

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR GARCIA Y DALIT, DEFENDANT-APPELLANT.

*G.R. No. L-44364. April 27, 1979*

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### PER CURIAM:

This is an automatic review of the decision dated July 21, 1976 of the Court of First Instance of Isabela, Hon. Constante R. Ayson presiding, in Crim. Case No. 617, convicting accused Victor Garcia y Dalit of the crime of Rape with Homicide and sentencing him to suffer the penalty of death, with all the accessory penalties provided for by law; to indemnify the heirs of the victim, Imelda Cristobal, the sum of P20,000.00 without subsidiary imprisonment in case of insolvency; and to pay the costs.

In an Information filed on January 6, 1975 by First Asst. Prov. Fiscal Simplicio C. Cabantac with the Court of First Instance of Isabela, Victor Garcia y Dalit was charged with the crime of Rape with Homicide, committed as follows:

"That on or about the 28th day of September, 1974, in the municipality of Ilagan, province Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously by means of force and violence, have carnal knowledge with one Imelda Cristobal, against the latter's will and consent; that on the occasion of the said rape, the said accused did then and there willfully, unlawfully and feloniously, with evident premeditation and taking advantage of his superior strength and with intent to kill, treacherously assault, attack and use personal violence upon the said Imelda Cristobal, by then and there giving her several fist blows on her mouth and face and submerging her into a creek, which directly caused the death of said Imelda Cristobal, due to chest compression and drowning." [1]

Upon arraignment, the accused pleaded not guilty.[2] During the trial, the prosecution presented five (5) witnesses – (1) Ignacia Cristobal – mother of the victim; (2) Rosa Lozano – aunt of the victim; (3) Wilfredo Cristobal – brother of the victim; (4) Teodoro Cristobal – brother of the victim; and (5) Conrado Gabriel – Municipal Health Officer of Ilagan, Isabela – and Exhibits "A" (Certificate of Death issued by the Local Civil Registrar), "B" (Medico-Legal Findings), and "C" (Certificate of Death issued by the Municipal Health Officer).

From the testimonies of the foregoing witnesses, the trial court culled the following findings of facts:[3]

"On September 28, 1974, about six o'clock p.m., Ignacia Cristobal, Wilfredo Cristobal and Teodoro Cristobal were resting in their respective houses in Gayong-gayong Norte, Ilagan, Isabela. They had just arrived from the field where they went to work that afternoon. Wilfredo's house is about fifteen meters north of the house of Ignacia while Teodoro's house is about ten meters north of Wilfredo's.

"Suddenly, Ignacia, Wilfredo and Teodoro heard someone shouting and screaming at the top of her voice, from the creek about 80 meters east of their houses. Wilfredo reacted first for he observed that the voice was that of his 16-year old sister Imelda Cristobal. He went out of his house immediately, passed and dropped at the nearby house of his aunt Rosa Lozano, first degree cousin of his father Vicente Cristobal, and asked her (Rosa) to 'please go to the creek and see Imelda'. But Wilfredo did not wait for Rosa anymore. He rushed to the creek followed in a short while by Rosa and Teodoro.

"When Wilfredo, Rosa and Teodoro reached the creek, one after the other in that order, they found Imelda. It was a pitiful and shocking sight they saw. Imelda was lying on the ground, face upward, naked and unconscious; her face and cheeks swollen, lower lips cut and bleeding; her arms scratched and bruised; hematoma on different parts of her body; and her clothes about four meters away from her. Rosa took the clothes and they dressed up Imelda. Shortly later, Imelda regained her consciousness. Wilfredo asked her: 'Who did this to you?' Imelda answered: 'Manong Victor, manong', referring to Victor Garcia, accused herein an husband of Juanita Cristobal, older sister of Imelda. Teodoro asked what happened. Imelda replied that Victor abused and dishonored her. When Teodoro inquired how Victor did it, Imelda briefly recounted what transpired and she said: 'When I was putting on my dress he held me by the neck from behind, dragged me and upon reaching the deeper part of the creek he submerged me. When I shouted he stuffed my mouth with cloth. Then he boxed face and I fell unconscious. When I regained my consciousness, Victor was thumping on my chest. I shouted again, then manong Fred arrived.'

"Disgraced and maltreated hard, Imelda was suffering bitterly. Weak she could not stand anymore. Teodoro, Wilfredo and Rosa carried her in their arms and with the assistance of Faustino Corpuz they took her home.

"Imelda was laid on a bed. Her mother Ignacia Cristobal asked her who was the perpetrator. Imelda answered in the presence of Marciano Corpuz, Narciso Lozano, Teodoro Cristobal, Faustino Corpuz, Fortunato Cristobal, Rene Cristobal, Juanita Cristobal and her children that Victor Garcia was the man who maltreated, abused and dishonored her. Again, Imelda told and recounted briefly to her mother and their neighbors what transpired, thus: 'When I was at the creek, putting on my dress, my brother-in-law held me from behind, submerged me in the creek several times, boxed me, sat on my chest. I lost consciousness then I did not know what happened.'

"The parents, brothers and sisters of Imelda thought of bringing her to town for immediate medical treatment but they desisted because of the curfew hours. They believed that they would be overtaken by the curfew on their way. Gayong-gayong Norte is 17 kilometers to town. In going to the centro, one has to hike first to barrio San Antonio, seven kilometers away, for about two to three hours, and from there to town by passenger jeepneys.

"Imelda died at about nine o'clock that night, three hours after the incident. The following day, September 29, Teodoro went to town and reported the incident to the police authorities. Three policemen and the municipal health officer, Dr. Conrado Gabriel, proceeded to Gayong-gayong, arriving there before high-noon. The doctor examined the victim.

"The findings of Dr. Gabriel as indicated in his medical and death certificates (Exhibit B and C, pp. 4 and 6, record) and testified to by him in Court are:

1. Hematoma on different parts of the body of the victim - chest, neck and back;
2. Chest - soft and distended; when pressed it sunk easily; ribs possibly broken;
3. Nipple, right side - removed; around it were bruises;
4. Abdomen - plenty of fluid (water); abdominal wall distended; when pressed twice, about 50 cc of water was expelled thru the mouth; fluid in abdomen may have been caused by immersion in water or deliberately introduced;
5. Hymen - fresh laceration at nine o'clock as a result of penetration; streak of blood found in the vaginal wall; and
6. Cause of Death - internal hemorrhage due to chest compression; presence of excessive fluid in the abdominal region as a secondary factor." (Underscoring supplied.)

Accused-appellant Victor Garcia interposed an alibi. He testified that he could not have committed the crime since he left Bo. Gayong-gayong Norte, Ilagan, Isabela, in the early morning of September 28, 1974 and went to Bo. San Lorenzo of the same town of Ilagan to clear a parcel of land by kaingin. He further testified that he stayed in the house of his brother's father-in-law, Domingo Espanto, in said Bo. San Lorenzo for two months as he received, on September 30, 1974, a letter from his wife, Juanita Cristobal Garcia, advising him not to go home because he was suspected of having killed his sister-in-law, Imelda Cristobal.[4]

To corroborate the testimony of the accused, the defense presented the following witnesses: (1) Domingo Espanto (father-in-law of the brother of the accused) who testified on direct examination that the accused arrived in his house in Bo. San Lorenzo before noon of September 28, 1974 and stayed there for sometime;[5] (2) Juanita Cristobal Garcia – wife of the accused, and elder sister of the victim - who testified on direct examination that her husband left barrio Gayong-gayong for barrio San Lorenzo at 6:00 o'clock in the morning of September 28, 1974 and did not return in the afternoon of that day; on cross-examination, she testified that her husband never returned to barrio Gayong-gayong because she wrote him a letter informing him that he was suspected to be the author of the crime and advising him not to return to barrio Gayong-gayong;[6] and, (3) Antonio Garcia – elder brother of the accused - who testified on direct examination that he delivered the letter of Juanita Cristobal Garcia to the accused in barrio San Lorenzo.[7]

The trial court rejected the alibi of the accused and, concluding that the prosecution had proved the case for the State beyond doubt, convicted the accused as charged and imposed upon him the supreme penalty of death.

Thus, this automatic review of the decision of the trial court.

Upon manifestation of accused-appellant Victor Garcia that he has no lawyer to represent him in this appeal, this Court appointed Atty. Manuel B. Tomacruz as counsel de oficio for the aforesaid appellant.[8] Said counsel de oficio filed the appellant's brief on February 28, 1977.[9] The Acting Solicitor General, Vicente V. Mendoza[10] filed the appellee's brief on May 27, 1977.[11] This case was considered submitted for decision on September 27, 1977.[12]

In seeking reversal of the judgment of conviction, defendant-appellant, through his counsel de oficio, assigns the following errors allegedly committed by the trial court:[13]

(I) THE LOWER COURT ERRED IN NOT CONSIDERING DEFENDANT-APPELLANT'S CLAIM THAT HE WAS NOT AT THE PLACE OF THE COMMISSION OF THE OFFENSE AT THE TIME THE SAME WAS COMMITTED.

(II) THE LOWER COURT ERRED IN GIVING WEIGHT TO THE HEARSAY TESTIMONY OF THE WITNESSES FOR THE PROSECUTION CONSIDERING THAT WHAT THE SAID WITNESSES ALLEGEDLY HEARD FROM THE VICTIM AS TO THE SURROUNDING CIRCUMSTANCES OF HER DEATH FAILED TO MEET THE REQUIREMENTS FOR THE ADMISSIBILITY OF A DYING DECLARATION.

(III) THE LOWER COURT FAILED TO CONSIDER THE FACT THAT THE WITNESSES FOR THE PROSECUTION HAD THE MOTIVE TO INCRIMINATE THE ACCUSED AND TO PERVERT THE TRUTH.

I. On the first assignment of error. Insisting that the claim of defendant-appellant that he was not at the place of the commission of the offense at the time the same was committed has been sufficiently established by the testimony of said appellant as confirmed by defense witness Domingo Espanto who testified that the appellant was in his house in barrio San Lorenzo on the day of the perpetration of the crime in barrio Gayong-gayong, counsel de oficio contends that the trial court committed an error in rejecting said alibi.

We cannot agree.

a. Whether or not the alibi has been sufficiently established by accused's testimony and that of his witness Domingo Espanto depends upon the weight accorded by the trial court to said testimonies, and this, in turn, will depend on the credibility of said witnesses and of their testimonies. Apparently, the trial court entertained serious doubts on the credibility of the defense witnesses, for, as it observed -

"The demeanor, attitude and manner of testifying, candid, direct and forthright answers of the prosecution witnesses show that their story and version reflected the truth of the incident. That of the defense witnesses on the other hand indicate that they did not truthfully tell what they know of the incident and that there is much wanting in their honesty, verity and credibility." [14] (Underscoring supplied.)

We are not inclined to dispute such observation of the trial court, for it was said court which actually heard the witnesses themselves and observed their deportment and demeanor during the trial. Thus, We have held, in a long line of cases, that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. [15]

Evidence to be believed must not only proceed from the mouth of a credible witness but must be believable in itself such as the common experience and observation of mankind can approve as probable under the circumstances. [16] The trial court assailed the credibility not only of the defense witnesses but that of their testimonies as well when it held, in no uncertain terms, that the claim that the defendant went to San Lorenzo on that fateful day of September 28, 1974 to clear a parcel of land by kaingin is unworthy of belief, for the reason that "it was the end of September, rainy and wet season, not kaingin season as claimed, in the province of Isabela." [17] Defendant-appellant did not take exception to this holding of the trial court.

It results, therefore, that defendant-appellant has no credible evidence upon which to anchor his defense of alibi.

b. As correctly pointed out by the trial court, alibi is the weakest of all defenses since it is easy to concoct but difficult to disprove. [18] Courts view it with caution and accept it only when proved by positive, clear and convincing evidence, i.e., such evidence which would preclude the possibility of the accused's presence at the scene of the crime. [19]

In the case at bar, the only evidence presented to corroborate defendant's self-serving claim that he was in barrio San Lorenzo at the time of the commission of the crime in barrio Gayong-gayong was the testimony of defense witness Domingo Espanto, the owner of the house in barrio San Lorenzo where defendant allegedly stayed on September 28, 1974. But not only does such testimony suffer the infirmity heretofore adverted to but, more importantly, it lacks the requisite certainty and positiveness to prove that the defendant was indeed in the house of the defense witness in barrio San Lorenzo on September 28, 1974. For, as borne out by the transcript of stenographic notes of the hearing on May 13, 1976, witness Espanto was not even sure of the month and the year when defendant Garcia arrived and stayed in his house in barrio San Lorenzo. Thus, on direct examination, Domingo Espanto testified as follows - [20]

"Q. By the way, you said that on September 28, 1974 the accused Victor Garcia was in your house. When did he arrive in your house?

A. He arrived there on September 28, sir.

Q. At what time?

COURT:

Q. What year?

A. It could be last year during the clearing season by kaingin.

Q. I remind you that this year is 1976. Will you please refresh your memory and try to recall the actual year?

A. It was the season for clearing the field as we were then opening some lots.

Q. At what time on September 28?

COURT:

Your last answer is not also clear. The question is what year of September 28 when Victor Garcia came to your house?

A. What I can remember is he arrived there on the 28th but I cannot remember the month or the year because I did not bother to think of the date because you know as a farmer I am occupied." (Underscoring supplied.)

And on cross-examination, witness Espanto testified as follows -[21]

"Q. So when you say that Victor Garcia arrived in your house on September 28, 1974 in answer to the question of the defense counsel, do we understand from you that that was only a calculation or your guess?

A. Yes, sir, because I do not know how to read so I just guessed.

Q. Because you are not sure, Victor Garcia could have arrived in your house on September 29, 1974?

ATTY. DOMINGO:

We object to the question as argumentative and besides misleading.

COURT:

No, it is not argumentative. Neither is it misleading. It is leading.

A. Yes, sir, he arrived because he stayed there.

Q. Possibly on September 29, 1974, that is my question.

A. As I have stated, I cannot remember anymore because as I said, I do not think of them." (Underscoring supplied.)

It is clear from the foregoing testimony of defense witness Domingo Espanto that he was uncertain of the date when defendant Garcia arrived and stayed in his house in barrio San Lorenzo. Accordingly, the requirement of a "positive, clear and convincing evidence" for an alibi has not been complied with. The same must, therefore, be rejected.

c. The trial court did not predicate its rejection of defendant's alibi solely on the weakness of the evidence for the defense, but, primarily, on the strength of the evidence for the prosecution which clearly belies defendant's claim that he was not, and could not have been, at the scene of the crime at the time the same was committed. After a careful scrutiny of the prosecution's evidence, We accord full concurrence with the trial court's conclusion that defendant's alibi deserves to be rejected.

Firstly, the defendant was seen leaving the crime scene by prosecution witness Wilfredo Cristobal, a brother of the victim. Said witness testified thus -[22]

"Q. Now, while you were resting in your house that particular time in the afternoon of September 28, 1974, do you know or do you remember of anything unusual that happened?

A. Yes, sir.

Q. What was that unusual happening?

A. While I was resting I heard my younger sister shouted and immediately I ran towards the place where the shout emanated and passed by the house of my Aunt Rosa Lozano. Upon my arrival there, I went ahead to where my sister shouted. I saw Victor who came from the place where my sister was.

Q. Where did you see your sister?

A. In the creek.

x x x

Q. And you stated that upon your arrival you saw Victor Garcia running away from where you saw your sister. When you saw your sister, what was the condition of your sister as you saw her?

A. She was naked, sir.

Q. What was her position at the time, was she standing, sitting or what?

A. She was lying with her face upward.

Q. Now, you said that you saw Victor Garcia running away from where you saw your sister, towards what direction did Victor Garcia proceed?

When you said that when you arrived at the place where you saw your sister Imelda you saw Victor Garcia coming from where she was, did you try to talk with Victor Garcia as you saw him going away from where Imelda was?

A. No, sir, because I went immediately to help my younger sister.

Q. Now, how about Victor Garcia, what did he do after you saw him coming from the place of your sister?

A. He ran holding a long handled bolo." (Underscoring supplied.)

Defendant's claim that he was in barrio San Lorenzo at the time of the perpetration of the crime in barrio Gayong-gayong simply cannot stand in the face of the foregoing clear and positive proof of his presence at the scene of the crime immediately after the same was committed.

Secondly, as aptly pointed out by the trial court, "(A)t the creek after she regained consciousness and on her deathbed in her parents' home, Imelda recounted to her mother, brothers and sister and neighbors what happened to her and explicitly named Victor Garcia as the man who abused, dishonored and mercilessly maltreated her." [23] Thus, Wilfredo Cristobal testified as follows -[24]

"Q. And what did you do after you saw Victor Garcia running away with a tabas from where you saw your sister?

A. I immediately carried her on my shoulder because she was then unconscious.

Q. And after that, what happened?

A. Then after a while my sister regained consciousness and I asked her who did that to her. She told me that it was Victor Garcia.

Q. How did she tell you that it was Victor Garcia who did something to her? I will reform the question. What did Imelda, your younger sister, actually tell you when she said it was Victor Garcia who did something to her?

A. She said that he (Victor) dishonored her.

Q. And what else did she say, if any?

A. It was my elder brother who continued interrogating her because immediately after we put on her dress and carried her to the house of my father, it was my elder brother who continued the interrogation.

x x x

Q. When your sister was brought to the house of your parents and you laid her down, do you remember if anybody else talked with her?

A. Yes, sir.

Q. Who?

A. My mother and father. I mean my father was not there then because he was in San Mariano.

Q. And how long did your mother talk to your sister?

A. Maybe about three (3) hours, sir.

Q. And you still remember what your sister Imelda told your mother if you were present during their conversation?

A. She repeatedly reported what Victor Garcia did to her that she was raped by him." (Underscoring supplied.)

The elder brother, Teodoro Cristobal, testified as follows -[25]

"Q. Now, when you went to the creek, what did you find out?

A. Upon reaching the creek, I saw my sister Imelda Cristobal being lifted by my brother Wilfredo Cristobal and I asked her what happened and she answered me that she was abused by Victor Garcia. She told me in Ilocano, niramang nagkaroon ng seksuwal na abuso sa kanya ng Victor Garcia.

Q. And when you were told by your sister that . . . I withdraw. When she told you that she was abused by Victor Garcia, what else did you ask her, if you asked her any further questions?

A. And I asked her how he did it and she answered me by saying that when I was putting on my dress, he held me by the neck and dragged me and upon reaching the deeper part of the creek he submerged me in the creek then I struggled. Then he dragged me again and when I shouted he stuffed my mouth with a cloth. Then he boxed my face. (Witness pointed to his mouth and his cheeks.)

Q. What else did he tell you, if any?

A. When I regained consciousness, I felt that Victor was on top of my chest thumping. Then I shouted again. That was the time that Manong Fred arrived.

x x x

Q. And what did you do after you brought her home to the house of your father?

A. Then we laid her on the bed, sir.

Q. And what transpired when you laid your sister on the bed?

A. My mother inquired from her who did that thing to her and she answered that it was Manong Victor Garcia." (Underscoring supplied.)

The victim's mother, Ignacia Cristobal, testified as follows -[26]

Q. And when your daughter Imelda was brought home by her brothers, were you able to talk with Imelda?

A. Then I asked Imelda what happened to you my daughter and she answered I did not like what happened to me. Do not blame me.

Q. Did you come to know what she meant when she said she did not like what happened? I withdraw. And what else, if any, did Imelda tell you?

A. That she was hurt very much when she was boxed by him.

Q. Did she tell you who boxed her?

A. Yes, sir.

Q. Whom did she mention?

A. She said my Manong Victor.

Q. Who is that Manong Victor she referred to?

A. Her brother-in-law.

Q. Do you know the full name of her brother-in-law Victor?

A. Yes, sir.

Q. Will you please tell the court?

A. Victor Garcia.

Q. And what else . . .

COURT:

Q. Is he in court now?

A. Yes, sir.

Q. Where is he, point at him?

A. That man. (Witness pointed to the accused who gave his name as Victor Garcia.)

x x x

COURT:

Q. Tell everything that your daughter told you as soon as she was carried home by her brothers Wilfredo and Teodoro and her Auntie Rose Lozano. (Witness is crying after giving her answer to the question of the court.)

A. She told me this, sir. When I was in the creek about to put on my dress, my brother-in-law came from behind but I did not notice him. He placed his hand on my neck from behind and submerged me in the creek several times. He boxed me several times and even sat on my chest for which I lost consciousness and I did not know what he did to me.

Q. What else did she tell you?

A. Shortly after, she died." (Underscoring supplied.)

Rosa Lozano, the aunt of the victim who helped Wilfredo and Teodoro Cristobal carry the victim from the creek to the house of her parents, likewise testified that the victim explicitly named the defendant, Victor Garcia, as the one who raped and maltreated her.[27]

In the face of the foregoing clear and positive identification of defendant Victor Garcia as the one who raped Imelda Cristobal and inflicted upon her the injuries which caused her death, his defense of alibi clearly appears as nothing but a mere concoction - a fabrication designed to exculpate him from violating the honor and taking the life of his 16-year old sister-in-law. And, We have repeatedly held, the defense of alibi cannot prevail over the positive identification of the accused as the author of the crime.[28]

d. Finally, note must be taken of the fact that Atty. Simplicio Domingo, Jr., the lawyer who represented the defendant during the trial, manifested in open court that the defendant was willing to plead guilty if the crime charged in the Information would be changed from Rape with Homicide to Murder.[29] The trial court did not, however, allow the amendment of the Information for the reason that evidence proving the commission of the crime of Rape with Homicide had already been presented by the prosecution.[30]

In resume, appellant's contention that the trial court erred in rejecting his alibi is clearly without merit.

II. On the second assignment of error. Defendant-appellant, through his counsel de oficio, assails the admissibility of the testimonies of the prosecution witnesses re the circumstances surrounding the victim's death on the ground that the same were not of their own personal knowledge but were only narrated to them by the victim. Alleging that such testimonies are hearsay, appellant contends that the trial court erred in admitting the same.

We cannot agree. It must be noted that neither the defendant nor his counsel below objected to the admission of the testimonies which are now being assailed as hearsay.[31] This is fatal to defendant-appellant's present posture since the failure to object to hearsay evidence constitutes a waiver of the right to cross-examine the actual witness to the occurrence, rendering the evidence admissible.[32]

Moreover, the testimonies of the prosecution witnesses as to the statements of the victim on the circumstances surrounding her death are admissible in evidence as her dying declaration, pursuant to Section 31, Rule 130 of the Revised Rules of Court which provides:

"SECTION 31. DYING DECLARATION. - The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death."

Appellant's contention that the statements of the victim cannot assume the character of a dying declaration, for the reason the prosecution allegedly failed to show that the statements were given by the victim under a consciousness of an impending death, is untenable.

We have held that "it is not necessary to the validity or admissibility of a dying declaration that the declarant expressly state that he has lost all hope of recovery; it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the time the declaration was made, the declarant did not expect to survive the injury from which he actually died." [33]

That the victim, Imelda Cristobal, was under a consciousness of an impending death at the time she made the statements identifying the defendant as the one who raped her and inflicted upon her the injuries which caused her death can be inferred from the circumstances under which the declaration was made. She had just recovered her consciousness and her physical condition bespeaks the imminence of her death. She was so weak that she had to be carried by her brothers and Aunt Rosa from the creek to the house of her parents. Added to the physical pain which she was then suffering by reason of the serious injuries inflicted upon her, was the mental anguish and

shock brought about by the unmitigated violation of her honor. With face swollen, lower lip cut and bleeding, hematoma all over the body, broken ribs, right nipple removed and bleeding, hymen lacerated, with blood streaks in the vaginal wall, and abdomen filled with water, the victim could not have entertained any hope of surviving the beastly attack on her by her "Manong Victor". In fact she died barely three (3) hours after the beastly assault.

In view of the foregoing circumstances, this assigned error is without merit.

III. On the last assignment of error. Counsel de officio for defendant-appellant contends, finally, that the prosecution witnesses had the motive to pervert the truth and to incriminate the defendant and that the trial court consequently erred in taking their testimony at their face value.

This contention is untenable. The alleged improper motive imputed by the defendant to the prosecution witnesses does not find support in the evidence on record. Except for Teodoro Cristobal who allegedly harbored ill-feeling against the defendant, no evidence whatsoever was presented to prove that prosecution witnesses Wilfredo Cristobal, Ignacia Cristobal and Rosa Lozano had the motive to pervert the truth and to incriminate the defendant. And the ill-feeling which Teodoro Cristobal allegedly had against the defendant could not have been sufficient for the former to impute against the latter, a brother-in-law, the heinous crime committed upon his sister and to allow, in the process, the true culprit to escape liability.

Furthermore, contrary to the allegation of appellant's counsel de officio, the trial court did not take the testimonies of the prosecution witnesses at their face value. It did exert effort to ascertain the credibility of the said witnesses as well as that of their testimonies. Thus, the trial court expressly observed in its decision that "(T)he demeanor, attitude and manner of testifying, candid, direct and forthright answers of the prosecution witnesses show that their story and version reflected the truth of the incident." [34] And as to the credibility of their testimonies, the trial court took the pains of stating in detail the corroborating points between the ante mortem statements of the victim, as testified to by the prosecution witnesses, and the medical findings of the Municipal Health Officer, thus -[35]

"Imelda said the accused submerged her in the creek. This was confirmed by the fact that her abdomen was filled with plenty of fluid. About 50 cc of water was expelled thru her mouth. Imelda said the accused boxed her face, stuffed her mouth, sat and thumped on her chest. This was confirmed by the fact that her lip was cut and broken, her face swollen, her chest soft and distended, her ribs possibly broken, her nipple removed and bleeding; Imelda said she fought her attacker and this was confirmed by the scratches and bruises on her arms and hematoma on many parts of her body. Imelda said that when she was putting on her dress, her "manong Victor" suddenly grabbed and held her from behind and dragged her to the water. This was confirmed by the fact that she was found naked. Imelda said that Victor dishonored her, took her womanhood. This was confirmed by the fresh laceration on her vagina, at nine o'clock and the streak of blood found at her vaginal wall. x x x"

Clearly, therefore, the last assignment of error is also without merit.

All the foregoing considerations lead Us to the ineluctable conclusion that the guilt of the defendant-appellant of the crime charged has been proven beyond reasonable doubt.

WHEREFORE, the decision of the Court of First Instance of Isabela dated July 21, 1976 -- convicting the defendant of the crime of Rape with Homicide, sentencing him to suffer the penalty of death, with all the accessory penalties provided for by law, and ordering him to indemnify the heirs of the victim the sum of P20,000.00 and to pay the costs -- is hereby AFFIRMED IN TOTO.

**SO ORDERED.**

Teehankee, Makasiar, Concepcion, Jr., Santos, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, Antonio, and Aquino, JJ., concurs in a separate opinion.

Fernando, Acting C.J., did not take part.

Abad Santos, J., on official trip abroad to represent the Philippines in the Conference of the Law on the Sea.

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[1] Records, p. 18.

[2] Id., p. 19.

[3] Decision of the Court of First Instance of Isabela, pp. 1-5 (Rollo, pp. 4-8).

[4] T.S.N., Victor Garcia, hearing of March 15, 1976, pp. 1-7.

[5] Id., Domingo Espanto, hearing of May 13, 1976, pp. 135-139.

[6] Id., Juanita Cristobal Garcia, hearing of February 20, 1976, pp. 104 and 114.

[7] Id., Antonio Garcia, hearing of May 13, 1976, p. 144.

[8] Resolution of the Court En Banc dated November 4, 1976 (Rollo, p. 46).

[9] Rollo, p. 60.

[10] Assisted by Asst. Sol. Gen. Ruben E. Agpalo and Trial Atty. Magdangal M. de Leon.

[11] Rollo, p. 65.

[12] Resolution of the Court En Banc dated September 27, 1977 (Rollo, p. 72).

[13] Brief for Defendant-Appellant, pp. 1-2.

[14] Decision, p. 11(Rollo, p. 14).

[15] People vs. Gargoles, G.R. No. L-40885, May 18, 1978; People vs. Pascual, G.R. No. L-27569, Oct. 28, 1977, 80 SCRA 1; People vs. Ancheta, G.R. No. L- 29581-82, Oct. 30, 1974, 60 SCRA 333; People vs. Boduso, G.R. No. L-30450-51, Sept. 30, 1974, 60 SCRA 60; People vs. Cardenas, G.R. No. L-29090, April 29, 1974, 56 SCRA 631; People vs. Carandang, G.R. No. L-31012, Aug. 15, 1973, 52 SCRA 259; People vs. Espejo, G.R. No. L-27708, Dec. 19, 1970, 36 SCRA 400.

[16] People vs. Dayag, G.R. No. L-30619, March 29, 1974, 56 SCRA 439; Vda. de Bonifacio vs. B.L.T. Bus Co., Inc., G.R. No. L-26810, August 31, 1970, 34 SCRA 618.

[17] Decision, pp. 8-9 (Rollo, pp. 11-12).

[18] People vs. Bulawin, G.R. No. L-30069, September 30, 1969, 29 SCRA 710; People vs. Cunanan, G.R. No. L-17599, April 24, 1967, 19 SCRA 769, citing: U.S. vs. Olias, 36 Phil. 828, 829; People vs. Pili, 51 Phil. 965, 966; People vs. Dizon, 76 Phil. 265, 272; People vs. Bautista, L-17772, October 31, 1962; People vs. Dayday, L-20806 & L-20807, August 14, 1965.

[19] People vs. Alcantara, G.R. No. L-26867, June 30, 1970, 33 SCRA 813; People vs. Casillar, G.R. No. L-28132, Nov. 25, 1969, 30 SCRA 353; People vs. Ali, G.R. No. L-18519, Oct. 30, 1969, 29 SCRA 756; People

vs. Condemena, G.R. No. L-22426, May 29, 1968, 23 SCRA 910.

[20] T.S.N., Domingo Espanto, hearing of May 13, 1976, pp. 136-137.

[21] Id., pp. 140-141.

[22] Id., Wilfredo Cristobal, hearing of May 23, 1975, pp. 44-45.

[23] Decision, p. 8 (Rollo, p.11).

[24] T.S.N., Wilfredo Cristobal, hearing of May 23, 1975, pp. 45-48.

[25] Id., Teodoro Cristobal, hearing of May 28, 1975, pp. 53-55.

[26] Id., Ignacia Cristobal, hearing of February 10, 1975, pp. 26-28.

[27] See, T.S.N., Rosa Lozano, hearing of April 10, 1975, p. 34.

[28] People vs. Caoile, G.R. No. L-31104, Nov. 15, 1974, 61 SCRA 73; People vs. Ancheta, G.R. Nos. L-29581-82, Oct. 30, 1974, 60 SCRA 333; People vs. Tumulip, G.R. No. L-28451, Oct. 28, 1974, 60 SCRA 303; People vs. Sangalang, G.R. No. L-32914, Aug. 30, 1974, 58 SCRA 737; People vs. Abletes, G.R. No. L-3304, July 31, 1974, 58 SCRA 241; People vs. Madera, G.R. No. L-35133, May 31, 1974, 57 SCRA 349; People vs. Aquino, G.R. No. L-27184, May 21, 1974, 57 SCRA 43; People vs. Cardenas, G.R. No. L-29090, April 29, 1974, 56 SCRA 631; People vs. Bongo, G.R. No. L-26909, Feb. 22, 1974, 55 SCRA 547; People vs. Dorico, G.R. No. L-31568, Nov. 29, 1973, 54 SCRA 172; People vs. Carandang, G.R. No. L-31012, Aug. 15, 1973, 52 SCRA 259; People vs. Herila, G.R. No. L-32785, May 21, 1973, 51 SCRA 31; People vs. Tanjalali Gajali, G.R. No. L-28534, July 31, 1972, 46 SCRA 130; People vs. Comelio, G.R. No. L-1289, June 10, 1971, 39 SCRA 435; People vs. Mercado, G.R. No. L-30298, March 30, 1971, 38 SCRA 168; People vs. Amit, G.R. No. L-30102, Feb. 27, 1971, 37 SCRA 793; People vs. Gande, G.R. No. L-28163, Jan. 30, 1970, 31 SCRA 347; People vs. Salip, G.R. No. L-21688, Nov. 28, 1967, 30 SCRA 389; People vs. Vicente, G.R. No. L-26241, May 21, 1967, 29 SCRA 247; People vs. Bato, G.R. No. L-23405, Dec. 29, 1967, 21 SCRA 1445; People vs. Susano, G.R. No. L-19099, March 31, 1964, 10 SCRA 609; People vs. Regal, G.R. No. L-14753, July 31, 1962, 5 SCRA 703; People vs. Selfaison, G.R. No. L-14732, Jan. 28, 1981, 1 SCRA 235.

[29] T.S.N., hearing of April 10, 1975, pp. 19-20.

[30] Id., p. 20.

[31] Id., Ignacia Cristobal, hearing of Feb. 10, 1975, pp. 26-28; Id., Teodoro Cristobal, hearing of May 28, 1975, pp. 53-54; Id., Wilfredo Cristobal, hearing of May 23, 1975, pp. 46-48; Id., Rosa Lozano, hearing of April 10, 1975, p. 34; Id., hearing of June 18, 1975 (offer of evidence), pp. 91 & 92.

[32] People vs. Paz, G.R. No. L-15050-53, August 31, 1964, 11 SCRA 667.

[33] People vs. Serrano, 58 Phil. 667 (citing People vs. Ancasan, 53 Phil. 779).

[34] Decision, p. 11 (Rollo, p. 14).

[35] Id., pp. 10-11 (Rollo, pp. 13-14).

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## CONCURRING OPINION

### ANTONIO, J.:

I concur. The statements of the victim, Imelda Cristobal, a sixteen-year-old girl, to her mother, her brothers and sister, immediately after she was sexually abused, pointing to the appellant as her aggressor, are admissible as part of the *res gestae*.

According to section 36 of Rule 130, of the Rules, "statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*." Statements growing out of the nervous excitement and physical condition of the declarant, the utterance of which was made spontaneously and related to the circumstances, are admissible as part of the *res gestae*.<sup>[1]</sup> The declaration made by a murder victim immediately after the stabbing incident, which declaration appears to be natural and spontaneous and made before the victim could contrive or devise a plan to incriminate the accused, would be considered as part of the *res gestae*, and hence, constitutes an exception to the hearsay rule.<sup>[2]</sup>

Similarly, statements of a woman as to an alleged rape committed upon her, made promptly to the first person whom she met that she knew, after she was seen coming swiftly from the direction of the place where the act occurred, and while she was excited, sobbing, and exhausted, were held admissible as part of the *res gestae*, the court declaring that the time, place, and circumstances under which the exclamations were made, made them admissible under the *res gestae* rule.<sup>[3]</sup>

The statements of a rape victim to a cafe operator shortly after the offense were admissible, where the cafe was the first lighted building she came to and the victim was crying.<sup>[4]</sup>

In a prosecution of her husband for rape, statements made by the wife to a policeman on his arrival at the apartment and on being asked what had occurred were admissible as spontaneous declarations. The fact that the officer had asked the wife "what happened" was insufficient to destroy the spontaneity of the declarations.<sup>[5]</sup>

Statements of the victim of a sexual offense made immediately after the commission thereof and under such circumstances as to indicate spontaneity are admissible as part of the *res gestae*.<sup>[6]</sup>

It may be said that statements of the victim of a sexual offense made immediately after the commission thereof and under such circumstances as to indicate spontaneity are admissible as part of the *res gestae*.

In *State v. Smith*,<sup>[7]</sup> statements by the victim of a rape, made immediately after the alleged occurrence when she went to the home of a neighbor, crying and hysterical, were held admissible as part of the *res gestae*, since the declarations were made under such circumstances as to be spontaneous and unpremeditated.

In *Lemons v. State*,<sup>[8]</sup> a prosecution for assault with intent to rape, testimony of a witness that he lived about 150 feet from the residence of the victim of the alleged offense, that he heard a disturbance at her home and had seen a man some fifteen minutes earlier prowling around the house, that when he heard someone scream, he ran to his door, where he met the prosecutrix, who told him that someone had burst into her house and insulted her, and that the prosecutrix at the time was excited, frightened, and nervous, was held admissible as *res gestae*, the court noting that the prosecutrix had to go only a short distance of 150 feet after the commission of the alleged offense, and, accordingly, her declarations were made immediately after the commission thereof.

In *Frazee v. State*,<sup>[9]</sup> a prosecution for rape, there was evidence that immediately after the alleged assault the prosecutrix ran to her neighbor's house and, finding her not at home, called her at her husband's place of business and informed her of the alleged rape. Her neighbor drove home at once and found the prosecutrix at her house, barefooted, crying, and in a hysterical condition, and the prosecutrix again related the details of the offense to her. The court held the declarations of the prosecutrix to the neighbor to be admissible under the *res gestae* rule, saying that the utterances of the prosecutrix were spontaneous and created by and springing from the attack made upon her, and made so soon after the alleged attack and in such a manner as to preclude the idea of deliberation and falsification.

The screams and exclamations of a woman, who, immediately after a rape was committed upon her, fled to the home of her mother-in-law, a short distance away, were held admissible as part of the *res gestae* in *People v. Anglada*.<sup>[10]</sup>

In *Shipp v. State*,<sup>[11]</sup> a prosecution for rape, wherein it appeared that immediately after commission of the alleged offense, the prosecutrix ran out of her house, barefooted and in her nightgown, and reported the occurrence to her neighbor next door, the neighbor's testimony as to what the prosecutrix told him was held admissible as part of the *res gestae*.

In *White v. State*,<sup>[12]</sup> a prosecution for rape, testimony by the twenty-year-old victim, who was of low mentality, that immediately after she left the defendant's room, she met the defendant's landlady and informed her of the defendant's acts, was declared *res gestae* of the main fact, the alleged rape.

Statements by a ten-year-old girl regarding a rape committed upon her, made immediately after the alleged occurrence, when the little girl ran to her mother, were held admissible as part of the *res gestae* in *Brooks v. Commonwealth*.<sup>[13]</sup>

In *Snowden v. United States*,<sup>[14]</sup> declarations by a five-year-old child as to the particulars of an assault with intent to rape committed upon her, made to her grandmother shortly after commission of the alleged offense when the grandmother returned home and found the child lying on the floor crying, and made in response to inquiries by the grandmother, were held admissible as part of the *res gestae*.

Similarly, statements made by the victim of a rape "soon after" commission of the offense and to the first person she met, the victim being hysterical and disheveled at the time, were held admissible as part of the *res gestae* in *Hall v. State*.<sup>[15]</sup>

Statements by the victim of an alleged rape immediately upon being taken to the home of a friend and within a short time after the occurrence of the offense, and while the victim was crying; moaning, hysterical, and bruised and bleeding, were held admissible as part of the *res gestae* in *Palmer v. State*.<sup>[16]</sup>

The admissibility of those statements are predicated upon the common experience that utterances made under such circumstances are devoid of self-interest, and the probability of falsehood is so remote as to be negligible. They are, as a matter of fact, spontaneous and instinctive reaction, produced by a startling or unusual occurrence. The statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content. Thus, the Rule states three (3) requisites for their admissibility: (1) the time of statement or utterance, or its "contemporaneous" character - which must be while a startling occurrence is taking place or immediately prior or subsequent thereto; (2) the statements must be "spontaneous"; and (3) the subject matter of the statement -- which means that the statement must relate to the circumstances of the startling occurrence.<sup>[17]</sup>

- [1] *Air France v. Carrascoso*, L-21438, Sept. 28, 1966, 18 SCRA 155.
- [2] *People v. De Gracia*, L-21419, Sept. 29, 1966, 18 SCRA 197.
- [3] *State v. Ingraham*, 118 Minn 13, 136 NW 258.
- [4] *Gage v. State*, 159 Tex Crim 336, 263 SW2d 553.
- [5] *People v. Damen*, 28 Ill 2d 464, 193 NE2d 25.
- [6] *Baber v. United States*, 116 App DC 358, 324 F2d 390, cert den 376 US 972, 12 L ed 2d 86, 84 S Ct 1139; *White v. State*, 237 Ala 610, 188 So 388; *Robinson v. States*, 209 Ga 650, 75 SE2d 9, cert den 345 US 999, 97 L ed 1405, 73 S Ct 1144; *Kyle v. State (Tex Crim)* 365 SW2d 168.
- [7] 3 Wash 2d 543, 101 P2d 298 (1940).
- [8] 59 Tex Crim 299, 128 SW 416 (1910).
- [9] 79 Okla Crim 224, 153 P2d 637 (1944).
- [10] 20 Puerto Rico 11 (1914).
- [11] 132 Tex Crim 274, 103 SW2d 976 (1937).
- [12] 237 Ala 610, 188 So 388 (1939).
- [13] 235 Ky 19, 29 SW2d 597 (1930).
- [14] 2 App DC 89 (1893).
- [15] 141 Tex Crim 607, 150 SW2d 404 (1941).
- [16] 34 Tex Crim 390, 115 SW2d 641 (1938).
- [17] *People v. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374.

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## CONCURRING OPINION

### AQUINO, J.:

I concur. Victor Garcia is guilty beyond reasonable doubt of rape with homicide, a special complex crime punished with death in article 335 of the Revised Penal Code.

That complex crime was proven by the antemortem declaration of the victim, who was Garcia's sister-in-law, by the testimony of Wilfredo Cristobal that he saw his brother-in-law, the accused Garcia, leaving the scene of the crime, and by the indubitable evidence of the corpus delicti or the fact of the commission of the rape with homicide.

As correctly surmised by the trial court, Garcia, whose house was about fifty meters away from the creek, must

have often seen his sister-in-law topless or naked, taking a bath in the creek. He lusted after her.

To overcome her resistance, he inflicted on her blows on the chest and other parts of the body and he tried to asphyxiate her in the creek. The victim died of internal hemorrhage due to chest compression and the presence of water in the abdominal region.

Before article 335 was amended, it was held that rape with homicide was committed in a case where the accused, who was suffering from gonorrhea, had sexual congress through intimidation with a fourteen-year-old girl who died because of the venereal infection. Article 48 of the Revised Penal Code was applied (People vs. Acosta, 60 Phil. 158).

In People vs. Matela, 58 Phil. 718, the accused raped his sixteen-year-old niece-in-law and then killed her by strangulation. He was convicted of the separate offenses of rape and homicide since it was not decisively shown that the two crimes were complex.

In People vs. Lopez, 107 Phil. 1039, the accused, after having carnal knowledge with a woman by means of intimidation, stabbed her to death. He was found guilty of the complex crime of rape and murder as a "one and single continuous act". Same holding in People vs. Yu, 110 Phil. 793 where the accused was convicted of the complex crime of rape and murder.

In People vs. Obaldo, 111 Phil. 838, the accused confessed that at seven o'clock in the evening he saw a twelve-year-old girl on the bank of the Pasig River near Fort McKinley, Rizal. As he was sexually aroused (nalibugan), he raped the girl who lost consciousness. The accused placed her in an army duffel bag which he left on the river bank. Later, that same night, a carpenter working at the construction of Del Pan Bridge in Tondo, Manila saw the duffel bag floating near the bridge. He opened the bag, on which was printed the name of the accused, a Korean war veteran, and found the body of the rape victim who was already dead. The accused was held to have committed the separate crimes of rape and murder but since there was no complaint for rape, he was convicted of murder only. Same holding in People vs. Dahino, L-2067, February 26, 1951, 88 Phil. 789.

The foregoing cases might have prompted the lawmaking body to enact Republic Acts Nos. 2632 and 4111, which define the special complex crime of rape with homicide, a capital offense.

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## CONCURRING OPINION

### BARREDO, J.:

As noted in the main opinion, the prosecution witnesses testified as follows:

1. Wilfredo Cristobal, brother of the deceased:

"A. She said that he (Victor) dishonored her.

Q. And what else did she say, if any?

A. It was my elder brother who continued interrogating her because immediately after we put on her dress and

carried her to the house of my father, it was my elder brother who continued the interrogation.

x x x

Q. When your sister was brought to the house of your parents and you laid her down, do you remember if anybody else talked with her?

A. Yes, sir.

Q. Who?

A. My mother and father. I mean my father was not there then because he was in San Mariano.

Q. And how long did your mother talk to your sister?

A. Maybe about three (3) hours, sir.

"Q. And you still remember what your sister Imelda told your mother if you were present during their conversation?

A. She repeatedly reported what Victor Garcia did to her that she was raped by him." (Underscoring supplied.)

## 2. Teodoro Cristobal, another brother:

"Q. Now, when you went to the creek, what did you find out?

A. Upon reaching the creek, I saw my sister Imelda Cristobal being lifted by my brother Wilfredo Cristobal and I asked her what happened and she answered me that she was abused by Victor Garcia. She told me in Ilocano, niramamas nac ni Victor Garcia.

Q. And when you were told by your sister that . . . I withdraw. When she told you that she was abused by Victor Garcia, what else did you ask her, if you asked her any further questions?

A. And I asked her how he did it and she answered me by saying that when I was putting on my dress, he held me by the neck and dragged me and upon reaching the deeper part of the creek he submerged me in the creek then I struggled. Then he dragged me again and when I shouted he stuffed my mouth with a cloth. Then he boxed my face. (Witness pointed to his mouth and his cheeks.)

Q. What else did he tell you, if any?

A. When I regained consciousness, I felt that Victor was on top of my chest thumping. Then I shouted again. That was the time that Manong Fred arrived.

x x x

Q. And what did you do after you brought her home to the house of your father?

A. Then we laid her on the bed, sir.

"Q. And what transpired when you laid your sister on the bed?

A. My mother inquired from her who did that thing to her and she answered that it was Manong Victor Garcia." (Underscoring supplied.)

## 3. Ignacia Cristobal, the mother:

"Q. And when your daughter Imelda was brought home by her brothers, were you able to talk with Imelda?

A. Then I asked Imelda what happened to you my daughter and she answered I did not like what happened to

me. Do not blame me.

Q. Did you come to know what she meant when she said she did not like what happened? I withdraw. And what else, if any, did Imelda tell you?

A. That she was hurt very much when she was boxed by him.

Q. Did she tell you who boxed her?

A. Yes, sir.

Q. Whom did she mention?

A. She said my Manong Victor.

Q. Who is that Manong Victor she referred to?

A. Her brother-in-law.

Q. Do you know the full name of her brother-in-law Victor?

A. Yes, sir.

Q. Will you please tell the court?

A. Victor Garcia.

Q. And what else . . .

COURT:

Q. Is he in court now?

A. Yes, sir.

Q. Where is he, point at him?

A. That man. (Witness pointed to the accused who gave his name as Victor Garcia.)

x x x

COURT:

Q. Tell everything that your daughter told you as soon as she was carried home by her brothers Wilfredo and Teodoro and her Auntie Rose Lozano. (Witness is crying after giving her answer to the question of the court.)

A. She told me this, sir. When I was in the creek about to put on my dress, my brother-in-law came from behind but I did not notice him. He placed his hand on my neck from behind and submerged me in the creek several times. He boxed me several times and even sat on my chest for which I lost consciousness and I did not know what he did to me."

4. Rosa Lozano, the aunt, likewise testified that the deceased explicitly named appellant as the one who raped and maltreated her.

What is immediately striking in the foregoing testimonies is that the direct quotations purportedly from the deceased do not refer at all to the alleged rape. References thereto are all in the form of conclusions, such as, "She said that he (Victor) dishonored her"; "She repeatedly reported what Victor Garcia did to her, that she was raped by him," "she answered me that she was abused by Victor – in Ilocano, niramias nac ni Victor Garcia," "I did not like what happened to me. Do not blame me." In other words, no particulars whatsoever of the rape, if rape it was,

were testified to have been related by the deceased. What is worse, the direct quotation from the deceased go no further than the following.

"A. She told me this, sir. When I was in the creek about to put on my dress, my brother-in-law came from behind but I did not notice him. He placed his hand on my neck from behind and submerged me in the creek several times. He boxed me several times and even sat on my chest for which I lost consciousness and I did not know what he did to me."

This version which makes no mention at all of rape was repeated practically word for word or verbatim by all the witnesses. But from said version, one would be at a loss as to when the supposed sexual act took place, whether before or after the deceased was maltreated. This particular point is not clear, considering that from what the deceased herself is alleged to have said, the impression is given that she was naked and about to put on or was putting on her dress when the appellant first took hold of her, not for the purpose of having intercourse with her but only to box and maltreat her, submerge her in the creek, stuff her mouth with a piece of cloth and sit on and thump her chest. In brief, I do not find in the record sufficient direct evidence of rape.

However, I am morally convinced that the circumstantial evidence amply proves that appellant had sexually assaulted the deceased on the same occasion testified by the witnesses. That he used force on her in committing the act is to me clear enough from the findings of Dr. Gabriel quoted in the main opinion. Her swollen face, her lower lip cut and bleeding, the hematoma all over her body, her broken ribs, her right nipple removed and bleeding, and her abdomen filled with water constitute mute but irrefutable proof of such violence. On the other hand, the fact that the nine o'clock laceration of her hymen was still fresh at the time the medical examination the day after, and there were streaks of blood found in her vaginal wall prove that someone had sexual intercourse with her.

Viewing the complaint or charge of the deceased variously testified to by the witnesses, that she had been "abused", "raped", "dishonored" and "niramas nac ni Victor", to be of less evidentiary value, the same being in the nature of conclusions, there is one particular statement made by her which to my mind is of vital importance. According to her mother, Ignacia Cristobal, when she asked Imelda "what happened to you my daughter -- she answered, 'I did not like what happened to me. Do not blame me.'" In other words, as I understand such testimony, the deceased was actually saying the laceration of her hymen was against her will; and neither her mother nor her sister, the wife of Victor, should hold it against her, from which it follows that it could not have happened if no violence had been used on her.

If this be inference or deduction, it is certainly inexorable and inevitable. And considered against the background of the other relevant circumstances proven in the record, one cannot entertain any reasonable doubt as to its correctness. Indeed, in the physical and emotional state in which Imelda was at the time the witnesses talked to her, just after the assault upon her had happened and hardly three hours before she died, she could not have been expected to be fully explicit in her narration of what was done to her. In such a situation, the duty of the judge is to apply the standards of human experience and common sense in deciphering what might appear as a telegraphic message of the *res gestae* itself, considering the startling nature of the occurrence.

With the foregoing observations which have served to dispel my misgivings regarding the seeming insufficiency of the evidence of rape in the record, I join in the judgment finding appellant Victor Garcia guilty as charged in the information and imposing upon him the extreme penalty of death.

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