

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. PABLITO ANDAN Y HERNANDEZ @ BOBBY,
ACCUSED-APPELLANT.**

G.R. No. 116437. March 03, 1997

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PER CURIAM:

Accused-appellant Pablito Andan y Hernandez alias "Bobby" was accused of the crime of rape with homicide committed as follows:

"That on or about the 19th day of February 1994, in the municipality of xxx, province of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one AAA against her will and without her consent; and the above-named accused in order to suppress evidence against him and delay (sic) the identity of the victim, did then and there wilfully, unlawfully and feloniously, with intent to kill the said AAA, attack, assault and hit said victim with concrete hollow blocks in her face and in different parts of her body, thereby inflicting upon her mortal wounds which directly caused her death.

Contrary to Law."[1]

The prosecution established that on February 19, 1994 at about 4:00 P.M., in xxx, AAA, twenty years of age and a second-year student at the xxx, left her home for her school dormitory in xxx. She was to prepare for her final examinations on February 21, 1994. AAA wore a striped blouse and faded denim pants and brought with her two bags containing her school uniforms, some personal effects and more than P2,000.00 in cash.

AAA was walking along the subdivision when appellant invited her inside his house. He used the pretext that the blood pressure of his wife's grandmother should be taken. AAA agreed to take her blood pressure as the old woman was her distant relative. She did not know that nobody was inside the house. Appellant then punched her in the abdomen, brought her to the kitchen and raped her. His lust sated, appellant dragged the unconscious girl to an old toilet at the back of the house and left her there until dark. Night came and appellant pulled AAA, who was still unconscious, to their backyard. The yard had a pigpen bordered on one side by a six-foot high concrete fence. On the other side was a vacant lot. Appellant stood on a bench beside the pigpen and then lifted and draped the girl's body over the fence to transfer it to the vacant lot. When the girl moved, he hit her head with a piece of concrete block. He heard her moan and hit her again on the face. After silence reigned, he pulled her body to the other side of the fence, dragged it towards a shallow portion of the lot and abandoned it.[2]

At 11:00 A.M. of the following day, February 20, 1994, the body of AAA was discovered. She was naked from the chest down with her brassiere and T-shirt pulled toward her neck. Nearby was found a panty with a sanitary napkin.

The autopsy conducted by Dr. xxx revealed that AAA died of "traumatic injuries" sustained as follows:

"1. Abrasions:

1.1 chest and abdomen, multiple, superficial, linear, generally oblique from right to left.

2. Abrasions/contusions:

2.1 temple, right.

2.2 cheek, right.

2.3 upper and lower jaws, right.

2.4 breast, upper inner quadrant, right.

2.5 breast, upper outer quadrant, left.

2.6 abdomen, just above the umbilicus, rectangular, approximate 3 inches in width, from right MCL to left AAL.

2.7. elbow joint, posterior, bilateral.

3. Hematoma:

3.1 upper and lower eyelids, bilateral.

3.2 temple, lateral to the outer edge of eyebrow, right.

3.3 upper and lower jaws, right.

4. Lacerated wounds:

4.1 eyebrow, lateral border, right, 1/2 inch.

4.2 face, from right cheek below the zygoma to midline lower jaw, 4 inches.

5. Fractures:

5.1 maxillary bone, right.

5.2 mandible, multiple, complete, right, with avulsion of 1st and 2nd incisors.

6. Cerebral contusions, inferior surface, temporal and frontal lobes, right.

7. External genitalia

7.1 minimal blood present.

7.2 no signs of recent physical injuries noted on both labia, introitus and exposed vaginal wall.

8. Laboratory examination of smear samples from the vaginal cavity showed negative for spermatozoa (Bulacan Provincial Hospital, February 22, 1994, by Dr. Wilfredo S. de Vera).

CAUSE OF DEATH: Cardiorespiratory Arrest due to Cerebral Contusions due to Traumatic Injuries, Face."[3]

AAA's gruesome death drew public attention and prompted Mayor xxx of xxx to form a crack team of police officers to look for the criminal. Searching the place where AAA's body was found, the policemen recovered a broken piece of concrete block stained with what appeared to be blood. They also found a pair of denim pants and a pair of shoes which were identified as AAA's.[4]

Appellant's nearby house was also searched by the police who found bloodstains on the wall of the pigpen in the backyard. They interviewed the occupants of the house and learned from Romano Calma, the stepbrother of appellant's wife, that accused-appellant also lived there but that he, his wife and son left without a word. Calma surrendered to the police several articles consisting of pornographic pictures, a pair of wet short pants with some reddish brown stain, a towel also with the stain, and a wet T-shirt. The clothes were found in the laundry hamper inside the house and allegedly belonged to appellant.[5]

The police tried to locate appellant and learned that his parents live in xxx. On February 24 at 11:00 P.M., a police team led by Mayor xxx traced appellant in his parents' house. They took him aboard the patrol jeep and brought

him to the police headquarters where he was interrogated. Initially, appellant denied any knowledge of AAA's death. However, when the police confronted him with the concrete block, the victim's clothes and the bloodstains found in the pigpen, appellant relented and said that his neighbors, Gilbert Larin and Reynaldo Dizon, killed AAA and that he was merely a lookout. He also said that he knew where Larin and Dizon hid the two bags of AAA.[6] Immediately, the police took appellant to his house. Larin and Dizon, who were rounded up earlier, were likewise brought there by the police. Appellant went to an old toilet at the back of the house, leaned over a flower pot and retrieved from a canal under the pot, two bags which were later identified as belonging to AAA. Thereafter, photographs were taken of appellant and the two other suspects holding the bags.[7]

Appellant and the two suspects were brought back to the police headquarters. The following day, February 25, a physical examination was conducted on the suspects by the Municipal Health Officer, Dr. xxx.[8] Appellant was found to sustain:

"HEENT: with multiple scratches on the neck Rt side. Chest and back: with abrasions (scratches at the back). Extremities: freshly-healed wound along index finger 1.5 cm. in size Lt."[9]

By this time, people and media representatives were already gathered at the police headquarters awaiting the results of the investigation. Mayor xxx arrived and proceeded to the investigation room. Upon seeing the mayor, appellant approached him and whispered a request that they talk privately. The mayor led appellant to the office of the Chief of Police and there, appellant broke down and said "Mayor, patawarin mo ako! I will tell you the truth. I am the one who killed AAA." The mayor opened the door of the room to let the public and media representatives witness the confession. The mayor first asked for a lawyer to assist appellant but since no lawyer was available he ordered the proceedings photographed and videotaped.[10] In the presence of the mayor, the police, representatives of the media and appellant's own wife and son, appellant confessed his guilt. He disclosed how he killed AAA and volunteered to show them the place where he hid her bags. He asked for forgiveness from Larin and Dizon whom he falsely implicated saying he did it because of ill-feelings against them.[11] He also said that the devil entered his mind because of the pornographic magazines and tabloid he read almost everyday.[12] After his confession, appellant hugged his wife and son and asked the mayor to help him.[13] His confession was captured on videotape and covered by the media nationwide.[14]

Appellant was detained at the police headquarters. The next two days, February 26 and 27, more newspaper, radio and television reporters came. Appellant was again interviewed and he affirmed his confession to the mayor and reenacted the crime.[15]

On arraignment, however, appellant entered a plea of "not guilty." He testified that in the afternoon of February 19, 1994 he was at his parent's house in xxx attending the birthday party of his nephew. He, his wife and son went home after 5:00 P.M. His wife cooked dinner while he watched their one-year old son. They all slept at 8:00 P.M. and woke up the next day at 6:00 in the morning. His wife went to Manila to collect some debts while he and his son went to his parents' house where he helped his father cement the floor of the house. His wife joined them in the afternoon and they stayed there until February 24, 1994 when he was picked up by the police.[16]

Appellant was brought by the police to a hotel at xxx. In one of the rooms, the policemen covered his face with a bedsheet and kicked him repeatedly. They coerced him to confess that he raped and killed AAA. When he refused, they pushed his head into a toilet bowl and injected something into his buttocks. Weakened, appellant confessed to the crime. Thereafter, appellant was taken to his house where he saw two of his neighbors, Larin and Dizon. He was ordered by the police to go to the old toilet at the back of the house and get two bags from under the flower pot. Fearing for his life, appellant did as he was told.[17]

In a decision dated August 4, 1994, the trial court convicted appellant and sentenced him to death pursuant to

Republic Act No. 7659. The trial court also ordered appellant to pay the victim's heirs P50,000.00 as death indemnity, P71,000.00 as actual burial expenses and P100,000.00 as moral damages, thus:

"WHEREFORE, in view of the foregoing, Pablito Andan y Hernandez alias "Bobby" is found guilty by proof beyond a scintilla of doubt of the crime charged in the Information (Rape with Homicide) and penalized in accordance with R.A. No. 7659 (Death Penalty Law) Sec. 11, Par. 8, classifying this offense as one of the heinous crimes and hereby sentences him to suffer the penalty of DEATH; to indemnify the family of AAA the amount of P50,000.00 for the death of AAA and P71,000.00 as actual burial and incidental expenses and P100,000.00 as moral damages. After automatic review of this case and the decision becomes final and executory, the sentence be carried out.

SO ORDERED."[18]

This case is before us on automatic review in accordance with Section 22 of Republic Act No. 7659 amending Article 47 of the Revised Penal Code.

Appellant contends that:

"I THE LOWER COURT ERRED IN ADMITTING AND USING AS BASIS OF JUDGMENT OF CONVICTION THE TESTIMONIES OF THE POLICE INVESTIGATORS, REPORTERS AND THE MAYOR ON THE ALLEGED ADMISSION OF THE ACCUSED DURING THE CUSTODIAL INVESTIGATION, THE ACCUSED NOT BEING ASSISTED BY COUNSEL IN VIOLATION OF THE CONSTITUTION;

II THE LOWER COURT ERRED IN FINDING THAT THERE WAS RAPE WHEN THERE IS NO EVIDENCE OF ANY KIND TO SUPPORT IT;

III THE LOWER COURT ERRED IN MAKING A FINDING OF CONVICTION WHEN THE EVIDENCE IN ITS TOTALITY SHOWS THAT THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT THE GUILT OF THE ACCUSED."[19]

The trial court based its decision convicting appellant on the testimonies of the three policemen of the investigating team, the mayor of xxx and four news reporters to whom appellant gave his extrajudicial oral confessions. It was also based on photographs and video footages of appellant's confessions and reenactments of the commission of the crime.

Accused-appellant assails the admission of the testimonies of the policemen, the mayor and the news reporters because they were made during custodial investigation without the assistance of counsel. Section 12, paragraphs (1) and (3) of Article III of the Constitution provides:

"SECTION 12.(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.

(2) x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) x x x"

Plainly, any person under investigation for the commission of an offense shall have the right (1) to remain silent; (2) to have competent and independent counsel preferably of his own choice; and (3) to be informed of such

rights. These rights cannot be waived except in writing and in the presence of counsel.[20] Any confession or admission obtained in violation of this provision is inadmissible in evidence against him.[21] The exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere and runs through menacing police interrogation procedures where the potentiality for compulsion, physical and psychological, is forcefully apparent.[22] The incommunicado character of custodial interrogation or investigation also obscures a later judicial determination of what really transpired.[23]

It should be stressed that the rights under Section 12 are accorded to "[a]ny person under investigation for the commission of an offense." An investigation begins when it is no longer a general inquiry into an unsolved crime but starts to focus on a particular 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.[24] As intended by the 1971 Constitutional Convention, this covers "investigation conducted by police authorities which will include investigations conducted by the municipal police, the PC and the NBI and such other police agencies in our government." [25]

When the police arrested appellant, they were no longer engaged in a general inquiry about the death of AAA. Indeed, appellant was already a prime suspect even before the police found him at his parents' house. This is clear from the testimony of SPO4 xxx, the police chief investigator of the crime, viz:

"COURT How did you come about in concluding that it was accused who did this act?

WITNESS First, the place where AAA was last found is at the backyard of the house of the accused. Second, there were blood stains at the pigpen, and third, when we asked Romano Calma who were his other companions in the house, he said that, it was Pablito Andan who cannot be found at that time and whose whereabouts were unknown, sir.

Q So you had a possible suspect?

A Yes, sir.

Q You went looking for Pablito Andan?

A Yes, sir.

Q And then, what else did you do?

A We tried to find out where we can find him and from information we learned that his parents live in xxx. We went there, found him there and investigated him and in fact during the investigation he admitted that he was the culprit." [26]

Appellant was already under custodial investigation when he confessed to the police. It is admitted that the police failed to inform appellant of his constitutional rights when he was investigated and interrogated.[27] His confession is therefore inadmissible in evidence. So too were the two bags recovered from appellant's house. SPO2 xxx, a member of the investigating team testified:

"Atty. Valmores: You told the court that you were able to recover these bags marked as Exhs. B and B-1 because accused pointed to them, where did he point these bags?

A At the police station, sir, he told us that he hid the two (2) bags beneath the canal of the toilet.

Q In other words, you were given information where these two (2) bags were located?

A Yes, sir.

Q And upon being informed where the two (2) bags could be located what did you do?

A We proceeded to the place together with the accused so that we would know where the two (2) bags were hidden, sir.

Q And did you see actually those two (2) bags before the accused pointed to the place where the bags were located?

A After he removed the broken pots with which he covered the canal, he really showed where the bags were hidden underneath the canal, sir."[28]

The victim's bags were the fruits of appellant's uncounselled confession to the police. They are tainted evidence, hence also inadmissible.[29]

The police detained appellant after his initial confession. The following day, Mayor xxx visited the appellant. Appellant approached the mayor and requested for a private talk. They went inside a room and appellant confessed that he alone committed the crime. He pleaded for forgiveness. Mayor xxx testified, viz:

"Mayor xxx: x x x. During the investigation when there were already many people from the media, Andan whispered something to me and requested that he be able to talk to me alone, so what I did was that, I brought him inside the office of the chief of police.

Private Prosecutor Principe: And so what happened inside the office of the Chief of Police, mayor?

A While inside the office of the headquarters he told me "Mayor patawarin mo ako,! I will tell you the truth. I am the one who killed AAA." So when he was telling this to me, I told him to wait a while, then I opened the door to allow the media to hear what he was going to say and I asked him again whether he was the one who did it, he admitted it, sir. This was even covered by a television camera."[30]

xxx xxx xxx

Q During that time that Pablito Andan whispered to you that he will tell you something and then you responded by bringing him inside the office of the Chief of Police and you stated that he admitted that he killed AAA . . .

Court: He said to you the following words . . .

Atty. Principe: He said to you the following words "Mayor, patawarin mo ako! Ako ang pumatay kay AAA," was that the only admission that he told you?

A The admission was made twice. The first one was, when we were alone and the second one was before the media people, sir.

Q What else did he tell you when you were inside the room of the Chief of Police?

A These were the only things that he told me, sir. I stopped him from making further admissions because I wanted the media people to hear what he was going to say, sir."[31]

Under these circumstances, it cannot be successfully claimed that appellant's confession before the mayor is inadmissible. It is true that a municipal mayor has "operational supervision and control" over the local police[32] and may arguably be deemed a law enforcement officer for purposes of applying Section 12 (1) and (3) of Article III of the Constitution. However, appellant's confession to the mayor was not made in response to any interrogation by the latter.[33] In fact, the mayor did not question appellant at all. No police authority ordered appellant to talk to the mayor. It was appellant himself who spontaneously, freely and voluntarily sought the mayor for a private meeting. The mayor did not know that appellant was going to confess his guilt to him. When

appellant talked with the mayor as a confidant and not as a law enforcement officer, his uncounselled confession to him did not violate his constitutional rights.[34] Thus, it has been held that the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime.[35] What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Section 12 are guaranteed to preclude the slightest use of coercion by the state as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth.[36] Hence we hold that appellant's confession to the mayor was correctly admitted by the trial court.

Appellant's confessions to the media were likewise properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence.[37]

The records show that Alex Marcelino, a television reporter for "Eye to Eye" on Channel 7, interviewed appellant on February 27, 1994. The interview was recorded on video and showed that appellant made his confession willingly, openly and publicly in the presence of his wife, child and other relatives.[38] Orlan Mauricio, a reporter for "Tell the People" on Channel 9 also interviewed appellant on February 25, 1994. He testified that:

"Atty. Principe: You mentioned awhile ago that you were able to reach the place where the body of AAA was found, where did you start your interview, in what particular place?

Mr. Mauricio: Actually, I started my newsgathering and interview inside the police station of xxx and I identified myself to the accused as I have mentioned earlier, sir. At first, I asked him whether he was the one who raped and killed the victim and I also learned from him that the victim was his cousin.

Q And what was the response of Pablito Andan?

A His response was he is a cousin of the victim and that he was responsible for raping and killing the victim, sir. And then I asked him whether his admission was voluntary or that there was a threat, intimidation or violence that was committed on his person because I knew that there were five other suspects in this case and he said that he was admitting it voluntarily to the policemen. I asked him whether he was under the influence of drugs but he said no, and "nakainom lang," sir.

Q You mentioned earlier that the uncle of the accused was present, was the uncle beside him at the time that you asked the question?

A The uncle was there including the barangay captain whose name I cannot recall anymore. A barangay captain of the place, I don't know if it is the place of the crime scene or in the place where AAA resides but . . . All throughout the scene inside the office of the Station Commander, there was no air of any force or any threatening nature of investigation that was being done on the suspect, that is why, I was able to talk to him freely and in a voluntary manner he admitted to me that he was the one who raped and killed, so we went to the next stage of accompanying me to the scene of the crime where the reenactment and everything that transpired during the killing of AAA.

Q Before you started that interview, did you inform or ask permission from the accused Pablito Andan that you were going to interview him?

A Yes, sir.

x x x

Q You mentioned that after interviewing the accused at the office of the xxx PNP, you also went to the scene

of the crime?

A Yes, sir.

Q Who accompanied you?

A I was accompanied by some xxx policemen including Mayor xxx and some of the relatives of the accused.

Q At this time, did you see the wife of the accused, Pablito Andan?

A Yes, sir, I saw her at the place where the body of AAA was recovered.

Q How many relatives of accused Pablito Andan were present, more or less?

A There were many, sir, because there were many wailing, weeping and crying at that time when he was already taken in the patrol jeep of the xxx police, sir.

Q Now, Mr. Mauricio, upon reaching the scene of the crime in xxx, what transpired?

A I started my work as a reporter by trying to dig deeper on how the crime was committed by the accused, so we started inside the pigpen of that old house where I tried to accompany the accused and asked him to narrate to me and show me how he carried out the rape and killing of AAA, sir.

Q Did he voluntarily comply?

A Yes, sir, in fact, I have it on my videotape.

Q It is clear, Mr. Mauricio, that from the start of your interview at the PNP xxx up to the scene of the crime, all the stages were videotaped by you?

A Yes, sir.[39]

Journalist Berteni Causing of "People's Journal Tonite" likewise covered the proceedings for three successive days.[40] His testimony is as follows:

"Atty. Principe: You mentioned that you had your own inquiries?

A We asked first permission from the mayor to interrupt their own investigation so that we can have a direct interview with the suspect.

Q Were there people?

A The people present before the crowd that included the mayor, the deputy chief of police, several of the policemen, the group of Inday Badiday and several other persons. I asked the suspect after the mayor presented the suspect to us and after the suspect admitted that he was the one who killed AAA. I reiterated the question to the suspect. Are you aware that this offense which is murder with . . . rape with murder is a capital offense? And you could be sentenced to death of this? And he said, Yes. So do you really admit that you were the one who did it and he repeated it, I mean, say the affirmative answer.

Q And that was in the presence of the crowd that you mentioned a while ago?

A Yes, yes, sir. And if I remember it right, as I took my camera to take some pictures of the suspect, the mayor, the policemen and several others, I heard the group of Inday Badiday asking the same questions from the suspect and the suspect answered the same.

Q Also in the presence of so many people that you mentioned?

A The same group of people who were there, sir.

Q You mentioned that the answer was just the same as the accused answered you affirmatively, what was the answer, please be definite?

Court: Use the vernacular.

A I asked him the question, after asking him the question," Ikaw ba talaga and gumawa ng pagpatay at pag-rape sa kay AAA? Ang sagot nya, "Oo." "Alam mo ba itong kasalanang ito, kamatayan ang hatol, inaamin mo pa ba na ikaw ang gumawa sa pagpatay at pag-rape kay AAA?" Sagot pa rin siya ng "Oo."

x x x

Q Did you ask him, why did you kill AAA?

A I asked him, your Honor and the reason he told me was because a devil gripped his mind and because of that according to him, your Honor, were the pornographic magazines, pornographic tabloids which he, according to him, reads almost everyday before the crime.

Atty. Principe: At the time of your interview, Mr. Reporter, will you tell the court and the public what was the physical condition of accused Pablito Andan?

A As I observed him that time there was no sign on his body that he was really down physically and I think he was in good condition.

Court: So he was not happy about the incident?

A He even admitted it, your Honor.

Court: He was happy?

A He admitted it. He was not happy after doing it.

Court: Was he crying?

A As I observed, your Honor, the tears were only apparent but there was no tear that fell on his face.

Court: Was he feeling remorseful?

A As I observed it, it was only slightly, your Honor.

x x x"[41]

Another journalist, Rey Domingo, of "Bandera" interviewed appellant on February 26, 1994.[42] He also testified that:

"Atty. Principe: Now, Mr. Witness, did the accused Pablito Andan give you the permission that you asked from him?

A Yes, sir.

Q And when he allowed you to interview him, who were present?

A The first person that I saw there was Mayor xxx, policemen from xxx, the chief investigator, SPO4 xxx, and since xxx, the chief of police was suspended, it was the deputy who was there, sir.

Q Were they the only persons who were present when you interviewed the accused?

A There were many people there, sir. The place was crowded with people. There were people from the PNP and people from xxx, sir.

Q How about the other representatives from the media?

A Roy Reyes, Orlan Mauricio arrived but he arrived late and there were people from the radio and from TV Channel 9.

Q How about Channel 7?

A They came late. I was the one who got the scoop first, sir.

Q You stated that the accused allowed you to interview him, was his wife also present?

A Yes, sir, and even the son was there but I am not very sure if she was really the wife but they were hugging each other and she was crying and from the questions that I asked from the people there they told me that she is the wife, sir.

Q How about the other members of the family of the accused, were they around?

A I do not know the others, sir, but there were many people there, sir.

Q Now, according to you, you made a news item about the interview. May we know what question did you ask and the answer.

A My first question was, is he Pablito Andan and his answer was "Yes."

Q What was the next question?

A I asked him how he did the crime and he said that, he saw the victim aboard a tricycle. He called her up. She entered the house and he boxed her on the stomach.

Q What was the next question that you asked him?

A He also said that he raped her and he said that the reason why he killed the victim was because he was afraid that the incident might be discovered, sir.

Q Now, after the interview, are we correct to say that you made a news item on that?

A Yes, sir, based on what he told me. That's what I did.

Q Were there other questions propounded by you?

A Yes, sir.

Q "Ano iyon?"

A He said that he threw the cadaver to the other side of the fence, sir.

Q Did he mention how he threw the cadaver of AAA to the other side of the fence?

A I cannot remember the others, sir.

Q But can you produce the news item based on that interview?

A I have a xerox copy here, sir.

x x x"[43]

Clearly, 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.[44] 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.[45] In fact, they asked his permission before interviewing him. They interviewed him on separate days not once did appellant protest his innocence. Instead, he repeatedly confessed his guilt to them. He even supplied all the details in the commission of the crime, and consented to its reenactment. All his confessions to the news reporters were witnessed by his family and other relatives. There was no coercive atmosphere in the interview of appellant by the news reporters.

We rule that appellant's verbal 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.[46] It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents. They confirm that certain rights of the individual exist without need of any governmental grant, rights that may not be taken away by government, rights that government has the duty to protect.[47] Governmental power is not unlimited and the Bill of Rights lays down these limitations to protect the individual against aggression and unwarranted interference by any department of government and its agencies.[48]

In his second assigned error, appellant questions the sufficiency of the medical evidence against him. Dr. xxx, a Medical Specialist with the Provincial Health Office, conducted the first autopsy and found no spermatozoa and no recent physical injuries in the hymen.[49] Allegedly, the minimal blood found in her vagina could have been caused by her menstruation.[50]

We are unpersuaded. A second autopsy was conducted on March 1, 1994 by Dr. xxx, a medico-legal officer of the National Bureau of Investigation. His findings affirmed the absence of spermatozoa but revealed that the victim's hymen had lacerations, thus:

"Hymen -- contracted, tall, thin with fresh lacerations with clotted blood at 6 and 3 o'clock positions corresponding to the walls of the clock."[51]

Dr. xxx testified that the lacerations were fresh and that they may have been caused by an object forcibly inserted into the vagina when the victim was still alive, indicating the possibility of penetration.[52] His testimony is as follows:

"Witness: When I exposed the hymen, I found lacerations in this 3 o'clock and 6 o'clock position corresponding to the walls of the clock. x x x.

Court: Include the descriptive word, fresh.

Witness: I put it in writing that this is fresh because within the edges of the lacerations, I found blood clot, that is why I put it into writing as fresh.

Atty. Valmonte: Now, Doctor, you told the Court that what you did on the cadaver was merely a re-autopsy, that means, doctor the body was autopsied first before you did you re-autopsy?

A Yes, sir.

Q Could it not be, doctor, that these injuries you found in the vagina could have been sustained on account of the dilation of the previous autopsy?

A Well, we presumed that if the first doctor conducted the autopsy on the victim which was already dead, no amount of injury or no amount of lacerated wounds could produce blood because there is no more circulation, the circulation had already stopped. So, I presumed that when the doctor examined the victim with the use of forceps or retractor, vaginal retractor, then I assumed that the victim was already dead. So it is impossible that the lacerated wounds on the hymen were caused by those instruments because the victim was already dead and

usually in a dead person we do not produce any bleeding.

Q What you would like to tell the Court is this: that the lacerations with clotted blood at 6 and 3 o'clock positions corresponding to the walls of the clock could have been inflicted or could have been sustained while the victim was alive?

A Yes, sir.

Q This clotted blood, according to you, found at the edges of the lacerated wounds, now will you kindly go over the sketch you have just drawn and indicate the edges of the lacerated wounds where you found the clotted blood?

A This is the lacerated wound at 3 o'clock and this is the lacerated wound at 6 o'clock. I found the blood clot at this stage. The clotted blood are found on the edges of the lacerated wounds, sir.

Q What could have caused those lacerations?

A Well, it could have been caused by an object that is forcibly inserted into that small opening of the hymen causing lacerations on the edges of the hymen, sir.

Q If the victim had sexual intercourse, could she sustain those lacerations?

A It is possible, sir.[53]

We have also ruled in the past that the absence of spermatozoa in the vagina does not negate the commission rape[54] nor does the lack of complete penetration or rupture of the hymen.[55] What is essential is that there be penetration of the female organ no matter how slight.[56] Dr. xxx testified that the fact of penetration is proved by the lacerations found in the victim's vagina. The lacerations were fresh and could not have been caused by any injury in the first autopsy.

Dr. xxx's finding and the allegation that the victim was raped by appellant are supported by other evidence, real and testimonial, obtained from an investigation of the witnesses and the crime scene, viz:

- (1) The victim, AAA, was last seen walking along the subdivision road near appellant's house;[57]
- (2) At that time, appellant's wife and her step brother and grandmother were not in their house;[58]
- (3) A bloodstained concrete block was found over the fence of appellant's house, a meter away from the wall. Bloodstains were also found on the grass nearby and at the pigpen at the back of appellant's house;[59]
- (4) The victim sustained bruises and scars indicating that her body had been dragged over a flat rough surface.[60] This supports the thesis that she was thrown over the fence and dragged to where her body was found;
- (5) Appellant's bloodstained clothes and towel were found in the laundry hamper in his house;
- (6) The reddish brown stains in the towel and T-shirt of appellant were found positive for the presence of blood type "B," the probable blood type of the victim.[61] AAA's exact blood type was not determined but her parents had type "A" and type "AB." [62] The victim's pants had bloodstains which were found to be type "O," appellant's blood type;[63]
- (7) Appellant had scratch marks and bruises in his body which he failed to explain;[64]
- (8) For no reason, appellant and his wife left their residence after the incident and were later found at his parents' house in xxx;[65]

In fine, appellant's extrajudicial confessions together with the other circumstantial evidence justify the conviction

of appellant.

Appellant's defense of alibi cannot overcome the prosecution evidence. His alibi cannot even stand the test of physical improbability at the time of the commission of the crime. Xxx is only a few kilometers away from xxx and can be traversed in less than half an hour.[66]

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 15, Malolos, Bulacan in Criminal Case No. 1109-M-94 is affirmed and accused-appellant Pablito Andan y Hernandez is found guilty of the special complex crime of rape with homicide under Section 11 of Republic Act No. 7659 amending Article 335 of the Revised Penal Code and is sentenced to the penalty of death, with two (2) members of the Court, however, voting to impose reclusion perpetua. Accused-appellant is also ordered to indemnify the heirs of the victim, AAA, the sum of P50,000.00 as civil indemnity for her death and P71,000.00 as actual damages.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Information dated March 11, 1994, Records, p. 1.

[2] TSN of May 11, 1994, pp. 34-38; Exhibit "P," Folder of Prosecution Exhibits, pp. 13-14.

[3] Exhibit "U," Folder of Prosecution Exhibits, pp. 18-19.

[4] TSN of April 19, 1994, pp. 47-51; TSN of April 20, 1994, pp. 45, 55-56; Exhibits "A," "C" and "I."

[5] Exhibits "J," "K," "L," and "N."

[6] TSN of May 2, 1994, pp. 71-72.

[7] Exhibits "O," "O-2," and "O-5;" Folder of Prosecution Exhibits; pp. 11-12; TSN of May 2, 1994, pp. 72-73.

[8] TSN of May 13, 1994, pp. 18-19.

[9] Exhibit "Q," Folder of Prosecution Exhibits, p. 15.

[10] TSN of May 13, 1994, pp. 21-22

[11] TSN of May 2, 1994, p. 88; TSN of May 20, 1994, pp. 13, 50.

[12] TSN of May 13, 1994, pp. 78-82.

[13] Id., pp. 20-24, 53, 59-64.

[14] Exhibits "AA" and "CC."

[15] TSN of April 27, 1994, pp. 14-18; TSN of May 13, 1994, pp. 74-87; TSN of May 27, 1994, pp. 8-32; Exhibits "S," "KK-1" to "KK-4," Folder of Prosecution Exhibits, p. 41.

[16] TSN of July 22, 1994, pp. 12-20, 75-80.

[17] TSN of July 22, 1994, pp. 12-20, 75-80.

[18] Decision of the trial court, p. 23, Rollo, p. 52.

[19] Appellant's Brief, p. 3, Rollo, p. 69.

[20] This provision was taken from Section 20, Article IV of the 1973 Constitution which adopted the ruling in *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 [1966] and *Escobedo v. Illinois*, 378 U.S. 478, 12 L. ed. 2d 977 [1964].

[21] *People v. Enrile*, 222 SCRA 586 [1993]; *Sampaga v. People*, 215 SCRA 839 [1992]; *People v. Penero*, 213 SCRA 536 [1992].

[22] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 410 [1996]; *Miranda v. Arizona*, *supra*, at 457.

[23] *Miranda v. Arizona*, *supra*, at 445; *Cummings v. State*, 341 A. 2d 294, 298 [1975].

[24] *People v. Macam*, 238 SCRA 306 [1994]; *People v. Bandula*, 232 SCRA 566, 575 [1994]; *People v. de Guzman*, 224 SCRA 93 [1993]; *People v. Olvis*, 154 SCRA 513 [1987].

[25] Bernas, *supra*, at 411.

[26] TSN of April 19, 1994, pp. 62-63.

[27] TSN of April 22, 1994, pp. 7-15; TSN of May 4, 1994, pp. 89-90; TSN of May 11, 1994, pp. 30-31.

[28] TSN of May 2, 1994, pp. 71-72.

[29] *People v. Alicando*, 251 SCRA 293 [1995]; *People v. Burgos*, 144 SCRA 1, 17-19 [1986].

[30] TSN of May 13, 1994, pp. 20-21.

[31] *Id.*, pp. 26-27.

[32] R.A. 6975, Department of Interior and Local Government Act of 1990, Chapter III (D), sec. 51 (b).

[33] *Leuschner v. State*, 397 A. 2d 622 [1979]; *Vines v. State*, 394 A. 2d 809 [1978]; *Cummings v. State*, 341 A. 2d 294 [1975]; *Howell v. State*, 247 A. 2d 291 [1968]; Statements made by defendant while in custody of police officers but not pursuant to any questioning by officers were properly admitted as spontaneously volunteered statements — *State v. Matlock*, 289 N.W. 2d 625 [1980]; *State v. Red Feather*, 289 N.W. 2d 768 [1980].

[34] *Baysinger v. State*, 550 S.W. 2d 445, 447 [1977], where a defendant, not in custody, in talking with the sheriff wanted the sheriff for a confidant instead of a law enforcement officer, his admissions on an incriminating taped conversation did not violate the 4th, 5th and 6th Amendments of the U.S. Constitution and are thus admissible.

[35] *Aballe v. People*, 183 SCRA 196, 205 [1990]; *People v. Dy*, 158 SCRA 111, 123-124 [1988]; *People v. Taylaran*, 108 SCRA 373, 378-379 [1981]; see also *People v. Rogers*, 422 N.Y.S. 18, 48 N.Y. 2d 167, 397 N.E. 2d 709, 714 [1979].

[36] *People v. Barlis*, 231 SCRA 426, 441 [1994]; *People v. Layuso*, 175 SCRA 47, 53 [1989].

[37] *People v. Vizcarra*, 115 SCRA 743, 752 [1982], the accused, under custody, gave spontaneous answers to a televised interview by several press reporters in the office of the chief of the CIS.

[38] TSN of April 27, 1994, pp. 11, 13-14; Exhibit "S."

[39] TSN of May 4, 1994, pp. 11-14; 15-16; Exhibit "AA."

[40] TSN of May 13, 1994, pp. 76-77.

[41] TSN of May 13, 1994, pp. 78-84.

[42] TSN of May 27, 1994, p. 9.

[43] *Id.*, pp. 10-14.

[44] *Navallo v. Sandiganbayan*, 234 SCRA 175, 183-184 [1994] — We ruled that an audit examiner is not a law enforcement officer nor did he, in this case, act as one.

[45] cf. *People v. Olvis*, 154 SCRA 513, 525-526 [1987] where several accused were forced by the police to reenact the commission of the crime.

[46] *People v. Marti*, 193 SCRA 57, 67 [1991].

[47] *People v. Maqueda*, 242 SCRA 565, 590 [1995]; *Quinn v. Buchanan*, 298 S.W. 2d 413, 417 [1957], citing *Cooley*, *A Treatise on the Constitutional Limitations* 93, 358.

[48] 16 C.J.S., *Constitutional Law*, Sec. 199, pp. 975-976; see also *People v. Marti*, *supra*, at 67-68 where we ruled that the constitutional proscription against unlawful searches and seizures cannot be extended to searches and seizures done by private individuals without the intervention of police authorities; *People vs. Maqueda*, *supra*, at 59 where we held that extra-judicial admissions of an accused to a private person and to a prosecutor in connection with the accused's plea to be utilized as a state witness where deemed outside the scope of the provision on custodial investigation.

[49] TSN of May 2, 1994, pp. 22, 24-26.

[50] *Id.*, pp. 43-44.

[51] Exhibit "Y," Folder of Prosecution Exhibits, p. 27.

[52] TSN of May 4, 1994, pp. 63, 75.

[53] *Id.*, pp. 59-63.

[54] *People v. Salomon*, 229 SCRA 403 [1994]; *People v. Empleo*, 226 SCRA 454 [1993]; *People v. Magallanes*, 218 SCRA 109 [1993].

[55] *People v. Rejano*, 237 SCRA 627 [1994]; *People v. Palicte*, 229 SCRA 543 [1994].

[56] *People v. Fabro*, 239 SCRA 146 [1994]; *People v. Fortez*, 223 SCRA 619 [1993]; *People v. Abiera*, 222 SCRA 378 [1993].

[57] TSN of May 2, 1994, pp. 78, 95.

[58] TSN of May 2, 1994, p. 83; April 25, 1994, p. 38.

[59] TSN of April 19, 1994, p. 51; TSN of May 2, 1994, p. 66; Exhibit "I."

[60] TSN of May 2, 1994, pp. 53-54.

[61] Exhibit "JJ," Folder of Prosecution Exhibits, p. 40.

[62] Exhibits "MM" and "NN," Folder of Prosecution Exhibits, pp. 43, 44.

[63] Exhibits "LL" and "OO," Folder of Prosecution Exhibits, pp. 42, 45.

[64] Exhibit "Q," Folder of Prosecution Exhibits, p. 15.

[65] TSN of May 2, 1994, pp. 82-84.

[66] TSN of July 1, 1994, pp. 13-14.

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