

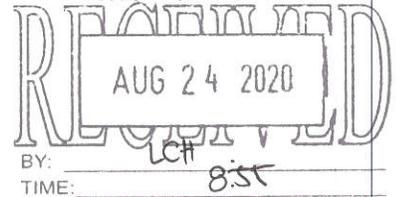


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:

“G.R. No. 240540 (*The People of the Philippines, Plaintiff-Appellee, v. Rolly S. Ballon, Accused-Appellant*) – This is an appeal¹ seeking to set aside the Decision² dated 25 October 2017 of the Court of Appeal (CA) in CA-G.R. CR-HC No. 07350. The CA affirmed the Decision³ dated 17 December 2014 of Branch 71, Regional Trial Court (RTC) of ██████████, Zambales in Criminal Case No. RTC-5480-I finding Rolly S. Ballon (accused-appellant) guilty of the crime of rape with homicide with modifications in the amount of damages awarded in favor of the heirs of the victim, AAA.⁴

Antecedents

Accused-appellant was charged with the crime of rape with homicide in an Information that reads:

That on or about the 9th day of September 2008 and sometime thereafter in the Municipality of ██████████, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, through force and violence, did then and there willfully, unlawfully and feloniously have sexual intercourse and carnal knowledge with 7-year old AAA, causing deep hymenal laceration at 6 o'clock position, and by reason and on the occasion of rape, the said minor died of asphyxia through strangulation when the accused tied her neck, to the damage and prejudice of the family of said deceased/victim AAA.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 15-17.

² *Id.* at 2-14; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Manuel M. Barrios and Maria Filomena D. Singh of the Special Third (3rd) Division of the Court of Appeals, Manila.

³ *CA rollo*, pp. 75-90; penned by Presiding Judge Consuelo Amog-Bocar.

⁴ The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are withheld pursuant to SC Amended Administrative Circular No. 83-2015.

⁵ Records, p. 2

On arraignment,⁶ accused-appellant pleaded not guilty to the charges. After pre-trial,⁷ trial on the merits ensued.

Version of the Prosecution

Prosecution witness CCC,⁸ a resident of the same *barangay* as AAA, alleged that on 09 September 2008, at about 5:30 p.m., while she was walking with her cousin towards the public market, she saw AAA who just walked past her own house. CCC noticed a man walking his bike ahead of AAA. CCC turned her back when she was about 50 to 60 meters away and saw the man board AAA on his bike. CCC learned about AAA's disappearance later that evening prompting her to tell her mother about what she saw. CCC proceeded to the police station with her parents and filed a blotter identifying accused-appellant as the man with AAA.⁹

Prosecution witness DDD testified that she knew AAA because she is the daughter of her teacher. In the afternoon of 09 September 2008, DDD asked AAA where she was going when she noticed AAA pass by mounted on a man's bike. DDD¹⁰ heard the man tell AAA that they were going to her mother. AAA echoed this to DDD who noted that the two (2) were heading to the wrong direction. DDD also heard the man tell AAA, "*Wag ka ng magsalita. Bibili tayo ng ice cream.*"¹¹ DDD recalled the man was wearing a gray hat and had a thick mustache while AAA was wearing her school uniform, and was holding a yellow umbrella and a pink bag. DDD identified the man he saw as accused-appellant but admitted on cross-examination that she only noticed his mustache and did not actually see the man's face.¹²

Another prosecution witness, Anthony Floresca (Anthony), testified seeing a man with a child riding on the back of his bicycle near the public cemetery at around 8:00 p.m. of 09 September 2008. The man was dark complexioned and was wearing a cap. The child's hands were not moving and her head was slumped on the man's shoulder. Anthony noticed that she was wearing a blue checkered skirt and white T-shirt, which he recognized as the uniform of ██████████ ██████████ College. Since it was raining hard, Anthony took pity on the child and offered the man to board his tricycle. The man just lowered his cap. Anthony recognized the man as accused-appellant through the light coming from the cemetery and his tricycle. Anthony claimed he was familiar with accused-appellant since they used to live in the same *barangay*.

⁶ *Id.* at 46-47.

⁷ *Id.* at 56.

⁸ *Supra* at note 4.

⁹ *Rollo*, p. 3.

¹⁰ *Supra* at note 4.

¹¹ *Rollo*, p. 4.

¹² *Id.* at 3-4.

About two (2) hours later, a policeman approached Anthony to ask if he saw a seven-year-old missing child, who had long hair and was wearing the checkered skirt of ██████████ ██████████ College. Anthony narrated his previous encounter with accused-appellant near the cemetery. He also told the policeman that he saw accused-appellant cross the road and head towards the farm. He later joined the search for the missing child and led the policemen to the farm he was referring to.¹³

BBB,¹⁴ AAA's mother, testified that on 09 September 2008, at around 1:00 p.m., she brought AAA to her school, ██████████ ██████████ College. AAA was wearing the checkered blue skirt and white blouse uniform of ██████████ ██████████ College. BBB proceeded to ██████████ Elementary School where she was teaching. She came home at around 5:00 p.m. and found no one in their house. Since AAA should have been home at around 4:45 p.m., BBB looked for her husband, who told her that AAA already passed by and walked towards the direction of their house. Assisted by their neighbors, BBB and her husband looked for AAA. Their search led them to CCC and DDD, who both narrated what they saw. BBB, thus, proceeded to the police station. AAA was found thirteen (13) days after by a man who was looking for his cow in a farm. AAA's body was already decomposing that time. AAA was still wearing her full uniform and shoes. She had her school ID and umbrella with her.¹⁵

BBB presented AAA's certificate of birth to prove AAA's age. She also provided a receipt showing the amount of ₱150,000.00 she spent for AAA's coffin. She further claimed to have spent a total of ₱356,000.00 for funeral and other expenses, but failed to provide receipts.¹⁶

Police Inspector Maria Angela Guese (P/Insp. Guese), the Medico-Legal Officer of the Scene of the Crime Operatives (SOCO) assigned at the Regional Crime Laboratory Office, Camp Olivas, City of San Fernando, Pampanga, was also presented before the court. She brought the Medico-Legal Report No. M-053-08ZPCLO¹⁷ of AAA prepared by Dr. Jude Doble. The Report yielded the following: a) there was a cloth ligature tied on the neck of AAA; b) both forearms were noted to be missing; c) soft tissue injury cannot be ruled out due to decomposition; d) no skull fracture and intracranial hemorrhage noted; e) the *labia majora* was convex and coaptated; f) the *labia minora* was pale with contusion noted on the leftside; g) the hymen was fleshy with deep laceration noted at 6 o'clock position; h) the posterior fourchette is sharp; i) the peri-urethral and vaginal smears were found negative for

¹³ *Id.* at 4-5.

¹⁴ *Supra* at note 4.

¹⁵ *Rollo*, p. 5.

¹⁶ *Id.*

¹⁷ *Records*, p. 277.

spermatozoa and gram negative diplococci; and j) the cadaver was already in an advance stage of decomposition.

According to P/Insp. Guese, the medico-legal report shows the cause of AAA's death as asphyxia by strangulation. Furthermore, AAA could have been dead for about (2) weeks given the advance stage of decomposition of AAA's body. The laceration at the 6 o'clock position in AAA's hymen could have been caused by insertion of a blunt instrument. She also clarified the absence of spermatozoa in the vaginal smears as attributable to the life span of a spermatozoa, which is only seventy-two (72) hours.¹⁸

Version of the Defense

Accused-appellant denied all allegations against him. At the time of the incident, he claimed to be at the house of his niece in Quezon City where he had been staying since April 2008. He denied knowing both AAA and Anthony and why the latter pointed to him as the perpetrator of the crime.¹⁹

The defense also presented Anthony to identify the affidavit he executed on 05 March 2009 and to testify on the events of 09 September 2008. Based on his affidavit, Anthony did not see the face of the man he encountered at the cemetery. He also failed to identify the child mounted on the bicycle. He was surprised when accused-appellant was identified as the perpetrator of the crime based on his previous testimony of not having seen accused-appellant on a bicycle carrying a child. He was illiterate and signed the affidavit because the police asked him to do so.²⁰

During his cross-examination, Anthony admitted being detained at the Provincial Jail of Zambales with accused-appellant when he recanted his testimony. When he testified in favor of accused-appellant on 27 May 2014, he arrived in court sharing a handcuff with the latter. When he testified for the prosecution, the affidavit dated 05 March 2009 already existed. He admitted having executed the said affidavit because the relatives of accused-appellant promised to give him money who also accompanied him when he executed the affidavit before the Office of the Public Attorney. On re-direct examination, Anthony clarified that while accused-appellant's relatives were with him during the execution of the affidavit, he was accompanied by his wife, who explained the contents of the affidavit to him.²¹

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 8.

²⁰ *CA rollo*, p. 131.

²¹ *Id.* at 131-132.

On 17 December 2014, the Regional Trial Court (RTC) rendered judgment finding accused-appellant guilty of rape with homicide, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Rolly Ballon guilty beyond reasonable doubt of the crime of rape with homicide for which he shall suffer the penalty of reclusion perpetua.

Further, accused is ordered to pay the private complainant the amount of P100,000.00 as civil indemnity, P75,000.00 as moral damages, and P150,000.00 as actual damages.

SO ORDERED.²²

The RTC found sufficient circumstantial evidence to convict accused-appellant of rape with homicide. Based on several witness accounts, accused-appellant was the last person seen in the company of AAA, who went missing that same day. The decomposing body of AAA was found thirteen (13) days later. Based on the medical report, AAA had hymenal laceration indicating that she had been raped. Clearly, there can be no other conclusion except for accused-appellant being the perpetrator of the crime.²³

The Court of Appeals affirmed accused-appellant's conviction through the assailed Decision, to wit:

WHEREFORE, premises considered, the Appeal is **DENIED**. The Decision dated 17 December 2014 issued by the Regional Trial Court, ██████████, Zambales, Branch 71 in Criminal Case No. RTC-5480-I, is hereby **AFFIRMED WITH MODIFICATIONS** in that the amount of moral damages is increased to One Hundred Thousand Pesos (PhP100,000.00), and an interest is imposed on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.²⁴

Grounded on its assessment of all circumstantial evidence, the Court of Appeals concluded that accused-appellant was the one who raped and killed AAA. It also found accused-appellant's defense of denial and alibi deserving

²² *Id.* at 89-90.

²³ *Id.* at 87-89.

²⁴ *Rollo*, p. 13.

of scant consideration. Hence, it affirmed the RTC's ruling but modified the damages awarded to AAA's heirs.²⁵

Issues

Accused-appellant assails his conviction for the supposed lack of evidence against him. Arguably, the evidence presented by the prosecution were merely circumstantial and altogether failed to show how he purportedly raped and killed AAA. Hence, he is entitled to acquittal for failure of the prosecution to prove his guilt beyond reasonable doubt.²⁶

The State, however, maintains that the lower courts properly gave weight to the prosecution witnesses, who identified accused-appellant as the last person seen with the victim. Accused-appellant, who was carrying a child on his back, was also seen heading towards a farm wherein the victim's body was found thirteen (13) days later. The medico-legal report showed a deep laceration of AAA's hymen at 6 o'clock position, which could have been caused by a blunt instrument such as an erect penis. All things considered, the prosecution was able to prove accused-appellant's guilt for the crime charged.²⁷

Given the foregoing, the Court is now tasked to determine whether or not accused-appellant was properly convicted with the crime of rape with homicide through circumstantial evidence.

Ruling of the Court

We affirm the CA's Decision dated 25 October 2017 with modification on the award of damages.

The felony of rape with homicide is a special complex crime, which is the treatment of two (2) or more crimes as a single indivisible and unique offense for being the product of a single criminal impulse.²⁸ Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended,²⁹ provide the manner of committing and penalty of rape with homicide, to wit:

²⁵ *Id.* at 10-13.

²⁶ *CA rollo*, pp. 45-55.

²⁷ *Id.* at 113-117.

²⁸ *People v. De la Cruz*, 711 Phil. 566-576 (2013); G.R. No. 183091, 19 June 2013, 699 SCRA 145, 151, 156.

²⁹ RA 8353 otherwise known as The Anti Rape Law of 1997.

ART. 266-A. Rape: *When and How Committed*. – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a. Through force, threat or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

ART. 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

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

x x x x

However, the Court has acknowledged the complexity of proving cases of rape with homicide, viz:

We have often conceded the difficulty of proving the commission of rape when only the victim is left to testify on the circumstances of its commission. The difficulty heightens and complicates when the crime is *rape with homicide*, because there may usually be no living witnesses if the rape victim is herself killed. Yet, the situation is not always hopeless for the State, for the *Rules of Court* also allows circumstantial evidence to establish the commission of the crime as well as the identity of the culprit. Direct evidence proves a fact in issue directly without any reasoning or inferences being drawn on the part of the factfinder; in contrast, circumstantial evidence indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence. To be clear, then, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting a felon free.³⁰

Otherwise stated, the evidence against an accused for the crime of rape with homicide is usually circumstantial. The nature of the crime, in which only the victim and the rapist-killer would have been around during its commission, makes the prosecution of the offense particularly difficult

³⁰ *Id.*

because the victim could no longer testify against the perpetrator. Thus, resorting to circumstantial evidence is almost always inevitable, and to demand direct evidence to prove in such instance the modality of the offense and the identity of the perpetrator would be unreasonable.³¹

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.³² To be sufficient for conviction, the following requirements of circumstantial evidence must be present: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond doubt of the guilt of accused.³³

In the present case, the RTC and the Court of Appeals did not err in convicting accused-appellant based on circumstantial evidence presented in court. To recall, CCC testified seeing AAA on board accused-appellant's bike, who was a stranger to them. DDD attested that AAA echoed her accused-appellant's answer to her query where AAA and accused-appellant were supposedly going. Accused-appellant retorted that they were going to AAA's mother. It bears stressing, however, that accused-appellant and AAA were headed to the wrong direction. Accused-appellant also uttered, "*Wag ka ng magsalita. Bibili tayo ng ice cream,*" an uncanny coaxing which cannot be taken favorably in this instance. Hours after AAA had gone missing, Anthony declared that he saw accused-appellant riding his bicycle with a child whose description matched that of AAA's. Accused-appellant went towards the farm where AAA's body was later found. The medico-legal report proved AAA's hymen had a deep laceration, which is consistent with the findings of rape.

Taken altogether, these circumstances lead to no other conclusion than accused-appellant being the perpetrator of the crime. His conviction is anchored not only on a single circumstance, but on a series of circumstantial evidence against him. The circumstantial evidence proffered by the prosecution constitutes an unbroken chain that leads to a reasonable conclusion that accused-appellant, and no other person, was the author of the crime. Indeed, proof beyond reasonable doubt "does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind."³⁴

³¹ *People v. Notarion*, 585 Phil. 611-625 (2008); G.R. No. 181493, 28 August 2008, 563 SCRA 618, 628.

³² *People v. Broniola*, 762 Phil. 186-197 (2015), G.R. No. 211027, 29 June 2015; 760 SCRA 597, 606.

³³ Sec. 4, Rule 133, Rules of Court; *People v. Gallarde*, 382 Phil. 718-741 (2000); G.R. No. 133025, 17 February 2000, 325 SCRA 835, 847.

³⁴ *People v. ZZZ*, G.R. No. 228828, 24 July 2019.

Since the records clearly evince the guilt of accused-appellant in the commission of his horrific acts, the Court deems it necessary to penalize the same with *reclusion perpetua*, which should have been death if not for the passage of RA 9346.³⁵ Nevertheless, accused-appellant shall not be eligible for parole by virtue of the said law.³⁶

Anent the award of damages, the Court modifies the same by awarding exemplary damages in the amount of ₱100,000.00 in conformity with prevailing jurisprudence.³⁷

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated 25 October 2017 in CA-G.R. CR-HC No. 07350 finding accused-appellant Rolly S. Ballon guilty beyond reasonable doubt of the crime of rape with homicide is **AFFIRMED with MODIFICATION**.

Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA's heirs the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱150,000.00 as actual damages, with interest imposed on all damages awarded at the legal rate of six percent (6%) per *annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.”

Very truly yours,

Mis-DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
9/2/20

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COURT OF APPEALS
CA-G.R. CR-HC No. 07350
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³⁵ An Act Prohibiting the Imposition of Death Penalty in the Philippines, 24 June 2006.

³⁶ *People v. Balisong*, 792 Phil. 837-853 (2016); G.R. No. 218086, 10 August 2016, 800 SCRA 211, 225.

³⁷ *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 788 SCRA 331.

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 71, Iba, Zambales
(Criminal Case No. RTC-5480-I)

The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Rolly S. Ballon
c/o The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
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