

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. CHRISTOPHER ESPANOLA Y PAQUINGAN ALIAS
"LANGGA"; OR "COCOY"; JIMMY
PAQUINGAN Y BATILO ALIAS JIMMY; AND GEOFFREY ABELLO
Y SALADO A...**

G.R. No. 119308. April 18, 1997

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the decision^[1] dated November 21, 1994, of the Regional Trial Court of Lanao Del Norte, 12th Judicial Region, Branch 5, City of Iligan, finding the accused-appellants Christopher Espanola y Paquingan, Jimmy Paquingan y Batilo and Jeoffrey Abello y Salado guilty beyond reasonable doubt as principals for the murder of Jessette Tarroza in Criminal Case No. 3773. The three accused were meted a prison term of reclusion perpetua with the accessory penalties provided by law. They were ordered to indemnify jointly and severally the heirs of the victim Jessette Tarroza the amount of P50,000.00 as actual damages, P50,000.00 as compensatory damages, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

The Amended Information charging the accused-appellants with the crime of Murder and indicting another accused in the person of Joel Gonzales reads:

"AMENDED INFORMATION

The undersigned City Prosecutor of Iligan accuses CHRISTOPHER ESPANOLA y Paquingan alias "Langga", JIMMY PAQUINGAN y Batilo, GEOFFREY ABELLO y Salado alias "Beroy" and JOEL GONZALES alias "Awing" alias "Wingwing" of the crime of MURDER, committed as follows:

"That on or about November 16, 1991, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who were all under the influence of drugs (Marijuana), conspiring and confederating together and mutually helping each other with intent to kill and by means of treachery and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, stab and hit one Jessette Tarroza, thereby inflicting upon the said Jessette Tarroza the following physical injuries, to wit:

- Incised wound 2.5 cms in length, lateral border of (R) ala nasi
- Triangular stab wound, neck (R) side, 4 cms x 3 cms x 5.5 cms
- Incised wound, anterior neck, 6 cms x 4 cms x 3.5 cms which traversed thru the trachea, external jugular vein and 3/4 of the esophagus
- Stab wound, anterior neck, (R) supraclavicular area, 2.5 cms x 1 cm x 4 cms
- Stab wound, (L) anterior chest, midclavicular line 1.5 cms x 1 cm x 2.5 cms

- Stab wound, (R) anterior chest, 4 cms x 2 cms with fracture of the 4th and 5th rib with lung tissue out
- Stab wound, (R) anterior chest, level of axilla, 2 cms x 1 cm x 5 cms
- Stab wound, (R) anterior chest, 3rd ICS, midclavicular line 2.5 x 1.4 cms
- C-shaped stab wound, (R) anterior chest, midclavicular line, 3.5 cms x 2 cms x 3 cms, 2nd ICS
- Stab wound, (R) anterior chest, 2nd ICS, (R) parasternal line, 2.5 cms x 1.5 cms x 4 cms
- Confluent abrasion (R) elbow joint, anteromedial aspect 3 cms in diameter
- Multiple punctured wounds (5), back, (R) side
- Confluent abrasion 10 cms by 3 cms, back, lumbar area

and as a result thereof the said Jesette Tarroza died; that immediately after inflicting fatal injuries on the said Jesette Tarroza, the herein accused took turns in having sexual intercourse with the victim.'

Contrary to and in violation of Article 248 of the Revised Penal Code with the aggravating circumstances of: (1) treachery and abuse of superior strength; (2) cruelty in all (sic) ignominy; (3) that the accused were under the influence of drugs at the time of the commission of the offense and (4) outraging or scoffing of (sic) the corpse of the victim.

City of Iligan, November 29, 1991."

The facts of the case show that Jesette Tarroza went to work at the Mercy Community Clinic, Camague, Iligan City, as a medical technologist at about 3 o'clock in the afternoon of November 16, 1991. Her tour of duty was from 3 o'clock in the afternoon to eleven o'clock in the evening.[2] After working for eight hours, she left the clinic at about 11:15 p.m. with Claro Liquigan, a co-employee. When they reached the junction road leading to her house at about 11:30 p.m., Claro offered to escort Jesette to her house but she refused saying that she knew the people in the area. She then walked towards her house while Claro rode his bicycle and went home. When they parted ways, Claro noticed four (4) persons in the pathway leading to Jesette's house. They were about 60 to 70 meters away from him and he did not recognize whether they were male or female.[3]

Jesette Tarroza failed to come home that fateful evening. She was found dead. Her father, Romeo Tarroza, rushed to the place where her body was discovered.[4] He was shocked to see Jesette lying in a grassy area more or less fifty (50) meters from their home and only fifteen (15) meters from the pathway. Her body bore stab wounds. Her red blouse was wide open and her pants removed. Her panty was likewise removed while her bra[5] was cut. The red blouse[6] was torn with three (3) holes at the back, ten (10) holes on the front and six (6) holes on the left sleeve. Her blouse, bra and shoes were stained with blood. Her panty, found about two (2) feet away from her cadaver, had blood on the front portion. A light green T-shirt with the print "Midwifery" at the back and "ICC" on the front[7] was also found near the shoes of the victim. The T-shirt was not hers.[8]

The law enforcement officers of Iligan City immediately conducted an investigation. They found blood stains along the pathway which was approximately fifteen (15) meters away from the place where the victim was found. There was a sign of struggle as the plants and bushes at the scene of the crime were destroyed and flattened. They extended their investigation to the neighboring sitios and purok of Kilumco but found no lead as to the perpetrators of the crime.[9]

In the morning of November 19, 1991, SPO 4 Ruperto Neri received an anonymous telephone call suggesting that a certain "Wing-wing"[10] be investigated as he has knowledge of the crime. Antonio Lubang, Chief of the Homicide Section, Intelligence and Investigation Division of the Iligan City Police Station, and his men looked

for "Wing-wing". Lubang knew "Wing-wing" as the latter frequently roamed around the public plaza. They learned that the real name of "Wing-wing" is Joel Gonzales. They then saw Gonzales at his house and invited him to the police station. At the police station, Gonzales confessed that he was present when the crime was committed and that he knew its perpetrators. He identified them as "Beroy", "Langga" and "Jimmy". He informed that the three stabbed and raped Jesette Tarroza. Gonzales, however, did not give the surnames of the three suspects. The policemen asked Romeo Tarroza whether he knew the suspects. Romeo Tarroza declared that they were his neighbors. He identified "Jimmy" as Jimmy Paquingan, "Langga" as Christopher Espanola and "Beroy" as Jeoffrey Abello.[11] On the same day, Gonzales was detained at the police station.

In the early morning of November 21, 1991, Chief Lubang invited Jimmy Paquingan, Christopher Espanola and Jeoffrey Abello to the police station where they were investigated. All denied the story of Gonzales. A police line-up of twelve (12) persons which included the three accused-appellants was then made in the police station. Gonzales was called and he pointed to Paquingan, Espanola and Abello as his companions in the killing and rape of Jesette Tarroza. After the line-up, the three suspects were brought to the City Health Office for check-up because the policemen saw that they had bruises and scratches on their faces, foreheads and breasts.[12] They were examined by Dr. Livey J. Villarin. With respect to Paquingan, the medical certificate (Exhibit "I") showed that he had scratch abrasions on the right mandibular area (jaw), on the left side of the neck and on the right mid-axillary (chest). Dr. Villarin testified that the abrasions could have been caused by any sharp object or possibly fingernails. The medical certificate issued to Espanola (Exhibit "J") showed that he had contusions on the right shoulder and hematoma. Dr. Villarin testified that the injuries could have been effected by a jab or sharp blow. The medical certificate issued to Abello (Exhibit "K") showed that he sustained abrasion and contusion at the right deltoid area which according to Dr. Villarin, could have been caused by a sharp or hard object or a fist blow that hit that particular area of the body.[13]

On the same day, an information for rape with homicide[14] was filed against Paquingan, Espanola and Abello. They were committed to the city jail after their warrant of arrest was issued by Executive Judge Federico V. Noel.[15]

In the afternoon of November 25, 1991, Chief Lubang brought Jimmy Paquingan to the City Prosecutor's Office for the taking of his confession after he manifested to the jail warden his intention to confess. City Prosecutor Ulysses V. Lagcao asked Paquingan if he would avail the services of counsel and he answered in the affirmative. When asked if he had a counsel of his own choice, he answered in the negative. He was provided with the services of Atty. Leo Cahanap, the legal counsel of the City Mayor's Office, and Atty. Susan Echavez, a representative of the IBP Legal Aid, Iligan City Chapter. They were given time to confer with him.[16] Paquingan then confessed. However, when asked to sign the stenographic notes, Paquingan refused saying he would wait for his mother first.[17] The sworn statement of Paquingan (Exhibit "L") was transcribed on November 29, 1991, but signed only by the two lawyers. According to the statement, Abello slashed the neck of Jesette. Jesette fell down and was brought to a bushy area where she was sexually abused. The first to have sexual intercourse with the victim was Abello. Paquingan then followed him. Espanola had his turn next; and Gonzales was the last.[18]

Upon review of the records of the case, Fiscal Lagcao discovered that the victim was sexually abused after she was murdered. Thus, he filed an Amended Information on November 29, 1991, charging the three accused with the crime of murder and indicting Joel Gonzales as the fourth accused.[19] A warrant for the arrest of Gonzales was issued on the same date by Executive Judge Federico V. Noel.[20]

All the accused pleaded "not guilty" when arraigned. After presenting several witnesses, the prosecution filed on June 17, 1992, a motion to discharge accused Joel Gonzales as a state witness[21] in accordance with Section 9, Rule 119 of the Rules of Court, alleging:

"1. That accused Joel Gonzales has intimated to the undersigned City Prosecutor that he is willing to testify for the prosecution as state witness;

"2. That there is absolute necessity for the testimony of accused Joel Gonzales considering that the evidence for the prosecution in this case is mainly circumstantial;

"3. That the testimony of accused Joel Gonzales can be substantially corroborated in its material points;

"4. That the said accused does not appear to be the most guilty; and

"5. That he has not at any time been convicted of any offense involving moral turpitude."

In traversing the motion, the defense asserted:

"1. That there is no showing in the face of said motion that Joel Gonzales agrees to be utilized as state witness;

"2. That Joel Gonzales appears to be the most guilty as he alone among the accused has executed a confession regarding the killing of Jesette Tarroza."

In an Order[22] dated June 26, 1992, the trial court discharged Gonzales as a state witness.

In the course of the trial, Dr. Chito Rey Gomez, Medico-Legal Officer of the Iligan City Health Office, testified that he conducted a post mortem examination on the cadaver of Jesette Tarroza. He issued a Death Certificate (Exhibit "E") which indicated that the cause of death was cardio respiratory arrest due to pneumohemothorax of the right chest. He also prepared a Necropsy Report (Exhibit "F") after the examination. He found five (5) stab wounds at the back of the victim and ten (10) stab wounds at the front, consisting of an incised wound at the lateral border of the ala nasi, right; triangular stab wounds on the right side of the neck and lower neck; an incised wound which traversed through the trachea external jugular vein and three-fourths (3/4) of the esophagus; a C-shaped stab wound that penetrated the thorax cavity and a stab wound above the breast near the axilla. He testified further that the wounds inflicted must have reached some vital organs of the body, possibly the lungs and blood vessels, and that the wounds were probably caused by three (3) different instruments. He likewise conducted a vaginal examination on the victim and noted that there was a fresh complete hymenal laceration at 3 o'clock and fresh complete lacerations at 7 o'clock and 8 o'clock, which could have been caused by a finger or a sex organ inserted into the vagina. When asked if the victim was sexually molested, he answered in the affirmative.[23]

Another witness for the prosecution was Dr. Tomas P. Refe, Medico-Legal Officer III of the National Bureau of Investigation, Central Visayas Regional Office. He testified that he conducted an autopsy examination on the cadaver of Jesette Tarroza and prepared Autopsy Report No. 91-27 (Exhibit "H"). He found abrasions and thirteen (13) stab wounds on the front part of the chest, right side, and at the back of the victim's chest. He also found an incised wound at the region of the nose involving the upper portion of the right side of the mouth, an incised wound on the front part of the neck cutting the trachea and partially the esophagus and an incised wound at the anterior aspect right side of the neck.[24] He declared that death was caused by the incised wounds and multiple stab wounds. The fatal wounds were wound nos. 2, 3, 4, 5, 7, 9 and 10 (Exhibits "H", "H-1"). He likewise examined the vagina of the victim and found the hymen moderately thick and narrow with lacerations complete at 3 o'clock and 6 o'clock, deep at 7 o'clock, 9 o'clock, 10 o'clock and 11 o'clock, and the edges of the lacerations were sharp and coaptable. He opined that there could have been a sexual intercourse committed after the death of the victim considering that the lacerations did not show any evidence of vital reaction which is commonly found in lacerations during lifetime.[25]

The prosecution also presented Joel Gonzales who turned state witness. On the basis of the demeanor of Gonzales

and the manner he answered the questions, the trial court gathered the impression that he was mentally retarded.[26] Gonzales did not know how to read and write.[27] In any event, he was able to testify that on the night of November 16, 1991, he went to Baybay, Camague, Iligan City, to witness a dance. His companions were "Beroy", "Jimmy" and "Cocoy". He identified Jeoffrey Abello as "Beroy", Christopher Espanola as "Cocoy" or "Langga" and Jimmy Paquingan as "Jimmy".

At the dance, they drank one (1) bottle of Tanduay and smoked one (1) stick of marijuana each. After the dance, he and his three (3) companions proceeded to Bacayo. While on their way, they met a woman whom Beroy, Cocoy and Jimmy followed. They brought the woman to a nipa hut and slept ("gidulgan") right beside the woman.

When asked who killed the victim on the night of November 16, 1991, at Kilumco, Camague, Iligan City, he answered "sila", referring to herein appellants. He further testified that Beroy slashed the neck of Jessette Tarroza, Langga slashed her breast, and Paquingan stabbed her at the back. The victim resisted by scratching her attackers.[28] After she died, they carried her to a bushy area and all of them sexually molested her. Beroy was first; Gonzales was second; Cocoy was third and Jeoffrey was the last. Gonzales likewise identified the T-shirt worn by Jeoffrey Abello that night as "That one Mercy." He declared that the brownish discoloration on the T-shirt was caused by the blood of Jessette Tarroza.[29]

On cross-examination, Gonzales said that Jessette Tarroza was not the one brought to the nipa hut, but a woman from Tambacan who went home later on. He then reiterated that after their encounter with the unnamed woman, they went to the school, met and followed Jessette Tarroza to a dark place. They encountered her on the road. He affirmed that it was Beroy who slashed the neck of the victim while Cocoy, also known as Langga, was the one who slashed her breasts.[30]

For their defense, all the appellants took the witness stand. Jimmy Paquingan narrated that at about 6 o'clock to 9 o'clock in the evening of November 16, 1991, he watched "beta" (movie) in the house of Sima Ybanez at Kilumco, Camague. Thereafter, he went to the house of his grandmother located at the same barangay and slept there. He did not go out again and woke up at 6 o'clock in the morning of November 17, 1991. His testimony was corroborated by Emma Mingo who testified that at about 6 o'clock in the evening of November 16, 1991, she viewed "beta" in her residence at Kilumcol Camague, with her daughter and accused Christopher Espanola. At about 9:30 in the evening, the film ended and Christopher left. At about the same time, Jimmy Paquingan, her nephew, came and proceeded to his room downstairs. As she waited for her husband to come home, she continuously stayed at the porch until 1:30 in the early morning of November 17, 1991. In her long wait, she did not see Jimmy leave his room.[31]

Christopher Espanola alleged that he was at home in the evening of November 16, 1991. He went out to view a "beta" in the house of Sima Ybanez. From there, he proceeded to a disco. On his way, he passed by the house of Carmencita Gatase who was then with Jeoffrey Abello. They went to the disco together. At the disco, he joined the group of Lito Moraira and Titing Mingo and drank with them. There was no occasion that he left the disco place until after 1 o'clock in the early morning of November 17, 1991, when they went home. He woke up at 7 o'clock the following morning and proceeded to the house of his grandmother to fetch water.[32]

Jeoffrey Abello narrated that in the early evening of November 16, 1991, he was at their house in Kilumco, Camague. He left their house to watch a "beta" in the house of Sima Ybanez. However, he was invited by Carmencita Gatase to go to a disco in Baybay, Camague. He acceded and went to Gatase's house. Christopher Espanola joined them on their way to the disco. They arrived at the disco at about 10 o'clock in the evening. He saw there a group of persons including Joel Gonzales and Titing Mingo. While he saw Christopher at about 11 o'clock that evening, he did not see Jimmy Paquingan. At about 1 o'clock in the early morning of November 17,

1991, he and Carmencita left ahead of Christopher. They then proceeded to the house of Carmencita where they slept.[33]

In her testimony, Carmencita Gatase identified the three (3) accused as her neighbors and long-time acquaintances. At about 8 o'clock in the evening of November 16, 1991, Jeffrey Abello went to her house. At 9:30 in the evening, she asked Jeffrey and Christopher Espanola, who was then downstairs, to go with her to the disco. They reached the place at about 10 o'clock. Christopher then asked permission to join the group of his Uncle Mingo. She and Jeffrey remained conversing and standing at the side of the disco. They left the dancing area at 1:30 in the early morning of November 17, 1991, not noticing the whereabouts of Christopher. On their way home, the two of them passed by the basketball court which was only eighty (80) meters from their house. They did not notice anything unusual. Jeffrey then slept in her house.[34]

After considering the opposing versions of the parties, the trial court gave credence to the evidence presented by the prosecution, particularly the testimony of state witness Joel Gonzales. It found that Jessette Tarroza was killed by the accused Christopher Espanola, Jimmy Paquingan and Jeffrey Abello. It rejected the defense of the accused as unnatural, incredible and riddled with inconsistencies. The three accused were convicted of the crime of Murder as the killing was attended by the aggravating circumstance of treachery. They were sentenced to suffer the penalty of reclusion perpetua and to pay a total amount of One Hundred Seventy Five Thousand pesos (P175,000.00) as damages to the heirs of the victim.

Hence, this appeal where accused-appellants contend:

"1. THAT THE LOWER COURT SERIOUSLY ERRED IN CONVICTING ACCUSED-APPELLANTS ON THE BASIS OF THE TESTIMONY OF JOEL GONZALES WHO WAS AN ADDITIONAL ACCUSED IN THE AMENDED INFORMATION OF (sic) MURDER AND WHOSE DISCHARGE WAS SOUGHT BY THE PROSECUTION AND GRANTED BY SAID COURT, INSPITE AND DESPITE OPPOSITION BY THE DEFENSE.

"2. THAT THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE TESTIMONY OF ACCUSED-APPELLANT PAQUINGAN THAT THE TAKING OF HIS AFFIDAVIT OF CONFESSION BY CITY PROSECUTOR LAGCAO WAS NOT VOLUNTARY, AND IN FACT, HE REFUSED TO SIGN THE SAME, CONTRARY TO THE STATEMENT OF SAID PROSECUTOR THAT IT WAS VOLUNTARILY GIVEN BY THE SAID ACCUSED-APPELLANT.

"3. THAT THE LOWER COURT ERRED IN NOT CONSIDERING THE CONSTITUTIONAL RIGHT OF ACCUSED-APPELLANT PAQUINGAN TO COUNSEL OF HIS OWN CHOICE, PREMISED FROM (sic) THE TAKING OF THE AFFIDAVIT OF CONFESSION BY PROSECUTOR LAGCAO, AGAINST HIS PENAL INTEREST. IN FACT HE TESTIFIED THAT SAID LAWYERS, ATTYS. LEO CAHANAP, THE CITY LEGAL OFFICER OF ILIGAN, AND SUSAN ECHAVEZ, WERE NOT THE COUNSELS OF HIS OWN CHOICE AND WERE MERELY SUPPLIED BY THE PROSECUTOR.

"4. THAT THE LOWER COURT ERRED IN UTILIZING THE GROUND OF ALIBI WHEN IT SAID THAT THE ACCUSED-APPELLANTS ADVANCED IT AS A MATTER OF DEFENSE. THE ACCUSED-APPELLANTS DID NOT CLING TO IT AS A MATTER OF DEFENSE. THEY MERELY STATED WHAT WAS TRUE AND FACTUAL IN SO FAR AS THEY WERE CONCERNED, AND IT WAS AN ERROR ON THE PART OF THE LOWER COURT TO RULE ON THE ISSUE AS ALIBI, WHICH PRECISELY, IN MANY DECISIONS OF THE HONORABLE SUPREME COURT,(sic) THAT ALIBI NEED NOT BE INQUIRED INTO WHERE THE PROSECUTION'S EVIDENCE IS WEAK, AS IN THE CASE AT BAR.

"5. THAT THE LOWER COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF JOEL

GONZALES NOTWITHSTANDING THE IMPROPRIETIES OF HIS DISCHARGE AS AN ACCUSED ON THE AMENDED INFORMATION OF (sic) MURDER, MORE SO, ON THE MATERIAL INCONSISTENCIES OF HIS TESTIMONIES, AS BORNE OUT BY THE TRANSCRIPT OF STENOGRAPHIC NOTES, AND MOST ESPECIALLY ON HIS MENTAL INCAPACITY, WHERE HIS TESTIMONIES WERE RUMBLING. (sic)

"6. THAT THE LOWER COURT, AT THE INSTANCE OF HON. MOSLEMEN MACARAMBON ERRED IN METING A PENALTY OF RECLUSION PERPETUA AS AGAINST ACCUSED-APPELLANTS, THE LATTER, (sic) BEING A DETAILED JUDGE IN RTC, BRANCH V, ILIGAN CITY, WAS THE ONE WHO PREPARED AND RENDERED THE DECISION, NOTWITHSTANDING THAT HE WAS NOT ABLE TO HEAR A SINGLE HEARING AND HAD NOT OBSERVED THE DEMEANOR AND CHARACTER TRAITS OF WITNESSES AND ACCUSED IN SAID CASE, AND INSPITE OF THE FACT THAT THE JUDGE WHO TOTALLY HEARD THE CASE OF RTC, BRANCH V, ILIGAN CITY,(sic) STILL CONNECTED WITH THE JUDICIARY, BUT MERELY DETAILED IN ONE OF THE SALAS OF THE REGIONAL TRIAL COURT, DAVAO CITY, AND HENCE, NOT RETIRED OR FOR (sic) OTHERWISE, AND APPROPRIATELY, THE RECORDS OF THE CASE SHOULD HAVE BEEN SENT TO HIM, FOR HIM TO PREPARE THE DECISION AND TO (sic) SEND THE SAME TO THE CLERK OF COURT OF RTC, BRANCH V, ILIGAN CITY, FOR PROMULGATION, AND THUS WAS (sic) THE JUDGMENT OF CONVICTION BY JUDGE MACARAMBON WAS NULL AND VOID."

We find the appeal unmeritorious.

We shall first discuss assigned errors numbers 1 and 5, in view of their inter-relationship.

The appellants contend that the trial court violated the rule in discharging Gonzales as a state witness. They claim that Gonzales was the only one who executed an affidavit of confession, hence, he was the most guilty of the accused and cannot be used as a state witness. To be discharged as state witness, Section 9, Rule 119 of the Revised Rules of Court requires that:

1. the discharge must be with the consent of the accused concerned;
2. his testimony must be absolutely necessary;
3. there is no other direct evidence available for the proper prosecution of the offense committed;
4. his testimony can be substantially corroborated in its material points;
5. he does not appear to be the most guilty; and
6. he has not at any time been convicted of any offense involving moral turpitude.

We do not agree that Gonzales is the most guilty of the accused. From the evidence, it appears that Gonzales is mentally retarded. He could not have been a leader of the group for he was intellectually wanting. He did not inflict any of the fatal wounds that led to the death of the victim. The trial court's assessment that he is not the most guilty is well-grounded.

It is also established that there was no eyewitness to the crime or other direct evidence. The testimony of Gonzales was absolutely necessary for the proper prosecution of the case against appellants. This was the decision of the prosecution itself when it moved for the discharge of Gonzales as a state witness. Part of prosecutorial discretion is the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses. Unless done in violation of the Rules, this determination should be given great weight by our courts.

The records will also show that while Gonzales rambled in some parts of his testimony in view of his low intellect, nonetheless, his testimony was substantially corroborated in its material points. His declaration that the

victim resisted and used her bare hands in scratching her attackers is confirmed by the findings of Dr. Villarín in Exhibits "I", "J" and "K". His statement that Beroy slashed the neck of the victim, Langga slashed her breast and Jimmy stabbed her at the back finds support in the result of the autopsy of the victim's cadaver by Dr. Refe and Dr. Gomez showing incised wounds and numerous stab wounds on the front and back of the victim and incised wounds on her trachea and esophagus. His assertion that he and the appellants sexually abused the victim after her death is corroborated by the lacerations found in the private part of the victim as determined by Dr. Gomez and Dr. Refe.

Lastly, there is no showing that Gonzales has been convicted of an offense involving moral turpitude. Gonzales also gave his consent to be utilized as state witness.^[35]In sum, all the requirements of Section 9, Rule 119 of the Revised Rules of Court were satisfied by the prosecution and the trial court did not err in discharging Gonzales as state witness.

Appellants also assail the testimony of Gonzales on the ground of his alleged mental incapacity. Section 20 of Rule 130 provides that "except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses." Section 21, inter alia, disqualifies as witnesses, "those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others." A mental retardate is not therefore, per se, disqualified from being a witness. As long as his senses can perceive facts and if he can convey his perceptions in court, he can be a witness.^[36] In the case at bar, we find that Gonzales had a tendency to be repetitious and at times had to be asked leading questions, but he was not unintelligible to be beyond understanding. He was clear and unyielding in identifying the appellants as the perpetrators of the crime. On the whole, his account of the crime was coherent enough to shed light on the guilt or innocence of the accused. To be sure, modern rules on evidence have downgraded mental incapacity as a ground to disqualify a witness.^[37]As observed by McCormick, the remedy of excluding such a witness who may be the only person available who knows the facts, seems inept and primitive.^[38] Our rules follow the modern trend of evidence.

Nor can the alleged inconsistencies between the sworn statement of Gonzales and his testimony in court affect his credibility. Gonzales' testimony jibes on material points. His inconsistencies on minor details of the crime are not earmarks of falsehoods. On the contrary, they show that his testimony is honest and unrehearsed.^[39] Moreover, it is a well-settled rule that affidavits should not be considered as the final and full repository of truth. Affidavits are usually taken ex-parte. They are oftentimes incomplete and inaccurate. Ordinarily in a question-and-answer form, they are usually and routinely prepared in police precincts by police investigators. Not infrequently, the investigator propounds questions merely to elicit a general picture of the subject matter under investigation.^[40] Thus, the fact that the sworn statement of Gonzales (Exhibit "M") did not mention a woman from Tambacan whom they met and brought to a nipa hut and slept with on the night of November 16, 1991, is attributable to the fact that he was not asked about women other than Jessette Tarroza. His line of questioning was as follows:

"x x x

FISCAL LAGCAO:

Q

After 11:00 o'clock that night, where did you and your companions go?

A

: We went to a grassy place in Camague, Iligan City to wait for a certain Jessette Tarroza.

Q

Whose idea was it that you will wait for Jessette Tarroza in that secluded place at Camague, Iligan City?

A

Beroy, sir.

Q

And eventually, did you see this Jessette?

A

Yes, sir.

The presence of another woman came out only in response to questions propounded to him during his cross-examination, viz:

ATTY. FLORES:

Q

Who was that woman killed?

A

Jessette Tarroza.

Q

The same woman brought to the nipa hut?

FISCAL LAGCAO:

I object, your Honor. . .

COURT:

Witness may answer, let him answer.

A

No.

COURT

Proceed.

ATTY. FLORES:

Q

You want to tell the Honorable Court, Mr. Witness that there was another woman in the nipa hut?

A

Yes.

Q

Who was the woman in the nipa hut?

FISCAL LAGCAO:

Immaterial . . .

COURT:

Witness may answer.

A

She is from Tambacan.

Q

Do you know her name.

A

No.

COURT:

In other words, for the Court's clarification, there were two (2) women during that night that you found in the nipa hut that you mentioned?

A

Yes.

COURT:

The other woman was killed - Jessette Tarroza?

A

Yes.

COURT:

The other woman was not killed?

A

No

Q

And this was not known to the authorities, the one that was not killed?

A

No.

Q

What was only mentioned to the authorities was the one that was killed?

A

Yes.

x x x. "[41]

Indeed, there is no rule of evidence that would stop an affiant from elaborating his prior sworn statement at the

trial itself.^[42] Testimonies given during trials are more exact and elaborate for their accuracy is tested by the process of cross-examination where the truth is distilled from half truths and the total lies.

The appellants also contend that Gonzales mixed-up his identification of appellants. In his sworn statement, he mentioned "Beroy, Jimmy and Langga" as his companions on the night of November 16, 1991, and as the ones who killed Jessette Tarroza, while in his direct testimony, he named and pointed at Beroy, Cocoy and Jimmy. A reading of his testimony, however, will reveal the fact that he consistently referred to appellant Jeoffrey Abello as "Beroy", Jimmy Paquingan as "Jimmy" and Christopher Espanola as "Cocoy" or "Langga", viz:

FISCAL LAGCAO:

Q

Mr. Witness, do you know a certain Beroy?

A

Yes.

Q

If this Q: If he is around, will you please point to him? Beroy is in court, will you please identify him by pointing at him?

A

Yes, sir.

Q

Please point to him if he is around.

A

(Witness pointing to a person who when asked identified himself as Jeoffrey Abello.)

Q

Do you know a certain Langga?

A

Yes.

Q

If he is around, will you please identify him by pointing at him?

A

Yes.

Q

Please point at him.

A

(Witness pointing to a person who identified himself as Christopher Espanola.)

Q

Do you know a certain Jimmy?

A

Yes.

A

(Witness pointing to a person who identified himself as Jimmy Paquingan).

FISCAL LAGCAO:

Q

Now, this Cocoy which you are referring to, is he in the courtroom at present?

A

Yes, he is around.

Q

Please identify him if he is around.

A

(Witness pointing to a person who when asked to identify himself answered that he is Christopher Espanola.)

x x x "[43]

The foregoing testimony of Gonzales clearly shows that appellant Christopher Espanola is "Cocoy" or "Langga".

We are not also prepared to disbelieve Gonzales simply because of his inconsistent statement as to the correct sequence the victim was sexually abused by the appellants. It matters little that Gonzales was tentative on who molested the victim first, second, third and last. What matters is that all the appellants molested the dead Tarroza.

The appellants also capitalize on the discrepancy in the identification of the print on the T-shirt worn by appellant Jeoffrey Abello. When asked to recall the clothes worn by Abello that fateful night, Gonzales stated "That one Mercy." In contrast, prosecution witness Romeo Tarroza testified that the light green T-shirt found near the shoes of the victim was printed with "Midwifery" and "ICC". This was corroborated by the testimony of Georgie

Tarroza that he recalled having seen Abello wearing that night a green T-shirt printed with "Midwifery" at the back and "ICC" on the front. We uphold the explanation of the trial court that the discrepancy could be attributed to the fact that Gonzales does not know how to read and write.

We now discuss assigned errors numbers 2 and 3. Appellants contend that the trial court erred when it ruled that the sworn statement of Jimmy Paquingan was voluntarily given by him though he refused to sign the same. Under the Constitution and existing law and jurisprudence, a confession to be admissible must satisfy the following requirements: 1) the confession must be voluntary; 2) the confession must be made with the assistance of competent and independent counsel; 3) the confession must be express; and 4) the confession must be in writing.[44] In *People v. Bandula*,^[45] we ruled that an extra-judicial confession must be rejected where there is doubt as to its voluntariness. The fact that appellant Paquingan did not sign his sworn statement casts serious doubt as to the voluntariness of its execution. It is inadmissible evidence.

Additionally, the claim of appellant Paquingan that he was not assisted by a counsel of his own choice when his affidavit of confession was taken is worth noting. Paquingan's sworn statement was taken on November 25, 1991, at 3 o'clock in the afternoon. At that time, an information for rape with homicide had already been filed against him and his co-appellants. Hence, when Paquingan gave his confession, Paquingan was no longer under custodial investigation^[46] since he was already charged in court. Nonetheless, the right to counsel applies in certain pretrial proceedings that can be considered "critical stages" in the criminal process.^[47] Custodial interrogation before or after charges have been filed and non-custodial interrogations after the accused has been formally charged are considered to be critical pretrial stages.^[48] The investigation by Fiscal Lagcao of Paquingan after the latter has been formally charged with the crime of rape with homicide, is a critical pretrial stage during which the right to counsel applies. The right to counsel means right to competent and independent counsel preferably of his own choice.^[49] It is doubtful whether the counsels given to Paquingan were of his own choice. In her rebuttal testimony, Rosita L. Abapo, declared to wit:

"x x x

ATTY. FLORES:

x x x

Q: In other words, you want to tell this Honorable Court as you stated earlier that it was Fiscal Lagcao who called up for these lawyers? Do you want to tell the Honorable Court that these lawyers were not the counsel of choice of Jimmy Paquingan at that time? They were not the counsel of choice of Mr. Paquingan at that time?

COURT:

Mr. Counsel, this witness does not know what is a counsel of choice. Make it clearer. It was not Mr. Paquingan who asked that Atty. Dalisay, Atty. Echavez and Atty. Cahanap be called to represent him?

WITNESS:

A: Yes, sir.

x x x"[50]

Moreover, we hold that Atty. Cahanap cannot qualify as an independent counsel, he being a Legal Officer of Iligan City. An independent counsel cannot be burdened by any task antithetical to the interest of an accused. As a legal officer of the city, Atty. Cahanap provides legal assistance and support to the mayor and the city in carrying out the delivery of basic services to the people, including the maintenance of peace and order. His office is akin to a prosecutor who undoubtedly cannot represent the accused during custodial investigation due to conflict of

interest.[51] Assigned errors numbered 2 and 3 are therefore ruled in favor of the appellants.

As to the fourth assignment of error, we subscribe to the finding of the trial court that the evidence of the accused-appellants proffers the defense of alibi. Time and again, we have ruled that both denial and alibi are weak defenses which cannot prevail where there is positive identification of the accused by the prosecution witnesses.[52] For alibi to prosper, it is not enough to prove that the accused is somewhere else when the crime was committed but he must likewise demonstrate that he could not have been physically present at the place of the crime or in its immediate vicinity at the time of its commission.[53] In the case at bar, it was not physically impossible for the appellants to be at the crime scene considering the proximity of the place where they claimed they were and the spot where Jessette Tarroza was brutally murdered.

We also reject appellants' claim that the decision of the trial court is void on the ground that the judge who penned the decision, Judge Moslemen T. Macarambon, was not the one who heard and tried the case. We have ruled in *People v. Rayray*, 241 SCRA 1 [1995], that the fact that the judge who heard the evidence is not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not per se render his decision void. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision.[54] For a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision.[55] Such reliance does not violate substantive and procedural due process of law.

We now review the award of damages to the heirs of Jessette Tarroza. When death occurs as a result of a crime, the heirs of the deceased are entitled to the amount of P50,000.00 as indemnity for the death of the victim without need of any evidence or proof of damages.[56] Accordingly, we award P50,000.00 to the heirs of Jessette Tarroza for her death. As for actual damages, we find the award of P50,000.00 proper considering that Romeo Tarroza spent more or less the same amount for the interment and burial of his deceased daughter.[57]

We have also awarded indemnity for the loss of earning capacity of the deceased -- an amount to be fixed by the court considering the victim's actual income at the time of death and his probable life expectancy.[58] The trial court awarded P50,000.00 as compensatory damages. We find the same inadequate considering that Jessette, who was twenty-four (24) years old at the time of her death, was employed as a medical technologist earning P99.00 per day.[59] To compute the award for Jessette's loss of earning capacity, her annual income should be fixed at P39,146.25.[60].

We also find the award of P50,000.00 as moral damages proper considering the mental anguish suffered by the parents of the victim on account of her brutal murder. We likewise uphold the award of P25,000.00 as exemplary damages considering that the killing of Jessette Tarroza was attended by treachery. She was also raped while already lifeless. All these are shocking to conscience. The imposition of exemplary damages against the appellants will hopefully deter others from perpetrating the same evil deed.

IN VIEW WHEREOF, we AFFIRM WITH MODIFICATION the assailed Decision dated November 21, 1994, of the Regional Trial Court (Branch 5) of Lanao del Norte, Iligan City, in Criminal Case No. 3773. Accordingly, the monetary awards granted in favor of the heirs of Jessette Tarroza are modified as follows:

- a) Fifty Thousand (P50,000.00) pesos as indemnity for her death;
- b) Fifty Thousand (P50,000.00) pesos as actual damages;
- c) Six Hundred Fifty Nine Thousand Two Hundred Ninety Four pesos and Fifty centavos (P659,294.50) for loss of earning capacity of said deceased;

- d) Fifty Thousand (P50,000.00) pesos as moral damages; and
- e) Twenty Five Thousand pesos (P25,000.00) as exemplary damages.

Costs against appellants.

SO ORDERED.

Regalado, Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Penned by Hon. Judge Moslemen T. Macarambon.

[2] TSN, Romeo Tarroza, March 25, 1992, pp. 6-7.

[3] TSN, Claro Liquigan, March 25, 1992, pp. 52-53, 55-56.

[4] Exhibits "B" and "B-1".

[5] Exhibits "B" and "B-1".

[6] Exhibit "A".

[7] Exhibit "C".

[8] Original Record, p. 357; Decision, p. 6.

[9] TSN, Antonio Lubang, June 29, 1992, pp. 7-11, 43; Decision, p. 8.

[10] Spelled in the TSN as "Weng-weng".

[11] Supra note 8, TSN, Antonio Lubang, pp. 11-18, 21-22.

[12]Id., pp. 19-23, 49-52.

[13] TSN, Dr. Livey J. Villarin, November 9, 1992, pp. 15-24; Original Record, pp. 365-366.

[14] The Information reads:

"That on or about November 16, 1991, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other by means of force, violence and/or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Jesette Tarroza and against her will; and on the occasion of such Rape, the said accused, armed with knives, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab and wound one Jesette Tarroza, thereby inflicting upon the said Jesette Tarroza the following physical injuries, to wit:

Cardio respiratory Arrest due to
Pneumohemothorax (R) chest
secondary to Multiple stab wounds
of the chest, neck and face
which caused her death.

"Contrary to and in violation of Article 335, as amended by Republic Act No. 2632 and Republic Act 441, with the aggravating circumstances that it was committed during night time and in an uninhabited and/or secluded place, which circumstances facilitated the commission of the offense, and that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission."

- [15] Original Record, p. 8.
- [16] TSN, Fiscal Ulysses V. Lagcao, October 7, 1993, pp. 11-12.
- [17] Id., p. 16.
- [18] Original Record, pp. 93-97.
- [19] Supra note 15, p. 5.
- [20] Original Record, p. 16.
- [21] Id., p. 79-80.
- [22] Id., p. 112.
- [23] TSN, Dr. Chito Rey Gomez, August 12, 1992, pp. 10-26, 47; Original Record, pp. 361-362.
- [24] TSN, Dr. Tomas P. Refe, October 12, 1992, pp. 7-12.
- [25] Id., pp. 13-14; Original Record, pp. 364-365.
- [26] TSN, Joel Gonzales, December 15, 1992, p. 7.
- [27] Id., March 18, 1993, p. 6.
- [28] Supra note 25, p. 22.
- [29] Id., pp. 14-25.
- [30] Supra note 25, March 19, 1993, pp. 14-15, 19-21; April 27, 1993, pp. 5-6.
- [31] Decision, pp. 19-20, 23-24.
- [32] Id., p. 28.
- [33] Id., p. 30.
- [34] Id., pp. 27-28.
- [35] Original Record, p. 88.
- [36] People v. Salomon, 229 SCRA 403 [1994].
- [37] Mueller, Kirkpatrick, Evidence Under the Rules, Text, Cases and Problems, 2nd ed., 1993, p. 524.
- [38] Law of Evidence, Hornbook Series, 1954, ed., pp. 140-141.
- [39] People v. Pacapac, 248 SCRA 77 [1995].
- [40] People v. Gabas, 233 SCRA 77 [1994].
- [41] Supra note 29, March 19, 1993, pp. 14-15.
- [42] Supra note 38.
- [43] Supra note 25, pp. 6 and 18.
- [44] People v. Deniega, 251 SCRA 626 [1995] citing Republic Act No. 7438.

[45] 232 SCRA 566 [1994].

[46] It is the stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who had been taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating statements. It is when questions are initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. (*Escobedo v. Illinois*, 378 U.S. 748 [1964] cited in *People v. Bandula*, 232 SCRA 566 [1994])

[47] R. del Carmen, Rolando V., *CRIMINAL PROCEDURE (LAW and PRACTICE)*, Second Edition 1991, p. 339; *Massiah v. U.S.*, 377 U.S. 201, 250 [1964]; *People vs. Macam*, 238 SCRA 306 (1994).

[48] *Id.*; *Miranda v. Arizona*, 384 U.S. 436 [1966].

[49] Section 12, Article III, 1987 Constitution of the Republic of the Philippines.

[50] TSN, Rosita Abapo, July 28, 1994, pp. 24-25.

[51] *Supra* note 46.

[52] *People v. Lapuz*, 250 SCRA 250 [1995]; *People v. Polangco*, 251 SCRA 503 [1995].

[53] *People v. Jose*, 250 SCRA 319 [1995]; *People v. Lapuz*, 250 SCRA 250 [1995].

[54] *People v. Pacapac*, 248 SCRA 77 [1995].

[55] *People v. Gazmen*, 247 SCRA 414 [1995].

[56] *People v. Teehankee*, 249 SCRA 54, 112 [1995] citing Article 2206 of the New Civil Code.

[57] *Supra* note 2, pp. 21-22.

[58] *Supra* note 58.

[59] *Supra* note 2, pp. 5-6.

[60] *Supra* note 58; Using the equation: Equivalent Monthly Rate = Applicable Daily Rate x 365 divided by 12, thus:

Equivalent Monthly Rate = P99.00 x 365

12

= P3,011.25

Annual Income = P3,011.25 x 12

= P36,134.760 Allowing for reasonable and necessary expenses in the amount of P15,600.00 per annum, her net income per annum would amount to P20,534.76. Hence, using the formula repeatedly adopted by this court: $(\frac{2}{3} \times [80 - \text{age of victim at time of death}]) \times \text{a reasonable portion of the net income which would have been received by the heirs for support}$,^[60]⁶¹ *Id.*, note 58.⁶¹ we fix the award for loss of earning capacity of deceased Jessette Tarroza at P659,294.

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