused-appellant's ownership or previous possession thereof. Indeed, these are items which anybody can carry and possess. Hence, it does not follow that accused-appellant was the owner or previous possessor of the said items. Moreover, even if identified as belonging to accused-

Supreme Court E-Library

appellant, the said items do not conclusively connect accused-appellant to the crime but merely arouse suspicion against him. However, mere suspicions and speculations cannot be the bases of conviction in a criminal case, especially so in the instant case involving the supreme penalty of death. In *People v. Lugod*,[19] we ruled:

> In the present case, much emphasis was placed by the trial court on the discovery of the pair of rubber slippers at the victim's house and the black T-shirt hanging on a guava twig near the cadaver of Nairube which were allegedly worn by accused-appellant the day before Nariube's disappearance. The trial court also relied on the fact that there was an eyewitness who saw accused-appellant leaving Villa Anastacia, the place where the body of the victim was found, in the morning after the disappearance of the victim. However, the combination of the above-mentioned circumstances does not lead to the irrefutably logical conclusion that accused-appellant raped and murdered Nairube. At most, these circumstances, taken with the testimonies of the other prosecution witnesses, merely establish the accused-appellant's whereabouts on that fateful evening and places accused-appellant at the scene of the crime and nothing more. The evidence of the prosecution does not provide a link which would enable this Court to conclude that he in fact killed and raped Nairube. It must be stressed that although not decisive for the determination of the guilt of the accused-appellant, the prosecution did not present any evidence to establish that he was at any time seen with the victim at or about the time of the incident. Neither was there any other evidence which could single him out to the exclusion of any other as being responsible for the crime.[20]

Also, in *People v. De Joya*,[21] we held:

> . . . Rubber or beach walk slippers are made in such quantities by multiple manufacturers that there must have been dozens if not hundreds of slippers of the same color, shape and size as the pair that Herminia gave to appellant's wife. And even if conclusive identification of the slippers had been offered, and it is assumed that appellant (rather

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[19] 352 SCRA 498, 515-516 [2001].

[20] *Ibid.*

[21] 203 SCRA 343, 350-351 [1991].

Supreme Court E-Library

than his wife) had worn those very slippers on that fatal afternoon, still the presence of that singular slipper did not clearly and directly connect the appellant to the robbery or the slaying. At most, under that assumption, the presence of that slipper in the house of the Valencias showed that the accused had gone to the house of the Valencias and there mislaid that slipper. . .

Then, too, in *People v. Mijares*,[22] we ruled that the fact that the accused was the last person seen with the victim and that his slippers were found at the crime scene do not necessarily prove that he killed the victim. Thus —

That appellant was the last person seen with the victim on the night she disappeared does not necessarily prove that he killed her. It was not established that appellant and the victim were together until the crime was committed. It was not even shown that the appellant proceeded to the crime scene, either by himself or together with the victim.

Likewise, the fact that the slippers which appellant borrowed from Elizabeth Oglos were found near the victim's dead body does not necessarily prove that he was the perpetrator of the crime. Even if we were to conjecture that appellant went to the *locus criminis* and inadvertently left them there, such supposition does not necessarily imply that he had committed the crime. Indeed, it was not established whether appellant went to the place before, during or after the commission of the crime, if at all. Moreover, the prosecution has not ruled out the possibility that the slippers may have been brought by another person to the crime scene, precisely to implicate him and thus exonerate the real culprit. Clearly, several antithetical propositions may be inferred from the presence of the slippers at the crime scene, and appellant's guilt is only one of them.

Verily, it can never be discounted that the pieces of laundry soap and string beans were purposely placed at the crime scene to implicate accused appellant. The presence of these items at the *locus criminis* opens a vast arena of speculations and, therefore, cast serious doubt on accused-appellant's complicity in the crime. The prosecution evidence has failed to satisfy the test of accused-appellant's guilt beyond moral certainty.

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[22] 297 SCRA 520, 531-532 [1998].

Supreme Court E-Library

Third, the doctor who examined the cadaver of the victim did not testify as to the estimated time of death of the victim. Such testimony is vital considering that it was established that the clothes worn by the victim at the time her cadaver was found was different from those that she wore when she was last seen alive. The records show that in the afternoon of September 15, 1997, she was wearing a green hat and a green girl scout uniform,[23] while on September 17, 1997, when her lifeless body was discovered, she was clad in school uniform consisting of a white polo-blouse and a sky-blue skirt.[24] It is possible, therefore, that some events may have occurred, or some persons other than the accused-appellant may have encountered the victim, prior to the commission of the crime. This undoubtedly creates a void or a missing chain of circumstance from the time the victim was seen walking 50 meters ahead of accused-appellant, to the time her lifeless body was discovered 2 days after.

In the appreciation of evidence in criminal cases, it is a basic tenet that the prosecution has the burden of proof in establishing the guilt of the accused for the offense he is charged — *ei incumbit probatio non qui negat.* Though the defenses of denial and alibi are inherently weak, the conviction of accused-appellant must rest not on the weakness of his defense but on the strength of the prosecution's evidence.[25] This applies with more vigor in the case at bar where the evidence of the prosecution is purely circumstantial. A judgment of conviction must rest on nothing less than moral certainty.[26]

While we strongly condemn the senseless and gruesome crime and sincerely commiserate with the suffering and emotional stress suffered by the bereaved family of the victim, nevertheless,

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[23] TSN, November 27, 1998, pp. 3 and 7.

[24] TSN, July 24, 1998, p. 15 and February 5, 1999, p. 6.

[25] *People v. Fabon*, 328 SCRA 302, 318 [2000]; citing *People v. Masalihit*, 300 SCRA 147 [1998]; *People v. Olivarez, Jr.*, 299 SCRA 635 [1998].

[26] *People v. Canlas*, G.R. No. 141633, December 14, 2001, citing *People v. Caparas, Jr.*, 290 SCRA 78 [1998].

Supreme Court E-Library

we find the pieces of circumstantial evidence insufficient to prove the guilt of accused-appellant beyond reasonable doubt. They do not pass the requisite moral certainty, as they admit of the alternative inference that other persons, not necessarily the accused-appellant, may have perpetrated the crime. Where the evidence admits of two interpretations, one of which is consistent with guilt, and the other with innocence, the accused must be acquitted. Indeed, it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[27]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, in Criminal Case No. S-2941, is *REVERSED* and *SET ASIDE*. Accused appellant Josephere Tajada @ Tata is *ACQUITTED* of the crime of Rape with Homicide on the ground of reasonable doubt. The Director of the Bureau of Corrections is directed to cause the immediate release of accused-appellant unless lawfully held for another cause, and to inform this Court of the date of his release, or the ground for his continued confinement, within ten days from notice.

SO ORDERED.

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

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[27] *People v. Capili*, 333 SCRA 355, 366 [2000].