

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JEMREICH MATIGNAS Y SAN PASCUAL, NOEL DE GUZMAN Y CRUZ, ALBERTO BAUTISTA JR. Y CAPANZA AND RUEL TARRE Y GONZALES, ACCUSED,

G.R. No. 126146. March 12, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The killing of the victim and appellants' authorship thereof have been proven beyond reasonable doubt by circumstantial evidence. However, the corpus delicti of the alleged rape has not been established. Hence, appellants may be convicted only of murder (qualified by abuse of superior strength), not rape with homicide; and sentenced to reclusion perpetua, not death.

Statement of the Case

For automatic review by this Court is the October 3, 1995 Decision[1] of the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 75), in Criminal Cases Nos. 2596-2600, finding Appellants Jemreich[2] Matignas and Noel De Guzman guilty beyond reasonable doubt of rape with homicide and sentencing them to death. The dispositive portion of the Decision reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered by this Court as follows:

“In Criminal Case No. 2596:

“a) finding accused Noel de Guzman y Cruz and accused Jeimrich (Jemreich/Gemreich) Matignas y San Pascual GUILTY beyond reasonable doubt of the crime of Rape with Homicide penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and, there being present the aggravating circumstances of nocturnity, abuse of superior strength, and that the crime was committed by two persons, they are hereby sentenced to suffer the penalty of death;

“b) finding accused Alberto Bautista, Jr. y Capanza and Ruel (Rhoel/'Taweng) Tarre y Gonzales NOT GUILTY of the crime charge[d] for failure of the prosecution to prove their guilt beyond reasonable doubt;

“c) ordering accused Noel de Guzman y Cruz and accused Jeimrich (Jemreich/Gemreich) Matignas y San Pascual to indemnify the heirs of the victim in the total amount of P2,127,543.85;

“In Criminal Case No. 2597:

“a) finding accused Jeimrich (Jemreich/Gemreich) Matignas GUILTY beyond reasonable doubt of the crime of Rape with Homicide penalized under Article 335 of the Revised Penal Code, as amended, by Republic Act No. 7659, and, there being present the aggravating circumstances of nocturnity and abuse of superior strength, he is hereby sentenced to suffer the penalty of death;

“In Criminal Case No. 2598:

“a) finding accused Alberto Bautista, Jr. y Capanza NOT GUILTY of the crime charged for failure of the

prosecution to prove his guilt beyond reasonable doubt;

“In Criminal Case No. 2599:

“a) finding accused Ruel (Rhoel/’Taweng’) Tarre y Gonzales NOT GUILTY of the crime charge[d] for failure of the prosecution to prove his guilt beyond reasonable doubt.

“In Criminal Case No. 2600:

“a) finding accused Noel de Guzman y Cruz GUILTY beyond reasonable doubt of the crime charge[d], and, there being present the aggravating circumstances of nocturnity and abuse of superior strength, is hereby ordered to suffer the penalty of death;

“The cases against Noel Liit, whose identity and whereabouts are still unknown, are hereby ordered archived pending his arrest.”[3]

Appellants, together with their co-accused -- Alberto Bautista Jr., Ruel Tarre and one alias “Noel Liit” whose true identity and whereabouts remain unknown -- were charged with rape with homicide in five separate Informations[4] all dated July 28, 1994, filed by State Prosecutor Linda L. Malenab-Hornilla. Docketed as Criminal Cases Nos. 2596, 2597, 2598, 2599 and 2600, the Informations were almost uniformly worded thus:

Crim. Case No. 2596-94

“That on or about the 10[th] day of January, 1994 in the Municipality of Rodriguez, Province of Rizal Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one alias Noel “Liit” whose true identity and present whereabouts is still unknown and mutually helping and aiding one another, with lewd designs and by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with one Rosario “Cherry” Olalez against her will and consent; that on the occasion of said rape, the above-named accused taking advantage of their superior strength, nocturnity and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and strangle with a rope said Rosario “Cherry” Olalez which directly caused her death.”[5]

Crim. Case No. 2597-94

“That on or about the 10[th] day of January, 1994 in the Municipality of Rodriguez, Province of Rizal [P]hilippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Noel De Guzman y Cruz, Alberto Bautista, Jr. y [Capanza], Ruel Tarre y Gonzales and one alias Noel “Liit” whose true identity and present whereabouts is still unknown and mutually helping and aiding one another, with lewd designs and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Rosario “Cherry” Olalez against her will and consent; that on the occasion of said rape, the above-named accused taking advantage of their superior strength, nocturnity and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and strangle with a rope said Rosario “Cherry” Olalez which directly caused her death.”[6]

Crim. Case No. 2598-94

“That on or about the 10[th] day of January, 1994 in the Municipality of Rodriguez, Province of Rizal Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Gemreich Matignas y San Pascual Noel De Guzman y Cruz, Ruel Tarra y Gonzales and one alias Noel “Liit” whose true identity and present whereabouts is still unknown and mutually helping and aiding one another, with lewd designs and by means of force threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Rosario “Cherry” Olalez against her will and consent that on the occasion of said rape, the above-named accused [;] taking advantage of their

superior strength, nocturnity and with intent to kill, did then and there willfully unlawfully and feloniously attack, assault and strangle with a rope said Rosario “Cherry” Olalez which directly caused her death.[7]

Crim. Case No. 2599-94

“That on or about the 10[th] day of January, 1994 in the Municipality of Rodriguez, Province of Rizal Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Gemreich Matignas y San Pascual Noel De Guzman y Cruz, Alberto Bautista, Jr y Capanzana and one alias Noel “Liit” whose true identity and present whereabouts is still unknown and mutually helping and aiding one another, with lewd designs and by means of force threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Rosario “Cherry” Olalez against her will and consent; that on the occasion of said rape, the above-named accused taking advantage of their superior strength, nocturnity and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and strangle with a rope said Rosario “Cherry” Olalez which directly caused her death.[8]

Crim. Case No. 2600-94

“That on or about the 10[th] day of January, 1994 in the Municipality of Rodriguez, Province of Rizal Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Gemreich Matignas y San Pascual Alberto Bautista, Jr y [Capanza], Ruel Tarra y Gonzales and one alias Noel “Liit” whose true identity and present whereabouts[s] is still unknown and mutually helping and aiding one another, with lewd designs and by means of force threats and intimidation, did then and there willfully unlawfully and feloniously have sexual intercourse with one Rosario “Cherry” Olalez against her will and consent; that on the occasion of said rape, the above-named accused taking advantage of their superior strength, nocturnity and with intent to kill, did then and there willfully unlawfully and feloniously attack, assault and strangle with a rope said Rosario “[C]herry “ Olalez which directly caused her death.[9]

Duly assisted by their respective counsels, appellants and their co-accused -- with the exception of Noel Liit who remained at large -- pleaded not guilty to the charge during their arraignment on August 17, 1994.[10] Trial on the merits proceeded in due course. Thereafter, the trial court rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief,[11] the Office of the Solicitor General presents the prosecution’s version of the facts as follows:

“On January 10, 1994, at past 2:00 o’clock in the morning, Herminia Olalez y Linco woke up so that she could fetch her daughter, the victim Rosario ‘Cherry’ Olalez, who would be coming home from her work at the Cravings Restaurant in Katipunan Avenue, Quezon City. Shortly before 3:00 o’clock in the morning, Herminia and her other daughter Yolanda proceeded to the waiting shed at the corner of A. Bonifacio and J.P. Rizal Street near the Smokey’s Fastfood Chain in Barangay Balite, Montalban, Rizal, which was about three (3) minutes walk from their house. They stayed at the waiting shed waiting for Cherry until past 4:00 o’clock in the morning but she did not arrive. So they decided to go home because Herminia had to cook food for Yolanda who had to leave for work later.

“Soon thereafter, Tita Bautista, a neighbor, called Herminia to ask her if Cherry had already arrived, because she found in the alley some clothes and an identification card belonging to Cherry. Immediately, Herminia’s two (2) children, Josephine and Roberto went outside to verify, Tita’s husband told them ‘dito ninyo tingnan manghiram kayo ng flashlight dito ninyo tignan dito parang meron kaming narinig na hinihilang parang basura.’ There, Josephine and Roberto saw their sister Cherry already dead. Upon hearing it, Herminia fainted.

“At around 5:35 o’clock in the morning, SPO2 Rolando Santos of the Montalban Police Station was informed

of the incident and he proceeded to the vacant lot where the body was found. There he found the victim's pants, underwear, detached lock of jewelry and detached clip of pants. He estimated the vacant lot to be around 25 to 30 meters from A. Bonifacio Street. While interviewing bystanders, a certain Marcelo San Pascual told him that the gate of Eulogio Rodriguez Elementary School [ERES] along the side of A. Bonifacio Street was open. However, when PO2 Santos proceeded to ERES to verify, it was already locked. Later, at the station, a brother of the victim brought to him a bullcap and a certain Mrs. Uaje also turned over to him a picture booklet, which she allegedly recovered near the scene of the crime.

"At 12:00 o'clock noon, Dr. Florante Baltazar, former Chief of the PNP Crime Laboratory Service, conducted a postmortem examination of the cadaver of the victim at the Morgue of Santiago Funeral Parlor, San Mateo Rizal. After completing his examination, Dr. Baltazar prepared Medico-Legal Report No. M-0069-94 dated January 19, 1994, which disclosed the following findings:

'Fairly developed, fairly nourished found cadaver in rigor mortis with postmortem lividity over the different parts of the body. Conjunctivae were pale. Lips and nailbeds were cyanotic, with petechial hemorrhage over the face and sandy particles at the pubic region.

'EXTERNAL INJURIES: NECK, TRUNK AND EXTREMITIES:

1)

multiple abrasions, neck, bisected by the anterior midline, measuring 13 cms x 15 cms.

2)

linear abrasion, anterior right neck, 7 cms from anterior midline measuring 0.9 cm x 0.1 cm.

3)

abrasion, left [supraclavicular region], 7.5 cms from anterior midline, measuring 0.9 cm x 0.5 cm.

4)

[this paragraph is not legible]

5)

multiple linear abrasions, right iliac region, 8 cms from anterior midline, measuring 4 cms x 2.5 cms.

6)

multiple abrasions, posterior right shoulder, measuring 4 cms x 4.5 cms., 16 cms. from posterior midline.

7)

multiple abrasion, left elbow, along its posterior midline, measuring 5.5 cms. x 3 cms.

8)

abrasion, right elbow, along its posterior midline, measuring 0.9 cm x 0.5 cm.

9)

abrasion dorsal aspect of the right foot, 3 cms. [m]edial to its anterior midline, measuring 1 cm x 0.8 cms.

10)

multiple abrasions, dorsal aspect of the left foot just medial to its anterior midline, measuring 0.8 cm x 0.6 cm.

11)

linear abrasion, dorsal aspect of the left foot, 3.5 cm. medial to its anterior midline, measuring 0.6 cm x 0.2 cm.

‘INTERNAL FINDINGS:

1)

Fractured; thyroid cartilage with surrounding hematoma.

2)

The larynx was cyanotic, esophagus and trachea were congested with petechial hemorrhages.

3)

Removed from the stomach about 1/4 glass of brownish fluid.

4)

Hymen showed deep laceration at 6 o'clock and hollow at 3 and 9 o'clock.

5)

vaginal smear was negative for spermatozoa

‘CONCLUSION:

‘Cause of death is cardio-respiratory arrest due to shock secondary to asphyxia by strangulation.

‘TIME AND DATE COMPLETED: 1105 H, 19 January 1994’

“A few days thereafter, the Montalban Police charged a certain Cesar Jablo for the crime after he was singled out in a police line-up by Nelita de la Cruz who pointed to him as the killer because he looked like the man who was tailing the victim before her violent death. Later, however, the case against Jablo was dismissed for insufficiency of evidence when brought for inquest before State Prosecutor Linda Malenab-Hornilla. State Prosecutor Malenab-Hornilla accordingly returned the case to the Montalban Police and also indorsed it to the NBI for further investigation.

“On June 1, 1994, Senior NBI Agent Paterno Reverva formally coordinated with the Montalban Police on the investigation of the case. Thereafter, new witnesses came out in the person of Benjamin Hernandez and Ernesto Fernandez who claimed that they saw appellants Jeimrich Matignas and Noel de Guzman tail and grab the victim beside the ERES gate along A. Bonifacio St. at around past 2:00 o'clock in the morning of January 10, 1994. On July 25, 1994, Benjamin Hernandez executed his affidavit before the NBI attesting to what he saw that early morning of January 10, 1994. The next day, on July 26, 1994, appellant Noel de Guzman was confronted by NBI agents about the incident. He readily signified willingness to cooperate and give his statement, which he did on July 27, 1994, with the assistance of counsel, Atty. Florante Dizon x x x.

“x x x x x x x x

“On July 27, 1997, Benjamin Hernandez went to the NBI and in a line up positively identified both appellants Matignas and de Guzman as the victim's assailants.

“Later, on August 1, 1994, Nelita de la Cruz also appeared before the NBI and she positively identified appellant de Guzman as the person whom she saw following the victim that early morning of January 10, 1994. This time, Nelita de la Cruz was certain. She explained that she had earlier mistaken Jablo for de Guzman because of similarities in their features, build and the manner in which they walk.”[12] (Citations omitted)

Version of the Defense

In his Brief,[13] Appellant Matignas narrates his version of the facts as follows:

“In the early morning of January 10, 1994, Herminia Olaez, a 61-year old housewife residing at 25 A. Bonifacio St., Rodriguez, Rizal, woke up at 2:00 a.m. as was her routine to wait for her daughter Rosario ‘Cherry’ Olaez (hereinafter referred to as Cherry) who would be coming from her work at the Cravings Restaurant at Katipunan Avenue, Quezon City. She was accompanied by another daughter named Yolanda Olaez. According to her, it was almost 3:00 a.m. when she and her daughter arrived at the waiting shed near Smokey’s Fastfood Chain which was a mere 3-minute walk away from their house.

“That was obviously the ritual in fetching Cherry from the main road. They waited in vain until 4:00 a.m. without actually noticing any vendor selling ‘balut’ and ‘lugaw’, and neither did she see anyone else waiting at the shed. Nor did she notice ANY of the accused, herein defendant-appellant included, at or about the time she and her daughter were waiting for Cherry. Since Yolanda was also to go to work, they decided to go home where Herminia cooked breakfast for her daughter Yolanda who thereafter left for work.

“x x x x x x x x

“x x x. Yolanda Olaez, Herminia’s daughter who was with her mother that early morning of January 10, 1994, surprisingly testified as a witness for the defense. Her testimony inexplicably yielded a slightly different version of what transpired that morning. In her affidavit (Exhibit ‘Z’) which she confirmed to be true and correct, she pegged the time when she and her mother left the house to be 12:30 a.m. since she happened to look at the clock. She also claimed having seen Matignas and his wife Jenny Serrano at about that time who even told her (Yolanda) that the Matignas couple would buy ‘goto’ at the corner of the plaza. She also described Jeimreich to be wearing ‘maong shorts and fatigue jacket.’ As will be explained later, this encounter with Matignas would actually work to confirm Matignas’ claim that he was at that place on or about that time.

“SPO2 Rolando Santos, detailed at Camp Vicente Lim at Canlubang as police trainee but was residing at Guitnangbayan. San Mateo Rizal, received information from one Mr. Casas about 5:30 a.m. of January 10, 1994 [about] the incident regarding the finding of Cherry’s corpse. He proceeded to the vacant lot near the house of Ricardo Bonifacio and Carlito Cruz at the interior of Bonifacio Street. Cherry’s body was no longer at the place where it was found and he was told that Cherry’s body was brought by her older brother to their house. He, however, conducted an ocular inspection and found at the scene Cherry’s pants, underwear, a detached lock of a piece of jewelry and a detached clip of the pants. Later, a certain Mrs. Uaje turned over to him a picture booklet which was allegedly found in front of the gate of the town plaza. A relative of Cherry also turned over a bullcap [sic] to the station. Since it could not be ascertained at the time who owned the cap which was recovered in front of a bakery near the waiting shed at Bonifacio Street, he kept it for future reference. All these items were subsequently turned over to the NBI which had later taken over the investigation.

‘x x x x x x x x

“The initial investigation of the crime was conducted by the Rodriguez PNP. A witness, Nelita de la Cruz, a 39-year old widow residing at Rosario, Rodriguez, Rizal, surfaced and related that about 2:15 a.m. of January 10, 1994, she left her house near the Eulogio Rodriguez Elementary School compound to take a ride going to her work as a cook at the Philippine Rock Corporation. Since she was afraid of the dogs, she walked in a fast manner along Bonifacio Street. She saw at that time a couple of jeeps, one pulling the other.

“She met Cherry who was approaching the first post with lights towards Cherry’s house. She and Cherry even nodded at each other. Nelita noticed a man following Cherry and as Cherry and the man following crossed her path, Nelita glanced at him and took note of his feature and build which appeared to resemble that of co-accused Noel de Guzman.

“She described the man following Cherry to be wearing x x x camouflage long pants, a t-shirt which color she

did not notice and a cap. The trial court described how that man walked, as related by Nelita, in this wise: ‘The man was walking with his heel almost pointing to each other and whose feet were moving sidewise at 90 degrees to the left and 90 degrees to the right.’ Nelita proceeded to the front of Smokey’s at Rizal Avenue to wait for a ride.

“In a police line-up conducted by the Rodriguez PNP about a week after the January 10, 1994 killing of Cherry[,] Nelita made a positive identification of one Cesar Hablo as the man following Cherry since said Cesar Hablo had similarities with the man she saw tailing Cherry. Nelita executed an affidavit on January 11, 1994 (exh. ‘4’) to that effect, although she was to admit later that she was confused at the time. She said she signed the affidavit upon the urging of the chief of police of Rodriguez; besides she was in a hurry because it was already late in the evening.

“Some 7 months later, Nelita was to tell the NBI investigators that the man tailing Cherry was not Cesar Hablo but co-accused Noel de Guzman. Matignas shall not extensively delve on Nelita de la Cruz’s pinpointing of co-accused Noel de Guzman, letting said accused make his own explanation in defense of Nelita de la Cruz’s identification. As far as Matignas is concerned, Nelita de la Cruz categorically stated that at the time she saw Cherry being followed by a man, she did not see Matignas. The absence of Matignas at the time Cherry was seen being tailed by a man was confirmed by another witness Ruby Valencia who similarly saw Cherry being tailed by a man and who, like Nelita dela Cruz, did not see Matignas at the time.

“Nelita de la Cruz’s obvious vacillating attitude towards the identity of Cesar Hablo to be the man she saw tailing Cherry in the morning of January 10, 1994 left the authorities no choice but to release Cesar from detention. It was perhaps this error in identification that prompted the entry of the National Bureau of Investigation into the case which had attracted national attention and had become front-page material for newspapers.

“The NBI had actually conducted a parallel investigation of cherry’s death together with the Rodriguez PNP. The NBI team nonetheless terminated its investigation after the PNP Rodriguez filed a case against suspect Cesar Hablo. But after the case against Hablo was dismissed, the NBI formed a new team to reinvestigate, mainly upon the request of Fiscal Lydia Hormela. Agent Paterno Reserva was thereafter directed by his chief Mamerto Espartero to undertake the reinvestigation. On the night of July 26, 1994, the chief of the PNP Rodriguez handed to Reserva the bullcap [sic] earlier found by a pedestrian in front of a bakery near the waiting shed at Bonifacio Street.

“Meanwhile, Mamerto Espartero, head agent of the National Capital Regional Office, receiving information from witnesses Benjamin Hernandez and Ernesto Fernandez implicating co-accused Noel de Guzman to be a strong suspect as the man who was tailing cherry in the morning of January 10, 1994, invited said Noel de Guzman to his office on July 26, 1994. What happened thereafter was stated in the trial court’s decision in this wise:

“x x x x x x x x

“Also in the afternoon of July 26, 1994, Matignas was similarly invited by agent Espartero to the NBI for investigation after having been implicated as a suspect by Benjamin Hernandez and Ernesto Fernandez who identified Matignas. Although no information had been [filed] against Matignas at that time, he was detained at the NBI on the strength of the identification made by Hernandez and Fernandez.

“The next day, July 27, 1994, accused Noel de Guzman executed a sworn statement which for its relevance to the case is quoted hereunder in its entire[t]y, thus:

“x x x x x x x x

“On the basis of the foregoing admission of Noel de Guzman, coupled with what the prosecutors saw to be confirmatory indication of Matignas’ alleged participation/role in the death of Cherry, Matignas and the other

defendants were charged on August 9, 1994 before the trial court with the offense of rape with homicide. As earlier stated, Matignas was charged twice for the offense of rape with homicide: one, as a co-conspirator of the other defendants, and two, practically as a sole accused since his co-accused's identity ('Noel Liit') and whereabouts were still unknown at the time.

"After proceedings, Matignas (as well as co-accused Noel de Guzman) was found guilty of rape with homicide in both Criminal Cases Nos. 2596 and 2600 and separately sentenced to suffer the death penalty. The other accused Alberto Bautista, Jr. and Ruel Tarre were found not guilty 'for failure of the prosecution to prove (their) guilt beyond reasonable doubt'. Believing that the trial court erred in its findings of fact and appreciation of law in rendering a finding of guilt on the part of Matignas, he has undertaken the instant appeal." [14]

Meanwhile, in his separate Brief, [15] Appellant De Guzman cited the testimonies of several witnesses, including himself, to support his denial and alibi.

"1. Virginia de Guzman testified that:

She is the mother of accused Noel de Guzman. She regularly sells goto in the evening, up to the early morning the following day, at the waiting shed in front of the town plaza near the corner of A. Bonifacio St.

On the night of January 9, 1994, as usual, she sold goto at the said place. She did not see witnesses Benjamin Hernandez and Ernesto Fernandez at said place on that night.

Her son, Noel, slept in the house on the night of January 9, 1994. As a matter of fact, when she arrived home at around 3:00 o'clock the following morning, he was still asleep.

In the evening of July 26, 1994, while Noel was in their house he was arrested by NBI agents. At the time, Noel was only wearing a torn off pants without any shirt on, and x x x he was not even allowed to put on his shirt. The white T-shirt worn by her son as appears in the picture (Exh. 19) was provided by the NBI which he brought along with him when he was transferred to the Municipal Jail of Montalban. While still detained at the NBI, her son sent her letters.

"2. Noel de Guzman testified that:

The charge against him is not correct. He went to bed at around 7:00 o'clock in the evening of January 9, 1994, and woke up the following day at about 7:00 o'clock in the morning.

In the afternoon of July 26, 1994, while he was in their house playing guitar, about six (6) persons suddenly barged into their house. He was ordered to lie down and thereafter he was handcuffed. At that time he was only wearing a torn off pant but bare on top. Without showing any warrant of arrest, he was dragged outside, loaded in a waiting vehicle and then travelled towards the direction of the highway where he was transferred to another jeep. From there they proceeded to the NBI headquarters in Manila.

It is not true as declared by agent Mamerto Espartero that he was invited by the NBI agents for investigation and that he indicated his willingness to cooperate. They arrived at the NBI headquarters at about 8:00 o'clock in the evening and he was taken directly to the NCR office. Shortly thereafter, he was mauled and hit with a bottle in his chest, and at the same time he was asked to confess, but he refused because there was nothing to admit.

From there, he was taken to another room where he was made to kneel on top of a table and somebody hit his chest with a book, and at the same time he was being forced to confess. In spite of said torture, he refused to make any admission. Thereafter, he was blindfolded and he could just surmise that he was in the roof top of the NBI building because he could feel drops of [dew] on his head. He was then made to lie on a bench, then somebody sat on his legs while his head was resting on the edge of a bench. At that precise moment, wet cloth

was placed on his face, somebody was holding his head and feet, while water was dropped into his nose. Because of this, he felt as if he was drowning. By reason of the hardships and torture he was subjected to, he decided to invent a story. After that he was taken back to the NCR office where his blindfold was removed. That was around 12:00 o'clock midnight.

After that, two NBI agents brought him near a table and they started asking question. In order to prevent further torture and water treatment, he answered them per story he made.

It is not true as declared by Atty. Mamerto Espartero that the investigation was conducted at around 7:00 o'clock in the morning of July 27, 1994, but at around 12:00 o'clock midnight of July 26, 1994 and that there was no lawyer who assisted him. It was only in the morning of July 27, 1994, when he was asked to sign the statement when he saw Atty. Dizon for the first time.

While he was under detention at the NBI, he sent two notes to his mother informing her about the torture and hardships he was subjected to.

According to him, his story as contained in the statement (Exh. K and submarkings) was based on the gossips and rumors he heard in the neighborhood.

“3. Oliver Yalong testified that:

He is one of the security guards at E. Rodriguez Elementary School (ERES). The school compound is surrounded by fence with three gates - one small and main gate in front of the town plaza and another one fronting A. Bonifacio St. The latter gate is attached to a concrete wall about 6 feet high and provided with a padlock.

He reported for work on January 9, 1994. As was his practice, he checked the gates after classes in the afternoon and he was certain that they were locked.

There was nothing unusual that happened during his tour of duty on the night certain of January 9, 1994 up to the following day.

In the morning of January 10, 1994, some police officers went to ERES. He was asked to fetch his companion, Albert Gonzales, from his house because of an incident that allegedly happened inside the school premises. When they (he, Gonzales and the police investigators) made an inspection, they found the gate in front of A. Bonifacio St. locked.

“4. Dr. E. Brion testified that:

He is presently a medico-legal practitioner and formerly connected with the NBI as medico-legal officer.

He analyzed and examined the Medico Legal Report prepared by Dr. Baltazar of the PNP Crime Laboratory.

He disagrees with some of the conclusions made by Dr. Baltazar more particularly with respect to the latter's claim that even if a woman has been sexually abused by around four young men it is possible that the vaginal canal would still be negative of spermatozoa. According to him, young men easily ejaculate and, therefore, the absence of spermatozoa in the vaginal canal negates the commission of rape.”[16]

Ruling of the Trial Court

The trial court gave full faith and credence to the positive identification made by Prosecution Witnesses Ernesto Fernandez, Benjamin Hernandez, Augusto Perez and Nelita de la Cruz; as well as to their testimonies that appellants had followed the victim before grabbing and embracing her near the area where the latter was found dead a few hours later. It also admitted in evidence and believed the confession of Appellant De Guzman that he and his co-appellant had raped and killed the victim. The trial court held:

“In this particular case, all the facts established point to accused Noel de Guzman and accused Jeimrich Matignas as the culprits in these cases. The two accused were seen at or near the scene of the crime during the time relevant in these cases. The two accused were seen tailing or following the victim at or near the scene of the crime during the time relevant in these cases. Then, the two accused were positively identified as the persons who were at or near the scene of the crime or near the place where the victim [was found dead] during the time relevant in these cases likewise at or near the scene of the crime. Further, the admission of accused Noel de Guzman of the foregoing facts adding - which he could have only known - that accused Jeimrich Matignas strangled the victim after they raped the victim, bolster[s] the evidence for the prosecution.”

Hence, this automatic review.^[17]

Issues

Appellant Matignas assigns for our consideration, six supposed errors as follows:

“I

In finding that circumstances, mainly provided by the so-called ‘positive’ identification by witnesses Ernesto Fernandez and Benjamin Hernandez, suffice to establish the guilt of herein defendant-appellant as among those persons ‘x x x who were following the victim and then embraced or grabbed the victim during the time so close to the time of the demise of the victim and at the place near where the victim was found dead’;

“II

In accepting to be gospel truth the ‘positive’ identification made by witnesses Ernesto Fernandez and Benjamin Hernandez of herein defendant-appellant despite the greater probability that said ‘positive’ identification was rendered doubtful [by] the testimony of the other prosecution witnesses Nelita Dela Cruz and Ruby Valencia who were both at the vicinity of the incident and who both did not see herein defendant-appellant at the time and place of the incident, a remarkable impossibility since witness Nelita Dela Cruz in particular practically confirmed what the other alleged eyewitnesses saw;

“III

In concluding that the circumstantial evidence established warranted the conviction of herein defendant-appellant.

“IV

In placing undue and misplaced importance to the testimony of witness Augusto Inocentes who claimed to have talked to herein defendant-appellant in the early morning of January 10, 1994 asking the whereabouts of another person, an event that herein defendant-appellant does not deny, and in inferring, albeit strained, that this incident ‘proves that the aforementioned accused (Jeimreich Matignas) was likewise present at the scene of the crime and during the time relevant in these cases x x x’;

“V

In condemning herein defendant-appellant to indemnify the heirs of the victim for expenses they incurred; and

“VI

In convicting herein defendant-appellant despite complete failure to establish his guilt beyond reasonable doubt.”^[18]

In his Brief, Appellant De Guzman interposes the following alleged errors for this Court’s consideration:

“I

The trial court erred in finding the circumstantial evidence sufficient to warrant the conviction of herein accused[.]

“II

The trial court erred in giving full faith and credence [to] the testimonies of Nelita Dela Cruz, Ernesto Fernandez and Benjamin Hernandez[.]

“III

The trial court erred in not rejecting the statement of accused Noel de Guzman given to the NBI on July 26, 1994 as inadmissible in evidence[.]

“IV

The trial court erred in ordering accused-appellant to indemnify the heirs of the victim [in] the sum of P2,127,543.85[.]

“V

The trial court erred in convicting herein accused-appellant[.]”[19]

As the two sets of assigned errors are similar, we deem it convenient to discuss them in the following order: (1) whether the trial court erred in finding the prosecution witnesses credible; (2) whether the circumstantial evidence was sufficient to warrant the conviction of appellants; (3) whether the RTC erred in not rejecting the Appellant De Guzman’s July 26, 1994 statement given to the National Bureau of Investigation (NBI); and (4) whether the trial court erred in ordering appellants to indemnify the heirs of the victim in the sum of P2,127,543.85.

The Court’s Ruling

The appeal is partly meritorious.

First Issue:

Credibility of the Prosecution Witnesses

Appellant Matignas contends that the trial court erred in giving credence to the testimonies of Prosecution Witnesses Fernandez, Hernandez and Perez, who had claimed to have seen him tailing the victim a few hours before she was killed, and being in the vicinity of the place where she was killed. He stresses that they gave varying accounts of the time they had supposedly seen him near the crime scene: Fernandez said that he saw Matignas follow and then suddenly embrace the victim between 1:00 and 2:00 a.m.; Hernandez, gave the same account but on the other hand, placed the time around 3:45 a.m.; and Perez claimed to have conversed with him around 2:00 a.m.

Appellant De Guzman questions the credibility of Fernandez and Hernandez, who had remained silent for six (6) months before revealing their knowledge of the case at bar. More emphatically, he assails the credibility of Dela Cruz, who at first pointed to Cesar Hablo as the man whom she had seen tailing the victim that fateful night.

We are not persuaded by these contentions. The testimonies of the witnesses were clear and straightforward in depicting how appellants had followed and later grabbed the victim near the vicinity of the locus criminis a few hours before her naked body was found.

Dela Cruz recounted how, in the early hours of January 10, 1994, she saw the victim being followed by a man whom she later identified as Appellant De Guzman. Her testimony proceeded in this wise:

“Q

And after you have prepared your things at that time, what happened next?

A

I remember that at 2:15 I went downstairs, sir.

Q

After that what happened?

A

I walked towards A. Bonifacio St., sir.

Q

By the way Madam Witness where is your house located?

A

Beside ERES, sir.

Q

What street, Barangay, Municipality and Province?

A

A. Bonifacio St., Barangay Rosario, Montalban, Rizal, sir.

x x x x x x x x

Q

Then after that what happened, if any?

A

I again walked and about the middle of the road I saw Cherry coming from the first post x x x that was lighted, sir.

Q

And may we know the full name of this Cherry, Madam Witness?

A

Rosario Cherry Olaez, sir.

Q

And after you saw Cherry what happened next if any?

A

I remember that while Cherry was walking a man was following [her] wearing a cap, sir.

Q

What was Cherry doing then, Madam Witness?

A

She was walking heading for home, sir.

Q

And how about the male person who was following him?

A

He was still following her because when I looked back I saw him, sir.

Q

Did Cherry notice that you saw her Madam Witness?

A

Yes, sir we just nodded [at] each other.

x x x x x x x x

Q

Madam Witness did you have a good glance [at] the features or buil[d and a]t the face of the person who was tailing or following Cherry Olalez at that time?

A

I can remember, sir.

Q

Kindly look around this Court room and tell this Honorable Court if the face, figures and features which you have seen last January 10, 1994 [resemble] any or one of the persons inside this Court room?

A

There was, sir.

Q

Kindly point and single out [these] persons and with leave of Court may we request that the witness here be allowed to step down and tap the shoulder of the persons he is referring to?

A

(Witness stepped down and tapped the shoulder of a person [who] identified himself as Noel de Guzman)

Q

Now Madam Witness after you have seen the male person following Cherry Olalez, what happened next, if any?

A

I did not see anything more because I was heading for work, sir.

Q

By the way Madam Witness may we know x x x what was the exact situation of the place there, particularly was the place lighted, Madam Witness?

A

The post[s] were lighted, sir.

Q

How where you able to recognize and have [a] vivid view of the face, features and buil[d] of the person who was following Cherry Olalez?

A

‘[Nang] makasalubong ko sila’, sir.

x x x x x x x x

Q

By the way Madam Witness going back to your statement and I quote: ‘Nagkasalubong kami ni Cherry na may sumusunod na lalaki’, my question is how far where you from the place where Cherry was at the time when you cross[ed] ways?

A

The width of the road, sir.

Q

In terms of meters can you more or less quantify, Madam Witness?

A

Maybe 6 meters, sir.

Q

From your place kindly make an estimate by pointing a distance where you were and from where Cherry Olaez was at the time when you cross[ed] pathways?

A

About 2 armslength, sir.

Q

And how about the male person who was following Cherry Olaez how far was he from you?

A

The distance between Cherry and the one following her is about one armslength, sir.

Q

How about you from the male person?

A

About 2 armslength, sir.”[20]

Witnesses Hernandez and Fernandez testified that they had seen the two appellants tailing the victim and, upon reaching the ERES gate along A. Bonifacio Street, suddenly grabbing and pulling her. Hernandez positively identified the two as the persons he had seen that night. He was positive about their identities, because he had known them for more than ten years. The salient points of his testimony are reproduced hereunder:

“Q

Mr. Witness, do you recall where were you on the wee hours of January 10, 1994?

A

I was at Rosario, sir.

Q

In what municipality?

A

Montalban, Rizal, sir.

Q

What were you doing in that place and time Mr. Witness.

A

I was on my way home from 'BOLAHAN NG HUETENG'.

Q

Now, Mr. Witness, while you were there at Rosario, Montalban, Rizal, do you recall x x x any unusual incident that happened?

A

There was, sir.

Q

What is that unusual incident all about?

A

I saw somebody walking, sir.

Q

In what particular place or location, Mr. Witness?

A

At A. Bonifacio.

Q

That person was walking towards what street?

A

Straight along A. Bonifacio, sir.

Q

After you witnessed this person walking, what happened next if any?

A

I saw when he reached a truck he met a girl.

Q

Then after that, what transpired next if any?

A

When they reached the front of the gate of the school they embraced the girl.

FISCAL:

Q

We notice Mr. Witness that when you gave your answer you made reference to 'they' meaning to say plural, are you referring to whom when you said they?

A

Because [there] were two (2) of them and the girl was the third.

Q

Did you come to know later on the identity of these two male persons.

A

I know them, sir.

Q

May we know their names from you Mr. Witness?

A

Yes, sir.

Q

Kindly give their names?

A

Noel de Guzman and Gemreich Matignas.

x x x x x x x x

Q

May I know the name of that girl?

A

Cherry Olaez, sir.

Q

And you are referring to the victim in this case?

A

Yes, sir. Because they were the ones whom I really saw.

Q

For how long have you known the accused Noel de Guzman?

A

For a long time already, sir.

Q

Could it be five (5) years, Mr. Witness?

A

More than, sir.

Q

Could it be ten (10) years?

A

More than.

x x x x x x x x

Q

And Mr. Witness, how sure are you it was Gemreich Matignas and Noel de Guzman whom you saw that very time, date and place?

A

I looked at the watch[;] it was around 3:45.

x x x x x x x x

Q

How far were you when you saw Gemre[ic]h Matignas and Noel de Guzman when they pulled and grabbed this girl?

A

About 200 meters, sir.

Q

May we know what street was that?

A

A. Bonifacio Street, sir.

Q

Do you recall of any actual land mark were the actual pulling incident happened?

A

Yes, sir.

Q

What is that land mark and identification?

A

After the humps, sir.

Q

What was Gemreich Matignas doing then immediately before they grabbed the girl?

A

He was following her.

Q

How about Noel de Guzman?

A

The same, sir.

Q

And you stated that you were more or less 200 meters away when you witnessed Gemreich Matignas and Noel de Guzman, my question now is were you able to observe and notice their attire?

A

Yes, sir.

Q

What was the accused Gemreich using then?

A

He was wearing maong shorts and wearing fatigue jacket.

Q

How about the accused Noel de Guzman?

A

He w[a]s wearing dark [t]'shirt and camouflage pants.

Q

What else if any?

A

He was wearing short pit [sic] or a cap.

x x x x x x x x

Q

Now Mr. Witness, when you saw Gemreich Matignas and Noel de Guzman grabbing the girl whom you identified and came to know later that it was Cherry Olaez the victim in this case, what did you do if any?

A

None sir, because I was frightened.

Q

By the way, is the place lighted?

A

Yes, sir.

Q

Was there any obstruction between you and the three persons, Mr. Gemreich Matignas, Noel de Guzman and Cherry Olaez?

A

None, sir.

x x x x x x x x

Q

Now Mr. Witness, what was the reaction of Cherry Olaez when she was being tailed or followed by the accused Matignas[?]

A

As if she was in a hurry, sir.

Q

How about Matignas what was he doing that very time?

A

He was following, sir.

x x x x x x x x

Q

After the two grabbed Cherry Olaez, what happened next if any?

A

I just learned in the morning that Cherry was killed.

Q

After learning that what was your reaction to that n[ew]s?

A

I recalled the incident because I might help to this case like this.

x x x x x x x x

Q

Were you alone that time?

A

I ha[d] a companion.

Q

Who is this companion of yours?

A

Ernesto Fernandez Herrera.

Q

All the while this Ernesto Fernandez Herrera was with you?

A

Yes, sir.

Q

What was Ernesto Fernandez Herrera doing then while you were witnessing those incident[s]?

A

He asked me if they were sweethearts.

Q

What was your answer to this query?

A

I answered I do not know[;] what I know is that they were neighbors and they know each other.”[21]

Corroborating Hernandez’s testimony, Fernandez testified as follows:

“Q

Mr. Witness, do you recall where were you on the wee hours of January 10, 1994?

A

I came from the lottery of jueteng, sir.

Q

And from that place where did you proceed, Mr. Witness?

A

We walked coming from Geronimo in front of the Municipal Hall, sir.

Q

Municipal Hall of what municipality, Mr. Witness?

A

Rodriguez, Rizal, sir.

Q

We observed that you answered in the plural and I quote 'kami', to whom [were] you referring to Mr. Witness when you said, 'kami'?

A

I ha[d] a companion a 'kabo' of the jueteng, sir.

Q

May we know the name of this 'kabo', Mr. Witness?

A

The name of the 'kabo' of jueteng is Benjamin Hernandez, sir.

x x x x x x x x

Q

Mr. Witness, you have described earlier before this Honorable Court the physical appearance and looks of that person whom you saw at that time, my question now is kindly look around this court room and tell this Honorable Court if that person whom you saw that time is present?

INTERPRETER:

Witness pointing to a man wearing [a] stripe t-shirt with blue and red [who] when asked answered by the name of Gemr[e]ich Matignas.

FISCAL CAPELLAN:

Q

Now Mr. Witness, from A. Bonifacio., where did this man proceed?

A

He proceeded to Smokey's, sir.

Q

And what did he do while he was at the Smokey's?

A

He talked to a girl, sir.

Q

Can you more or less describe to this Honorable Court the looks and physical appearance of that girl to whom the man whom you identified earlier talked x x x?

A

Her height is 5'4 to 5'6 and the hair is shoulder's length, sir.

Q

What was this girl wearing then, Mr. Witness?

A

The girl was wearing a pink kamisa de chino, sir.

Q

If shown to you a picture of that girl, will you be able to recognize and identify the same, Mr. Witness?

A

Maybe, sir.

Q

I am showing to you a picture which is part of the records of the prosecution, kindly go over the same and tell this Honorable Court if the girl being depicted here is the very same girl to whom the boy whom you saw coming out [of] A. Bonifacio was talking to?

A

Yes, sir.

FISCAL CAPELLAN:

For purposes of identification, your Honor please, may we request that the photograph be marked as our Exhibit...

ATTY. FERRY:

May I request for the record, your Honor, that the picture identified by the witness depicts a girl in a lying position, lying on her back.

FISCAL CAPELLAN:

May we also make it o[f] record, your Honor, that the witness here after looking over the face of the person depicted here pointed to the clothes worn by the girl, your Honor please, which is very apparent that it is x x x pink in color, Exhibit 'K', your Honor.

COURT:

Mark it.

FISCAL CAPELLAN:

Q

Now after this man whom you identified earlier talked to this girl, what happened next, if any?

A

The girl went home coming from the Smokey's followed by the man, sir.

X X X X X X X X

Q

Then for how long did this man [talk] to the girl, Mr. Witness?

A

Only [a] second, sir.

X X X X X X X X

Q

Then after this boy talked to that girl, what happened next if any?

A

The victim proceeded to A. Bonifacio St., sir.

Q

When you said victim, Mr. Witness, to whom [were] you referring to?

A

The girl depicted in the picture that the Fiscal showed me, sir.

Q

Then after that what happened next if any?

A

While the girl was walking to A. Bonifacio St., a man appeared, sir.

Q

And how about the man who talked to the victim earlier, what did he do if any?

A

He was following, sir.

Q

And at what point that the other man appeared, Mr. Witness?

A

At the back of Ben Hernandez a teenager suddenly showed up, sir.

Q

And after that what happened next if any?

A

Upon reaching the hump fronting the Earest School, that [was] the time when he walked side by side with her, sir.

x x x x x x x x

Q

Kindly look around and tell this Honorable Court if he is present?

x x x x x x x x

INTERPRETER:

Witness tapped the shoulder of a man [who] when asked answered by the name of Noel de Guzman.

FISCAL CAPELLAN:

Thank you for the request.

Q

Now, after that what happened next while they were infront or within the vicinity of the gate of Earest [sic], Mr. Witness?

A

I heard the words 'Puwede ba kitang sabayan, Cheers', sir.

Q

What was the response of the girl if you know if any?

A

She just continued walking, sir.

Q

And in what manner [was] this girl x x x walking, Mr. Witness?

A

She walked faster, sir.

Q

And how about the two men?

A

The girl walked side by side with the man whose shoulders I tapped earlier and the other man passed by the left side of the truck, sir.

Q

Then what happened next if any?

A

I asked Benjamin Hernandez who are those two persons, sir.

Q

And what was the answer of Benjamin Hernandez to your [query]?

A

The other one is the son of a teacher and the other one is the son of a woman who is selling goto, sir.

Q

And to whom was he referring to when he made that statement, Mr. Witness?

A

The two men, sir.

Q

And after that what happened next if any?

A

I suddenly looked at A. Bonifacio St., and I saw them[;] they grabbed the girl, sir.

x x x x x x x x

Q

Now after the girl was grabbed what happened next if any?

A

When they grabbed the girl at the gate, we x x x already rode on a jeep, I did not notice anymore what happened, sir.

Q

By the way Mr. Witness, was the place lighted then?

A

Yes, sir.

Q

[Were] there any obstruction between you and the place where Cherry or the girl was grabbed?

A

None, sir.”[22]

The trial court found the witnesses to be reliable and credible and not driven by any ill will or false motive in testifying against appellants. Settled is the rule that where the culpability or the innocence of the accused hinges on the credibility of the witnesses and the veracity of their testimonies, the findings of trial courts are given the highest degree of respect. This is because of its unique opportunity to observe them firsthand and to note their demeanor, conduct and attitude. Hence, their findings on such matters are binding and conclusive on appellate courts, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[23]

Second Issue:

Circumstantial Evidence

Appellants further argue that the trial court erred in relying on mere circumstantial evidence. We are not convinced.

The RTC convicted appellants on the basis of the following pieces of evidence: (1) the testimony of Prosecution Witnesses Fernandez, Hernandez, Perez and Dela Cruz who positively identified them to have been at or near the scene of the crime; (2) the extrajudicial confession of De Guzman; and (3) the finding of the cap near the area

where the body of the victim was found.

Circumstantial evidence is defined as “that which indirectly proves a fact in issue an inference which the factfinder draws from the evidence established. Resort thereto is essential when the lack of direct testimony would result in setting a felon free.”[24]

This Court has iterated that “there can be a verdict of conviction based on circumstantial evidence when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pinpointing the accused, to the exclusion of all the others, as the perpetrator of the crime. In order that circumstantial evidence may be sufficient to convict, the same must comply with these essential requisites, viz., (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”[25]

The following circumstances form the unbroken chain which lead us to conclude beyond moral certainty that appellants were the culprits:

First, the testimony of Hernandez, who just came from a jueteng lottery, that he saw a man following a girl and upon reaching A. Bonifacio Street another man appeared who likewise tailed her; upon reaching the ERES gate, both men suddenly embraced, pulled and grabbed the girl (whom he later learned to be the victim) around 3:45 a.m. on January 10, 1994.

Second, Fernandez, who was with Hernandez at that time because he also participated in the said lottery, gave a similar testimony.

Third, Dela Cruz narrated that she saw the victim in the wee hours of the morning and that she was being followed by Appellant De Guzman.

Fourth, Perez said that he also observed Matignas near the gambling place during that time.

Fifth, the finding of the body of the victim at a vacant lot near the ERES school.

Sixth, the finding of the Matignas’ bullcap near the place where the body of the victim was found.

Seventh, the admission of Appellant Matignas that he was out prowling his neighborhood in the early hours of the morning of January 10, 1994.

Eight, appellants were the last persons seen with the victim before her corpse was found a few hours thereafter.

Ninth, Hernandez, Fernandez, Dela Cruz, and Perez had no ill motive to testify against appellants.

From the foregoing circumstances, it is undisputed that appellants were physically present at the scene of the crime and its immediate vicinity, and that several eyewitnesses positively identified them as the same persons who tailed, embraced and pulled the victim in front of the gate of the ERES school along A. Bonifacio Street before her body was discovered at a vacant lot near the said school.

Third Issue:

Extrajudicial Confession

Appellant De Guzman assails his extrajudicial confession for having allegedly been extracted through torture. He adds that no warrant of arrest was served upon him when he was “invited for questioning,” and that he was not assisted by counsel during custodial investigation. We agree.

For an extrajudicial confession to be admissible, the following requisites must be met: (1) the confession must involve an express and categorical acknowledgment of guilt; (2) the facts admitted must constitute a criminal

offense; (3) the confession must have been given voluntarily; and (4) the confession must have been intelligently made by the accused while realizing the importance of such act.[26]

True, Appellant De Guzman was assisted by a lawyer when he reduced his extrajudicial confession into writing and signed it. However, this fact did not satisfy the requirement that an “independent counsel” be made available to a person under custodial investigation as guaranteed by Section 12(1), Article III of the 1987 Constitution, which we reproduce hereunder:

“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.”

Instead of giving Appellant De Guzman the option to choose his own counsel, NBI Regional Director Salvador Ranin instead summoned Atty. Florante Dizon to assist Appellant De Guzman. Moreover, the testimony of Atty. Dizon shows that the custodial investigation started without his presence. We quote his testimony as follows:

“Atty. Ferry:

Your Honor, that is precisely the thrust of my question because that was the information given to him by Espartero. That is why I am asking him whether he asked Espartero when accused/suspect Noel de Guzman gave his statements whether he was already represented by a lawyer. I am referring to that point in time when Noel de Guzman allegedly indicated his readiness to give a confession since he assisted him later according to him.

Court:

All right, you may answer.

A

I did not inquire [about] that, sir.

Atty Ferry:

Q

You did not find it important?

A

At that very moment, no, sir.

Q

When Espartero told you that he was giving a statement, did it not occur to you that somehow Espartero had already propounded verbal interrogation?

A

Atty. Espartero told me that ‘the suspect is here, he is willing to give his statement’.

Q

Did you ask him how he came to know that the suspect Noel de Guzman was willing to give a statement?

A

Yes, sir.

Q

What did you ask him?

A

I asked him what is your basis and he told me he was identified and because he was identified the suspect admitted to them his participation, sir.

Q

You said that the suspect admitted to them his participation. Are these the very words of Espartero when he told you?

A

Not exactly but that is the very gist, sir.

Q

To avoid confusion, did Espartero tell you clearly that when he conferred with Noel de Guzman, he gathered from him that he was willing to give a statement and that he admitted having a participation in the commission of the crime?

A

Yes, sir.

Q

Now, my question is, when this Noel de Guzman made his verbal admission as relayed to you by Espartero was [he] then assisted by a lawyer?

A

I did not ask, sir.

Atty. Ferry:

Q

And after that meeting with Espartero, you met with Mr. Ranin?

A

Yes, sir.

Q

How soon after you talked with Espartero?

A

Moments only, sir, more or less two to three minutes.

Q

When you arrived there at around six in the morning how long did take you to confer with Espartero?

A

Only about three minutes, sir.

Q

So before 6:30 you were able to talk with Director Ranin?

A

Yes, sir.

Q

What did he tell you regarding his telephone conversation with you the night before?

A

He told me about the admission and willingness of Noel de Guzman to give his confession, sir.

Q

Those were the very words of Director Ranin?

A

No, not exactly, sir.

Q

More or less, will you kindly re-state the words of Atty. Ranin when he apprised you?

A

He told me in Tagalog, 'Atty. Dizon, paki-asistihan mo si Noel de Guzman na kusang magbibigay ng kanyang pag-amin.'

Q

So am I correct to state that your understanding of what Director Ranin said is more or less the same with my understanding that Noel de Guzman had already indicated his willingness to give his confession?

A

That is my understanding, sir, that is what he told me.

Q

I will repeat the question. Did you ask Director Ranin whether or not Noel de Guzman was assisted by a lawyer before you came into the picture when he indicated his willingness to give a confession?

A

No more, sir.

Q

You did not ask that?

A

Yes, sir.

Q

Again, you did not find it relevant?

A

Personally, at that time, yes, sir.

Q

It is not yet relevant?

A

Yes, sir.”[27]

In *People v. Compil*, [28] the belated arrival of a lawyer the following day, though prior to the actual signing of the uncounseled confession, did not cure the defect, for the investigators had already extracted incriminatory statements from the accused. We held thus:

“The belated arrival of the CLAO lawyer the following day even if prior to the actual signing of the uncounseled confession does not cure the defect for the investigators were already able to extract incriminatory statements from accused-appellant. The operative act, it has been stressed, is when the police investigation is no longer a general inquiry into an unsolved crime but has beg[u]n to focus on a particular suspect who has been taken into custody by the police to carry out a process of interrogation that lends itself to eliciting incriminatory statements, and not the signing by the suspect of his supposed extrajudicial confession. Thus, in *People v. de Jesus* we said that admissions obtained during custodial investigations without the benefit of counsel although later reduced to writing and signed in the presence of counsel are still flawed under the Constitution.”[29]

Since appellant’s counsel in the present case arrived after the custodial investigation had already been started by the NBI, the assailed extrajudicial confession is deemed constitutionally flawed and therefore inadmissible in evidence.

Fourth Issue:

Indemnity

The RTC erred in awarding the amount of P1,879,200 for the loss of earning capacity. Using the formula adopted by this Court, as well as the American Expectancy Table of Mortality, Rosario Olalez’s loss of earning capacity is to be computed as follows:[30]

Net earning capacity = Life expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = $\frac{2}{3}$ (80 - the age of the deceased).[31]

x

= $[2 (80-21)] \times [(P2,900 \times 12) - 17,400]$

3

= P684,440

Thus, the award for loss of earning capacity should be only P684,440, not P1,879,200. The actual damages of P198,343.85, representing expenses for the wake of the victim, is duly supported by receipts.

Crime and Punishment

The only evidence supporting the charge of rape is the Sworn Statement extracted from De Guzman, which we have declared to be inadmissible in evidence. True, the postmortem findings of Dr. Florante Baltazar, the former Chief of the PNP (Philippine National Police) Crime Laboratory Service, showed that the victim’s hymen had

deep lacerations at the 6 o'clock position and shallow lacerations at the 3 and the 9 o'clock positions. In his testimony, however, the doctor said that these were most probably caused by the entry of foreign objects of varying sizes.

The foregoing medical evidence is inconclusive regarding the cause of the lacerations in the victim's private part. Considering that there were no spermatozoa found therein, it would not be prudent to conclude that she was sexually violated on the night in questions. Furthermore, not only were they not found to be "fresh lacerations" but they could have also been caused by the insertion of objects other than a male organ. And it must be noted that, at the time the alleged rape was committed on January 10, 1994, the existing law on rape had not yet been modified to include insertion of any instrument or foreign object into the genital or anal orifice of another person. Said amendment provided by RA No. 8353 entitled "The Anti-Rape Law of 1997" became effective only in 1997.

Based on the above, we hold that the pieces of circumstantial evidence do not prove beyond reasonable doubt that the victim was raped. Much less can the non-existent crime be attributed to appellants. In short, there is no sufficient proof of the corpus delicti of the alleged rape.

Qualifying Circumstance

Attended the Killing

We also affirm the trial court's finding that abuse of superior strength attended the killing of the victim. "Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor and selected or taken advantage of by him in the commission of the crime." [32] In *People v. Mariano*, [33] the Court – in appreciating abuse of superior strength -- said:

"We also find that the circumstance of abuse of superior strength aggravated the killing of the victim. There was gross physical disparity between the age, built and strength of accused-appellant Ruth Mariano viz-a-viz the victim Michelle. The former is a big and burly matured woman in her thirties, several inches taller than the victim, and 'who could subdue her [victim] even without a weapon.' While the latter was merely a teenager, five (5) feet tall, slim and poorly nourished and weighed less than 100 pounds according to Dr. Aranas." [34]

In this case, we believe that this qualifying circumstance should also be appreciated considering that two men, instead of a "big and burly woman without a weapon" in the above-stated case, assailed the lone female victim. Two men could subdue a girl better than a big and burly woman. And the fact that they flanked her before grabbing her demonstrates that there was hardly any chance for the victim to run or put up a defense. Indeed, the victim in this case was assaulted and strangled to death. Thus, following Article 248 of the Revised Penal Code, the killing is qualified to murder. There being no aggravating or mitigating circumstance proven, the penalty should be reclusion perpetua, not death.

WHEREFORE, the automatically-appealed Decision is MODIFIED as follows: (1) appellants are found GUILTY of murder and are each sentenced to reclusion perpetua and (2) they are ordered to pay, jointly and severally, the victim's heirs P50,000 as indemnity ex delicto, another P50,000 as moral damages, [35] P198,343.85 as actual damages and P684,440 as loss of earning capacity. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

- [1] Penned by Judge Andres B. Reyes Jr.; rollo, pp. 76-146.
- [2] Also referred to by the trial court as “Gemreich” or “Jeimreich.”
- [3] RTC Decision, pp. 70-71; rollo, pp. 145-146.
- [4] Rollo, pp. 12-21.
- [5] Rollo, p. 12.
- [6] Rollo, p. 14.
- [7] Rollo, p. 16.
- [8] Rollo, p. 18.
- [9] Rollo, p. 20.
- [10] Certificates of Arraignment; records, pp. 197-201.
- [11] Rollo, pp. 408-470. Appellee’s Brief was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Azucena Balanon-Corpuz and Solicitor John Emmanuel F. Madamba.
- [12] Appellee’s Brief, pp. 5-20; rollo, pp. 415-430.
- [13] Rollo, pp. 157-216. The Brief of Appellant Jeimreich Matignas was signed by Atty. Fernando F. Vilorio.
- [14] Appellant Jeimreich Matignas’ Brief, pp. 5-26; rollo, pp. 165-186.
- [15] Rollo, pp. 300-326. The Brief of Noel De Guzman was signed by Atty. Eleazar G. Ferry.
- [16] Appellant Noel De Guzman’s Brief, pp. 8-10; rollo, pp. 310-312.
- [17] This case was deemed submitted for resolution on March 20, 2000, upon receipt by this Court of Appellant Jeimreich Matignas’ Reply Brief.
- [18] Appellant Jeimreich Matignas’ Brief, pp. 1-2; rollo, pp. 161-162; original in upper case.
- [19] Appellant Noel De Guzman’s Brief, p. 1; rollo, p. 303; original in upper case and underscored.
- [20] TSN, October 26, 1994, pp. 34-38.
- [21] TSN, November 16, 1994, pp. 3-9.
- [22] TSN, December 21, 1994, pp. 5-12.
- [23] *People v. Basquez*, GR No. 144035, September 27, 2001; *People v. Jaberto*, 307 SCRA 93, May 12, 1999; *People v. Deleverio*, 289 SCRA 547, April 24, 1998.
- [24] *People v. Cuenca*, GR No. 143819, January 29, 2002, p. 15, per Panganiban, J, citing *People v. Rendaje*, 344 SCRA 738, 746-747, November 15, 2000.
- [25] *People v. Malimit*, 264 SCRA 167, 178, November 14, 1996, per Francisco, J.
- [26] See Regalado, *Remedial Law Compendium*, Vol. II, (7th Rev. ed, 1995), p. 594; *People v. Fabro*, 277 SCRA 19, 32-33, August 11, 1997.
- [27] TSN, May 15, 1995, pp. 22-24.

[28] 244 SCRA 135, May 15, 1995.

[29] Ibid., p. 142, per Bellosillo, J.

[30] People v. Verde, 302 SCRA 690, 707, February 10, 1999.

[31] People v. Sanchez, GR Nos. 121039-45, October 18, 2001, per Melo, J.

[32] People v. Cortez, 348 SCRA 663, 674, December 26, 2000, per Bellosillo, J.

[33] 347 SCRA 109, December 6, 2000.

[34] Ibid., pp. 124-125, per Curiam.

[35] People v. Ortiz, GR No. 133814, July 17, 2001.

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