

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO UMALI Y MARASIGAN, ACCUSED-APPELLANT.

G.R. No. L-35705. August 21, 1982

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PER CURIAM:

Automatic review of the decision of the Court of First Instance of Laguna, Branch IV, dated September 22, 1972, in Criminal Case No. SC-165, convicting Ricardo M. Umali of the crime of rape with homicide and sentencing him to suffer the penalty of death.

The information against Umali reads as follows:

"At the instance of FAUSTINO PANGHULAN, in a complaint under oath, the undersigned Acting Provincial Fiscal accuses RICARDO UMALI Y MARASIGAN alias 'Carding' of the crime of 'RAPE WITH HOMICIDE', committed as follows:

"That on or about the 17th day of September 1970, at Canlubang, Calamba, Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously, drag said CORAZON PANGHULAN, a minor, to a secluded place and with the use of force and violence, have sexual intercourse with her against her will, and by reason or on the occasion thereof, said accused, with intent to kill, wilfully, unlawfully and feloniously attack, assault and strangle said CORAZON PANGHULAN, thereby causing her death."

The People's version of the facts is as follows:

"The deceased Corazon Panghulan, daughter of Mr. and Mrs. Faustino Panghulan of Calamba, Laguna, was, at the time of her brutal death on September 17, 1970, only thirteen years old (Exhibit "G"; p. 59, t.s.n. Mendoza) and a mere sixth-grade pupil at the Canlubang Elementary School. She used to walk to school, which was about two kilometers from their house in sitio Apat na Bahay, barrio Happy Valley, Calamba. She would leave the house at about 6:00 A.M., return home at noon, go back to school after lunch, and finally go home at 5:00 P.M. (pp. 31, 55-56, t.s.n., id.).

"On the other hand, the accused Ricardo Umali is thirty years old, married, and with no fixed re-sidence of his own. When he was still single, he used to work as a laborer at the Canlubang Sugar Estate (pp. 21, 76, t.s.n., id.). He later married a Visayan woman known only by the first name 'Inday' (p. 78, t.s.n., id.). Thereafter, he was charged before the municipal court of Calamba for having raped inside the compound of the Canlubang Sugar Estate on February 13, 1964, one Zenaida Dizon, a 12-year old girl from Barrio Lantikan, Calamba, which case was docketed as Criminal Case No. 2573 (Exhibit "I"). However, the case was settled after Umali gave the girl's parents the sum of P200.00, and the court dismissed the case at the instance of the girl's father. As a result of this incident, Ricardo Umali was dismissed by said sugar company, and he thereafter earned his living by cutting grass (Exhibit "J"; pp. 62, 71-72, 77, t.s.n., id; pp. 35-39, 41-43, t.s.n., Sept. 8, 1971, Desamero). Later, he left his wife to cohabit with a certain Flaviana Vanguardia, and they lived together as common-law husband and wife in Barrio Layos, Tanauan, Batangas, for five years (pp. 78, 87, 90, t.s.n., Mendoza). Thereafter, the accused resided either with his parents in Barrio Mayapa, Calamba, Laguna, or with

his common-law wife in Barrio Layos, Tanauan, Batangas (pp. 6, 21, 31, 78, t.s.n., id.). Then, he 'fell in love' with 13-year old Corazon Panghulan of Barrio Mayapa, Calamba, and he decided to do something about it (p. 50, t.s.n., id.).

"At about 9 o'clock in the morning of September 17, 1970, the accused Ricardo Umali visited Teodora Gaynilo, wife of Domingo Panghulan and whom he had known for over three years, in the latter's house in sitio Apat na Bahay, barrio Happy Valley, Calamba, and the two had a long talk. During the conversation, the accused asked Teodora what time Corazon Panghulan usually came home from school, and Teodora answered that Corazon usually came home between 11:30 to 12:00 o'clock noon (pp. 30-31, 34, t.s.n., id.). Teodora's husband is the brother of Corazon's father, and only one house separates their homes in sitio Apat na Bahay (pp. 31-35, t.s.n., id.).

"At about 11:30 A.M. that same day of September 17, 1970, Teodora Gaynilo and her husband left their house to go to the market in Canlubang proper. On the road, they met the accused Ricardo Umali who was going towards the opposite direction. Ten minutes later, said couple met their niece, Corazon Panghulan, who had just come from school. After a while, the couple heard a shout for help, and when they looked towards the direction of the shout they saw, on a curve in the road 150 to 200 meters away, the accused Ricardo Umali dragging and pulling Corazon Panghulan towards the interior of the sugar cane field. Teodora called out, 'Ricardo, Ricardo' in a loud voice, and she also called her niece, 'Corazon, Corazon', but the accused continued to drag the girl until they disappeared from the couple's view at the curve of the road. Teodora Gaynilo's husband was about to rush to the accused, but Teodora stopped him because she noticed that the accused was armed with a scythe and he was also bigger than her husband. The couple then decided to report the matter to the police in Canlubang, and so they hurried to Canlubang proper, where Teodora went to the market while her husband went directly to the authorities to report what had happened to their niece Corazon Panghulan. Teodora also did not buy food anymore and instead proceeded to the house of the parents of Corazon, arriving thereat at about 12:30 P.M., but unluckily, Corazon's mother was not at home. Mrs. Panghulan arrived home only at about 3:00 P.M., and Teodora immediately informed her about the incident involving her daughter. Thereafter, Teodora and some neighbors joined in the search for Corazon, but they failed to find her (pp. 32-33, 36-38, t.s.n., id.; pp. 17-18, 21, 23, t.s.n., March 31, 1971, Desamero).

"What happened between the accused Ricardo Umali and the abducted girl Corazon Panghulan in the meantime, is described in the sworn statement Exh. "A" given by the former to the police authorities of Canlubang on October 7, 1970, wherein he made the following revelations:

"After dragging the girl towards an isolated and secluded place inside the sugar cane field, he forced her to lie on the ground, telling her that if she would not do so, he would kill her. Very much frightened, the girl lay on the ground as told. He then rode on top of her and succeeded in having sexual intercourse with her. After this intercourse, the private part of the girl (who was a virgin) bled profusely. He again raped the girl, and while doing so, he also squeezed her breast and kissed her face. After consummating the second rape, he strangled the girl in the neck with his hands until her life was snuffed out. Afterwards, he left the dead girl and went home to barrio Mayapa.

"The accused later admitted to the municipal judge before whom he subscribed to his statement Exh. "A" that he killed the girl in order that she would not report to her parents what he had done to her (p. 50, t.s.n. April 21, 1972, Desamero).

"By a strange coincidence, when the accused Ricardo Umali came out of the sugar cane field after raping and killing the girl Corazon Panghulan, Pablo Mendoza, a resident of Barrio Sirang Lupa, Calamba, was cutting grass nearby. As Umali had bloodstains on his polo shirt and on a portion of his pants, Mendoza inquired why he had bloodstains on his clothes, and Umali explained that he had accidentally hurt himself with his bolo while he was inside the plantation cutting sugar cane (pp. 19-20, 25-27, t.s.n. Mendoza). Mendoza had known the accused for a long time because both of them used to work at the Canlubang Sugar Estate. He also knew

that the accused then resided in Barrio Mayapa, Calamba, Laguna, and that the latter's house was just about four kilometers from the place where they met that afternoon (p. 27, t.s.n. id.).

"Going back to the couple Domingo Panghulan and Teodora Gaynilo, the former, upon reaching Canlubang proper on the afternoon in question, immediately went to the Canlubang Security De-partment and reported to Abundio Suarez, a security guard of said company, the abduction incident and the place where it had happened. Acting on the report, Suarez and some companions proceeded to the place where the abduction took place and they found, about two feet from the road, pieces of paper with the name of Corazon Pang-hulan written on them. The group traced the path taken by the abductor and his girl victim to the interior of the sugar cane field, but unable to find the missing girl, they returned to their of-fice and reported the matter by phone to the police department of Calamba (pp. 41-44, t.s.n. Mendoza; pp. 24-26, 28, t.s.n. Feb. 19, 1971, Desamero).

"Faustino Panghulan, father of Corazon, arrived home from work at about 8:00 P.M. that same day of September 17, 1970, and his wife imme-diatly told him what had happened to their daughter Corazon as reported by Teodora Gaynilo. Faustino immediately went to the place mentioned by Teodora, and there he saw some residents of his barrio and some policemen already searching for his missing daughter. Throughout that night and until the follow-ing day, September 18, 1970, they searched for the girl, but to no avail (pp. 44-45, 59, t.s.n. Mendoza). Whereupon Teodora Gaynilo and the mother of Cora-zon Panghulan appealed to the police authorities of Calamba for them to help look for the missing girl, and they were assured by Lt. Vivencio Manaig of the Calamba police that they would be given the requested police assistance (pp. 5-6, 12-13, t.s.n. March 31, 1971, Desamero).

"Earlier that same day of September 18, 1970, at about 12:00 o'clock noon, Linda Vidal, a niece of Faustino Panghulan, came to the place where the people searching for her cousin Corazon were taking a rest and informed her uncle Faustino that she had met earlier that day her neighbor Pablo Mendoza, who told her that he saw the accused Ricardo Umali the day before coming out of the sugar cane field with bloodstains in his clothes. With this new information, Faustino Panghulan, together with his son Pablo and neighbor Eladio Opeña, went to see Pablo Mendoza at the latter's house in Barrio Sirang Lupa, and Pablo Mendoza told them that he really saw the accused come out of the sugar cane field between 2:00 to 3:00 o'clock P.M. the day before with bloodstains on his shirt and pants. Pablo Mendoza thereafter accompanied Faustino Panghulan and his companions to the place aforesaid (pp. 57-58, 65-66, t.s.n. Mendoza).

"With the assistance of Pablo Mendoza, the search party, including the policemen, divided themselves into several groups and renewed their search for the missing girl. The search went on for another hour until Eladio Opeña, who was with the group of Faustino Panghulan, saw the dead body of Corazon. Opeña shouted about his discovery, and the search party came and saw the dead body of Corazon on the ground with face upward, with no clothes on, and with her private parts soaked in blood. Upon seeing her dead daughter, the father Faustino Panghulan felt as if he was going to lose his mind, but he did not touch the body of her daughter since it was prohibited by the police. After a while, Faustino started walking home to get some clothes for the naked body of his daughter (pp. 23, 58-59, 68-69, t.s.n. Mendoza).

"About 350 meters from his house, Faustino Panghulan met some Calamba policemen riding in a jeep, who informed him that his daughter had already been found, not knowing that Faustino had already seen his dead daughter. The policemen also informed Faustino that they had already put some clothes on the body of his daughter, which they were bringing to Calamba, and that he better just follow them to the police station there. Faustino and his wife thus proceeded to Calamba, where they saw the body of their daughter in the municipal morgue (p. 5, t.s.n. Feb. 19, 1971, Desamero). Dr. Eusebio Panganiban, municipal health officer of Calamba, arrived later (pp. 59, 69-70, t.s.n. Mendoza) and made an autopsy examination of the dead girl's body upon the written request of the Calamba police department. The cadaver was by that time already rigid (pp. 13-14, t.s.n., Feb. 8, 1971).

"In the course of said autopsy examination, Dr. Panganiban found interstitial hemorrhages in the muscles of

the dead girl's neck constituting evidence of strangulation. He also found fresh multiple lacerations in the dead girl's hymen and spermatozoa inside her vaginal orifice, both of which indicated that she was forcibly abused and that she was still a virgin when she was raped (pp. 13-16, t.s.n., Feb. 8, 1971; Exhibits 8, E and E-1). Dr. Pangani-ban extracted smears from the inside of the vaginal orifice of the dead girl, placed them in slides (Exhibits F-1, F-2 and F-3), and sent the slides to the National Bureau of Investigation in Manila for determination whether they contained human sperm cells or not (p. 16, t.s.n., Feb. 8, 1971). Dr. Panganiban also had the girl's cadaver photographed with special focus on the head, chest, and nipples, which revealed occlusion of the respiratory tract (Exhibits D, D-1, D-2, and D-3; pp. 16-17, t.s.n., Feb. 19, 1971, Desamero; pp. 31-34, t.s.n., Sept. 23, 1971, Desamero).

"Maria P. de los Santos, medical technologist of the NBI, conducted on September 19, 1970, a laboratory examination of the three slides (Exhibits F-1, F-2, and F-3) sent to her by Dr. Panganiban, and found them to be positive of human spermatozoa, which findings she incorporated in her laboratory report No. SC-70-5 (Exhibit C and C-1) (pp. 51-54, t.s.n., April 23, 1971). This report was given to the Calamba police department which, in turn, forwarded it to Dr. Panganiban (p. 9, t.s.n., Feb. 8, 1971).

"On the basis of his own findings and the laboratory report of the NBI, Dr. Panganiban reached the conclusion that the dead girl had recently been raped and afterwards strangled to death (pp. 13-16, t.s.n., Mendoza). The doctor set down his findings in a 'Medico-Legal Necropsy Report' dated October 6, 1970, the pertinent portions of which read:

'MEDICO-LEGAL NECROPSY REPORT'

Date: October 6, 1970

NECROPSY REQUESTED BY: Chief of Police, Calamba, Laguna

MORGUE: Municipal NECROPSY NO. 232

NAME: Corazon Panghulan

AGE: 13

SEX: Female

NATIONALITY: Filipina

RACE: Brown

COLOR: Brown

RESIDENCE: Canlubang Sugar Estate

OCCUPATION: School Pupil

DIED AT: Canlubang, Laguna

DATE AND TIME: 7:30 p.m. Sept. 18, 1970

LENGTH: 146 cm.

WEIGHT: IDENTIFIED

BY:

CLINICAL DIAGNOSIS: Shock, asphyxia by strangulation, rape.

'POSTMORTEM FINDINGS'

1. Bleeding from nose.
2. Rigidity of whole body.
3. Both lungs left and right were edematous and ecchymotic.
4. Both lungs were both overdistended with interstitial emphysema.
5. Supleural and subpericardial, hemorrhage.
6. Heart presence of blood right side is distended.
7. Contusion of neck.
8. Finger nail abrasions in front of neck.
9. Interstitial hemorrhages in the muscles of the neck.
10. Petchial hemorrhages and congestion of the larynx and pharynx.
11. Hemorrhages present in the capsule or the thyroid.
12. Hemorrhages present in the submaxillary and paratoid glands.
13. Liver edematous.
14. Stomach, intestines were empty.
15. Multiple lacerations of the hymen, and presence of spermatozoa.

CAUSE OF DEATH: Shock, asphyxia by strangulation.

REPORT SUBMITTED: October 6, 1970.

(SGD.) EUSEBIO P. PANGANIBAN, M.D.

Municipal Health Officer

Calamba, Laguna'

(Exhibit "B", p. 8, Records).

"The sex-killing incident was duly entered by the Calamba Police Department in its blotter (p. 8, t.s.n., Mendoza). Members of said police department then tried to apprehend the suspect Ricardo Umali but could not find him in Calamba. Having received information that Umali had no fixed home, residing sometimes in Barrio Mayapa in Calamba, Laguna, and sometimes in Barrio Luyos, Tanauan, Batangas, some Calamba policemen went to Tanauan, Batangas on September 18, 1970, and requested the help of the chief of police of Tanauan in the apprehension of the suspect. The Tanauan police finally apprehended Umali on October 7, 1970 and brought him to the Canlubang Sugar Estate Security Department in Calamba, which in turn delivered him to the Calamba Police Department (pp. 3, 6-7, 8, t.s.n., Mendoza; pp. 39-48, t.s.n., April 21, 1972, Desamero).

"In the office of Chief of Police Mario Ignacio of Calamba, the accused Ricardo Umali was investigated and his statement Exhibit "A" taken. The investigation was conducted by police investigator Capt. Vivencio Manaig in the presence of the chief of police. Before the investigation started, Manaig informed the accused that it was his right not to answer or to refuse to make a statement, but the accused manifested that he was willing to give a statement. Then, Manaig propounded questions to the accused in Tagalog and the latter

answered also in Tagalog. The investigation started at about 1:45 P.M. and lasted for one hour. There-after, Umali thumbmarked his statement (pp. 3-4, 48-49, 52-53, t.s.n., Mendoza).

"Umali was then brought to the office of Calamba Municipal Judge Domingo Angeles by Chief of Police Ignacio and Capt. Manaig. Before Judge Angeles started his investigation of Umali on the latter's statement Exh. "A", he asked the Chief of Police and the police investigator to step out. Ignacio and Manaig were, however, only about two or three meters from the wall of the office of the judge and could hear the latter asking Umali why he committed the offense, and they heard Umali answer that he fell in love with the girl and that he could not resist not doing something to her. When the judge asked Umali why he killed the girl afterwards, the latter replied that he killed her so that she could not tell her parents what had happened to her. Chief of Police Ignacio denied having maltreated or threatened Umali either during his investigation of the latter or when Umali subscribed to his statement Exh. "A" before Judge Angeles (pp. 49-50, t.s.n., April 21, 1972, Desa-mero).

"On his part, Municipal Judge Domingo Angeles testified that in administering the oath to suspects who have given statements to the police it is his policy to send out of his office the police officers or investigators who are with the suspects in order that he can freely question the declarants about their statements, which procedure he followed in the case of the accused Ricardo Umali (pp. 48, 51, t.s.n., Mendoza). And since the affidavit of Umali was in the nature of a confession, he took a longer time investigating the latter regarding the same. Because Umali did not know how to read, the judge asked his clerk of court, Cresencio Abesamis, to read to him (Umali) the contents of his statement Exh. "A". The judge then asked Umali further questions, and from the latter's answers, the judge was convinced that Umali's statement Exhibit "A" was freely and voluntarily given and that he fully understood the same. The judge then asked Umali to swear to the truth of his statement, and thereafter, the latter voluntarily imprinted his thumbmark on said statement upon the judge's instruction (Exhibits "A-5" and "A-6") (pp. 49-51, t.s.n., April 23, 1971; pp. 39-41, t.s.n., Sept. 8, 1971)." (Brief, pp. 3-18.)

For the sake of clarity, Exhibit A is reproduced in full as follows:

"SALAYSAY NI RICARDO UMALI Y MARASIGAN, KUHA NI CAPT. VIVENCIO S. MANAIG, DITO SA HIMPILAN NG PULISYA NG CALAMBA, LAGUNA, NGAYONG IKA?7 NG OKTUBRE, 1970, SA GANAP NA ALA-1:45 NG HAPON

1. TANONG: Sang-ayon sa Batas nating umiiral, ikaw ay may karapatang hindi magbigay ng salaysay at matapos kong maipabatid sa iyo, ikaw ba ay handa rin magbigay ng salaysay at ang lahat mong sasabihin ay pawang katotohanan lamang?

SAGOT: Opo.

2. T : Kung gayon ay sabihin mo ang iyong pangalan at iba pang pagkakakikilanlan ng iyong sarili?

S : RICARDO UMALI y MARASIGAN, may 32 taong gulang, may-asawa, nagtatrabaho, at sa kasalu-kuyan ay sa nayon ng Mayapa, Calamba, Laguna, naninirahan.

3. T : Bakit ka naririto ngayon sa Himpilan ng Pulisya ng Calamba, Laguna at kinukunan ng tanong?

S : Ako po ay nagkasala.

4. T : Anong pagkakasala ang ibig mong sabihin dito?

S : Ako po ay nanggahasa ng isang dalagita at pagkatapos po ay aking pinatay.

5. T : Sino naman ang dalagitang iyong sinasabi mo?

S : Hindi ko po alam ang pangalan ngunit alam ko po na siya ay duon tumitira sa Sitio Apat na Bahay, Happy

Valley, sakop ng nayon ng Canlubang, Calamba, Laguna.

6. T : Kailan at saan nangyari ang mga bagay na ito?

S : Noong pong ang oras ay humigit-kumulang sa alas-2:30 ng hapon, ika-17 ng Septiembre, 1970, duon sa nayon ng Canlubang, Calamba, Laguna.

7. T : Nalalaman mo ba naman kung sino ang mga magulang noong dalagitang iyong ginahasa at pinatay?

S : Hindi ko kilala ang kanyang mga magulang, ngunit nakikilala ko ang kapatid nitong dalagitang ito sa ngalang Pablo.

8. T : Papaano ang iyong ginawa bago mo ginahasa at napatay itong dalagitang ito?

S : Ako po noon ay papauwi na sa amin sa nayon ng Mayapa at noong pong malapit na ako sa nayon ng Canlubang ay aking nasalubong itong dalagitang ito at duon po sa pagkakataong iyon ay aking siyang hinawakan sa kamay at pagkatapos ay aking kinaladkad sa loob ng tubuhan.

9. T : Noong kayo ay naroroon na sa loob ng tubuhan, ano naman ang iyong ginawa, kung mayroon man?

S : Akin po siyang pinahiga at kusang nahiga po naman sa takot sa akin.

10. T : Matapos na makahiga itong dalagitang ito, ano pa ang iyong ginawa?

S : Akin pong pinatungan at akin pong ginahasa ang dalagitang ito?

11. T : Sinabi mo na iyong ginahasa iyong dalagitang ito, iyon ba namang titi mo ay naipasok mo sa poke ng dalagitang ito?

S : Opo.

12. T : May ilang ulit mo naman ginahasa ang dalagitang ito?

S : Dalawang ulit po.

13. T : Noong una mong gahasain, ano naman ang ginagawa noong dalagita?

S : Hindi na po siya kumikibo sa dahilang siya ay aking pinagsabihan na pag siya ay sumigaw at hindi ko nakuha ang gusto ko siya ay aking papatayin.

14. T : Doon sa una mong pagkakagahasa, ano naman ang nangyari duon sa kabahagi noong dalagita?

S : Nagdugo po ang kanyang kabahagi.

15. T : Samantalang itong dalagitang ito ay iyong ginagahasa, ano pa ang iyong ginagawa duon sa pagkakataong iyon?

S : Aking pong hinihipuan ng suso at hinahalikan sa pisngi.

16. T : Matapos mong magahasa ng dalawang beses, ano pa ang iyong ginawa?

S : Akin pong sinakal itong dalagitang ito.

17. T : Ano ang nangyari kung ito ay iyong sinakal?

S : Nakita ko pong nangatal ang kamay at pag-katapos po noon ay nakita kong patay na.

18. T : Matapos mong mapatay iyong bata, ano pa ang iyong ginawa?

S : Lumabas na po ako sa kalsada at ako po ay umuwi na sa amin sa Mayapa.

19. T : May ilang beses ka ng gumagawa ng ganitong panggagahasa?

S : Dalawang beses na po ngunit iyong pong una ay hindi ko pinatay.

20. T : Ano naman ang dahilan at iyong pinatay itong dalagitang ito?

S : Para huwag na pong makapagsumbong sa kanyang mga magulang.

21. T : Katotohanan bang lahat ang iyong sinabi rito at handa mo rin bang sumpaan at lagdaan sa harap ng Hukuman ang iyong salaysay na ito?

S : Opo.

(SGD.) (THUMBMARKED)

RICARDO UMALI

SUBSCRIBED AND SWORN to before me this 7th day of October, 1970, at Calamba, Laguna, Philippines.

(SGD.) DOMINGO M. ANGELES

Municipal Judge

Calamba, Laguna"

During the trial, the accused interposed the defense of alibi. He testified that on September 16, 1970, at about 7:30 p.m., he met his mother, Consolacion Marasigan, while he was on board a jeepney parked at Tanauan, Batangas; that his mother was crying because his brother, Ernesto Umali, left home; that his mother requested him to accompany her to Sariaya, Quezon, to look for his brother; that they arrived at Sariaya at about 8:00 p.m.; that they stayed in a certain store which was open the whole night; that in the afternoon of the follow-ing day, September 17, 1970, they went to Lucena City to continue their search; that they arrived in Lucena City at about 8:00 p.m.; that they stayed there up to the following day, September 18, 1970; that he suggest-ed to his mother to proceed to Manila to look for his brother in the houses of their relatives; that his mother heeded his advice and pro-ceeded to Manila while he continued his search in Lucena City; that when he still could not find his brother, he went home; that on October 1, 1970, he left home to look for a job; that he was not able to find one so he returned home on October 7, 1970; that when he was about to alight the BCo bus, six policemen accosted him and dragged him to their jeep and brought him to the municipal building of Tanauan, Batangas; that when he asked why he was arrested, the policemen answered that he will know the reason in Canlubang, Laguna; that the policemen then brought him to Canlubang; that after the Tanauan policemen left him, the Canlubang policemen dragged him to a room and maltreated him until he lost consciousness; that one of the policemen who maltreated him was Abundio Suarez; that when he regained consciousness, he was on board the vehicle of Calamba policemen on their way to the Calamba Police Department; that he noticed his fingers to be bluish in color; that upon arrival at the Calamba Police Department, a Calamba policeman read to him a thumbmarked document containing his name; that he was then brought to the Municipal Judge of Calamba; that the Judge read to him the document and asked him to swear to the truth of the statements therein by affixing his thumbmark on the document; that he was forced to affix his thumbmarks on the document be-cause a policeman poked a gun at his back; that the Judge could not see what the policeman was doing and could not hear the three policemen at his back whispering to him that something will happen to him when he returns back to his cell if he will not affix his thumbmark on the document; that they were then a little over one meter from the Judge and were standing in front of him; and that he knew how to sign his name but did not tell the Judge about it.

Consolacion Marasigan, mother of the accused, testified that on September 16, 1970, at about 3:30 in the

afternoon, she went to her son, Ricardo Umali, in Tanauan, Batangas, to ask him if her other son, Ernesto Umali, who ran away from home, went to him; that when she reached Tanauan, she saw her son Ricardo in one of the parked jeepneys; that after learning that Ricardo had not seen her other son, she asked Ricardo to accompany her in looking for Ernesto; that they then went to San Pablo City; that they arrived at San Pablo City at about 5:00 p.m.; that they then boarded a bus bound for Sariaya, Quezon; that they reached Sariaya at about 8:00 p.m.; that they stayed in a certain restaurant and waited there until the following morning; that they searched for her son in Sariaya the whole day of September 17, 1970, but could not find him; that the following morning, they proceeded to Lucena City; that they spent the whole day of September 18, 1970, looking for her son in Lucena City; that when they still could not find Ernesto, Ricardo suggested that she look for him in Manila while he would continue his search in Lucena City; that she heeded Ricardo's advice and proceeded to Manila on the evening of said day; that she stayed in the house of her nephew in Manila up to September 25, 1970, when she returned to Mayapa, Calamba, Laguna, unable to find her son; and that Ernesto returned home only after she had appealed in a radio station.

And Flaviana Vanguardia, wife of the accused, testified that on September 16, 1970, the mother of Ricardo went to their house in Tanauan to ask Ricardo to accompany her in looking for her other son who was missing; that her husband returned to their house only on September 19, 1970; that sometime in October, 1970, she was informed by her mother-in-law that her husband was being detained in the municipal jail of Calamba; that she went to Calamba to see her husband but the latter was already transferred to Santa Cruz, Laguna; that she then went to Santa Cruz, Laguna and found her husband in the provincial jail; that she asked him why he was detained and why his body was swollen and her husband replied that he did not know why he was detained and that he was beaten up by the policemen.

After trial the court rendered the following judgment:

"In view of the foregoing considerations, this Court finds the accused guilty beyond reasonable doubt of the crime of rape with homicide as defined and penalized by Article 335 of the Revised Penal Code as amended by Republic Act No. 2632 and Republic Act No. 4111. Accordingly, he is hereby sentenced to suffer the penalty of death."

In this appeal, appellant's counsel has made only one assignment of error, namely:

"THE TRIAL COURT ERRED IN OVERLOOKING OR FAILING TO CONSIDER CERTAIN FACTS OF WEIGHT AND IMPORTANCE WHICH SHOW THAT THE EVIDENCE WAS STAGE-MANAGED BY THE PROSECUTION."

After a careful review of the evidence on record, We are convinced and so hold that the guilt of the accused of the crime of rape with homicide had indeed been proven beyond reasonable doubt. That the accused Ricardo Umali had dragged the victim Corazon Panghulan towards the interior of the sugarcane field, forced her to have sexual intercourse with him and, thereafter, strangled her to death had been sufficiently proven not only by evidence supplied by third persons (namely: the testimony of Teodora Gaynilo that she saw the accused dragging the victim towards the interior of the sugarcane field; the testimony of Pablo Mendoza that he saw the accused coming out of the sugar-cane field with blood stains on his shirt and pants; the testimonies of Faustino Panghulan and Pablo Mendoza that the victim was found dead and naked inside the sugarcane field; the testimony of Dr. Eusebio Panganiban that his autopsy of the body of the victim showed that she was raped and strangled to death; the testimony of NBI Medical Technologist Maria P. de los Santos that the smear on one of the slides submitted by Dr. Panganiban was positive of human spermatozoa; and other corroborating evidence) but also by the extrajudicial confession (Exh. "A") of the accused himself. His subsequent retraction and denial of the voluntariness of his confession cannot be given credence in the light of the positive testimonies not only of the

police officer (Capt. Vivencio Manaig) who took down his confession but also of the Municipal Judge (Judge Domingo M. Angeles) before whom the same was acknowledged that his statements were given intelligently and voluntarily. Umali failed to substantiate his claim that he was maltreated by the policemen in Canlubang including Abundio Suarez who, incidentally, was not a Canlubang policeman, as claimed by Umali, but a security guard of the Canlubang Sugar Estate. He himself admitted that the document containing his confession was read to him in the office of Judge Angeles and that he, thereafter, thumbmarked the same in front of said judge. His claim that he was merely forced to acknowledge his confession because a policeman behind him poked a gun at his back and that the other policeman at his back whispered to him that something would happen to him should he refuse to thumbmark the document is too crude to be convincing. It should be noted that by his own admission they were then merely a little over one meter from the judge whereas Judge Angeles categorically testified that he required the policemen to get out of the room before inquiring from the accused about the voluntariness of his confession.

The accused's counsel de officio contends that since the record fails to show that the accused was informed of his right to counsel and that he had unquestionably waived such right, Exh. "A" is inadmissible in evidence under Sec. 20, Art. IV of the new Constitution. He fails to take into account that the extrajudicial confession was executed on October 7, 1970, while the new Constitution took effect only on January 17, 1973. And it is now settled that the right to counsel at custodial investigations is applicable only after the effectivity of the 1973 Constitution and not before (*People vs. Hipolito*, G.R. No. L-31402, August 17, 1981, 106 SCRA 610, 617, citing *People vs. Molleda*, G.R. No. L-34248, November 21, 1978, 86 SCRA 667; *Magtoto vs. Manguerra*, G.R. Nos. L-37201-02, March 3, 1975, 63 SCRA 4).

Umali's alibi does not merit consideration by the Court not only because of the weaknesses which inhere in such a defense but more so because it is actually based on flimsy excuses. His claim that he was in Lucena City at the time of the commission of the offense because his mother asked him to accompany her in looking for his brother who ran away from home simply does not inspire belief. As the trial court correctly pointed out:

"Ernesto, the son for whom this mother pretends to be so solicitous, was no longer a child when he allegedly ran away because of a quarrel with his father. He was already married. As a matter of fact, the supposed cause of his quarrel with his father was because his father allegedly wanted him to return home to his wife whom he had left.

"Considering the age of Ernesto, it is unbelievable that his mother would immediately be alarmed at his failure to return home on the same day he allegedly had a quarrel with his father, so much so that she rushed to her other son, the accused herein, to frantically seek his help to locate Ernesto who had allegedly ran away from home. Flaviana Vanguardia's attempt to corroborate the testimony of her common-law husband and that of her common-law mother-in-law, is ineffectual. By her own admission on cross-examination, she said that it was merely a passenger of a jeepney who informed her that her common-law husband was sending word to her that he had gone to Sariaya to look for his missing brother together with his mother.

"Aside from the fact that alibi, as has been repeatedly held, is at best weak defense. (*People vs. Lumantar*, L-16383, May 30, 1962, 5 SCRA 157; *People vs. Pelagio*, L-16177, May 24, 1967, 20 SCRA 153; *People vs. Tontanoza*, L-19421, May 29, 1967, SCRA 249; *People vs. Gomez*, L-25815, May 31, 1969, 28 SCRA 440; *People vs. Bulawin*, L-30069, September 30, 1969, 29 SCRA 710) in this particular case, it is also not credible. The story of the accused, his mother and common-law wife is simply unconvincing." (Decision, pp. 17-18, rollo, pp. 34-35.)

Finally, We cannot agree with the contention of the accused's counsel de officio that the prosecution's evidence is "just too pat to be true" and that the same is "too full of improbable coincidences that can only happen when the evidence is contrived or stage-managed but could not have happened in reality"; for to do so would be to doubt the credibility of the prosecution witnesses whom the trial court considered to be worthy of belief. We affirm the

trial court's finding on the credibility of the prosecution witnesses not only because of the time-honored rule that the conclusions of trial courts on credibility of witnesses are entitled to great respect by appellate courts since it is the former courts who actually observed the witnesses' demeanor and manner of testifying, but more so because We have actually reviewed the testimonial evidence and have found the same to be credible.

In view of all the foregoing, We affirm the trial court's conclusion that the guilt of Ricardo Umali of the crime of rape with homicide has been proven beyond reasonable doubt and its imposition of the supreme penalty of death. Considering however its failure to provide for the accused's civil liability to the heirs of the deceased victim despite the absence of express waiver thereof or reservation of the same, the decision is modified accordingly.

WHEREFORE, the decision of the trial court is hereby affirmed with the sole modification that the accused is further ordered to indemnify the heirs of Corazon Panghulan in the amount of P12,000.00. Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Teehankee, J., see his brief concurrence.

Fernando, C.J., no part.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur and qualify the same only in consonance with my dissent in the leading case of *Magtoto vs. Manguerra*, 63 SCRA 4, 27, that the outlawing in the 1973 Constitution of confessions obtained without the accused having been informed of his right to silence and to counsel "is plain, unqualified and without distinction whether the invalid confession be obtained before or after the effectivity of the Constitution. The Court is called upon to enforce the plain mandate of the Constitution outlawing the admission of such invalid confessions. *Ubi lex non distinguit nec nos distinguere debemus.*" Since even with the exclusion of such confession, the evidence of record as set forth in the main opinion of the Court establishes beyond doubt the guilt of the accused, I concur in the affirmance of the death penalty.

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