

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELESTINO D. PAYOT, ACCUSED-APPELLANT.

G.R. No. 119352. June 08, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21, finding accused-appellant Celestino D. Payot guilty of rape with homicide and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties provided by law and to indemnify the heirs of the victim Jocelyn Bosbos in the amount of P50,000.00. Two other accused, Reynaldo Fernandez and Ruben Cuico, were acquitted on the ground of reasonable doubt.

The information against accused-appellant Celestino D. Payot alias "Boy" and his co-accused, Reynaldo Fernandez alias "Baldo" and Ruben Cuico, alleged[2] -

That at 8:00 o'clock, or thereabout, in the evening of January 29, 1991 at Sto. Niño, New Clarin, Bansalan, Davao del Sur, within the jurisdiction of this Court, the above-named male accused conspiring, confederating, helping one another and acting in concert did then and there wilfully, unlawfully and feloniously overpower, hold and employ force upon one Jocelyn Bosbos, a twelve (12) year old girl, by holding her, covering her mouth and choking her to stifle any resistance, and against her will while then being held by accused Fernandez and Cuico, accused Payot have carnal knowledge of the victim, and on the occasion of and by reason of the rape kill the same victim, to the great damage and prejudice of the victim and her legal heirs.

CONTRARY TO LAW.

Upon arraignment, all three accused entered a plea of not guilty, whereupon trial on the merits ensued.

The prosecution presented seven (7) witnesses: Arcadio Tagab, Lt. Filipinas F. Papa, Rolito Sirot, Dr. Annabelle Yumang, Ricarda Bosbos, SPO1 Rogelio Canillo, and Atty. Ernesto De la Cruz. Their testimonies follow:

Arcadio Tagab, farmer and resident of Sitio Sto. Niño, New Clarin, Bansalan, Davao del Sur, testified that he came to know accused-appellant sometime in December 1990 when the latter asked him for help to find work. Tagab and accused-appellant worked together for half a day in the construction of a fishpond owned by one Iking Enduro. Accused-appellant slept in Tagab's house and left the following morning, telling Tagab that he was going to Dadiangas.

At about 10:00 p.m. of January 29, 1991, accused-appellant came back. He was wearing short pants and had no shirt on. Accused-appellant was muddy and his right knee and right forearm were bloodied. Tagab observed that accused-appellant was agitated. Accused-appellant was shaking his head and making sounds with his tongue (panakla) while answering Tagab's questions. When asked why he had blood on his right knee and forearm, accused-appellant said he had fallen into a canal. According to Tagab, before he went to sleep, accused-appellant took money out of his wallet, gave it to Tagab's wife to be given to Tagab's 11-year old daughter, and then stroked

the child's head. The next morning, accused-appellant went to a river nearby to wash his clothes. Tagab later found out that accused-appellant put the washed clothes in his bag which he hung on the fence of a certain Nida Cabales and went to Sitio Sta. Cruz to buy soap. Accused-appellant was in the house of one Fredo when Tagab arrived and said someone was looking for accused-appellant. Upon being thus told, accused-appellant said he was going to see his cousin Washington Talaboc in Lower Mabuhay. At that time, some policemen and members of a vigilante group called Tadtad were already looking for accused-appellant. Instead of going back to Nida Cabales' house to get his bag, accused-appellant fled towards Bansalan Poblacion. However, the Tadtads caught up with him in a sugarcane field and arrested him. Tagab declared that he had no previous quarrel nor any misunderstanding with accused-appellant.[3]

The personal effects seized from accused-appellant, consisting of a Reebok black bag, a pair of "Canadian Club" denim pants, and the left back pocket taken from the said pants, were submitted to the Philippine National Police (PNP) Crime Laboratory, Region X, Camp Evangelista, Cagayan de Oro City for examination. The specimens were found positive for the presence of human blood. A "serological examination" conducted to determine the blood type showed that the stains belong to the AB type of blood group. The three (3) accused were subjected to blood typing. The results showed that accused-appellant had blood type A (Exh. Q), while Reynaldo Fernandez and Ruben Cuico both had blood type O (Exhs. R and S).[4]

Rolito Sirot, resident of Upper Mabuhay, Bansalan, Davao del Sur and a member of the volunteer vigilante group called Tadtad, testified that in the early morning of January 30, 1991, Arcadio Tagab reported to him that the night before, accused-appellant went to his house bloody and wet. Later that morning, a child reported that somebody had been raped and killed and her body had been found near a canal. The hunt was, therefore, on for accused-appellant who was reported last seen in the house of a certain Gantuatco. But when accused-appellant saw the Tadtads, he jumped out of the house and ran towards the river. The tadtads, of whom there were 12, divided themselves into two groups and went after accused-appellant. Sirot was able to apprehend accused-appellant who, after being subdued, said, "What happened? Is it because of the girl being raped? I don't have anything to do with it." Sirot told him, "Because you did it, then you have to answer for it." Accused-appellant was then taken to the Bansalan Police Station.[5]

Dr. Annabelle P. Yumang, rural health physician of Bansalan, Davao del Sur, conducted a post-mortem examination (Exh. Y) at 12:15 p.m. of January 31, 1991 on the cadaver. The results of her examination showed:

FINDINGS: (+) frothy secretions coming out from the nose and mouth

(+) swollen and cyanotic face

(+) lacerations of vaginal canal - on both sides extending up to the perineal area

(-) result for smear for the presence of spermatozoa

She testified that there was a hematoma on the left side of the face that must have been caused by a hard blunt object, a hard fist blow delivered upon the victim or the dropping of a stone on the body of the victim lying face up. There were frothy secretions in the mouth and nose of the victim which could have been caused by drowning. There were scratches on the neck of the victim, four (4) on the left side and one (1) on the right side, possibly inflicted by a person holding violently the neck while in the act of raping or having sexual intercourse with an unwilling victim. There were also some abrasions found on the wrists of the victim possibly caused by a struggle whereby the victim was forcibly held while attempting to free herself from her attacker. There was some blood on both legs of the victim.[6]

Dr. Yumang found that the victim had no underwear and that there were some injuries on her private parts. There

was dried blood around the genitalia. The bloodstains on the dress of the victim came from her vaginal canal. Bloodstains were also found on the anterior portion of the thigh. There were fresh lacerations on the hymen of the victim extending up to the vaginal canal and the perenium. Dr. Yumang claimed she found pubic hair of a man inside the vaginal canal of the victim. Both the minor and major labia were swollen which could have been caused by application of pressure such as sexual intercourse. Dr. Yumang said that the "absence of spermatozoa" (Exh. Y-3) was not an indication that there was no sexual intercourse. She said that the victim died because of massive bleeding from the vaginal canal. She theorized that the seminal fluid might have come out or that there was actually no ejaculation, but it did not necessarily follow that there was no penetration of the vagina.[7] The certificate of death (Exh. T) gave the immediate cause of death of the victim as "asphyxia by drowning" (Exh. T-5) and the time of death to be 1:30 a.m. of January 30, 1991 at Sto. Niño, New Clarin, Bansalan, Davao del Sur.[8]

Ricarda Bosbos, mother of the 12-year old victim, testified that she last saw her daughter at about 6:00 p.m. of January 29, 1991 at the basketball court of Sitio Sto. Niño where the victim was helping her sell "banana cues." She said she was so tired after selling "banana cues" that day, which was the fiesta of Sto. Niño, that she did not notice that her daughter was missing. It was only at about 5 o'clock in the morning of the next day, when there was a commotion following the discovery of a dead body of a child lying by the irrigation canal, that she learned that the victim was her child. After being informed that accused-appellant had admitted the commission of the crime, she went to the Bansalan Police Station and told accused-appellant, "It would not matter if you raped her. You did not kill her [You should have not killed her]." According to Ricarda Bosbos, accused-appellant said, "Forgive me, Nang, for I did not know what I was doing because I was drunk," to which she replied, "You ask forgiveness from the Lord because I could not forgive you." [9]

SPO1 Rogelio Canillo of the PNP Head quarters at Camp Catitipan testified that in the morning of January 30, 1991, he and Station Commander Lt. Vicente Labiaga of the Bansalan Police Station, Pfc. Moreno, Cpl. Navarro of the Intelligence Section, and other members of the patrol team went to the ricefield of Patricio Cartena, following a report that the lifeless body of Jocelyn Bosbos had been found. They found the victim's mouth and lower jaw deformed, her tongue sticking out, indicating that she had been choked. There was a contusion on her neck. SPO1 Canillo said he and Cpl. Navarro stayed behind after the body had been taken to the funeral parlor. They were told by one Ondo Josol that a suspicious-looking person arrived at the house of Arcadio Tagab around 11:30 p.m. of January 29, 1991 and stayed there overnight. They were also told that the following morning, the person washed his clothes at the nearby river. SPO1 Canillo and Cpl. Navarro, therefore, went to the house of Tagab. They found a bag hung on the fence of the house of Elpidio Cabaes (husband of Nida Cabaes). The bag had bloodstains and contained a pair of denim pants and T-shirts. Cabaes told them the bag belonged to accused-appellant and that the latter had left to buy some soap. SPO1 Canillo said he and his companion waited two (2) hours for accused-appellant to come back, but he never did. At around 11:30 a.m., they received information that accused-appellant was seen fleeing to New Talisay, a neighboring barangay, pursued by the barangay people and the Tadtad vigilante group. Accused-appellant was later captured and brought to the Bansalan Police Station. SPO1 Canillo claimed that accused-appellant confessed to him that he had raped the victim and that he had been assisted by two other persons. Canillo said that the following day, the Bansalan police presented a line-up of twenty (20) youths from Sto. Niño, New Clarin to accused-appellant, but he failed to identify his two (2) alleged companions.[10]

According to SPO1 Canillo, on February 3, 1991, the authorities "invited" one Reynaldo Fernandez alias "Baldo," a resident of Lower Mabuhay, Bansalan. He was identified by accused-appellant as one of his companions in committing the crime. Reynaldo Fernandez allegedly admitted that he was with accused-appellant when the latter raped the victim. However, according to SPO1 Canillo, Fernandez claimed that he only held the victim's legs but

did not rape her. SPO1 Canillo said Fernandez demonstrated how he spread the victim's legs while accused-appellant raped her. Fernandez pointed to Ruben Cuico as their companion on the night of the incident. Accused-appellant allegedly dragged the victim to the ricefield. He was the first to rape the victim. He was followed by their companion. Accused-appellant strangled the victim's neck and boxed her on the mouth. On the other hand, according to SPO1 Canillo, Ruben Cuico denied participation in the crime and claimed he lifted the victim out of the canal and put her on the dike after she had been abused. SPO1 Canillo prepared a written report (Exh. W) of the investigation they conducted.

Atty. Ernesto de la Cruz, then a practicing Attorney,[11] testified that he assisted the accused-appellant in making a written confession (Exh. X) on February 7, 1991, at the request of a court aide of Judge Rogelio Narisma of the Metropolitan Circuit Trial Court of Bansalan and Magsaysay. He said he explained to accused-appellant in the Cebuano dialect the contents of the document (Exh. X), after which he asked if accused-appellant was willing to sign the document. Despite the fact that he informed the latter that the death penalty could be imposed on him if he was found guilty, accused-appellant said he was willing to sign. Accused-appellant signed the confession, after which Atty. De la Cruz affixed his signature as administering officer. But Atty. De la Cruz admitted he was not present when the extrajudicial confession was prepared.[12]

Accused-appellant Celestino D. Payot, and his co-accused, Reynaldo Fernandez and Ruben Cuico, took turns testifying in their defense.

Accused-appellant Celestino D. Payot testified that he was living in the mountains of Balutakay. On January 1, 1991, he went to Barangay Sto. Niño, New Clarin, Bansalan, Davao del Sur to look for a job and stayed for two (2) days in the house of Arcadio Tagab. He declared that Tagab was a good friend and he never had any misunderstanding with him. Because of the peace and order situation which forced people to leave Balutakay, he went back to Bansalan on January 29, 1991. He stayed at Bansalan Poblacion up to 5:30 p.m. He confirmed that he later spent the night in the house of Arcadio Tagab in Sitio Sto. Niño, New Clarin, Bansalan. He said, however, that he arrived there at around 8:00 p.m. and not at 10:00 p.m. as Tagab had said. He admitted he had blood on his pants but he said it was because he injured his arm while jumping over the fence surrounding Tagab's house. He described the fence as made of madre de cacao trees planted around the yard and crisscrossed with bamboo slats. But he denied that he was wearing short pants and that he did not have any shirt on when he arrived in Tagab's house. Accused-appellant said that upon arriving, he called out for Tagab and identified himself as Boy Payot. Tagab peeped through the window of his house. Accused-appellant said that instead of waiting for Tagab to open the gate, he (accused-appellant) jumped over the fence and hurt himself in the process. He rubbed his elbow on his right thigh twice and on his right waist once in order to wipe the blood away. The long pants found in his bag also had bloodstains. Accused-appellant claimed that the bloodstains on the front were caused by his wiping the blood off his elbow, but he did not know where the bloodstains on the back part of the pants came from. He explained that his pants were wet because he fell into the canal while on his way to the house of Tagab. Accused-appellant said he slept at about 9:00 p.m., woke up at 6:00 a.m. the following day, and then washed his clothes in the river about 300 meters from the house of Tagab. He put the clothes in his bag which he left by the fence of Nida Cabales' house because he was going to buy some soap in Sta. Cruz. Along the way, Tagab saw him and told him that some people were looking for him. He proceeded to the house of his cousin, Washington Talaboc, to get some soap, but before reaching the place, he was arrested. He was taken to the Bansalan Police Station where he was investigated at about 9:00 a.m. the following day by Patrolmen Moreno and Abagon. When he denied Knowledge of the rape-slay, the police officers threatened to cut off his penis. He claimed that police officer Florante Jabonero banged his (accused-appellant's) face against the iron bar of the cell which is why he has a scar on his left eyebrow. The police threatened him that if he did not sign a confession, he would be taken to the mountains of Balutakay and he would be accused of being an NPA. He complained that he was investigated

without the assistance of counsel. He said police officers Moreno and Abagon prepared a sworn statement/affidavit and took him to one Atty. Paguican who explained to him in the Cebuano-Visayan dialect the contents of the affidavit. He declared that he did not sign the sworn affidavit because its contents were not true. He said he finally signed the affidavit before Atty. Ernesto de la Cruz because he could no longer endure the maltreatment of the police officers. Accused-appellant stated he did not know Reynaldo Fernandez and Ruben Cuico. He came to know them for the first time inside the Bansalan Municipal Jail. He only implicated the two because all of them had been arrested by the police officers.[13]

Venerando Necesario, farmer and a resident of New Visayas, Matanao, Davao del Sur, testified that he had known Reynaldo Fernandez since 1972. At about 6:00 p.m., on January 29, 1991, after Necesario had supper with his family, Fernandez came and together they attended the disco, it being the fiesta of the Sto. Niño. He saw Ruben Cuico and Boy Bosbos, the brother of Jocelyn Bosbos, inside the disco. They stayed at the disco up to 4:00 a.m. and went home together. He claimed that Fernandez used to work for him as tractor operator on the farm. He knew also the parents of the victim Jocelyn Bosbos and never had any misunderstanding with them in the past.[14]

Reynaldo Fernandez, resident of Sitio San Roque, Mabuhay, Bansalan, Davao del Sur, testified in his behalf. He said that he operated farm equipment, owned by one Nicolas "Kuling" Nazareno, together with Venerando Necesario, Carlito, and Rommel. On January 29, 1991, at about 8:00 p.m., he was inside the disco with Necesario Venerando and stayed there up to 4:00 a.m. of January 30, 1991. On February 3, 1991, at about 3:00 p.m., while he was in his house, he was told by a child that a person with a firearm was looking for him. It turned out it was SPO1 Rogelio Canillo who had two companions. He claimed he was taken to a store in Sto. Niño where he was made to drink liquor. After he got drunk, they took him in a patrol jeep to the municipal hall where he was interrogated by police officer Florante Jabonero. Jabonero took him to a room after boxing him at the right side of his ribs. Another police officer joined in investigating him. When he denied knowledge of the crime, they cocked their firearms and threatened to kill him. He was tortured for about twenty (20) minutes. Afterwards, Jabonero turned to accused-appellant whom he beat, and then fired a shot although nobody was hit. He was never assisted by a lawyer during the investigation at the police station. After staying in jail for about twenty (20) days, he was allowed to go home. But thirty-five (35) days later he was rearrested and detained in the provincial jail. He denied knowing accused-appellant and Ruben Cuico and claimed that he came to know them only when he met them inside the jail. He said that he does not know how to read and write and that he only finished Grade I.[15]

Ruben Cuico, resident of New Visayas, Matanao, Davao del Sur, testified that on January 29, 1991, he attended the fiesta of Sto. Niño, New Clarin, Bansalan, at about 10:30 a.m. with two other companions, named Delfin and Juanito. They proceeded to the disco that night and stayed there from 7:00 p.m. up to about 3:00 a.m. the following day. On January 30, 1991, he learned from a neighbor that Jocelyn Bosbos had been raped and killed on the evening of January 29, 1991. At about 4:30 p.m. of February 3, 1991, he was arrested by three (3) police officers and taken to the Bansalan Police Station where he was investigated. He denied knowing accused-appellant. As he refused to be put in jail, a police officer, Florante Jabonero, kicked him on the back and struck him on the chest. At around 1:00 a.m., Jabonero took him out of his cell and dragged him to the rest room. He was required to strip and sit on the toilet bowl. Jabonero poked his pistol on Cuico and said, "You, you are really a bad person. It takes a long time for you to confess but you knew these people." But because Cuico insisted he did not know anything about the incident, Jabonero boxed him on the chest three (3) times. Jabonero pulled some of his pubic hair and made him swallow it. Jabonero told him, "Do not spit it out because if you will do that, I will cut off your sexual organ." As Cuico nonetheless spat out the pubic hair from his mouth, Jabonero struck him on the chest twice and ordered him to eat the pubic hair otherwise, he would be killed. Jabonero then scooped some water from the toilet bowl and forced Cuico to swallow what he had in his mouth. When he was through,

Jabonero let Cuico go back to the cell, but not after warning him that, if he squealed, Jabonero would come back for him. Cuico denied he had told SPO1 Canillo that he was the one who took the body of Jocelyn Bosbos from the canal and placed it on the dike. He denied knowing accused-appellant and Reynaldo Fernandez. He said that he first met them on February 3, 1991 inside the Bansalan Municipal Jail. He came to know Arcadio Tagab only when the latter went to the jail. Throughout the investigation, Cuico was never assisted by a lawyer. He was only able to finish up to Grade II.[16]

On July 14, 1994, the trial court rendered its decision convicting accused-appellant Celestino D. Payot of rape with homicide but acquitting the two (2) other accused, Reynaldo Fernandez and Ruben Cuico. The dispositive portion of its decision reads as follows:

WHEREFORE, premises considered and in pursuit of the ends of justice, this Court hereby finds accused Celestino Payot guilty beyond reasonable doubt of the crime of Rape with Homicide as defined and penalized under Art. 335 of the Revised Penal Code as amended and hereby sentences the said Celestino Payot to a penalty of Reclusion Perpetua with the accessories of the law. He is hereby ordered to indemnify the heirs of Jocelyn Bosbos the sum of P50,000.00 pursuant to present jurisprudence.

Considering the heinous crime that Celestino Payot had committed, the Court could have sentenced him to the supreme penalty of death but for the fact that at the time of the commission of the crime, the death penalty has not as yet been restored by Congress.

For failure of the prosecution to prove the guilt of the accused Ruben Cuico and Reynaldo Fernandez beyond reasonable doubt, both accused are hereby ACQUITTED of the charge and their immediate release is hereby ordered unless the said Reynaldo Fernandez and Ruben Cuico are detained for some other legal causes. Accused Celestino Payot is entitled to full credit of the preventive imprisonment he had undergone while under detention if he has signed his conformity to abide by the rules and regulations imposed upon inmates by the Provincial authorities of the Davao del Sur Provincial Jail, otherwise, he shall be entitled only to four-fifth of the preventive imprisonment he had undergone.

SO ORDERED.[17]

Hence, this appeal. Accused-appellant contends that-

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION EVIDENCE BUT RATHER ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.
- THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WITH HOMICIDE DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH THE NEEDED QUANTUM OF EVIDENCE FOR CONVICTION.

First. Contrary to accused-appellant's contention, the trial court did not rely on the weakness of the evidence for the defense but on the evidence for the prosecution which establishes beyond reasonable doubt the guilt of accused-appellant. To be sure, the trial court did not base its findings on the extrajudicial confession of accused-appellant, for indeed it is inadmissible in evidence for being in violation of Art. III, §12 (1) of the Constitution, which requires that persons under investigation for the commission of an offense shall be informed of their right to remain silent and to have competent and independent counsel preferably of their own choice. The trial court may have cited admissions made by accused-appellant in the course of his testimony in court, but that is not the same as relying on the weakness of the defense evidence rather than on the strength of the prosecution evidence.

Indeed, accused-appellant's admissions confirm in many respects the testimonies of some of the prosecution

witnesses as the following portion of the trial court's decision shows:[18]

The Court had closely noted from the testimony of accused Celestino Payot that he is a person without a permanent place of residence. He declared that in the first and second week of January, 1991 he was staying in the mountains in Balutakay. That on January 1[st], 1991, he went to Barangay Sto. Niño, Bansalan to look for a job and stayed for two days in the house of one Henoy Amaba at Balutakay for twenty (20) days. In the evening of January 29, 1991, he spent the night in the house of Arcadio Tagab whose house is located at Barangay Sto. Niño, New Clarin, Bansalan, arriving at Tagab's house at about 8:00 o'clock in the evening. But according to Arcadio Tagab, Celestino Payot arrived at his residence at about 10:00 o'clock in the evening of January 29, 1991 (TSN, pp.8-9, August 5, 1991). Now, why was Payot naked above the waist and his pant wet and bloody? Why was he having wounds on his right knee and right forearm? Why was his body wet including his hair? Why was he acting queerly, was jittery and unusually shaking his head and making sounds with his tongue (panakla) (testimony of Arcadio Tagab, TSN, pp. 9-11, August 5, 1991). Why did he not come out and confront the Tadtad group and/or Villagers of Sto. Niño as to why were they looking for him instead of hiding in the sugarcane field where he was arrested by the Tadtad group after coming out therefrom, if he really has not committed something wrong? Only the wicked fleeth but the innocent stays as bold as a lion. His physical appearance and his unusual and queer behavior when he arrived at the residence of Arcadio Tagab portrayed in bold relief the picture of a man who was conscience-stricken because of the heinous crime he had committed. His act of shaking his head and making sounds with his tongue was an outward physical manifestation of a man enveloped in a feeling of remorse. These and his being muddy, naked above the waist with wet and blooded pants, with wounds at his right forearm and right knee, were telltale signs of his having sexually abused and killed Jocelyn Bosbos. It should be noted that Jocelyn Bosbos was raped and killed in a rice paddy where there was irrigated water and the cause of death of the victim was "asphyxia by drowning" (Exh. T). Celestino Payot was so conscience-stricken that in front of Ricarda Bosbos, mother of the victim while Payot was inside the police station, he asked for forgiveness from Ricarda Bosbos as "he was drunk at the time and did not know what he was doing." (TSN, testimony of Ricarda Bosbos, p. 18, February 20, 1992)

The foregoing considered, this Court is morally certain of the guilt of accused Celestino Payot beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error produces absolute certainty. Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind." (Rule 133, Sec. 2 Rules on Evidence)

The Court in arriving at this decision did not for a moment consider the extrajudicial confession of Celestino Payot as the same was taken without the assistance of counsel and therefore violative of the person's constitutional right.

Because of its unique opportunity to observe the witnesses and their demeanor especially under cross-examination, the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court.[19] The demeanor of the person on the stand can draw the line between fact and fancy. As has been said, the forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch - this can reveal if the witness is telling the truth or lying through his teeth. And once prosecution witnesses are afforded full faith and credit, the defense's version necessarily stands discredited.[20]

Second. There is sufficient circumstantial evidence to support the trial court's finding that accused-appellant raped and killed the victim Jocelyn Bosbos. Rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. The complex crime of rape with homicide is even more difficult to prove because the victim can no longer testify. In such cases, the evidence must necessarily be circumstantial.[21] Under the Rules of Court, circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and, (c) the combination of all

circumstances is such as to produce conviction beyond reasonable doubt.[22] Facts and circumstances consistent with guilt and inconsistent with innocence constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[23]

In the case at bar, the following circumstances constitute an unbroken chain pointing to accused-appellant as the author of the crime in question:

- The victim Jocelyn Bosbos was last seen alive by her mother Rebecca Bosbos at about 6:00 p.m. of January 29, 1991 within the basketball premises of Sitio Sto. Niño.
- She was later found dead on a dike near the ricefield in Sitio Sto. Niño, New Clarin. It was estimated she died at about 1:30 a.m. of January 30, 1991, due to massive bleeding from the vaginal canal and the immediate cause of her death was "asphyxia by drowning."
- The post-mortem examination conducted on January 31, 1991 showed frothy secretions coming from the nose and mouth of the victim, indicating she had been strangled, and vaginal lacerations with blood around the genitalia caused by the application of pressure, such as sexual intercourse.
- Accused-appellant arrived in Arcadio Tagab's house in Sitio Sto. Niño, New Clarin at about 10:00 p.m. of January 29, 1991. Although accused-appellant claimed he arrived in Tagab's house at 8:00 p.m., the testimony of Tagab that accused-appellant arrived at 10:00 p.m. is more probable. As accused-appellant himself said, when he arrived, he had to call out and identify himself before Tagab opened the window to let accused-appellant know Tagab had heard him. It seems that the owner of the house had already retired for the night and there were no more lights on. Accused-appellant himself said it took some time for Arcadio Tagab to let him in, which could only mean that accused-appellant arrived quite late at night. Apparently, accused-appellant insisted it was just 8:00 in the evening when he arrived in Tagab's house to avoid suspicion that he was in the vicinity of the place of the crime at about the time of its commission.
- Accused-appellant was muddy while his right knee and right forearm were bloodied. He claimed he was injured when he allegedly jumped over the fence of Tagab's house. But the pair of denim pants (Exh. F) found inside his bag were also bloodstained. These were not the pants that Tagab said accused-appellant was wearing when he arrived, because according to Tagab accused-appellant was wearing short pants. Apparently, accused-appellant's purpose in insisting that he was wearing the long pants was to explain the presence of bloodstains in them consistent with his claim that the bloodstains came from injuries to his right elbow which he allegedly sustained while jumping over the fence. However, this pair of pants also had bloodstains in the back parts which could not have come from accused-appellant's injured right forearm.
- The precipitin test showed that the specimen taken from accused-appellant's pants and bag was positive for human blood. The blood type was AB. Accused-appellant's blood type is A, that of Reynaldo Fernandez is O as is also that of Ruben Cuico. The foregoing give the lie to accused-appellant's claim that the bloodstains on the front of his pants were caused by his wiping the blood off his injured elbow.
- He washed his clothes in the river to remove the bloodstains in them.
- Instead of hanging out his clothes after washing them, he put them back in his bag which he left hanging on the fence of a house. Moreover, only after washing them did he attempt to buy soap.
- His pants were not only muddy but wet because he said he fell into a canal. It is significant that the body of Jocelyn Bosbos was found in the canal near the ricefield. Accused-appellant was nervous, he was shaking his head and constantly making sounds with his tongue (panakla) while answering Tagab's questions.
- Upon being informed by Tagab that someone was looking for him, accused-appellant immediately left and said he was going to see his cousin, Washington Talaboc, in Lower Mabuhay.

- Accused-appellant did not go back to get his clothes which he left inside a bag near Cabales' house as he tried to elude the police led by SPO1 Rogelio Canillo and the Tadtad group pursuing him. He was finally arrested in Bansalan Poblacion.

- When confronted by the victim's mother, Ricarda Bosbos, accused-appellant told her, "Forgive me, Nang, for I did not know what I was doing because I was drunk."

Arcadio Tagab's claim that he had no misunderstanding with accused-appellant was confirmed by the latter. He and accused-appellant worked in the construction of a fishpond from December 4 to 5, 1989. Accused-appellant stayed in Tagab's house during that time. Tagab had no reason, therefore, to testify falsely against accused-appellant. Tagab said when he saw accused-appellant muddy and bloody and his pants wet, he suspected something had happened to accused-appellant. The latter's explanation that he got wet after falling into a canal did not fully convince him especially because accused-appellant appeared fidgety and showed signs of nervousness, constantly making sounds with his tongue while answering questions concerning his appearance. For this reason, Tagab reported accused-appellant to Rolito Sirot, a member of the vigilante group called Tadtad.

Rolito Sirot testified that accused-appellant fled upon learning that policemen and members of the Tadtad group were looking for him. The testimonies of Tagab and Sirot dovetail in material points.

Accused-appellant himself admitted he went to the house of Tagab on January 29, 1991 although he insisted he arrived there about 8:00 p.m. He stayed there overnight. He woke up at 6:00 a.m. the following day and washed his clothes in a nearby river to remove the blood stains. Afterwards, he put his newly washed clothes inside his bag which he hung on the fence of a house owned by Nida Cabales in order to get some soap. When Tagab informed him that some people were looking for him, he fled to the house of his cousin, Washington Talaboc, where he was eventually apprehended. His actions bespeak of guilt and not of innocence. Flight has been held to be an evidence of guilt.[24] Thus, the established facts and circumstances constitute and fairly support the conclusion that accused-appellant was the author of the crime.[25]

It has not been shown that the prosecution witnesses, particularly Arcadio Tagab, were impelled to testify against accused-appellant by reason of ill motives.[26] Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their testimonies are entitled to full faith and credit.[27] In the case at bar, accused-appellant in fact admits that he and Tagab were good friends and that there had been no previous misunderstanding or quarrel between them.[28]

Third. Accused-appellant's defense is alibi. He claims that at the time of the alleged crime, he was in the house of Tagab at Sto. Niño, New Clarin, Bansalan, Davao del Sur, having arrived there at about 8:00 p.m. of January 29, 1991. But, as already stated, this is belied by the testimony of Tagab that accused-appellant actually arrived in his house at about 10:00 p.m. Indeed, the occupants of the house had already retired for the night which is why it took some time for Tagab to acknowledge accused-appellant's call. Accused-appellant himself said that Tagab did not open the gate at once but had to peep through the window in his house to see who was calling before letting him know that he had been recognized. Accused-appellant could not wait for the gate to be opened. He vaulted over the fence in order to get into the premises.

For the defense of alibi to prosper, it is not enough to prove that accused-appellant was somewhere else when the offense was committed, it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[29] Considering the fact that he necessarily had to pass over the dike in the ricefield where the victim was found dead before he reached Tagab's house, accused-appellant could have been somewhere near the place between 6:00 p.m. (when the victim was last seen alive) and 10:00 p.m. (when he arrived at Tagab's house). In *People v. Cañete*[30]

it was held:

Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (People v. Lumantas, 28 SCRA 764 [1969]), or three (3) kilometers (People v. Binsol, 100 Phil. 713 [1957]) or even five (5) kilometers (People v. Manabat, 100 Phil. 603 [1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (People v. Aparato, 80 Phil. 199 [1948]).

Fourth. The trial court awarded the heirs of the victim civil indemnity of P50,000.00. This should be increased to P100,000.00 in accordance with the ruling in People v. Robles,[31] in which it was stated:

With regard to the civil indemnity, the court hereby rules that the victim of rape with homicide should be awarded the amount of P100,000.00. Prevailing judicial policy has authorized the mandatory award of P50,000.00 in case of death, and P50,000.00 upon the finding of the fact of rape. Also, under recent case law the indemnity for the victim shall be in the increased amount of P75,000.00 if the crime of rape committed is effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws [R.A. No. 4111 and R.A. No. 7659]: Thus, if homicide is committed by reason or on the occasion of the rape, indemnity in the amount of P100,000.00 is fully justified and properly commensurate with the seriousness of the said special complex crime.

An award of P50,000.00 for moral damages should likewise be made in favor of the heirs of the victim in accordance with recent rulings of this Court.[32]

WHEREFORE, the decision of the Regional Trial Court of Bansalan, Davao del Sur, Branch 21 is AFFIRMED with the MODIFICATION that the award of civil indemnity is increased to P100,000.00 and, in addition, that the heirs of the victim are awarded P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.
Puno, J., on official leave.

[1] Per Judge Rodolfo A. Escovilla.

[2] RTC Records, p.1.

[3] TSN, pp. 4-20, 25, Aug. 5, 1991; See Sworn Statement of Arcadio Tagab dated February 5, 1991 (RTC Records, p. 5).

[4] Testimony of Lt. Filipinas F. Papa, forensic analyst of the PNP, TSN, pp. 4-5, 14-16, 19, Nov. 19, 1991.

[5] TSN, pp. 3-8, 12-13, Dec. 2, 1991.

[6] TSN, pp. 4-10, Dec. 18, 1991.

[7] Id., pp. 10-17, 26-28.

[8] Id., pp. 16-17.

[9] TSN, pp. 13-18, Feb. 20, 1992.

[10] TSN, pp.4-14, March 12, 1992.

- [11] Now Judge of Municipal Circuit Trial Court (MCTC) of Hagonoy-Matanao, Davao del Sur.
- [12] TSN, pp. 3-18, Aug. 7, 1992.
- [13] TSN, pp. 4-52, Oct. 1, 1992.
- [14] TSN, pp. 4-16, Oct. 22, 1992.
- [15] TSN, pp. 3-31, Nov. 12, 1992.
- [16] TSN, pp. 3-26, March 18, 1993; pp.3-11, Sept. 3, 1993.
- [17] Rollo, pp. 29-30.
- [18] RTC Decision, Rollo, pp. 28-29.
- [19] People v. Maglente, G.R. Nos. 124559-66, April 30, 1999; People v. Banela, G.R. No. 124973, January 18, 1999, People v. Cogonan, 262 SCRA 693 (1996); People v. Cura, 240 SCRA 234 (1995).
- [20] People v. Sanchez, G.R. Nos. 121039-45, January 25, 1999, citing People v. Espinosa, 180 SCRA 393 (1989).
- [21] People v. Robles, G.R. No. 124300, March 25, 1999.
- [22] Rule 133, §4.
- [23] People v. Mahinay, G.R. No. 122485, February 1, 1999; People v. Alberca, 257 SCRA 613 (1996); People v. Abitona, 240 SCRA 335 (1995).
- [24] People v. Alberca, 257 SCRA 613 (1996).
- [25] People v. Bionat, 278 SCRA 454 (1997); People v. Grefaldia, 272 SCRA 591 (1997); People v. Salvame, 270 SCRA 766 (1997).
- [26] TSN, pp. 20-22, Aug. 5, 1991.
- [27] People v. Bergante, 286 SCRA 629, 642 (1998); People v. Jumamoy, 221 SCRA 333 (1993); People v. Estrellanes, 239 SCRA 235 (1994); People v. Hubilla, 252 SCRA 471, (1996).
- [28] TSN, pp. 29-31, Oct. 1, 1992.
- [29] People v. Verde, G.R. No. 119077, February 10, 1999; People v. Añonuevo, 262 SCRA 22 (1996); People v. Pija, 245 SCRA 80 (1995).
- [30] 287 SCRA 490, 500 (1998).**
- [31] G.R. No. 124300, March 25, 1999.
- [32] People v. Robles, *ibid*; People v. Prades, G.R. No. 127569, July 30, 1998.

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