

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEORITO PORIO Y RAPSING, ACCUSED-APPELLANT.

G.R. No. 117202. February 13, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Once again, we hark back to the principle that as long as constitutional safeguards are adequately complied with, a confession constitutes evidence of the highest order for it is supported by the strong presumption that no person of normal mind will deliberately and knowingly confess to a crime unless prompted by truth and his conscience.[1]

In an Information[2] dated July 10, 1990 filed with the Regional Trial Court, Branch 72, Olongapo City, accused Deorito Porio y Rapsing was charged with the complex crime of rape with homicide, committed in the following manner:

“That on or about the twenty-fifth (25[th]) day of June, 1990, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Riza Cleodoro,[3] an 11 year old girl, and by reason or on the occasion of the rape, the accused, with intent to kill, did then and there wilfully, unlawfully and feloniously assault and strangle the said Riza Cleodoro, which caused her death shortly thereafter.

“CONTRARY TO LAW.”

Accused entered a plea of "not guilty." [4] During the hearing, the prosecution presented Dr. Richard Patilano, Atty. Juanito Atienza, Pfc. Roosevelt Menor, Cpl. Felipe Francia, and Pat. Marlon Agno as its witnesses. The defense, on the other hand, offered the sole testimony of accused Deorito Porio.

The testimonies of the prosecution witnesses reveal that:

Shortly before midnight of June 25, 1990, the residents of New Cabalan found the lifeless body of Riza Cleodoro Flores near a creek at Purok I, Libas, New Cabalan, Olongapo City. She was 11 years old, and was survived by her mother Trinidad Cleodoro.[5]

The Autopsy Report[6] shows that the cause of Riza's death is strangulation. The genital examination discloses "sexual intercourse with a man." The pertinent portions of the said report issued by Dr. Richard Patilano, Medico-Legal Officer of Olongapo City, read:

"Contusions: 4x1 cm over the left side of the neck; 2x1 cm over the anterior aspect of the neck; 2x1.5 cm over the left side of the inguinal area.

Breast: not yet developed.

Genital Examination:

No pubic hair, Labia majora-gaping, Labia Minora –gaping. Feurchetelax with fresh lacerations at the median line, Vestibular mucosa, cyanotic with congestion. Hymen and vaginal walls with fresh lacerations at 1:00 o'clock and 6:00 0'clock positions. Hymenal orifice, originally annular admitted 2.5 cm in diameter bottle

with marked resistance. Vaginal walls congested with bloody materials, scanty.

Lungs: Voluminous, soggy, dark red in color. Petechial hemorrhages present at the subepicardial and subpleural areas.

x x x x x x

Conclusion:

Genital Findings are compatible with sexual intercourse with a man on or about the alleged date of commission, with violence.

Cause of death: Neurogenic Shock and Asphyxia by Strangulation.” (Emphasis ours)

The day after Riza's exanimate body was found, Barangay Purok Leader Francisco Montes informed Cpl. Felipe Francia of the Olongapo Police Department that the accused attempted to rape Riza on three previous occasions. Montes got this information, as a Purok Leader, from Trinidad, the victim's mother, who confirmed its veracity.[7]

On January 26, 1990, Montes accompanied the accused to the Olongapo Police Department. Immediately, Pat. Marlon Agno and Cpl. Francia conducted a cursory examination of the accused.[8] The latter readily admitted to them that he raped and killed Riza and that he was bothered by his conscience. However, Pat. Agno and Cpl. Francia did not reduce the accused's admission in writing.[9]

On January 27, 1990, the accused, together with Montes, returned to the Olongapo Police Station. Montes then informed Pfc. Roosevelt Menor that the accused admitted having committed the crime. Thereupon, Pfc. Menor verified from the accused the truth of such statement. The latter answered positively. Communicating in the Tagalog language, Pfc. Menor informed the accused of his constitutional rights, among which are his rights to remain silent and to have a counsel of his own choice. Pfc. Menor also cautioned the accused that whatever statement he will give can be used against him in court. Pfc. Menor repeatedly explained these rights to the accused. He said he understood them. Since the accused could not mention any lawyer of his own choice, Pfc. Menor requested Atty. Juanito Atienza to assist him.[10]

Atty. Atienza conferred with the accused, informing him of all his constitutional rights.[11] Atty. Atienza also reminded him of the gravity of his crime and advised him of its consequences.[12] Notwithstanding these warnings, accused, assisted by Atty. Atienza signed the Pagpapatunay[13] that he was informed of his constitutional rights which he understands; and that he is expressly waiving them. Immediately, he made the following confession in his Sinumpaang Salaysay:

“T:

Ano ang masasabi mo sa nangyaring ito?

S:

Nagawa ko po iyon dahil gusto ko po at ako ay nakainom.

T:

Isalaysay mo nga sa akin ang mga pangyayari?

S:

Pagkatapos ko pong ayusin ang aking trabaho ay umalis na ako, bandang alas otso na po iyon at dumaan ako sa

isang tindahan at bumili ng isang lapad na ESQ, tapos tuloy na ako sa bahay namin ni Trining at Teresa.

T:

Sino naman itong Trining?

S:

Ina po ni Teresa, na kinakasama ko.

T:

Ipagpatuloy mo ang iyong salaysay?

S:

Iyon po, pagdating ng bahay ay ininom namin ni Trining ang dala kong alak na ESQ, tapos itong bata naman na si Teresa ay nagpaalam sa kanyang ina na aakyat at magpapakilo ng plastic doon sa buyer, tapos nang magtagal siya ay sinundan siya ng ina niya at sinundan ko na rin at nakita ko si Teresa at nakita ko siya sa malapit sa puno ng mangga at sinabi ko sa kanya na samahan niya ako sa manga at doon ay nakatuwaan kong alisin ang kanyang short at hinawakan ko ang puki niya (affiant is referring to Teresa Florez, 11 years old, the victim) at hindi ako nakatiis ay inihiga ko siya sa damuhan.

T:

Anong sabi niya nang ihiga mo, hindi ba siya natakot o sumigaw?

S:

Ang sabi niya ay ano ang gagawin mo sa akin?

T:

Ano naman ang sinabi mo sa kanya?

S:

Sabi ko sa kanya, sige na, hindi ko na matiis.

T:

Ipagpatuloy mo ang salaysay mo?

S:

Nang maihiga ko siya ay ibinaba ko ang pantalon ko hanggang tuhod tapos ipinasok ko ang ari ko sa kanyang pag-aari at kalahati lang ang naipasok ko dahil nasasaktan siya at umiiyak, at nawalan siya nang malay.

T:

Nang mawalan na si Teresa ng malay, ano ang sumunod na ginawa mo?

S:

Nabigla po ako at nahawakan ko ang leeg niya at nasakal ko na siya hanggang mamatay na siya, at nang iwan ko siya ay talagang hindi na humihinga at nagtuloy ako sa bahay na tinirhan namin ni Trining at nagpalipas ng oras doon at nang magkagulo doon sa bahay ni Bruan ay pumunta ako doon at nakita ko na nga itong si Teresa na kalong ng kanyang ina at patay na.

T:

Nang malaman mong nakamatay ka na nga, ano ang ginawa mo?

S:

Wala po, nagbantay pa ako doon at ako pa ang nagbuhat ng bangkay ni Teresa papuntang taas doon sa bahay ni SEVERO FLORES para maimbistigahan at tuloy madala dito sa Funeraria Fernandez.

x x x x x

T:

Nakahiram ka ba ng pera kay Pineda pagkatapos ng insidenteng ito?

S:

Opo, dalawang daan lang para sana ibigay ko sa nanay ng bata.

T:

Naibigay mo naman?

S:

Opo.

T:

Nasaan na ngayon si Teresa?

S:

Nandoon po siya nakaburool sa simbahan ng Purok 1.

T:

May ipapakita akong isang short sa iyo, ano ang masasabi mo dito?

S:

Iyan po ang suot na short ni Teresa na hinubad ko (Affiant is pointing to a blue short pants allegedly wore by the victim during the incident)

T:

Sa kasalukuyan ay wala na akong itatanong pa sa iyo, may nais ka bang idagdag dito sa sinabi mo?

S:

Wala na po, maliban sa kaya ako nagtapat ay nakokonsensya ako.

ASSISTED BY:

(Sgd)

(Sgd)

ATTY. JUANITO C. ATIENZA

DEORITO PORIO

Affiant"[14]

The prosecution failed to present Purok Leader Montes as a witness because he died during the hearing of this case.[15] Meanwhile, the subpoena upon the victim's mother has remained unserved as she is no longer residing at her given address.

The accused presented a different story during the trial.

He testified that in the evening of June 25, 1990, he went home after his day's work in a junk shop. His common-law wife Trinidad and the victim were nowhere to be found. He searched for them in the highway. Later on, he found Trinidad holding the lifeless body of the victim. They brought her to the barangay authorities, but they were advised to go to the morgue.

The accused denied having raped and killed the victim.

With respect to the execution of his Sinumpaang Salaysay, the accused testified that he did not read it. Although a certain Atty. Atienza was present during the investigation, he did not know the said lawyer, nor did he request him to act as his counsel. According to him, the police "let" him sign the document.[16]

On July 20, 1994, the trial court, rendered a Decision finding the accused guilty beyond reasonable doubt of rape with homicide, thus:

“WHEREFORE, in view of the foregoing considerations, this Court finds accused Deorito Porio y Rapsing guilty beyond reasonable doubt of the complex crime of rape with homicide and sentences him to RECLUSION PERPETUA; to indemnify the complainant Trinidad Cleodoro the amount of P50,000.00 as actual damages; P100,000.00 as moral damages; P100,000.00 as exemplary damages; and to pay the costs.

SO ORDERED.”[17]

Feeling aggrieved, the accused, now appellant, comes to us ascribing to the trial court the following errors:

“I

THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE EXTRAJUDICIAL CONFESSION OF THE ACCUSED-APPELLANT IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO HAVE COMPETENT AND INDEPENDENT COUNSEL PREFERABLY OF HIS OWN CHOICE.

“II

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT CONSIDERING THE INSUFFICIENCY OF THE EVIDENCE PRESENTED BY THE PROSECUTION.

“III

THE TRIAL COURT GRAVELY ERRED IN GIVING MUCH WEIGHT AND CREDIT TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN REJECTING THE EVIDENCE FOR THE DEFENSE.

“IV

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE COMPLEX CRIME OF RAPE WITH HOMICIDE.”[18]

Appellant mainly contends that the taking of his Sinumpaang Salaysay was in violation of his constitutional rights and is, therefore, inadmissible. He claims that he was not assisted by an independent counsel and that he was "intimidated or practically forced to execute or sign" the same. He likewise maintains that the evidence against him is insufficient since all the prosecution witnesses are mere "witnesses after the fact."

The Solicitor General maintains that the constitutional mandates on custodial investigation were complied with, hence, appellant's Sinumpaang Salaysay is admissible. Also, appellant's guilt was established beyond reasonable doubt as his Sinumpaang Salaysay was corroborated by the corpus delicti.

The primordial issue in this case is whether appellant's extra-judicial confession (Sinumpaang Salaysay) was taken in violation of his constitutional rights.

Appellant's extra-judicial confession is not constitutionally infirmed.

This Court, with its constant tryst with retracting confessants, has drawn the cardinal requirements for an extra-judicial confession to be admissible, to wit: 1) the confession must be voluntary; 2) the confession must be made with the assistance of a competent and independent counsel, preferably of the confessant's choice; 3) the confession must be express; and 4) the confession must be in writing.[19] Measured against this yardstick, we are convinced that appellant's Sinumpaang Salaysay is admissible.

I. The confession was made voluntarily.[20]

A confession is presumed to be voluntary until the contrary is proved and the declarant bears the burden of proving that his confession is involuntary and untrue.[21] Appellant was unable to discharge this burden. He failed to present evidence that he was "intimidated or practically forced to execute or sign"[22] his Sinumpaang Salaysay.

Initially, it must be stressed that appellant was not arrested by the police authorities. He voluntarily went to the Olongapo Police Station, accompanied by Montes, a Purok Leader, to whom he previously mentioned having

committed the crime.[23] There, before Cpl. Francia and Pat. Agno, he admitted that he raped and killed Riza.[24] With such prior deliberate conduct, we are inclined to believe that the subsequent execution of his Sinumpaang Salaysay before Pfc. Menor was likewise voluntary on his part.

Significantly, this Court has held that where the appellant did not present evidence of compulsion or duress or violence on his person; where he did not institute any criminal or administrative action against his alleged intimidators for maltreatment; where there appeared to be no marks of violence on his body; and where he did not have himself examined by a reputable physician to buttress his claim, all these should be considered as factors indicating voluntariness of a confession.[25]

In the case at bar, no evidence whatsoever was offered by appellant to show that he filed a complaint against the persons who allegedly intimidated or forced him even if he had the opportunity to do so. Neither did he submit to the trial court a medical report proving that his body was subjected to violence or torture. He even willfully signed a Pagpapatunay that he gave the statements freely, without coercion, intimidation, inducement, or false promises, thus:

"PAGPAPATUNAY

Pagpapatunay po ito na naunawaan ko ang lahat ng nasasaad sa gawing itaas, pinawalang halaga o bisa ko ang mga ito sa harapan ni Atty. JUANITO C. ATIENZA. Kusa po akong nagbigay ng kusang salaysay at hindi ako pinilit o tinakot o pinangakuan ng ano pa man, lahat ng aking sasabihin ay buong katotohanan lamang.

(Sgd.)

DEORITO PORIO

May salaysay "[26]

On its face, the Sinumpaang Salaysay has no sign of suspicious circumstances tending to cast doubt on its integrity. Like in other cases where this Court upheld the admissibility of extra-judicial confessions, appellant's narration reflects spontaneity and coherence which, psychologically, cannot be associated with a mind to which force and intimidation have been applied. Appellant's response to each question contains details beyond what was being asked, thus indicating a mind free from extraneous restraints. As can be gleaned from the confession, the investigator did not propound questions answerable only by yes or no. He gave appellant sufficient latitude to elaborate by simply saying to him, "Ipagapatuloy mo ang iyong salaysay."

All the above facts indicate that appellant executed his Sinumpaang Salaysay freely and voluntarily. To hold otherwise is to facilitate the retraction by appellant of his solemnly made statements at the mere allegations of force, intimidation, violence or torture, without any proof whatsoever.[27] Bare assertions will certainly not suffice to overturn the presumption of voluntariness.[28]

II. The confession was made with the assistance of a competent and independent counsel.

Enshrined in Article III, Section 12 (1) of the 1987 Constitution are the rights of the accused during custodial investigation, thus:

"Sec. 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."

The rights to remain silent and to have a competent and independent counsel may be waived by the accused

provided that the constitutional requirements are complied with. It must appear clearly that the accused was beforehand accorded his right to be informed of such rights. In addition, the waiver must be in writing and in the presence of counsel.

Appellant signed the Sinumpaang Salaysay which consists of two parts. The first part shows that he was informed he has a right to remain silent and not to give any statement; that he has a right to retain a counsel of his choice; and that any statement he gives can be used against him in court. After being thus informed, he said he was willing to give a statement and tell the truth. He even signed a Pagpapatunay that contains an express waiver of his constitutional rights in the presence of Atty. Atienza.

Notwithstanding such express waiver of his rights, Pfc. Menor still requested Atty. Atienza to act as counsel for appellant during the investigation. He interposed no objection to Atty. Atienza's assistance, thus:

COURT:

Q

But you have no objection for Atty. Atienza to help you in that investigation?

A

No, sir.

Q

In fact you would prefer that you were assisted by a lawyer while being investigated in a very serious charge of rape with homicide?

A

Yes, sir.

Q

And the fact that Atty. Atienza was there to help you, you consented to your having assisted while being investigated?

A

Yes, sir.

Q

You understand Tagalog very well?

A

Yes, sir.” (Emphasis supplied)[29]

It is now too late in the day for appellant to insist that he did not know Atty. Atienza and that the latter was only

"picked up" by Pfc. Menor outside the police station. It must be emphasized that appellant did not object when Atty. Atienza, suggested by the police, acted as his own counsel. We have consistently ruled that while the initial choice of the lawyer, in cases where a person under custodial investigation cannot afford the services of the lawyer, is naturally lodged in the police investigator, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigator is deemed engaged by the accused where the latter never raised any objection against the former's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of his statement before the swearing officer.[30] We reiterate that appellant did not interpose any opposition when Atty. Atienza assisted him.

We find that Atty. Atienza is a competent and independent counsel. To be considered competent and independent for the purpose of assisting an accused during a custodial investigation, it is only required for a lawyer to be:

"....willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In *People v. Basay* (219 SCRA 404, 418) this Court stressed that an accused' right to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle." [31]

Atty. Atienza testified that he was present and assisted appellant during the time that the latter waived his constitutional rights and gave his statement admitting that he committed the crime charged. As a matter of fact, he asked the investigator to give him an opportunity to talk to appellant alone. We quote Atty. Atienza's testimony, thus:

"PROSECUTOR MACABANGUN:

Q

I have here a document, it appears in that statement executed by the accused Deorito Porio that your signature appears at the bottom of the statement, and it is stated that you assisted the accused. Will you please look at this document and tell the Court if you can recognize your signature?

A

Yes, sir, I remember when my signature appears as said counsel during the custodial investigation of a certain Porio.

Q

Will you please tell the Court if at the time that certain Porio was investigated in the police department and his statement was being taken x x x will you please tell us whether you were present during the taking of this statement that you just identified?

A

I was present during the actual taking of the statement – of this statement you have shown me, sir.

Q

All the time that the accused was giving this statement you were always present during that investigation?

A

Yes, sir, I was all the time present. As a matter of fact, before the statement was taken by the police I requested for opportunity to talk with the suspect alone, before that giving of the statement. I told him the consequences of giving the statement; the gravity of the offense and also informed him about all his right, which if allowed I will quote the right I told him before giving his statement. I told him that he can remain silent if he wish to.

I informed him that he can get the assistance of counsel of his own choice. He told me that it is not necessary because I was called upon by the police to assist in the investigation.

I told him that it is a very grave offense. Because of the gravity of the offense I requested for interview of the suspect.

And I explained to him like the statement that he will give can be used against him.

Q

And after you interviewed the accused and informed him all about his rights and consequences of his intended giving of voluntary statement to the policemen, what did the accused tell you?

A

He said he is giving the statement just the same he was then, I feel during those date, he was in deep remorse because I understand that the victim is a daughter of his live-in-partner.

Q

Now, in this statement that was given by the accused wherein you assisted the accused there was a signature over the typewritten name Atty. Juanito Atienza, whose signature is that?

A

This is my signature.”[32]

III. The confession is explicit and categorical.

A confession is an acknowledgement in express words, by the accused in a criminal case, of the truth of the main fact charged, or some essential parts thereof.[33] Owing to its very definition, there is no such thing as an implied confession.[34] It is always a direct and positive acknowledgement of guilt. Considering that appellant is charged with the complex crime of rape with homicide, his statements that he inserted his penis in the victim's vagina and that he strangled her to death are express confessions or acknowledgement of guilt.

IV. The confession is in writing.

Appellant's Sinumpaang Salayasay is not only in writing, it also written in the language which appellant speaks and understands.

In fine, we hold that appellant's Sinumpaang Salaysay adequately satisfies the constitutional requirements on pre-interrogation advisories. Appellant can no longer extricate himself from its necessary consequences. While the passage of time could easily bring a change of mind to a retracting confessant, courts, on the strength of settled principles, cannot undo for the confessant what he had deliberately done in the name of truth. We can not overlook the fact that appellant's Sinumpaang Salaysay is replete with details which only a perpetrator of the

crime could have supplied and which could not have been concocted by someone who did not take part in its commission. Appellant's statement that he raped the victim and then strangled her to death cannot be taken lightly as it concurs with the findings of Dr. Patilano that the cause of death is strangulation and that the victim's genitalia shows "sexual intercourse with a man...with violence." This clearly signifies that appellant's Sinumpaang Salaysay is corroborated by the corpus delicti.

In a criminal prosecution, in order to warrant a conviction, the State is required to prove the guilt of the accused beyond reasonable doubt. An extra-judicial confession made by an accused is a sufficient ground for conviction if corroborated by the evidence of the corpus delicti.[35] The existence of the corpus delicti and the legality of appellant's extra-judicial confession having been duly proven by the State, appellant's conviction is, therefore, in order. To reiterate, a confession constitutes evidence of the highest order as long as constitutional safeguards are adequately complied with, as in this case.

The trial court correctly imposed upon appellant the penalty of reclusion perpetua inasmuch as the crime was committed in 1990 when the imposition of the death sentence was suspended. However, the trial court erred in awarding P50,000.00 as actual damages since there is no evidence to sustain the same. Instead, the civil indemnity of P100,000.00 must be awarded, this amount being properly commensurate with the seriousness of the complex crime of rape with homicide.[36] The amount of P100,000.00 for moral damages awarded by the trial court must be reduced to P50,000.00 in keeping with current jurisprudence.[37] And, the award of exemplary damages must be deleted. In criminal offenses, exemplary damages may be imposed only if the crime was committed with one or more aggravating circumstances.[38] Here, the prosecution failed to establish any aggravating circumstance.

WHEREFORE, the challenged Decision of the trial court finding appellant guilty of the crime of rape with homicide is hereby **AFFIRMED**, subject to the modification that the heirs of the victim, Riza Cleodoro Flores, shall be entitled to the amount of P100,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Melo, J., (Chairman), Vitug, Panganiban, and Carpio, JJ., concur.

[1] *People v. Aquino*, 310 SCRA 437 (1999).

[2] *Rollo*, p. 3.

[3] Her real name is Riza Cleodoro Flores, her mother's surname being "Cleodoro." She is referred to as "Teresa" by accused Deorito Porio.

[4] *Records*, p. 7.

[5] *TSN*, January 25, 1991, pp. 4-5.

[6] *Records*, p. 145.

[7] *TSN*, January 25, 1991, p. 10.

Trinidad Cleorodro also executed a sworn statement on June 27, 1990 before Pfc. Leo Batinga, pointing to Deorito Porio as her suspect. The pertinent portion of which reads:

T:

Sino ang pinagsusutpetsahan mo na maaring pumatay sa iyong anak?

S:

Ang kinakasama ko pong si Deorito Porio.

T:

Bakit mo nasabi ito?

S:

Kasi po noong minsan hindi ko lang matandaan kung anong taon ay may nagpatulong sa akin na manghingi ng gamot sa Landfield at nagaatubili akong sumama dahil sa walang kasama ang anak kong si Riza subalit pinilit akong pasamahin nitong si Deorito. Pagbalik ko makaraan ang isang oras ay nakasara ang pintuan namin kaya ito ay itinulak ko at nakita ko itong anak ko na nakahiga sa pagitan ng dalawang hita ni Deorito na naka walker lang at ang anak kong si Riza ay walang panty. Ang ginawa ko ay sinugod ko itong si Deorito at sinabihan na “Gusto Mong Pagsamantalahan ang Anak Ko Ano?” at sinabi niya na inaayos lang daw niya ito. Binantaan pa po niya ako na kung magsusumbong ako sa pulis o sa barangay ay papatayin niya ako.

T:

Ilang beses mo siyang nahuli na gustong pagsamantalahan ang anak mo?

S:

Ang natatandaan ko po ay may tatlong beses na niyang ginawa ito. (Records, pp. 150-151)

[8] TSN, January 25, 1991, p.23.

[9] Ibid., p. 20.

[10] TSN, September 28, 1990, pp. 4-5.

[11] TSN, February 8, 1993, pp. 4-5.

[12] Ibid., pp. 3-4.

[13] Records, p. 147.

[14] Records, pp. 147-148

[15] Per information of Corazon Montes, Francisco Montes died on June 21, 1992. (Records, p. 86)

[16] TSN, January 29, 1994, pp. 3-11.

[17] Penned by Judge Eliodoro G. Ubiadas.

[18] Rollo, p. 34-35.

[19] People v. Gallardo, 323 SCRA 219 (2000); People v. Bacor, 306 SCRA 522 (1999).

[20] The term "voluntary," as used in the development of the law of confessions, means that the accused speaks of his free will and accord, without inducement of any kind, and with a full and complete knowledge of the nature and consequences of the confession, and when the speaking is so free from influences affecting the will of the accused, at the time the confession was made, that it renders it admissible in evidence against him. (Francisco, Evidence, Third Edition, 1996, p. 222 citing Wharton's Criminal Evidence, Sec. 631a)

[21] People v. Aquino, supra.

[22] Brief for the Accused-Appellant, p. 9.

[23] TSN, September 28, 1990, p. 4.

[24] TSN, January 25, 1991.

[25] People v. Pia, 145 SCRA 581 (1986); People v. Villanueva, 128 SCRA 488 (1984); People v. Urgel, 134 SCRA 483 (1985) and People v. Toledo, 140 SCRA 259 (1985).

[26] Records, p. 148.

[27] People v. De Vera, 312 SCRA 640 (1999).

[28] Francisco, Evidence, Third Edition, 1996, p. 221.

[29] TSN, June 29, 1994, p. 7.

[30] People v. Gallardo, supra; People v. Suarez, 267 SCRA 119 (1997); People v. Parojinog, 203 SCRA 673 (1991).

[31] People v. Espiritu, 302 SCRA 533 (1999) citing People v. Deniega, 251 SCRA 626 (1995).

"To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him, but rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false. The counsel, however, should never prevent an accused from freely and voluntarily telling the truth." People v. Gallardo, 323 SCRA 218 (2000).

[32] TSN, February 8, 1993, pp. 3-4.

[33] Francisco, Evidence, Third Edition, 1996, p. 219 citing Wigmore, Evidence, Vol. I, Section 821.

[34] Ibid..

[35] Section 3, Rule 133 of the Rules of Court.

[36] People v. Rolly Abulencia y Coyos, G.R. No. 138403 (August 22, 2001), citing Tuangco, G.R. No. 130331, November 22, 2000; People v. Valla, 323 SCRA 74 (2000); citing People v. Robles, 305 SCRA 273 (1999); People v. Bantilan, 314 SCRA 380 (1999).

[37] People v. Valla, *ibid.*, People v. Paredes, 293 SCRA 411 (1998).

[38] Article 2230, Civil Code of the Philippines.

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