

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GOMEZ SALIGAN, ACCUSED-APPELLANT.

*G.R. No. L-39712. November 21, 1980*

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### PER CURIAM:

This case was originally certified to this Court in 1972[1] for automatic review of the decision of the Court of First Instance of Davao del Norte promulgated in open court on September 22, 1972 finding Gomez Saligan guilty of the special complex crime of "rape with homicide" as indicted, and sentencing him to death.

In a decision promulgated on November 29, 1972[2] penned by then Associate Justice Fred Ruiz Castro, this Court found and held that "the trial Court, far from approximating the model of conduct We outlined in *People vs. Apduhan* (L-19491, August 30, 1968, 24 SCRA 798), proceeded with inordinate haste in the arraignment of the defendant and disregarded this Court's injunction regarding the observance of solicitous care in the admission of pleas of guilty to capital offenses," citing a long string of cases from *U.S. vs. Talbanos*, 6 Phil. 641, to *People vs. Villafuerte*, L-32026, July 31, 1973. The judgment appealed from was, therefore, set aside and the case remanded to the court of origin for a new arraignment and further proceedings in accordance with law and consistently with the views expressed by this Court.

Accused Saligan was arraigned anew in the Court below on March 11, 1974 with the assistance of counsel. He entered a plea of "not guilty".[3] The case proceeded to trial, and on September 24, 1974, the Court a quo rendered its decision, the dispositive portion of which reads in part as follows:

"PREMISES CONSIDERED, the Court finds Gomez Saligan guilty beyond any reasonable doubt of the crime of Attempted Rape with Homicide as defined and penalized under Article 335 of the Revised Penal Code, for which he is hereby sentenced to death by electrocution, to indemnify the heirs of his victim, Teofista Maloloy-on, in the amount of P12,000.00, to suffer all the accessory penalties of the law, and to pay the costs."[4]

Hence this automatic review of the death penalty imposed.

The record reveals the following undisputed facts:

At around 11:00 o'clock in the morning of July 2, 1972, a certain Rufino Rocacorba was buried at Mawab, Davao del Norte.[5] Among those who attended the burial were Teofista Maloloy-on, Anastacia Rocacorba and herein appellant Gomez Saligan.[6] After the burial, Teofista, Anastacia and Saligan boarded a jeep and the women disembarked at the house of the deceased Rufino Rocacorba at Sitio San Isidro, Maco, Davao del Norte.[7] At around 6:00 o'clock in the afternoon of that same day, Teofista left ahead of Anastacia, informing the latter that she had to go home to attend to her child and that she had a previous agreement with appellant Saligan to meet at "Cable," a hanging bridge on the way to Limbo, Maco, Davao del Norte, so that they could go home together.[8]

The next day, July 3, 1972, the dead body of Teofista was discovered at a spot around fifty (50) meters from the hanging bridge, near the river.[9] Dr. Antonio C. Sebumpan, Municipal Health Physician of Maco, Davao del

Norte, conducted the autopsy on the corpse at about 1:00 o'clock in the afternoon. His Necropsy Report contains the following medical findings:

"NECROPSY REPORT

TO WHOM IT MAY CONCERN:

This is to certify that the undersigned had personally conducted a postmortem examination on Mrs. Teofista Maloloy-on, 31 years old, married with eight children and residing at barrio Limbo, Maco, Davao del Norte, on July 3, 1972 at 1:00 P.M. at barrio Panibasan, Maco, Davao del Norte.

MEDICAL FINDINGS

- PHYSICAL EXAMINATION:

- Position of the corpse - Body lying with her back at the open field about eight (8) meters away from the barrio road. Both thighs spread apart, both legs flexed over the thigh. Abdomen downward bared. Location of the underwear panty at left ankle, panty smeared with blood. Body smeared with blood.

- Fairly developed, fairly nourished, with absence of vital function during examination as heart rate, respiratory rate and pulse rate and weighing about 100 lbs.

- Head - Left cheek contusion about 4 cm. in dia., right cheek contusion 3 cm. in diameter, forehead contusion about 3 cm. in diameter.

- Neck - Anterior aspect (Throat) - Incised wound (Hacking wound), 6 cm. in length, 2 cm. above the suprasternal notch. Major blood vessels, muscles, esophagus cut.

- Chest - Anterior aspect - left clavicular area-stab wound 4 inches in depth. Entrance of the wound 2 cm. in diameter.

- Abdomen - Epigastric area-stab wound. Point of entrance 2 cm. in diameter. Point of exit 1 cm. in diameter at the back.

- Right hand - Dorsal aspect-Incised deep wound 5 cm. in length.

- Left hand - Incised deep wound between left thumb and left index finger, 4 cm. in length.

- Left Arm - Upper third anterior aspect-incised deep wound, 5 cm. in length.

- Right Thigh - Anterior aspect - upper third-stab wound 3 inches depth, 2 cm. in diameter entrance. Presence of contusion 5 cm. in diameter middle aspect.

- Left Thigh - Anterior aspect - middle third-contusion 5 cm. in diameter.

- GENITAL EXAMINATION:

- Genitalia - absence of underwear panty. Panty located at the left ankle smeared with blood. Pubic hair sparse  
- absence of blood, semen and foreign body.

- Vulva -

a) Labia Majora - nothing pertinent.

b) Labia Minora - nothing pertinent.

- Vaginal opening gaping. Admits the examining two fingers easily. No vaginal bleeding nor laceration noted. Semen not recovered during the time of examination.

Post-Mortem rigidity noted during the inquest. Stage of decomposition has not started.

CAUSE OF DEATH: - HEMORRHAGE SECONDARY FROM MULTIPLE STAB WOUNDS AND INCISED WOUND AT THE NECK INVOLVING MAJOR BLOOD VESSELS.

(SGD.) ANTONIO C. SEBUMPAN, M.D.

Municipal Health Physician

Maco, Davao del Norte"[10]

It further appears from the evidence for the prosecution that on July 4, 1972, or two days after the alleged incident, appellant Saligan executed an Affidavit marked in evidence as Exhibit "A",[11] confessing to the rape and killing of Teofista Maloloy-on. Patrolman Arnulfo P. Gohol, the police investigator who conducted the investigation, testified that the contents of Exhibit "A", which is in English, were translated word for word to the accused in the Visayan-Cebuano dialect which the latter spoke fluently and understood although he is a Mansaca.[12] Pat. Gohol further stated that the accused was arrested because his hat was found near the body of the victim Teofista,[13] and in the course of the investigation that followed his arrest, the accused said that he did not need the services of a lawyer because he was "going to answer his guilt." [14]

Municipal Judge Feliciano L. Belleza before whom the Affidavit, Exhibit "A", appears to have been subscribed and sworn to by the accused on July 4, 1972, also testified for the prosecution. He declared, among others, that he conversed with the accused in Visayan,[15] that he translated every word of Exhibit "A" to the accused in the Visayan dialect,[16] that the latter told him (Judge Belleza) that he voluntarily surrendered to the police because he was afraid of the "barrio folks and the relatives" of the deceased Teofista,[17] and that the accused, when asked whether the Affidavit was given by him voluntarily to the police department of Maco, replied in the affirmative.[18]

In this appeal, accused Gomez Saligan, through his counsel de oficio, does not question the ruling of the trial Court on the homicide aspect of this case. On the contrary, he admits to having killed the victim with his own bolo, hacking and stabbing her several times and inflicting injuries which caused her death. Indeed, the evidence is overwhelming on this point. As stated earlier, Teofista informed Anastacia Rocacorba that she was going to meet the accused at the "Cable" bridge. The victim's lifeless body was found near the same bridge. The accused's buri hat, which he himself acknowledged as belonging to him, was found beside the dead body of Teofista.[19] The accused likewise identified the bolo, marked in evidence as Exhibit "D", and stained with blood when recovered by the police authorities, as his own.[20] The doctor who performed the autopsy testified that the wounds on the victim's body could have been inflicted with this same bolo, Exhibit "D".[21] And the strongest evidence of all is the accused's own admission, by way of Affidavit of Confession[22] and in the Court at the trial,[23] that he killed Teofista Maloloy-on. Finally, in his Brief, appellant declares that "there is no question that the homicide had been committed,[24] praying that the decision of the lower Court be modified by convicting him of simple homicide.[25] We, therefore, deem it unnecessary to further delve on the matter of the homicide except in relation to the other remaining issues.

It is the rape aspect of this case that is in dispute. The trial Court found that there was attempted rape. Appellant vigorously insists that he never raped or attempted to rape the victim at any time before or after her death. The Solicitor General, for the government, maintains that the rape was consummated. Before proceeding any further, however, it must be stated that regardless of whether herein appellant is found guilty of consummated rape or a mere attempt thereof, the penalty imposable on him will be the same. The Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111, expressly provides in its Article 335 that "(w)hen rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death. When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death."

Appellant contends that on the issue of the alleged attempted rape, the testimony of Dr. Antonio C. Sebumpan as the only witness presented by the prosecution is highly inconclusive and insufficient, that the other witnesses testifying are totally unavailing, and that there was an invalid reliance on the weakness of the evidence for the defense. On the other hand, the Solicitor General in his Brief counters that consummated rape had been sufficiently proven not only by the testimony of Dr. Sebumpan but likewise by the appellant's own affidavit of confession, Exhibit "A", the testimonies of Patrolman-Investigator Arnulfo P. Gohol and Municipal Judge Feliciano L. Belleza, and the fact that the contents of Exhibit "A" are corroborated by the testimony of Dr. Sebumpan.

After going over the entire record of this case, We have reached the conclusion and are fully convinced, as the Solicitor General maintains, that there was consummated rape.

In the lower Court, appellant repudiated his extrajudicial confession, Exhibit "A", on the sole ground that the contents thereof were not explained to him. The Court a quo in arriving at its decision disregarded Exhibit "A" reasoning thus:

"(t)he accused, on the stand, said his Affidavit, which is in English, was not translated to him. The accused is a Mansaca who speaks his native dialect and Cebu-Visayan only. He speaks no English at all. He is illiterate, - he only knows how to write his first name 'Gomez'." [26]

We rule otherwise. As We had stated in the case of *People vs. Dorado* [27] and reiterated in the recently decided case of *People vs. Abejero*, [28] "it is not sound practice for the court to disregard the confession just because the accused repudiates it at the trial, (hence) before setting aside a confession, the reasons and motives for its repudiation should be carefully scrutinized." [29] In the instant case, We find that appellant's extrajudicial confession is admissible as evidence to prove his culpability and, therefore, must be given due weight and consideration. Our reasons are stated hereunder.

First, appellant expressly acknowledged his signature on Exhibit "A". [30] He does not allege that the sworn declaration was extracted from him through force and intimidation or that he was compelled by duress to affix his signature thereon. Appellant merely claimed during the trial that the contents of Exhibit "A" were not explained to him. [31] As a general rule, We look with disfavor upon extrajudicial confessions couched in a language or dialect admittedly not known or understood by the supposed declarant. [32] However, We may make an exception when there is sufficient and satisfactory proof to show that the contents of the confession had been translated and explained to the alleged declarant and he understood the same, and the confession on its face bears the earmarks of voluntariness. Thus, in the case of *People vs. Dayday, et al.*, [33] We upheld the admissibility of the extrajudicial confessions holding thus:

"The accused, therefore, may not convincingly deny knowledge of the contents of their written confessions, for the same were translated and explained to them by the municipal mayor in the Binukid dialect, which dialect they habitually spoke. As stated, they affirmed the contents of their confessions before the municipal mayor and, later, before the justice of the peace."

In the instant case, both the police officer who took down the confession and the municipal judge before whom the same confession was subscribed and sworn to testified in Court and categorically declared under oath that although the appellant is a Mansaca, they learned through conversing with him that he knew; understood and spoke fluently the Visayan-Cebuano dialect, and that they translated the contents of the typewritten confession word for word to appellant in the said dialect. [34] At the trial, appellant admitted that he knew, understood and spoke Visayan-Cebuano, and in fact he gave his testimony in Court in that dialect. [35]

In the second place, appellant affirmed the veracity of most of the statements contained in his Affidavit. The

following transpired in the direct examination of appellant:

"Q

Now, I will read to you certain parts of this affidavit, Exhibit "A": 'Q. Will you please state briefly how did this incident of raping and killing Teofista (Toting) Maloloy-on committed by you?' And the answer is: 'In the afternoon of July 2, 1972, we went to Mawab, Davao del Norte to bury one Rufino Rocacorba, together with Teofista Maloloy-on,' Is this particular part of your answer true or not true?

A

Yes, sir.

Q.

Another portion of that answer is - 'From Mawab we boarded a jeep going to Panibasan, Maco, Davao del Norte and disembarked at the store of Naraga at sitio San Isidro, Panibasan, Maco, Davao del Norte because Teofista Maloloy-on is going to give alms to Sebastian Rocacorba whose house was located at the back of the store of Naraga.'

A

Yes, sir.

Q

Is this fact right?

A

Yes, sir.

Q

Another portion is: 'At around 6:00 p.m. more or less we walk towards home because we are neighbors living at barrio Limbo, Maco, Davao del Norte but before reaching the hanging bridge of barrio Panibasan, in going to barrio Limbo because I have already the intention of abusing her, I suddenly took hold of her arms and forced her to lay to the ground with the intention of raping her but she resisted so that we grappled and rolled below the road near the river.' Is this your answer?

A

I have no intention of raping her. The story is like this, sir. This is what happened. Because I was drunk, sir, this woman put her arms on my shoulder and when I fell down, she fell down also and that started our grappling together and rolling on the ground until we reached near the river.

xxx xxx xxx

Q

Another portion - 'What happened next if there was any?' and your answer was - 'While grappling I was able to take hold of her hands and was able to pin her down by using my legs, so that after several minutes Teofista Maloloy-on became very tired and at this instance I loosen the zipper of my pant and unbutton the buttons of my panty and took out my penis and inserted in her vagina but before I could consummate the carnal act, I met my climax so that my sperm was spread all over the private part of Teofista Maloloy-on.' Do you remember having made this answer to the one who asked you this question?

A

This woman, I do not have any intention of raping her. When I approached her before I could do the sexual act, my climax came already and my sperms came out from my penis and I do not have any intention of raping her.

Q

Is it not a fact that you unbuttoned your pants and your drawer and you took your penis out of your panty, your drawer, rather?

A

Yes, sir, but I was still standing.

Q

Do you mean to say that you reached your climax even before you could go over the woman?

A

Yes, sir. I have reached my climax before I could go over the woman.

Q

There is here another answer. 'At this instance she bite one of my fingers so that I feel the pain of the biting and lose my temper and took hold my bolo which was tucked beside my waist and right away hacked Teofista (Toting) Maloloy-on in the neck who was still lying and again stabbed her several times in the stomach and body and left her seriously wounded.' Is this answer of yours true?

A

Yes, sir. I have killed her because she bit my finger. Had she not bitten my finger I would not have killed her." [36]

Likewise corroborative of the contents of Exhibit "A" are the testimony of prosecution witness Anastacia Rocacorba, and the findings and testimony of Dr. Antonio C. Sebumpan in respect of the position and location of the corpse at the time of its discovery, the number and nature of the wounds on the victim's body, the kind of weapon used to inflict the wounds, the absence of the victim's underwear at her genitalia and the cause of her death.

Thirdly, the investigating officer who took down appellant's confession and the administering officer before whom said confession was subscribed and sworn to are entitled to the presumption of regularity, short of any

convincing evidence to the contrary,[37] more so in view of the absence of an imputation or any fact or circumstance disclosed by the record that they had a motive or valid reason to accuse appellant falsely of so grave an offense as rape with homicide. On top of this, We do not see how either of them could have supplied the precise details found in the affidavit of confession, facts which only appellant could have known, and most of which he, in fact, confirmed.

Lastly, the presumption of the law is in favor of the spontaneity and voluntariness of an extrajudicial confession of an accused in a criminal case. The burden is upon the declarant to destroy this presumption.[38] Appellant has failed in this task.

We, therefore, find no justification for the exclusion of Exhibit "A" from the mass of evidence to be considered, weighed and evaluated in determining the existence and extent of appellant's guilt.

We do not agree with the trial court that the accused merely attempted to rape Teofista. Besides the categorical statement in appellant's extrajudicial confession that "But before leaving her seriously wounded, I was able to abuse her two times," there is clear and convincing evidence on record proving that rape had been consummated by the accused when he admitted that he took out his penis and inserted it in the vagina of the victim (See underlined portion of the Affidavit of accused, Exhibit "A"). The law, Article 335 of the Revised Penal Code, provides that "(r)ape is committed by having carnal knowledge of a woman," and jurisprudence requires that there must be proof to some degree of entrance or penetration of the male organ into the labia or lips of the offended party's vagina for rape to be considered to have reached the consummated stage.[39] Although the victim was a married woman who had borne eight children,[40] and the autopsy revealed no vaginal bleeding or laceration[41] and no semen was recovered at the time of the post-mortem examination,[42] We concur with Dr. Sebumpan's opinion that sexual intercourse had been committed, based on his findings that (1) the dead body was in a coital position, i.e., it was lying with back on the ground, the two legs flexed over the thighs, and the two thighs flexed over the abdomen and spread apart; (2) the panty of the victim was not in the genitalia but in her left ankle; and (3) the vagina was gaping,[43] which circumstances were not contradicted by the defense. On the contrary, the appellant's admission that he inserted his penis into the vagina of the victim must be accepted as true from the factual and physical circumstances above stated.

Appellant does not dispute the findings of Dr. Sebumpan as embodied in the Necropsy Report, Exhibit "B-1". The post-mortem examination disclosed that the victim sustained, among other injuries, contusions in her right and left cheeks, and right and left thighs, middle anterior aspect. Contusions are produced by the application of force,[44] such as boxing. This evidence indicates that Teofista had put up a struggle so that appellant had to box her on the cheeks and thighs to restrain her. That Teofista's panty was found at her left ankle is a further indication that appellant used force to have sexual intercourse with the victim, for if it were true, as appellant would have the Court believe, that it was Teofista who voluntarily removed her underwear, why would she leave it hanging from her ankle? In other words, the location of the panty at the time of the autopsy strongly suggests that Teofista had been forcibly stripped of her underwear. Finally, the fact that the corpse was found in a coital position strengthens Our conclusion that appellant had the opportunity and took advantage of it to abuse sexually his victim.

Apart from the foregoing, the evidence for the defense is weak. Only appellant testified in his behalf, and his credibility is greatly impaired by inconsistencies, contradictions and improbabilities in his testimony. For instance, he would make it appear that it was Teofista who made overtures at sex, claiming that she put her arm on his shoulder then later took off her underwear,[45] and that he took advantage because he was alone with her and it was dark.[46] Yet, he categorically declared that he had no amorous relations whatsoever with the victim, he never courted her, and they had never made love or talked about it at any time before or even immediately prior to the incident in question,[47] and, as a matter of fact, they were not even close friends, merely

neighbors.[48] Under these circumstances, We cannot bring Ourselves to believe that a Filipino married woman with eight children like Teofista would do what appellant claims she did unless she had some kind of a sexual or mental aberration. Appellant's following testimony is highly unnatural and contrary to common experience.

"Q

Did you tell Maloloy-on before she allegedly removed her panty that you wanted to have sexual intercourse with her?

A

No, sir.

Q

In other words, you had no conversation with Maloloy-on before she allegedly removed her panty?

A

She asked me why we fell down and she asked me, 'Are you drunk?' and I said, 'Yes.'

Q

That was all that you talked about. You never talked about sexual intercourse?

A

No, sir.

Q

And you want the Court to believe that despite the absence of any conversation about sexual intercourse, she just removed her panty?

A

Yes, sir."[49]

Even on the assumption that Teofista had intended to seduce appellant, it is very unlikely that she would remove her underwear without even knowing how appellant would react or respond. More importantly, she would not have told Anastacia Rocacorba, or any other person for that matter, of her assignation with appellant at the "Cable" bridge. On the contrary, she would have tried her utmost to conceal this fact lest someone witness her in flagrante delicto with appellant and report her infidelity to her husband Isabelo Maloloy-on. Needless to state, her having mentioned to Anastacia that she was meeting appellant, her neighbor, on the night in question is not consistent with the behavior or conduct of one who was about to commit a marital indiscretion.

Appellant alleges that he killed Teofista because he lost his temper when she bit his little finger,[50] claiming revenge was the motive for the homicide.[51] He, however, also stated that Teofista bit him because "she thought (he was going to) rape her." [52] This is irreconcilable with his allegations hereinabove mentioned to the effect that Teofista was a "willing victim." Furthermore, it is unthinkable why he would kill the woman, and in the manner in which he did it, merely because she bit his little finger. We simply do not know what to believe in

appellant's story. Instead, We agree with the observations of the Solicitor General that a bite in one's finger does not lead to a homicidal hacking and stabbing as was done in this case, and his conclusion that the biting of appellant's finger was part of the resistance of Teofista to the carnal efforts of appellant.[53] Indeed We are convinced that the multiple injuries appellant inflicted on Teofista are but the eloquent proof of his vented rage when the latter fiercely refused to yield to his lust.

The rest of appellant's testimony is equally confusing, giving a decidedly unclear and muddled account of what transpired between him and Teofista on that tragic night of July 2, 1972. Excerpts from his testimony hereunder reproduced will readily show how impossible it is to find out what exactly is appellant's version of the incident in question.

"Q

Now, you said you were still standing when you loosened the zipper of your pants and took out your penis, is that correct?

A

Yes, sir. When I got near her I opened the zipper of my pants and unbuttoned my underwear and took out my penis but at that instance my sperms came out already and I was not able to get on top of her.

Q

Will you please describe to us the position of the deceased Maloloy-on at the time you unbuttoned or loosened the zipper of your pants?

A

She was lying down, sir.

Q

And according to Dr. Sebumpan, the panty of the deceased was already removed from her private part at the time of the examination. Now, please tell us if the panty of the deceased Maloloy-on was already removed at the time that you loosened your zipper?

A

Yes, sir, she already removed her panty."[54]

"Q

And the purpose why you loosened your zipper and took out your penis was to have sexual intercourse with her but it was unfortunate that you had your climax before you could go on top of her?

A

Yes, sir. My sperms came out before I could go on top of her.

Q

You also said that you fell down to the ground because you were drunk. Now, which came first, the loosening of your zipper or your falling to the ground because you were drunk?

A

At the same time I also fell down.

Q

Now, tell us exactly, were you already on the bending position towards the body of the deceased at the time you said your sperms came out or you were yet standing?

A

I was on the act of going over her.

Q

And please tell the Court when for the first time did you think of having sexual intercourse with her, before you loosened your zipper?

A

It was only on that occasion because I was drunk, when we were on our way home.

Q

And you took advantage because you were alone with her and it was dark?

A

Yes, sir."<sup>[55]</sup>

"Q

After you stabbed her and wounded her, did you not return the panty of Teofista Maloloy-on?

A

No, sir, because it was she who took out her panty and I did not mind any more if she returned it or wore it back.

Q

At what precise time were you bitten by Teofista Maloloy-on, at the time you loosened your zipper or before you loosened your zipper?

A

At the time when she fell down.

Q

In other words, you were lying together on the ground?

A

Yes, sir, because the ground was sloping.

Q

And you were on top of her when you were bitten by her, by Teofista Maloloy-on?

A

No, sir, It was at the time when we fell down together and when I fell I was on top of her because she was pinned down and it was on that time I was on top of her when she bit my finger and that was the time my sperms came out.

Q

So at the time that your sperms came out, you were still on the ground with Teofista Maloloy-on?

A

Yes, sir, because my pants, the zipper of my pants was already opened.

Q

So that immediately after you were bitten by Teofista Maloloy-on, you lost your temper, according to you, and you immediately got your bolo and hacked her on the neck?

A

Yes, sir.

Q

And you said that that was before your sperms came out?

A

Yes, sir.

x x x x x x x x

Q

Did you say that it was Maloloy-on herself who took out her panty?

A

Yes, sir, she was the one who took out her panty.

Q

When was that, when did she take out her panty?

A

She was the one who removed her panty. And when she fell down and I was on top of her and that was the time she bit my finger because she thought that I will rape her.

Q

You mean then that Maloloy-on was willing to submit herself to your raping her?

A

It was she who took out her panty, sir.

Q

And that was before you unzipped your pants and unbuttoned your drawer to put out your penis. The act of Maloloy-on in removing or putting down her panty was before you unzipped your pants and unbuttoned your drawer and put out your penis?

A

Yes, sir.

Q

And at that time she was not yet wounded?

A

Yes, sir, she was not yet wounded.

Q

After you ejaculated or your sperms came out, that was the time when Maloloy-on bit your little finger?

A

No, sir. It was at the time when we were rolling and grappling with each other that she bit my finger.

Q

Did you not state in the cross-examination that you killed Maloloy-on because she bit your little finger?

A

Yes, sir.

Q

But your killing her was after you ejaculated or after she had put down or take out her panty and you also unbuttoned your drawer to put out your penis?

A

I have killed her already before I unbuttoned my pants.

Q

Can you explain how she put down her panty after she was killed?

A

At the time when we were already grappling and rolling on the ground, that was the time she took out her panty.

Q

Now, I will ask you a direct question. Have you ever been able to have any sexual intercourse with Maloloy-on before?

A

I have not consummated my carnal knowledge on her but my sperm cells got out or came out when I was on the act of getting on top of her

Q

At least, what I understand from your declaration is you attempted to rape her but you were not able to consummate the rape?

A

I have no intention of raping her, sir, because it was she herself who took out her panty.

Q

And it was because that she took out her panty that you were excited that you also unzipped your pants and put out your penis that you ejaculated before you could go on top of her?

A

Yes, sir, but she was the first who took out her panty. And when I opened my zipper I was not able to go on top of her.

Q

Now, which was ahead, the wounding of Teofista Maloloy-on or your unzipping your pants?

A

The killing was ahead, sir.

Q

So, you killed her before you unzipped your pants?

A

Yes, sir."<sup>[56]</sup>

"Q

Now, please describe the position of Teofista Maloloy-on at the time that she bit your finger, was she lying on the ground as you said you were on top of her when you fell on the ground?

A

She was right on the ground with her side on the ground.

Q

And you said you pinned her because you were on top of her?

A

Yes, sir.

Q

And you also told the Court that at the time you were bitten by Teofista Maloloy--on you had already your penis outside your drawer?

A

Yes, sir.

Q

And tell us exactly your position, rather, the position of Teofista Maloloy-on in relation to you at the time you allegedly had your ejaculation.

A

She was lying down and I was on my knees kneeling.

Q

And you said she was lying down with her back on the ground?

A

Yes, sir.

Q

And what about your hand, is it not a fact that you were resting your hand on the ground while you were kneeling in front of her?

A

Yes, sir.

Q

And she was in front of you?

A

Yes, sir.

Q

And at the time you said she had no more panty?

A

Yes, sir.

Q

And your sperms spread throughout her private part?

A

Yes, sir."[57]

Appellant argues on the basis of his foregoing unreliable testimony that assuming there was rape or attempted rape, the same was committed after the victim had died and hence there was no rape or attempted rape in contemplation of law, it being necessary for the commission of either of the said crimes that the victim be alive.

Likewise in support of his submission, appellant invites attention to Dr. Sebumpan's testimony that "the wounds were inflicted before the sexual intercourse,"[58] and to the allegation in the Information filed against him in this case that the injuries inflicted upon Teofista caused her "instantaneous death." [59]

The above argument is devoid of merit and We quote with approval from the Solicitor General's Brief, thus:

"The argument that the rape was on a dead woman is hairsplitting. When the appellant started to force the woman to submit to his carnal desires, she was alive and fighting for her honor. But even assuming arguendo this hairsplitting distinction, there is no evidence that the woman was already medically dead when he raped her. Instead of desisting and calling for help in an attempt to save her life, he x x x went ahead with the rape." [60]

As for appellant's testimony on the matter, We have previously shown that it is unworthy of credence, hence the same may be disregarded. With respect to Dr. Sebumpan's statement alluded to, the record shows that he was referring only to the stab wounds on the victim's body. It must be remembered that according to this witness' Necropsy Report, aside from stab wounds on the chest, abdomen and right thigh, Teofista sustained contusions on both cheeks, on the forehead and on both thighs, one incised wound at the neck, and incised deep wounds on both hands and on the left arm. Nowhere in Dr. Sebumpan's testimony does he claim that the stab wounds, which according to him "were inflicted before the sexual intercourse" caused the victim to die instantaneously. It is entirely probable, and indeed Dr. Sebumpan's testimony does not rule out the possibility, that some of the wounds, particularly the stab wounds, were inflicted before and even during the sexual intercourse to subdue the victim, and the others after carnal knowledge to kill her and seal her lips forever. As to the allegation of "instantaneous death" in the Information, the same is not material. The word "instantaneous" was manifestly used merely to qualify the term "death", and was not at all meant to determine the crime committed or the severity of the penalty to be imposed. More than that, it is obvious from the text of the charge that the injuries alleged as having caused "instantaneous death" refer to injuries inflicted after the rape.

In resume, We find that the appellant's culpability for the complex crime of rape with homicide has been fully and conclusively established by the evidence on record. The sentence of death imposed by the Court a quo must be affirmed.

WHEREFORE, the judgment appealed from is hereby modified in that We find the accused guilty of rape with homicide and he is hereby sentenced to the supreme penalty of DEATH. The remaining portion of the judgment is hereby affirmed, with costs de oficio.

### **SO ORDERED.**

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

Fernando, C.J., and Aquino, J., in the result.

Teehankee, J., took no part.

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[1] Docketed as G.R. No. L-35792.

[2] See *People vs. Saligan*, L-35792, 54 SCRA 190--196.

[3] Original Records, p. 43; and Decision of the Trial Court, p. 2; Rollo, p. 8.

[4] Decision of the Trial Court, p. 7; Rollo, p. 13.

- [5] t.s.n., May 16, 1974, p. 4.
- [6] t.s.n., May 16, 1974, pp. 4-5; July 3, 1974, pp. 23 and 33.
- [7] t.s.n., May 16, 1974, p. 6; July 3, 1974, p. 33.
- [8] t.s.n., May 16, 1974, pp. 6-7.
- [9] t.s.n., March 27, 1974, p. 17; May 16, 1974, pp. 13-14; July 3, 1974, p. 15.
- [10] Exhibit "B-1", Folder of Exhibits.
- [11] Original Records, pp. 3-4.
- [12] t.s.n., March 27, 1974, p. 12.
- [13] Ibid., p. 14.
- [14] Ibid., pp. 11-12.
- [15] Ibid., p. 7.
- [16] Ibid., pp. 5-6.
- [17] Ibid., pp. 8-10.
- [18] Ibid., p. 6.
- [19] t.s.n., March 27, 1974, p. 14; May 16, 1974, pp. 5-6, 8-10 and 13; July 3, 1974, p. 30.
- [20] t.s.n., May 16, 1974, p. 6, 11-12; July 3, 1974, p. 30.
- [21] t.s.n., July 3, 1974, p. 7.
- [22] Exhibit "A", Original Records, p. 5.
- [23] t.s.n., July 3, 1974, pp. 30, 35, 37-38.
- [24] Brief for Appellant, p. 4; Rollo, p. 36.
- [25] Ibid., p. 10; Rollo, p. 42.
- [26] Decision of the Lower Court, pp. 5-6; Rollo, pp. 11-12.
- [27] L-23464, Oct. 31, 1969, 30 SCRA 53, 57-58.
- [28] L-36039, May 17, 1980.
- [29] Ibid.
- [30] t.s.n., July 3, 1974, pp. 22 and 27.
- [31] Ibid., pp. 23, 25 and 27.
- [32] People vs. Manobo, L-19798, Sept. 20, 1966, 18 SCRA 30; People vs. Maisug, et al., L-22187, March 28, 1969, 27 SCRA 742, 753; People vs. Urro, et al., L-28405, April 27, 1972, 44 SCRA 473, 486; People vs. Francisco, L-40352, Nov. 29, 1976, 74 SCRA 158, 167; People vs. Robles, et al., L-30060, July 30, 1979; People vs. Alquizar, L-35369, Aug. 21, 1979; People vs. Guillermo, et al., L-36824, Sept. 11, 1979.
- [33] L-20806-07, Aug. 14, 1965, 14 SCRA 935, 943.

[34] t.s.n., March 27, 1974, pp. 5-7 and 12.

[35] t.s.n., July 3, 1974, p. 21.

[36] t.s.n., July 3, 1974, pp. 23-24, 25-27.

[37] People vs. Barrios, et al., L-34785, July 30, 1979; People vs. Compacion, et al., L-33951, September 28, 1979; People vs. Juliano, L-33053, January 28, 1980.

[38] People vs. Castañeda, et al., L-32625, Aug. 31, 1979; People vs. Caramonte, L-31866, November 7, 1979; People vs. Ramos, L-35063, December 27, 1979; People vs. Juliano, *supra*.

[39] People vs. Oscar, 48 Phil. 527, 529; People vs. Hernandez, 49 Phil. 980, 982; People vs. Selfaison, et al., L-14732, Jan. 28, 1961, 1 SCRA 235, 242; People vs. Jose, et al., L-28232, Feb. 6, 1971, 37 SCRA 450, 469; People vs. Carandang, et al., L-31012, Aug. 15, 1973, 52 SCRA 259, 269-270; People vs. Royeras, L-31886, April 29, 1974, 56 SCRA 666, 671; People vs. Amores, L-32996, Aug. 21, 1974, 58 SCRA 505, 508.

[40] See Necropsy Report, Exh. "B-1", Folder of Exhibits.

[41] *Ibid*.

[42] *Ibid*.

[43] t.s.n., July 3, 1973, pp. 6, 9 and 12.

[44] Solis, Pedro P., "Legal Medicine," 1964 ed., p. 179.

[45] t.s.n., July 3, 1974, pp. 24, 31, 34-39.

[46] *Ibid*., p. 33.

[47] *Ibid*., pp. 31-32, 34.

[48] *Ibid*., p. 40.

[49] *Ibid*., pp. 38-39.

[50] t.s.n., July 3, 1974, pp. 27, 35-37.

[51] Brief for the Appellant, pp. 7-8; Rollo, pp. 39-40.

[52] t.s.n., July 3, 1974, p. 36.

[53] Brief for the Appellee, p. 11; Rollo, p. 66.

[54] *Ibid*., p. 31.

[55] *Ibid*., pp. 32-33.

[56] *Ibid*., pp. 34-38.

[57] *Ibid*., pp. 40-42.

[58] t.s.n., July 3, 1974, p. 7.

[59] See Information, Original Records, p. 17.

[60] Brief for the Appellee, *supra*.

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