



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ARNEL ALICANDO y BRIONES,
Petitioner,

G.R. No. 181119

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JUL 31 2013

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RESOLUTION

REYES, J.:

This is a petition for review on *certiorari*¹ from the Decision² rendered by the Court of Appeals (CA) on December 14, 2007 in CA-CEB-CR-HC No. 00571 affirming with modifications the conviction by the Regional Trial Court (RTC) of Iloilo City, Branch 23, of Arnel Alicando y Briones (petitioner) for the crime of rape with homicide committed against AAA³, a four-year old girl. The RTC imposed on the petitioner the penalty of death and awarded to the heirs of AAA ₱7,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. The CA concurred with the RTC's factual findings. However, in view of Republic Act (R.A.) No. 9346⁴ and this Court's pronouncement in *People v. Bon*,⁵ the CA

¹ Rollo, pp. 10-40.

² Penned by Associate Justice Franchito N. Diamante, with Associate Justices Isaias P. Dicedican and Priscilla Baltazar-Padilla, concurring; id. at 41-55.

³ Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

⁴ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

⁵ 536 Phil. 897 (2006).

modified the RTC's decision by imposing instead the penalty of *reclusion perpetua*. The CA likewise increased the award to the heirs of AAA of civil indemnity to ₱100,000.00 and moral damages to ₱75,000.00. In addition thereto, the CA awarded to AAA's heirs ₱25,000.00 as exemplary damages.

Antecedent Facts

The CA summed up the facts of the case, *viz*:

In the afternoon of June 12, 1994, [BBB], the father of four-year old [AAA], was having a drinking spree with a group composed of Ramil Rodriguez, Remus Montrel, Russel Autencio and the [petitioner] at his house at x x x. At about 4:45 o'clock in the afternoon, the [petitioner] left while [BBB] conducted his other companions to Lapuz. The [petitioner] was residing at his uncle's house about five (5) arm's length away from [BBB's] house.

When [BBB] arrived home at 8:00 o'clock that evening, he could not find [AAA]. He and his wife looked for her until 2:00 in the morning to no avail.

The following day, Leopoldo Santiago, a neighbor, was surprised when answering the call of nature outside his house, he chanced upon the dead body of [AAA]. It was covered by a fish basin and surrounded by ants. The child was crouched as if she was cold, with her hands on her head. Immediately, the girl's parents were informed. The small, lifeless body was brought to their house.

The matter was reported to the police at once. At this point, Luisa Rebada[,] who lived about 1-1/12 arm's length away from the house of [the petitioner,] related to the girl's distraught parents what she knew.

Luisa Rebada recounted that at about 5:30 of the afternoon before, she saw [AAA] at the window of [the petitioner's] house. She called out to her and offered her some "yemas." The [petitioner] suddenly closed the window. Later on, Luisa heard [AAA] cry and then squeal. Her curiosity aroused, she crept two steps up the house of the [petitioner], peeped through an opening between the floor and the door, and saw [the petitioner] naked on top of [AAA], his right hand choking the girl's neck. Rebada became frightened and went back to her house to gather her children. She told her compadre, Ricardo Lagrana, who was in her house at that time, of what she saw. The latter got nervous and left. That evening[,] when she heard that [AAA's] parents were looking for the child, she called out from her window and asked what time [AAA] left their house. [BBB] answered he did not know. Thus, with Luisa Rebada's revelation, [the petitioner] was arrested.

During the investigation conducted by PO3 Danilo Tan, [the petitioner] readily admitted to raping and killing [AAA]. The police were able to recover from the house of the [petitioner] [AAA's] green slippers, a pair of gold earrings placed on top of a bamboo post, a bloodied buri

mat, a pillow with blood stain in the middle, and a stained T-shirt owned by the [petitioner].

An autopsy was conducted and the report of Dr. Tito Doromal, the medico-legal officer, revealed that the child was sexually violated and that the following caused her death: (a) asphyxia by strangulation; (b) fractured, 2nd cervical vertebra; and (c) hemorrhage, 2nd degree to lacerated vaginal and rectal openings.

Consequently, the [petitioner] was charged in Criminal Case No. 43663 for Rape with Homicide before Branch 38 of the [RTC] of Iloilo City. The accusatory portion of the Information reads, to quote:

“That on or about the 12th day of June, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said [petitioner], did then and there wilfully, unlawfully, and feloniously and by means of force, violence and intimidation[,] to wit: by then and there pinning down one [AAA], a minor, four years of age, choking her with his right hand, succeeded in having carnal knowledge with her and as a result thereof she suffered asphyxia by strangulation, fractured cervical vertebra and lacerations of the vaginal and rectal openings causing profuse hemorrhages and other injuries which are necessarily fatal and which were the direct cause of her death thereafter.

CONTRARY TO LAW.”

When arraigned, [the petitioner] entered a plea of guilty. In compliance with law and jurisprudence, the prosecution presented its evidence. It presented (1) Luisa Rebada; (2) Dr. Tito Doromal, the medico-legal officer; (3) SPO1 Manuel Artuz, the exhibit custodian of Iloilo City Police Station; (4) PO3 Danilo Tan; (5) SPO3 Rollie Luz, police investigator; and (6) [BBB], the victim’s father. The defense, for its part, merely presented the autopsy report of Dr. Tito Doromal to show that the proximate cause of death was asphyxia by strangulation. Hearings on the merits were successively conducted from June to July in the year 1994.

On July 20, 1994, the trial court rendered a Decision convicting the [petitioner] of the crime of rape with homicide. He was accordingly meted out the penalty of death by electrocution.

On automatic appeal to the Supreme Court, the case was remanded to the trial court for further proceedings. The Supreme Court found that the proceedings before the lower court were tainted with procedural infirmities, namely: (a) an invalid arraignment; and, (b) admission of inadmissible evidence.

Thus, on August 13, 1996, [the petitioner] was arraigned anew whereby he entered a plea of not guilty. The defense filed a motion for inhibition against the Hon. David A. Alfeche, Jr. The motion was granted and the case was re-raffled to Branch 23 of the [RTC] in Iloilo [C]ity presided over by the Hon. Tito G. Gustilo.

Trial on the merits was again conducted. During the hearings, counsel for the defense refused to cross-examine the witnesses who had been presented in the first trial as he interposed a continuing objection to their presentation again as witnesses since their testimonies had already been ruled upon by the Supreme Court as incredible and inadmissible in case G.R. No. 117487⁶.

When the prosecution had finished presenting its evidence, the [petitioner] filed a demurrer to evidence, which was subsequently denied. Instead of presenting evidence, the [petitioner] manifested that he was submitting the case for judgment without presentation of evidence for the defense.

On May 2, 1997, the trial court rendered a decision against the [petitioner], x x x:

x x x x.⁷ (Citations omitted)

The petitioner, through the Free Legal Assistance Group, filed an appeal before the CA claiming that: (a) the pieces of evidence relied upon by the RTC in convicting him were all derived from his uncounselled confession, thus, they should be excluded as they were fruits of the poisonous tree; (b) he was denied due process as his previous counsel had committed gross mistakes and had ineffectively represented him; and (c) his guilt was not proven beyond reasonable doubt.⁸

The CA concurred with the RTC's factual findings, affirmed the conviction of the petitioner, but modified the penalty and the damages imposed upon him. The CA declared that:

After a careful scrutiny of the Decision rendered by the Supreme Court on automatic review of the judgment issued by the trial court remanding the instant case to the lower court for further proceedings, this Court found out that although the Highest Tribunal did say that "the conviction is based on an amalgam of inadmissible and incredible evidence and supported by scoliotic logic", the same did not refer to the testimony of witness Luisa Rebada. In fact, the Supreme Court came to mention witness Luisa Rebada only in reference to the trial court's conclusion that the physical evidence excluded by the Supreme Court "strongly corroborate the testimony of Luisa Rebada that the victim was raped." When the Highest Tribunal annulled and set aside the order of conviction of the [petitioner] on grounds that the Decision was shot full of errors, both substantive and procedural, it enumerated the errors committed by the [RTC], to wit:

x x x x

⁶ *People v. Alicando*, 321 Phil. 656 (1995).

⁷ *Rollo*, pp. 42-46.

⁸ *Id.* at 42.

We note that the testimony of Luisa Rebada was not among those errors named by the Supreme Court. Hence, the observation of the Office of the Solicitor General that “the refusal to cross-examine was a strategy deliberately adopted by the defense. Xxx And other than the deliberate refusal on the part of the [petitioner’s] trial attorney to cross-examine Rebada, [the petitioner] has not shown any other act or omission on the part of his former counsel to show ‘gross mistake and ineffective assistance’ resulting to the denial of due process”, is correct.

Moreover, when the case was remanded for trial anew before the lower court, the physical evidence previously ruled upon by the Supreme Court as inadmissible, namely: the pillow and the bloodstained T-shirt of the [petitioner], were no longer offered as part of the evidence for the plaintiff-appellee. Hence, the claim of [the petitioner] that the judgment by the trial court was based on evidence derived from [the petitioner’s] uncounselled confession is unfounded. Instead, the trial court relied on the testimony of eyewitness Luisa Rebada, which it found credible, trustworthy and sufficient to sustain a conviction.

x x x x

We note that the worthiness of Rebada’s testimony and her credibility as a witness had been passed upon not once, but twice by the trial court Judges David A. Alfeche, Jr. and Tito G. Gustilo. Both judges found the declarations of the eyewitness credible, trustworthy and free from serious and material contradictions.

Further, witness Rebada’s testimony is confirmed by the physical evidence one of which is the result of the autopsy conducted on the victim’s body. Rebada testified:

“Q: When you peeped through the hole of about two inches wide, did you see anything inside?

A: I saw [the petitioner] with his right hand choking [AAA] on the neck.

Q: What else?

A: [The petitioner] is nude and he is on top of [AAA].

x x x x

Q: How about [AAA]?

A: [AAA] has a dress. It is only her short and panty that were taken off.”

Given the recollection of Rebada as to the manner that the crime was perpetrated, the autopsy report aptly showed that the injuries sustained by [AAA] were the same injuries she would sustain as a result of the assault made on her by the [petitioner]. Thus:

x x x x

x x x The vaginal and anal findings of Dr. Tito Doromal revealed that the lacerated wound from the fourchette up to the dome of the rectum was caused by forcible entry of an object. Rebada’s testimony that she saw [the petitioner] naked on top of the victim and the autopsy report revealing the laceration of the vagina and the fact that the [petitioner] asked for forgiveness from the father of the victim when confronted of his

act eloquently testify to the crime committed and its authorship in the case at bench.

There is nothing on record that can serve as basis to doubt the testimony of the key prosecution witness, which is confirmed by the *corpus delicti*. The *material* events, which she declared in her affidavit, were the very same declarations she made when she took the witness stand. Rebada had no reason to falsely testify against the [petitioner] and there were no possible motives alleged for her to do so. She is not in any way related to the [victim's family], and there was no evidence adduced to show that she harboured any ill-feelings towards the [petitioner]. In a sense, her credibility is even enhanced by the absence of any improper motive. x x x.⁹ (Citations omitted)

Issues and the Contending Parties' Arguments

The instant petition ascribes to the CA the following errors:

- (1) The CA ignored the issue of ineffective assistance of counsel, thereby sacrificing substantial justice and departing from the usual course of judicial proceedings.
- (2) The CA breached the Constitution and jurisprudential doctrines when it affirmed the petitioner's conviction on the basis of evidence derived from uncounselled confession.
- (3) The CA erred in concurring with the RTC that the petitioner's guilt had been proven beyond reasonable doubt.¹⁰

In support thereof, the petitioner avers that his previous counsel refused to examine all the prosecution witnesses on the mistaken belief that their testimonies were already considered by this Court as incredible in the decision rendered in G.R. No. 117487. The said counsel did not even confront Luisa Rebada (Luisa) anent her prior inconsistent statements relative to which hand the petitioner used to strangle AAA, and when was the time she informed her *compadre*, Ricardo Lagrana (Lagrana), of the occurrence which she had witnessed.

Further, after the RTC denied the demurrer filed, the petitioner's previous counsel still refused to adduce evidence for the defense. The counsel's errors were gross. The petitioner was deprived of due process of law and should therefore not be bound by his counsel's mistakes.

⁹ Id. at 48-53.

¹⁰ Id. at 20.

The petitioner likewise reiterates his claim that the prosecution exhibits should be excluded for having been obtained in the process of a custodial interrogation where he was unassisted by counsel. Further, while the medical reports showed seminal stains in AAA's vaginal smears, there was no proof that the stains were identical or that they came from the petitioner.

The Office of the Solicitor General (OSG), on the other hand, seeks the dismissal of the instant petition. The OSG argues that the previous counsel of the petitioner deliberately adopted the strategy of refusing to cross-examine the prosecution witnesses. To do otherwise would have been futile considering that Luisa never wavered in her testimonies. Besides, apart from the refusal to cross-examine Luisa, the petitioner failed to prove any other act or omission of his counsel showing gross mistake or indicating ineffective assistance.

The OSG stresses that the conviction of the petitioner both by the RTC and the CA was based on the uncontradicted testimony of Luisa, which two trial judges had found to be clear, straightforward and credible. The physical evidence, to wit, the pillow and blood-stained shirt, which the petitioner alleged were fruits of the poisonous tree, were no longer offered as evidence by the prosecution in the course of the second trial conducted after the case was remanded to the RTC.

Anent the sufficiency of the prosecution's evidence, the OSG emphasizes that the autopsy report prepared by Dr. Tito Doromal (Dr. Doromal) corroborated Luisa's statements. AAA's injuries, as indicated in the report, jibed with those she would have sustained as a result of the attack as narrated by Luisa. Further, according to Luisa's account, the petitioner was the person last seen with AAA and a conclusion can be drawn as to who caused the girl's death.¹¹

This Court's Disquisition

The instant petition lacks merit.

"Section 1, Rule 45 of the Rules of Court categorically states that the petition filed shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the

¹¹ Id. at 100-101, citing *People v. Givera*, 402 Phil. 547, 568 (2001).

issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.”¹²

In the case at bar, the petitioner raises issues with an intent to subject to review by this Court the uniform factual findings of the RTC and the CA. Specifically, the alleged ineffective assistance of counsel and the existence of insufficient evidence to prove the guilt of the petitioner beyond reasonable doubt are factual matters beyond the ambit of a petition filed under Rule 45 of the Rules of Court.

Further, the petitioner poses the question of whether or not the CA erred in convicting him on the basis of evidence obtained from an uncounselled confession. The issue is not genuinely a legal issue even when it speciously presents itself to be one at first glance. An examination of the assailed decision reveals that the conviction handed by the courts *a quo* was primarily based on the testimony of Luisa, as corroborated by Dr. Doromal’s autopsy report, and not on physical evidence, to wit, the pillow and the blood-stained shirt, which the petitioner claimed were fruits of the poisonous tree.

Besides, the three issues, upon which the instant petition is based, are saliently the very same ones raised before and resolved by the CA.

“Axiomatic is the rule that factual findings of trial courts are accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted. This rule is founded on the fact that the trial judge has the unique opportunity to personally observe the witnesses and to note their demeanor, conduct and attitude on the witness stand, which are significant factors in evaluating their honesty, sincerity and credibility. Through its direct observations in the entire proceedings, the judge can be expected to reasonably determine whose testimony to accept and which witness to disbelieve. On the other hand, the reviewing magistrate has none of the advantages peculiar to the trial judge’s position, and could rely only on the cold records of the case and on the judge’s discretion.”¹³

Luisa’s testimonies were found by two branches of the trial court and the CA as credible, straightforward and consistent. It is also well to note that Luisa once again testified even after the proceedings before the RTC,

¹² *Vda. De Formoso v. Philippine National Bank*, G.R. No. 154704, June 1, 2011, 650 SCRA 35, 48-49, citing *Cebu Bionic Builders Supply, Inc. v. Development Bank of the Philippines*, G.R. No. 154366, November 17, 2010, 635 SCRA 13.

¹³ *People v. Paraiso*, 402 Phil. 372, 388-389 (2001).

which were conducted relative to the petitioner's initial indictment, were declared null. She was firm and unshaken in her identification of the perpetrator of the crime and no ill motive can be attributed to her on why she testified against the petitioner. It is an oft-repeated doctrine that the testimony of even "a single eyewitness is sufficient to support a conviction so long as such testimony is found to be clear and straight-forward and worthy of credence by the trial court."¹⁴ Further, discrepancies referring only to minor details and collateral matters do not affect the veracity of the witness' declarations.¹⁵ The alleged inconsistencies in Luisa's statements regarding which hand the petitioner used to strangle AAA and when did she inform her *compadre*, Lagrana, about what she had witnessed, were too inconsequential for they do not relate to the elements of the crime charged. Those inconsistencies cannot destroy the thrust of Luisa's testimony that: (a) the petitioner was the last person seen with AAA before the girl's lifeless body was found; (b) from an opening in between the door and the floor, she saw the petitioner naked on top of AAA, whose panty and shorts were taken off; and (c) the petitioner choked AAA's neck with one hand. The autopsy report prepared by Dr. Doromal indicating that AAA was raped and that she sustained injuries in her head, neck, thoraco-abdominal regions, extremities, vagina and anus validated Luisa's statements. Hence, this Court finds no arbitrariness in the factual findings of the courts *a quo*.

The amounts of civil indemnity and moral and actual damages awarded by the CA to the heirs of AAA are proper. However, considering AAA's minority,¹⁶ the highly reprehensible and outrageous acts committed against her, and for the purpose of serving as a deterrent against similar conduct, this Court finds it warranted to increase the petitioner's liability for exemplary damages to ₱50,000.00.¹⁷ Further, the monetary awards for damages shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.¹⁸

WHEREFORE, the instant petition is **DENIED**. The Decision dated December 14, 2007 of the Court of Appeals in CA-CEB-CR-H.C. No. 00571 is however **MODIFIED**. **ARNEL ALICANDO y BRIONES** is found **GUILTY** beyond reasonable doubt of the crime of rape with homicide and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of AAA the amounts of ₱100,000.00 as civil indemnity, ₱7,000.00 as

¹⁴ *People v. Alilio*, 311 Phil. 395, 404 (1995).

¹⁵ *Supra* note 13, at 389.

¹⁶ Under Section 11(4) of Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes), when the victim is a child below seven years of age, rape is qualified as a heinous crime punishable by death. *People v. Catubig* (416 Phil. 102, 120 [2001]) clarified that "relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages."

¹⁷ In *People v. Villarino* (G.R. No. 185012, March 5, 2010, 614 SCRA 372), this Court awarded exemplary damages in the amount of ₱50,000.00 to the heirs of a ten-year old minor victim of rape with homicide.

¹⁸ Please see *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

actual damages, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages. All the monetary awards for damages shall earn annual interest at the legal rate of six percent (6%) from the date of finality of this Resolution until fully paid.

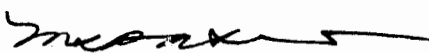
SO ORDERED.



BIENVENIDO L. REYES

Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



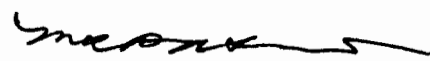
LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice