

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT LEONOR Y ESPARAGO, EDUARDO ABE Y OTIZ, JOSEPH GEORFO Y MEDEL AND ARMAD GANSAD Y LUMON, ACCUSED-APPELLANTS.

Ponente: BUESER, J.

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BUESER, J.:

Before the Court is an appeal from the decision rendered by the Regional Trial Court, Branch 163 of Pasig City finding the accused-appellants guilty beyond reasonable doubt of Robbery with Multiple Homicide in Criminal Case No. 130841-H entitled “People of the Philippines vs. Albert Leonor y Esparago, Eduardo Abe y Otiz, Joseph Georfo y Medel, Armand Gansad y Lumon and CICL Jeffrey Prima y Tagayon” and Albert Leonor guilty beyond reasonable doubt of the crime of Rape with Homicide in Criminal Case No. 130842-H entitled “People of the Philippines vs. Albert Leonor y Esparago, Eduardo Abe y Otiz, Joseph Georfo y Medel, Armand Gansad y Lumon and CICL Jeffrey Prima y Tagayon.”

Culled from the records[1] are the following pertinent, material antecedent facts:

Spouses Antonio and Hayda Napura owned a bakery at ISG Village Central, Western Bicutan, Taguig City. Their residence at the same village was just a five-minute walk from the bakery. The couple have an adopted daughter, Heide. On the other hand, Albino Nalagay was Hayda Napura's brother and Heide's biological father. AAA[2] was the housemaid of the family.

Accused-appellant Albert Leonor (Leonor, for brevity) was a former baker of the Napura's whose work was terminated because of his usual habit of leaving the store without his employer's permission. Armand Gansad (Gansad, for brevity) was the former family driver of the Napuras. Eduardo Abe (Abe, for brevity), Joseph Georfo (Georfo, for brevity) and Jeffrey Prima (Prima, for brevity) usually hanged out in front of the bakery.

At around 4 o'clock in the morning of May 29, 2005, Ahron, A. Nalagay, Little and Melchor woke up. Ahron started baking “pandesal” while Antonio Nalagay (Antonio, for brevity) attended to the store. Ahron wondered why AAA did not bring their breakfast.

At about 9:30, Antonio went to the Napura's residence. He returned afterwards because it seems nobody was at home. He asked Ahron to call Hayda through her mobile phone but the latter's phone was unattended. At around 10:00 o'clock in the morning, Ahron went to the Napura's house. He peeped through a window and saw Hayda's jewelry box scattered on the bed.

Ahron returned to the bakery, worried. He thought that Antonio Napura might have been rushed to the hospital. Ahron and Antonio Nalagay returned to the house. Despite several calls and knocks, nobody answered them. When he saw the couple's Tamaraw FX parked outside, they decided to forcibly open the main door of the house. Once inside, they saw blood under a bench. Antonio pushed the master's bedroom door and they were shocked to see the bloodied and headless body of Hayda lying at the door. In the kitchen, they found Antonio Napura and in another room, Heide and AAA, all dead. AAA was bloodied and fully naked.

Ahron immediately informed complainant Albino, who was in the province at that time, and “Molin” Hayda's sister-in-law, of the tragedy that occurred in the Napura residence. Ahron also informed the purok leader of the place and the latter in turn reported the matter to the Taguig Police Station. At about 7:00 o'clock in the evening of the same day, policemen arrived and conducted their investigation.

According to Ahron, three days before the incident, accused Leonor slept in the bakery for one night, left in the morning, came back again in the early morning of the next day, slept, and then left again. He had with him a .38 caliber revolver. He suspected Albert to be the culprit because of the grudge he harbored against Hayda. Albert got mad at Hayda because she fired him from work at such time when he badly needed money for his intended marriage with his live-in partner.

On June 6, 2005, an Information[3] was filed against the accused-appellants, viz:

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That, on or about the 29[th] day of May, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, while armed with butcher's knife, with intent to gain and by means of force, violation and intimidation, did, then and there take, steal rob and divest from complainants, namely: Hayda Napura y Nalagay, Antonio Napura y Nonaillada, Heide Napura y Nalagay, 4 years old, a minor, and Leny Nietes y Lozada, the following items, to wit: one (1) pc. Nokia cellphone, one (1) 8210 cellphone and assorted pieces of jewelry and cash money of an undetermined amount; and by reason or on the occasion of said robbery, the above-named accused, in conspiracy with one another, while armed with butcher's knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hack the said complainants thereby inflicting upon them fatal injuries which directly caused their death, said robbery and killing have been attended by the aggravating circumstance of abuse of superior strength and committed by an organized/syndicated group.

CONTRARY TO LAW.[4]

Version of the Prosecution

SPO1 Mapili testified that he and PO3 Ehron Balauat were the ones assigned to investigate the crime. When he received a report on the incident, he immediately sought the assistance of the Scene of the Crime Operation (SOCO). SOCO and the CIS discovered the headless body of Hayda inside the master's bedroom, the dead body of Heide with deep cut wound on her throat and with multiple lacerations on both hands, the naked body of AAA with ligature marks on her neck in the adjoining room and of Antonio Napura in the kitchen. He noted a forcibly opened cabinet and several bloodstains scatted on the floor.

The police conducted a follow up operation. On May 31, 2005, the police received information that Leonor was hiding at SSG Village, Zone 1, Signal Village in Taguig[5]. They immediately went there disguised as government employees of Taguig City Hall[6]. They met Leonor's mother and brother, however, they were unable to find Leonor that day[7].

In the morning of June 1, 2005, a certain M/Sgt. Pacarin went to see Brgy. Kagawad Antonio F. Castro, Jr.(Castro, fro brevity) to tell him that Leonor was staying at his place. Leonor's brother was Pacarin's boarder[8]. Pacarin mentioned that Leonor was a suspect in the Sto. Niño massacre and was willing to surrender[9]. Castro asked Pacarin to bring Leonor to him[10].

Castro called Councilor Dueñas to endorse Leonor[11]. After twenty minutes, Dueñas arrived[12]. Thereafter, Pacarin together with Leonor, Marissa and Leonor's brother arrived[13]. It was the first time Castro met Leonor and his family members[14]. Dueñas talked to Leonor and the former noticed that Leonor had a wound in his

palm[15]. Dueñas invited them to the police headquarters at the City Hall[16].

Leonor, his wife and his brother boarded Dueñas's car and proceeded to the City Hall. At Dueñas's office, he had Leonor, his wife and brother seated in front of his desk[17]. Thereafter, Capt. Bong and the other police handling the investigation arrived[18].

They started asking Leonor as to his whereabouts before, during and after the killing of the Napura family[19]. Leonor replied that he did not leave the house that day. When asked why he was terminated from work, Leonor replied that he does not know. Dueñas asked him about the wound in his palm, Leonor said that he slipped while doing his laundry in Bulacan[20].

Dueñas decided to talk to Leonor's common law wife, Marissa. They left Leonor and his brother, while he and Capt. Obong conferred with Marissa in an office next to Dueñas's. Marissa confided that Leonor arrived in Bulacan at past 6 in the evening of May 29[21]. Moreover, she noticed he already had a wound in his palm[22]. He gave her money and instructed her to arrange their wedding[23].

Dueñas returned to his office and confronted Leonor with the information he gathered from Marissa[24]. Leonor was silent. Dueñas returned to the adjacent office where he left Capt. Obong and Marissa[25]. Capt. Obong told him that Marissa is willing to accompany them to Bulacan to show Leonor's things, particularly a pair of maong pants[26].

At around 5 or 6 o'clock in the afternoon of June 1, 2005, Dueñas, together with Marissa and Capt. Obong's team proceeded to Bulacan. Marissa took a pair of maong pants, showed it to them as well as Leonor's bag[27]. Marissa told them that before she saw Leonor washing the maong pants, she saw it covered with blood[28].

Dueñas team examined the maong pants and noticed traces of blood[29]. Marissa also surrendered a .38 caliber gun which she said belonged to Leonor[30]. The team left Bulacan and returned to Taguig, bringing with them the maong pants, gun and bag[31].

Upon arrival at his office, Dueñas confronted Leonor and told the latter he recovered his maong pants with traces of blood, his bag as well his revolver[32]. Leonor embraced his brother and confessed his participation in the crime[33]. His extra-judicial confession was made in the presence of and recorded by members of the media[34]. He identified and pinpointed the other four (4) persons involved with the crime namely: Abe, Georfo, Prima and Gansad.

Thus, together with the operatives and members of the media, Dueñas and Leonor went to Sitio Sto. Niño to apprehend a man Leonor identified as Abe[35]. Thereafter, they went to Georfo's residence. They did not find Georfo, however his wife informed them that he is in Batangas and voluntarily brought them there[36].

That same night of June 1, 2005, they proceeded to Batangas[37]. When the police approached Georfo's house, he and his mother came out. Leonor identified him and was arrested by the police[38]. After which, they headed back to Taguig.

Leonor mentioned another suspect, Jeffrey Prima, was also in Sto. Niño West, Western Bicutan. When they reached Prima's house, they found out from Prima's friend that he was in Quezon City[39].

Still accompanied by the media, they proceeded to Quezon City to find Prima. There, Prima was identified by Leonor and was arrested.[40] With all the four suspects in custody, Dueñas and the police returned to Taguig City Hall. They turned over the suspects to the Investigation Division and were presented to the media on June 2.[41] During their interview by Dueñas in the presence of the media, the five confessed their respective participation in the crime. Leonor admitted having committed the crime and implicated Abe, Georfo, Gansad and Prima as

co-conspirators[42].

As aptly pointed out by the court a quo:

“In a video-taped interview by Councilor Duenas in the presence of mediemen xxx, all accused confessed to their participation in the crime. From the video-tape, the Court gathered that Albert, Eduardo and Joseph gathered in a chapel within the neighborhood and Albert asked Eduardo and Joseph if they wanted to earn money. Not long after that, the FX tamaraw, owned by the Napuras, arrived driven by Armand.

Jeffrey stated that he was picked-up by Albert and Joseph from the basketball court and was told to stay outside the house. He did; and shortly, thereafter, he heard a female outcry so he ran inside the house. After seeing what was going on inside, he ran away and proceeded to his house. The following day, he went to Quezon City and stayed with his “barkadas.”

According to Eduardo, Albert and Armand were the ones who knocked at the door because they were known to the family. Leny, the housemaid, opened the door and let them in. Moments later, lights inside the house were turned off and Albert told Eduardo and Joseph that they could come in. They did.

Albert admitted that when they entered the house, Hayda was at the living room watching tv. He was very, very angry at her for terminating his employment that he immediately strangled her. When he saw that she was already gasping for breath, he went to the kitchen and took a knife which he used to slash her neck. But there was a bone in her neck which he could not break so he pulled her almost-dead body to a room where he completely severed her head. Then, he wrapped the head with a piece of clothing and placed it inside a plastic bag and positioned the baggage at the door.

Eduardo told his interviewers that after he was let in by Albert, he saw the latter holding the child (Heide) and stroking her hair and when the maid [“AAA”] opened the door of the comfort room, Albert pushed Heide aside causing the latter to slump on the floor no longer moving. He saw blood on Heide's body. Albert entered the toilet and sexually forced himself against [AAA]. Then, he saw Albert and Armand helping each other pull the naked body of the still-breathing [AAA] to a room. At that time, Albert was half naked, wearing only a wet pair of short pants. Eduardo noticed blood on AAA's face.

Albert admitted that inside the room, he tied [AAA's] neck with electrical refrigerator wire until she died. Albert pointed to Joseph as the one who strangled the old man (A. Napura) until he suffered a stroke and died.

According to Eduardo, Joseph threw him the bag containing their loot while he (Joseph) carried the plastic bag containing Hayda's head. When interviewed before the media, all four were agreed that after all these were finished, they all boarded the FX, with Armand on the driver's seat, split their stolen money and discarded Hayda's head; and that Eduardo alighted first, followed by Joseph and then Albert and Armand.”[43]

Buccal swab, finger prints, foot prints and hair samples were taken from the accused-appellants[44]. On the other hand, the maong pants was submitted to the PNP Crime Laboratory for Serology test.[45] Specimens of hand clippings and blood samples from the deceased, the underwear belonging to AAA and the maong pants were likewise subjected to DNA test[46]. Subsequently, the DNA test result dated July 21, 2005 revealed that the maong pants has the DNA of Heidi Napura and accused-appellant Leonor.

The autopsy report[47] of AAA revealed that she died of asphyxia by strangulation and her external genitalia is grossly swollen and discolored.

On April 8, 2009, the accused-appellants filed a Motion for Leave of Court to File Demurrer to Evidence[48]. The court a quo granted the same and gave the accused-appellants thirty (30) days to file their Demurrer to Evidence. On November 11, 2009, the court a quo denied the Demurrer to Evidence and set the case for continuation of trial on February 2, 2010[49].

Accused-appellants took the witness stand and testified in their behalf.

Version of the defense

On the witness stand, Leonor denied the ownership of the blood-stained maong pants[50]. He testified that he was in Bulacan when he learned that his employer and her family were killed. On May 31, 2005, his brother called to tell him that the police were looking for him[51]. He decided to go to Manila that night in order to clear his name. He stayed at his brother's house in GHQ Village, Zone 1, Signal Village, Taguig City.[52]

The next day, Councilor Dueñas and a man in civilian clothes arrived. Dueñas invited Leonor to his office, to which the latter agreed. He was brought to Kagawad Castro's house and was informed that he was one of the suspects in the Taguig massacre[53]. Leonor denied his involvement and explained that he was only there to clear his name[54].

Leonor, together with Marissa, his brother and his mother were brought to Dueñas's office at Taguig City Hall[55]. Dueñas kept on asking him to admit his involvement with the massacre. Leonor refused and at around 5 o'clock in the afternoon, Dueñas, Captain Obong and PO1 Mapili began torturing him[56]. First, they placed a bullet between his finger and repeatedly squeezed Leonor's hand[57]. They asked Leonor to sit on a bench, placed a plastic bag and poured water on his head.[58] Thereafter, they electrocuted Leonor at the neck, kicked his back, thigh and chest[59]. When Leonor fell on the floor, Captain Obong and Dueñas lifted him up and brought him to the comfort room[60].

Inside the comfort room, the two held Leonor's index finger against the wall while Capt. Obong hit it with a baby armalite[61]. After which, he was brought back into Dueñas's office and asked if he will admit having committed the crime[62]. Leonor still refused and replied that he did not commit the crime[63]. Dueñas brought out his gun, poked it at Leonor's left side and asked him if he wanted his wife to experience the same treatment he had[64]. Leonor understood what it meant, that his wife will be subjected to torture. Fearing for his wife, he told Dueñas that he will confess.[65]

Dueñas offered cash in the amount of Fifteen Thousand pesos (Php 15,000.00) in exchange if Leonor can pinpoint two other persons living near the Napura's bakery[66]. Aside from the cash, Dueñas promised that Leonor will be allowed to go home[67]. The first person identified by Leonor was Eduardo Abe and then Joseph Georfo because they were often seen in front of the bakery[68].

After Georfo was identified, the police immediately decided to look for him. Leonor, together with the police, went to Georfo's house. They did not find Georfo and his wife informed that that he is in Batangas.[69] They proceeded to Batangas where Georfo was arrested[70].

On their way back to Manila, Dueñas poked a baby armalite against Georfo and told Leonor to pinpoint another person[71]. Leonor asked Georfo the name of the minor with long side-burns who hangs out with the latter[72], and that happened to be Jeffrey Prima.

When Georfo, Abe and Prima were brought together at Dueñas's office, the latter asked them if they know a person who can drive. Leonor gave the name of Armand Gansad (Gansad, for brevity), who used to be the Napura's driver.[73] The police thereafter arrested Gansad.

The police tortured the accused-appellants. They placed a plastic on Abe's head and poured water. On the other hand, Gansad was hit with a night stick at his left eyebrow. Chief Reyes wrapped a towel on his hands and boxed Gansad's chest.[74] The accused-appellants were never given food or drinks. The confession they gave before the media were merely concocted and coached by Dueñas himself[75]. Dueñas threatened the accused-appellants with

bodily harm should they fail to cooperate[76].

On August 13, 2010, the court a quo rendered its decision the dispositive portion of which reads:

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“WHEREFORE, after a careful consideration of the mass of evidence adduced by the prosecution and the interlocking chain of facts and circumstances obtaining in these cases, judgment is hereby rendered as follows:

- In Criminal Case No. 130841, accused Albert Leonor y Esparago, Eduardo Abe y Ortiz, Joseph Georfo y Medel and Armand Gansad y Lumon are hereby found GUILTY beyond reasonable doubt of the crime of Robbery with Multiple Homicide and, taking into consideration the aggravating circumstances of abuse of superior strength and having been committed by an organized/syndicated group, are hereby sentenced to suffer the penalty of reclusion perpetua and all the effects thereof as provided by law.

They are further ordered to pay jointly and severally, the heirs of Antonio, Hayda and Heide, all surnamed Napura, Php673,655.75 as actual damages and the heirs of each of the victims, namely Antonio, Hayda and Heide, all surnamed Napura, and [AAA] Php50,000.00 as civil indemnity; Php50,000.00 by way of moral damages; Php50,000.00 as exemplary damages and to pay the costs, at the legal rate of interest from the time of the filing of the Information until fully paid and to return to the heirs of all the victims the stolen items.

CICL Jeffrey Prima y Tagayon is hereby ACQUITTED on ground of reasonable doubt.

- In Criminal Case No. 130842, accused Albert Leonor y Esparago is hereby found GUILTY beyond reasonable doubt of the crime of Rape with Homicide for the rape with killing of [AAA] and, there being no mitigating or aggravating circumstance, is sentenced to suffer the penalty of reclusion perpetua and all the effects thereof as provided by law.

He is further ordered to pay the heirs of [AAA] Php75,000.00 as civil indemnity; Php50,000.00 by way of moral damages and to pay the costs, at the legal rate of interest from the time of the filing of the Information until fully paid.

Accused Eduardo Abe y Ortiz, Joseph Georfo y Medel, Armand Gansad y Lumon and CICL Jeffrey Prima y Tagayon are hereby ACQUITTED on ground of reasonable doubt.

SO ORDERED.”[77]

Issues

Aggrieved, accused-appellants filed the instant appeal raising the following issues for our consideration:

1. WHETHER OR NOT THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH MULTIPLE HOMICIDE.
2. WHETHER OR NOT THE COURT A QUO ERRED IN ADDITIONALLY CONVICTING ALBERT LEONOR FOR RAPE WITH HOMICIDE.
3. WHETHER OR NOT THE COURT A QUO ERRED IN NOT DISMISSING CRIMINAL CASE NO. 130841-H FOR ROBBERY WITH MULTIPLE HOMICIDE AGAINST ARMAND GANSAD WHO DIED DURING THE PENDENCY OF THE AFOREMENTIONED CASES.
4. WHETHER OR NOT THE COURT A QUO ERRED IN FINDING THAT THE ACCUSED-APPELLANTS WERE VALIDLY ARRESTED WITHOUT A WARRANT.

OUR RULING

The name of Albert Leonor first came up as a possible suspect when witness Ahron Noble informed the police officers that he harbored a grudge against the late Hayda Napura after being fired from work. Thus, based on this, the police conducted an investigation with Albert Leonor as the suspect in the massacre of Napura family.

The accused-appellants stated that Leonor made an extra-judicial confession of his involvement with the killing of the Napuras, identified the other accused-appellants and by reason thereof, were subsequently arrested. The other accused-appellants also confessed to their participation in the crime. However, all the accused-appellants were arrested without a warrant and were not read or informed of their “Miranda rights” upon arrest and before the questioning was conducted by Dueñas. Furthermore, they were not assisted by counsel when they made their extra-judicial confessions.

Leonor, upon learning that he was a suspect, decided to go to Manila in order to clear his name before the authorities. However, he claimed that he was subjected to atrocious treatment and torture by Dueñas and the police officers who forced him to confess having committed the crime and pinpoint to the other accused-appellants as his co-conspirators. On the other hand, the other accused-appellants Abe, Georfo, Gansad and Prima were likewise arrested without warrant and forced to confess their participation in the crime.

Based on records, all of the accused-appellants were arrested without a warrant. Under the Rules of Court warrantless arrests may be validly effected upon the following instances:

Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

None of the aforementioned circumstances were present in the case at bar. However, upon review, We find that none of the accused-appellants questioned the legality of their arrests before their arraignment. Moreover, they were assisted by counsel during arraignment. Thus, they were deemed to have submitted themselves to the jurisdiction of the court a quo and cured the defect of the illegality of their arrests[78]. Likewise, their active participation in the trial estops them from questioning the legality of their arrest. It is settled that “an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived[79].”

Admissibility of the maong pants
and the DNA test results

The maong pants was obtained by the authorities when these were voluntarily handed over by Marissa. No search warrant was necessary since Marissa gave Leonor's personal effects while the police were outside the house in Bulacan, no search was conducted. These were brought to the PNP Crime Laboratory for DNA testing on June 2,

2005.

The ownership of the maong pants was established thru the testimonies of Dueñas and Obong. While Marissa was never presented as witness to substantiate Leonor's ownership of the maong pants, the testimonies of Obong and Dueñas are considered independent relevant statements and may be admitted in the absence of a timely objection. It is "an exception to the hearsay rule, the purpose of which is merely to establish the fact that the statement was made or the tenor of such statement[80]".

When Obong and Dueñas testified that Marissa handed over the maong pants, bag and .38 caliber revolver which she claimed belonged to Leonor, they were merely testifying that Marissa told them that these items belonged to Leonor. It does not establish the truth of Marissa's statement, only that she mentioned that those items are owned by Albert Leonor. "Evidence regarding the making of such independently relevant statement is not secondary but primary, because the statement itself may (a) constitute a fact in issue or (2) be circumstantially relevant as to the existence of that fact[81]."

Here, Marissa's statement is relevant to the issues of Leonor's ownership of the maong pants from which the DNA profile of Heide Napura was obtained and ultimately his culpability of the offense charged[82].

Anent the issue of the DNA results, records show that the DNA samples collected in the maong pants matched with the DNA from the blood sample (Specimen L) of Heide Napura. In determining the probative value of DNA evidence, the Rule on DNA Evidence (A.M. No. 06-11-5-SC) provides:

SEC. 7. Assessment of probative value of DNA evidence. In assessing the probative value of the DNA evidence presented, the court shall consider the following:

- (a) The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;
- (b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;
- (c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and
- (d) The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily.

SEC. 8. Reliability of DNA Testing Methodology. In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:

- (a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;
- (b) The subjection to peer review and publication of the principles or methods;
- (c) The general acceptance of the principles or methods by the relevant scientific community;
- (d) The existence and maintenance of standards and controls to ensure the correctness of data generated;
- (e) The existence of an appropriate reference population database; and
- (f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles

and the significance and limitation of statistical calculations used in comparing DNA profiles.

In the instant case, the chain of custody from the time the maong pants was handed over by Marissa up to the moment it was turned over to the PNP Crime Laboratory was established. PCI Calaoa who conducted the DNA test on the maong pants and the specimens from the deceased, was duly qualified by the prosecution as an expert witness as DNA analyst. He testified and explained the procedural steps on the DNA analysis of the maong pants as well as the blood samples from the victims. Based on these DNA tests, the DNA found on the maong pants is identical with those found in Heide Napura's blood.

It is well settled that DNA evidence is relevant and reliable since it is based on scientifically valid principles of human genetics and molecular biology[83]. Verily, “DNA print or identification technology has been advanced as a uniquely effective means to link a suspect to a crime, or to exonerate a wrongly accused suspect, where biological evidence has been left. For purposes of criminal investigation, DNA identification is a fertile source of both inculpatory and exculpatory evidence. It can assist immensely in effecting a more accurate account of the crime committed, efficiently facilitating the conviction of the guilty, securing the acquittal of the innocent, and ensuring the proper administration of justice in every case[84]”.

The extra-judicial confessions of the accused-appellants before the members of the mass media are admissible.

Article III, Section 12 of the 1987 Constitution provides:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

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(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

The provision applies during the stage of custodial investigation when the investigation is no longer a general inquiry into an unsolved crime but has focused on a person as a suspect, i.e., when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.[85]

In order for the extra-judicial confessions to be admissible, the following requisites[86] must be present:

- (1) it must be voluntary;
- (2) it must be made with the assistance of competent and independent counsel;
- (3) it must be express; and
- (4) it must be in writing.

In the instant case, the accused-appellants were already considered as suspects when they were presented before the media. Dueñas may be deemed a law enforcer because he was the Head of the Taguig Anti-Crime and Illegal Drugs at the time. Thus, when Dueñas asked them to tell the truth, it can no longer be considered a mere general inquiry. However, the confessions made in response to the questions by the reporters are admissible against the accused-appellants. The answers were given not in response to the authorities, but through interview conducted by

the members of the media.

It was held by the Supreme Court that “appellant's confessions to the news reporters were given free from any undue influence from the police authorities. The news reporters acted as news reporters when they interviewed appellant. They were not acting under the direction and control of the police. They were there to check appellant's confession to the mayor. They did not force appellant to grant them an interview and reenact the commission of the crime[87].” Moreover, “confessions to the newsmen are not covered by Section 12(1) and (3) of Article III of the Constitution. The Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents[88]”.

Hence, the court a quo aptly held that what the mediamen undertook was an interview and the accused-appellants' uncounselled confession is admissible in evidence. The constitutional safeguard on custodial investigation does not apply.

Robbery with Homicide Aggravated by Rape

The prosecution was able to prove that the deceased AAA was raped by accused-appellant Leonor on the occasion of Robbery with Homicide. Thus, the crime he committed is Robbery with Homicide aggravated by Rape.

As held in *People vs. Fabon*[89]:

When the special complex crime of robbery with homicide is accompanied by another offense like rape or intentional mutilation, such additional offense is treated as an aggravating circumstance which would result in the imposition of the maximum penalty of death. In the case of *People vs. Lascuna*[90], we said:

We agree with the Solicitor General's observation that the crime committed was erroneously designated as robbery with homicide, rape and physical injuries. The proper designation is robbery with homicide aggravated by rape. When rape and homicide co-exist in the commission of robbery, it is the first paragraph of Article 244 of the Revised Penal Code which applies, the rape to be considered as an aggravating circumstance.

Gansad's Death before final judgment extinguished his

criminal and civil liability

In a letter[91] dated September 10, 2008, City Jail Warden Amatiaga informed the court a quo that Armand Gansad died on September 9, 2008 while being treated at Rizal Medical Center

Article 89 of the Revised Penal Code provides:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

xxx

In *People vs. Olaco*[92], the Supreme Court reiterated the guidelines laid down in *People vs. Bayotas*, viz:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, “the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *sensu strictiore*.”

xxx

Verily, there being no final judgment in the instant case at the time of Gansad's death, the criminal case against him should have been dismissed.

WHEREFORE, premises considered, the DECISION dated August 13, 2010 rendered by the Regional Trial Court Branch 163 of Taguig City in Criminal Case No. 130841-H is hereby MODIFIED as follows:

1. ALBERT LEONOR is convicted of the crime Robbery with Homicide aggravated by Rape under the first paragraph of Article 294 of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua, with all its accessories, to indemnify the heirs of AAA Php 75,000.00 as civil indemnity; Php 50,000.00 by way of moral damages and to pay the costs, at the legal rate of interest from the time of the filing of Information until fully paid.

2. The criminal case ARMAND GANSAD is hereby DISMISSED.

The rest are AFFIRMED in TOTO.

SO ORDERED.

Salazar-Fernando R.A., (Chairperson) and Garcia, R.R. JJ., concur.

[1] Rollo, pp. 1-286

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Records, pp. 1.3

[4] Records, pp. 1-2.

[5] TSN of P/Sr. Insp. Obong, dated August 22, 2006, page 7

[6] Ibid.

[7] TSN of P/Sr. Insp. Obong, dated August 22, 2006, page 7

[8] TSN of Antonio F. Castro, dated December 4, 2007, page 7

[9] Ibid.

[10] TSN of Antonio F. Castro, dated December 4, 2007, page 8

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] TSN of Antonio F. Castro, dated December 4, 2007, page 16.

[15] TSN of Antonio F. Castro, dated December 4, 2007, page 9.

- [16] TSN of Antonio F. Castro, dated December 4, 2007, page 10.
- [17] TSN of Henry Dueñas dated February 6, 2007, p.10.
- [18] Ibid.
- [19] Ibid.
- [20] TSN of Henry Dueñas dated February 6, 2007, p.13.
- [21] TSN of Henry Dueñas dated February 6, 2007, p.15.
- [22] Ibid.
- [23] TSN of Henry Dueñas dated February 6, 2007, p.15-16.
- [24] TSN of Henry Dueñas dated February 6, 2007, p.16.
- [25] Ibid.
- [26] Ibid.
- [27] TSN of Henry Dueñas dated February 6, 2007, p.18-19.
- [28] TSN of Henry Dueñas dated February 6, 2007, p.19.
- [29] Ibid.
- [30] TSN of Henry Dueñas dated February 6, 2007, p. 20.
- [31] TSN of Henry Dueñas dated February 6, 2007, p. 21.
- [32] TSN of Henry Dueñas dated February 6, 2007, p.22.
- [33] TSN of Henry Dueñas dated February 6, 2007, p. 23.
- [34] Ibid.
- [35] TSN of Henry Dueñas dated February 6, 2007, p. 25.
- [36] TSN of Henry Dueñas dated February 6, 2007, p. 26.
- [37] TSN of Henry Dueñas dated February 6, 2007, pp. 27-28.
- [38] TSN of Henry Dueñas dated February 6, 2007, pp. 28.
- [39] TSN of Henry Dueñas dated February 6, 2007, p.29.
- [40] TSN of Henry Dueñas dated February 6, 2007, p. 30.
- [41] TSN of Henry Dueñas dated February 6, 2007, p.31.
- [42] Rollo, p. 50
- [43] Roll, pp. 50-51.
- [44] Records, pp. 118-119.
- [45] Records, p.120.
- [46] TSN of PCI Reynaldo Calaoa dated October 9, 2011, p. 11.

- [47] Records, p. 339.
- [48] Records, pp. 381-382.
- [49] Order dated November 11, 2009, Records, pp. 443-450.
- [50] Re-direct of Albert Leonor dated February 22, 2010, TSN, p. 15.
- [51] TSN of Albert Leonor dated February 15, 2010, pp. 4-5.
- [52] TSN of Albert Leonor dated February 15, 2010, p. 5.
- [53] TSN of Albert Leonor dated February 15, 2010, p. 5.
- [54] TSN of Albert Leonor dated February 15, 2010, p. 5.
- [55] TSN of Albert Leonor dated February 15, 2010, p. 8.
- [56] TSN of Albert Leonor dated February 15, 2010, p. 10.
- [57] TSN of Albert Leonor dated February 15, 2010, p. 10.
- [58] TSN of Albert Leonor dated February 15, 2010, p. 10.
- [59] TSN of Albert Leonor dated February 15, 2010, p. 11.
- [60] TSN of Albert Leonor dated February 15, 2010, p. 11.
- [61] TSN of Albert Leonor dated February 15, 2010, pp. 11-12.
- [62] TSN of Albert Leonor dated February 15, 2010, p. 13.
- [63] TSN of Albert Leonor dated February 15, 2010, p. 13.
- [64] TSN of Albert Leonor dated February 15, 2010, p. 13.
- [65] TSN of Albert Leonor dated February 15, 2010, pp. 13-14.
- [66] TSN of Albert Leonor dated February 15, 2010, p. 14.
- [67] TSN of Albert Leonor dated February 15, 2010, pp. 14-15.
- [68] TSN of Albert Leonor dated February 15, 2010, p. 15.
- [69] TSN of Albert Leonor dated February 15, 2010, p. 16.
- [70] TSN of Albert Leonor dated February 15, 2010, p. 17.
- [71] TSN of Albert Leonor dated February 15, 2010, p. 18.
- [72] TSN of Albert Leonor dated February 15, 2010, p. 18.
- [73] TSN of Albert Leonor dated February 15, 2010, p. 20-21.
- [74] TSN of Albert Leonor dated February 15, 2010, p. 21-23.
- [75] Cross Examination of Albert Leonor dated February 22, 2010, pp. 12-13.
- [76] Cross Examination of Albert Leonor dated February 22, 2010, p. 13.
- [77] Rollo, pp. 56-57.

- [78] *Miclat vs. People of the Philippines*, GR. No. 176077, August 31, 2011.
- [79] *Ibid.*, citing *Rebellion v. People*, G.R. No. 175700, July 5, 2010.
- [80] *Bayani vs. People of the Philippines*, GR. No. 155619, April 14, 2007.
- [81] *Ibid.*, citing *Bon v. People of the Philippines*, G.R. No. 152160, January 13, 2004.
- [82] *Bayani vs. People of the Philippines*, GR. No. 155619, April 14, 2007.
- [83] *People of the Philippines vs. Yatar*, GR. No. 150224, May 19, 2004.
- [84] *Ibid.*
- [85] *People of the Philippines vs. Andan*, GR. No. 116437, March 3, 1997.
- [86] *People vs. Domantay*, GR. No. 130612, May 11, 1999.
- [87] *People of the Philippines vs. Andan*, GR. No. 116437, March 3, 1997 citing *People v. Olvis*, 154 SCRA 513, 525-526 [1987].
- [88] *People of the Philippines vs. Andan*, GR. No. 116437, March 3, 1997.
- [89] GR. No. 133226, March 16, 2000.
- [90] GR. No. 90626, August 18, 1993 citing *People vs. Guarin*, G. R. No. 125964, 22 October 1999; *People vs. Sanchez*, G. R. No. 118423, 16 June 1999; *People vs. Tidula*, 292 SCRA 596.
- [91] *Records* p. 266.
- [92] GR. No. 197042, October 17, 2011 citing *People vs. Bayotas*.

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