

DARIO P. BELONGHILOT, PETITIONER, VS. REGIONAL TRIAL COURT OF ZAMBOANGA DEL NORTE, BRANCH 7, HON. JESUS O. ANGELES, RESPONDENT.*G.R. No. 128512. April 30, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128512/>**PER CURIAM:**

On appeal before us is the decision of the Regional Trial Court of Dipolog City, Zamboanga del Norte,[1] in Criminal Case No. 6652, convicting appellants Dario P. Belonghilot (Dario), Rino M. Castillo (Rino) and Rolando T. Barcelona (Rolando), of the crime of rape with homicide. The victim was AAA (AAA), a thirty-year-old wife and mother of four.

Dario had previously appealed his conviction to us through a petition for review, docketed as G.R. No. 128512. Considering that the death penalty was imposed, the case was also forwarded to us on automatic review and docketed as G.R. No. 128963.[2] In a resolution dated August 12, 1997, we ordered the two cases consolidated.

The Antecedents

On February 11, 1994, at about 1:00 a.m., AAA and her husband Ely Pasco (Ely), were among forty-seven or so buseros (members of a fishing outfit), who were pulling a beach seine (a large vertical fishing net) near the seashore in Lower Dipane, Manukan, Zamboanga del Norte. When Ely saw that the beach seine had a large haul, he instructed AAA to go to their house and get another container. AAA left and that was the last time he saw her alive.[3]

At about 3:00 a.m., when AAA did not come back, Ely went to their house to look for her. Finding that AAA was not there, he returned to the beach seine to ask for help from the buseros to look for his wife. A search for AAA ensued. At around 4:00 a.m., the body of AAA was found, naked and lifeless, covered only with dry coconut leaves, some 250 meters away from the location of the beach seine.[4]

The local police of Manukan, Zamboanga del Norte, commenced an investigation. Eventually, they arrested 16-year-old Rolando for the crime, and decided to use 20-year-old Dario and 16-year-old Rino as government witnesses. Ely, not satisfied with the outcome of the police investigation, sought the assistance of the National Bureau of Investigation (NBI).[5]

Acting on Ely's request, the NBI assigned the case to Agent Atty. Oscar D. Tamorong. After conducting its own investigation, the NBI filed charges against Dario, Rino and Rolando with the Provincial Prosecutor for Zamboanga del Norte.[6] On the basis of the NBI report, the following information[7] was filed:

The undersigned, Provincial Prosecutor, accuses DARIO P. BELONGHILOT, RINO M. CASTILLO, and ROLANDO T. BARCELONIA of the crime of RAPE WITH HOMICIDE, committed as follows:

That, at dawn, on or about the 11th day of February, 1994, in the municipality of Manukan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, moved by lewd and unchaste design, did then and there willfully,

unlawfully and feloniously by means of force, intimidation, have carnal knowledge with one AAA, 30 year[s] old, a mother of four (4) children, against her will and without her consent; that in pursuance of their evil motive and to better accomplish their evil purpose, the above-named accused, did then and there willfully, unlawfully and feloniously attack, assault, box, and submerge in water one AAA, thereby inflicting upon her injuries on the vital parts of her body which caused her instantaneous death; that as a result of the commission of the crime, the heirs of the herein victim suffered the following damages, viz:

P70,000.00

a) Indemnity for victim's death. . . P50,000.00

b) Loss of earning capacity. . . . 20,000.00

CONTRARY TO LAW.

On arraignment, appellants pleaded not guilty to the information.[8] Trial then ensued.

The Prosecution's Evidence

The prosecution presented five witnesses in the following order: Dr. Reneir Alonzo, Rolando M. Sevillista, Ely Pasco, NBI Agent Atty. Oscar D. Tamarong and Yolanda Mecoliar. Their testimonies are summarized as follows:

Dr. Reneir V. Alonzo was the Rural Health Physician who conducted the post mortem examination on the body of AAA on February 11, 1994. He testified that he found, as indicated in the examination report,[9] a periorbital contusion/hematoma on the victim's right eye, a linear abrasion on her right upper eyebrow, a whitish foam on the mouth and nostrils, contusions around the neck, a linear abrasion on the abdomen and contusion on both buttocks. Dr. Alonzo further stated that when he examined the victim's private part, he found a whitish mucus substance. A vaginal smear was taken which tested positive for sperm cells. He identified the cause of death as cardiorespiratory arrest secondary to asphyxia (submersion in water).[10]

Rolando M. Sevillista was the operator of the fishing outfit that pulled the beach seine on the day that AAA was found dead. Mr. Sevillista testified that among those who were present near the seashore were: AAA, Ely, and appellants, Dario, Rino and Rolando. He added that he noticed that appellants were drunk that night of February 10, 1994. Mr. Sevillista narrated that, at about 3:00 a.m. of February 11, 1994, Ely told him that his wife did not return and asked permission to look for her. Later, Ely came back and told him that he was not able to find his wife. As a result, the whole fishing group assisted in the search. Eventually, the naked body of AAA was discovered, covered only with coconut leaves and with bruises on her neck and face.[11]

Mr. Sevillista further testified that he observed three sets of footprints around the area where the body was found. The first two sets appeared side by side, while the third set was isolated and appeared to have come from the seashore, going towards the body. Mr. Sevillista also stated that, earlier in the evening, he saw appellants Dario and Rino among the buseros wearing dry clothing. But later on, when he noticed them a second time, they were suddenly wet "near the thigh." He inquired how they became wet and the two explained that they had to cross the Dipane river. However, he found their story not believable because he knew that it was already low tide so that the river could easily be crossed just by jumping over it.[12]

Ely Pasco, the prosecution's third witness, testified that both he and his wife were with the fishing outfit in the early morning of February 11, 1994. At around 1:00 a.m., when Ely observed that they had plenty of catch, he instructed AAA to go home to get another container. When AAA left, he noticed that Dario and Rino followed her. An hour later, at around 2:00 a.m., he saw that the two appellants were back with the fishing outfit. However, he observed that Rino was now wet up to his waist while someone informed him that Dario was likewise wet the same way. At around 3:00 a.m., when AAA failed to come back, Ely went to their house to look for her. Seeing

that she was not in their house, Ely returned to the beach seine to ask for help in looking for his wife. After a coordinated effort to look for his wife, the body of AAA was found in a coconut plantation near the shore.[13]

The barangay captain informed the police authorities of Manukan, Zamboanga del Norte about the incident. Thereafter, Ely learned that the police had arrested Rolando and intended to make Dario and Rino as government witnesses.[14] The police told him that they will just file a case against one and the other two will be used as witnesses so that the case will be solved easily.[15] Ely did not like the outcome of the investigation because he believed that Dario and Rino were the real perpetrators of the crime, since they were the ones whom he saw follow his wife.[16] Because of this development, Ely sought assistance from the NBI to conduct its own investigation.[17]

Oscar D. Tomarong was the agent who conducted the NBI investigation. Agent Tomarong testified that in the early morning of February 11, 1994, he received a call from a certain Mr. Teodoro Urquiaga, informing him about the death of AAA. The following day Agent Tomarong went to the crime scene to investigate. He observed that there were footprints originating from the seawater and ending where the body was found. There were also footprints coming from the body and going towards the direction of the Dipane river. He added that the impressions of the footprints coming from the seawater were bigger than those going to the river and that the latter were more in number such that it is possible that these were made by two people.[18]

Agent Tomarong further stated that after his initial investigation, he learned that the police authorities of Manukan had picked up Dario and Rino for questioning. This caused him to terminate his investigation in order to give the police authorities a chance to finish their investigation. Eventually, the police concluded their investigation with the filing of charges against Rolando. It was set for preliminary investigation with the municipal trial court of Manukan. Thereafter, Agent Tomarong heard that Ely was complaining that justice was not served by the police investigation because his suspects were not charged and, instead, were made government witnesses. Ely then pleaded with the NBI to take over the investigation. On February 18, 1994, the NBI requested the municipal trial court to defer its preliminary investigation of Rolando so that the NBI could conduct a further investigation of the matter. The municipal trial court granted the request and the police turned over to Agent Tomarong the custody of Rolando, and the two witnesses, Dario and Rino.[19]

Agent Tomarong narrated that, on their way to the NBI office, Rolando told him that he was not alone in committing the crime. To see if Rolando was telling the truth, he stopped at the crime scene and had Rolando demonstrate how the crime was committed. Later that day, Rolando confessed in writing and in the presence of his counsel, Atty. Romero, to his participation in the crime.[20] On February 22, 1994, Rino executed his own written confession, in the presence of his counsel Atty. Carpio, regarding his participation in the crime.[21] The following day, Rolando and Rino reenacted on video how the crime was committed.[22]

Yolanda Mecoliar was among the buseros present who were gathering fish the day AAA died. Ms. Mecoliar testified that she remembered seeing appellants Dario, Rino and Rolando there. She also testified that she saw Dario and Rino follow AAA when she left and that Dario and Rino returned at around 2:00 to 3:00 a.m. of February 11, 1994, already wet.[23] Ms. Mecoliar further testified that Rolando and Rino admitted in her presence their participation in the death of AAA.[24]

Also part of the prosecution's evidence are the extrajudicial confessions of Rolando and Rino.

In his extrajudicial confession,[25] Rolando narrated that on the evening of February 10, 1994, at about 8:30 p.m., after watching a video show in Villaramos,[26] he, Rino and Dario drank tuba in the store of Martina Cabrera. After consuming one gallon of tuba, they went to Dario's house. There, they drank more tuba and smoked marijuana. At about 11:00 p.m., they left the house and went with a group of buseros who were going to the beach

seine near the Dipane river ,along the seashore. Among those in the group was AAA. Along the way, Dario suggested to Rino and Rolando that they have sexual intercourse with AAA because, according to Dario “AAA is fond of fucking.” Rino and Rolando agreed because they considered Dario as their leader.

While on the seashore, Rolando noticed that AAA left the group and walked towards her house. Upon seeing Dario and Rino follow AAA, he followed them at a distance of about 3 fathoms.[27] He then narrated that when Dario and Rino were at the side of AAA, they started to rape her. Dario held the hair of AAA, while Rino held her waist. AAA struggled to free herself but she was thrown to the ground. Then Dario pressed the head of AAA to the water. Not long thereafter, AAA stopped moving. Later on, Dario and Rino, who were laughing, said to him “It’s your turn” while making a fucking sign with their fingers. After that, Dario and Rino left to return to the beach seine. Rolando, left alone, carried AAA’s body to a dry place. He observed that her neck was broken but her hands moved. He then got aroused when he saw the naked body of AAA and he inserted his penis into AAA’s vagina until he had an orgasm. When he was finished, he covered AAA’s body with coconut leaves and went home. When asked why he did not help AAA, Rolando replied that he did not think of helping her because he had agreed to their plan earlier.

Rino, in his extrajudicial confession,[28] confirmed that on the night of February 10, 1994, he, Rolando and Dario watched a video show and then proceeded to the house of Martina Cabrera to drink tuba. They continued drinking in Dario’s house and also smoked marijuana. Thereafter, they proceeded to the beach seine to get some fish.

While waiting for the fish to be hauled, they saw AAA walk away from the group. They followed her. After walking about 200 meters from the Dipane river, AAA turned her head towards them. As she turned, Dario boxed her on the head, causing her to fall. AAA staggered to get up and tried to shout for help. But Dario held and twisted her head, while Rino held her waist. During the struggle, Rino heard a cracking sound. Thereafter, Dario pushed AAA’s head into the water until her body, except for her hands, stopped moving. Her hands continued to tremble. Dario then lifted her and Rino stepped back. From his vantage point, he saw Dario squat near the body of AAA for about half an hour. After that, Dario went to Rino and they gave each other “high fives.” Rolando came along and Dario told him that it was his turn. At that moment a beam of light was flashed in their direction, prompting Rino to leave Dario and Rolando and return to the beach seine. Not long thereafter, Dario arrived at the beach seine. They then asked for fish and went to Dario’s house to sleep. Rino left the next morning to go home.

Rino and Dario saw each other that afternoon. It was then that Dario suggested that they implicate Rolando as the one who killed and raped AAA. They agreed to fabricate a story that would make it appear that on the night of the incident, Rino saw Rolando following AAA; that he then followed Rolando; and that when he saw that Rolando was abusing AAA, he ran away. Dario and Rino narrated this story to a barangay councilman. The following morning, they were taken by the police and made to sign affidavits.

The Defense’s Evidence

Appellants all testified in their defense. Dario’s younger sister, Neslie Belonghilot, and Evelyn Ogarte, were also presented as their fourth and fifth witnesses. Their testimonies are substantially as follows:

Rolando Barcelona testified to repudiate his written confession and deny having any involvement in the death of AAA. Rolando claimed that his extrajudicial confession was obtained through coercion and was written without the assistance of counsel.[29] He added that his lawyer, Atty. Romero of the Public Attorney’s Office (PAO), arrived after his confession had already been prepared and signed by him. He informed Atty. Romero about this but that the reaction of the latter was to countersign the confession.[30]

Rolando narrated that on the night of February 10, 1994, he was with Dario and Rino watching a video in Villaramos. After watching the video, all three went to Martin Cabrera’s house and drank one ball of tuba.

Thereafter, they went to the house of Dario and just chatted. After a while, they proceeded to the beach seine to ask for some fish. When they were able to get some fish, they returned to Dario's house to sleep.[31]

Rino Castillo likewise repudiated his extrajudicial confession. He claimed that Agent Tomarong mauled him while he was detained in the NBI office. Rino also testified that his confession was prepared without a counsel being present and that Agent Tomarong fabricated the answers contained in the confession.[32]

Rino narrated that on the night of February 10, 1994, he was with Dario and Rolando watching a video. Afterwards, they proceeded to Martina Cabrera's house and drank one gallon of tuba. They continued drinking another half gallon of tuba in the house of Dario. When they finished drinking, they went to the beach seine to ask for fish. After getting some fish, they went back to Dario's house and slept.[33]

Dario Belonghilot also denied any involvement in the death of AAA. In his testimony, he stated that he, Rino and Rolando were together on the night of February 10, 1994, watching a video in Villaramos. From there, they went to the house of Martina Cabrera and drank one ball of tuba. They continued to drink a half ball of tuba in his house. Thereafter, the three, accompanied by Dario's younger sister Neslie, proceeded to the beach seine where they were able to get a pail of fish. They then brought the fish to his house where it was eaten, before they slept.[34]

Neslie Belonghilot, the 12-year-old sister of Dario, testified that she was with her brother and his friends when they went to the beach seine.[35] She claimed that they were together the whole time until they went back to Dario's house.[36]

Evelyn Ogarte testified that she saw appellants near the beach seine.[37] She claimed that at no time did appellants leave the beach seine from the time they first arrived until they left.[38]

After all the evidence had been presented, the trial court rendered a decision finding that appellants, acting in conspiracy with each other, were guilty of rape with homicide, as follows:[39]

WHEREFORE, as actual participants, acting in conspiracy with each other, aggravated by nighttime, aforestated three accused are hereby pronounced with moral certainty GUILTY as charged. Accordingly, Dario Belonghilot is sentenced to suffer the penalty of death, and reclusion perpetua is imposed upon Rolando Barcelona and Rino Castillo.

Jointly and severally, they are directed to indemnify the victim's husband and children, namely: Ely Pasco, Celeste, 13; Geraldine, 11; Mary Ann, 9; and Ely Jr., 8, all surnamed Pasco: P200,000 for loss of income; P50,000 for death compensation; P100,000 for moral damages; and costs of the suit.

SO ORDERED.

Appellants Rino and Rolando[40] seek a reversal of their conviction on the basis of the following assignment of errors:[41]

- THE TRIAL COURT ERRED IN CONVICTING DARIO BELONGHILOT BASED SOLELY ON THE CONFESSIONS OF RINO CASTILLO AND ROLANDO BARCELONIA.
- THE TRIAL COURT ERRED IN CONCLUDING THAT DARIO BELONGHILOT AND RINO CASTILLO FOLLOWED AAA.
- THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF AGENT TOMARONG.

Appellant Dario,[42] in his brief, assigns the following errors:[43]

- THE TRIAL COURT ERRED IN CONSIDERING THE “CIRCUMSTANTIAL EVIDENCE” AS SUFFICIENT TO CONVICT APPELLANT DARIO BELONGHILOT.
- THE TRIAL COURT FAILED TO CONSIDER THE IRRECONCILABLE CONTRADICTIONS IN THE SWORN STATEMENT INITIALLY GIVEN TO THE POLICE BY ELY PASCO.
- THE TRIAL COURT FAILED TO CONSIDER THE IRRECONCILABLE CONTRADICTIONS IN THE TESTIMONY OF ELY PASCO ESPECIALLY AS TO HIS TESTIMONY ON THE FACTUAL BASIS OF THE “CIRCUMSTANTIAL EVIDENCE.”
- THE TRIAL COURT ERRED IN CONSIDERING AND RENDERING ADMISSIBLE THE “CONFESSIONS” OF RINO CASTILLO AND ROLANDO BARCELONIA INSPITE OF DOUBTS ON THE COMPLIANCE WITH CONSTITUTIONALLY-PRESCRIBED REQUIREMENTS.
- THE TRIAL COURT ERRED IN CONSIDERING AND ADMITTING SAID CONFESSIONS AGAINST DARIO BELONGHILOT.
- THE TRIAL COURT ERRED IN CONSIDERING AND GIVING CREDENCE TO THE TESTIMONY OF AGENT TOMARONG.
- THE TRIAL COURT ERRED IN CONVICTING DARIO BELONGHILOT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT AND FOR DISREGARDING SOME CRUCIAL DETAILS AND NOT GIVING CREDENCE TO HIS ALIBI.

The Issues

The assignments of errors raised by appellants can be reduced into two issues: (1) whether or not the extrajudicial confessions are admissible; and (2) whether or not the evidence is sufficient to sustain a conviction under the crime charged.

The Court’s Rulings

First Issue: Admissibility of the Extrajudicial Confessions

We are unconvinced by appellants’ attempt to exclude the extrajudicial confessions of Rino and Rolando under the claim that they were taken in violation of their constitutional rights.

The circumstances surrounding the execution of the extrajudicial confession of Rolando were testified to by Agent Tomarong:[44]

Q

So, after the preliminary examination with Rolando Barcelona, did he confess to you?

A

Yes, in fact he confessed while we did not reach the office yet.

Q

Was that confession reduced into writing?

A

It was reduced to writing.

Q

Was his confession with the assistance of counsel?

A

Yes, he was assisted by his lawyer.

Q

Who requested that he be assisted by a lawyer?

A

When I told him his rights he told me that he wants to have a lawyer but he told me he has no money to pay.

Q

What did you do?

A

I told him that there are lawyers in the government wherein he can be assisted that he will not be paying.

Q

Do you know who was the lawyer whom he requested to assist him?

A

I believe he requested from the Public Attorney's Office.

Q

Do you know if he made a written request for the assistance of counsel?

A

He made a request because on that day in the afternoon, Atty. Romero came to our office bringing a letter from Rolando Barcelona telling us that he is the lawyer.

xxx xxx xxx

Q

So when did Atty. Cesar Romero of the Public Attorney's Office appear before your office?

A

In the afternoon of February 18.

Q

What did he do when he arrived at your office?

A

He requested us to see Rolando Barcelona.

Q

Was he able to confer with Rolando Barcelona?

A

Yes, we allowed them to talk well.

Q

What happened after that?

A

After they talked Atty. Romero told me that his client is willing to give his statement?

Q

You mean, a voluntary statement?

A

Yes, Ma'am.

Q

Were you able to get the statement of Rolando Barcelona with the assistance of his counsel Atty. Romero?

A

Yes, Ma'am.

xxx xxx xxx

Q

When you took the statement of Rolando Barcelona, did you appraise him of his constitutional rights aside from the fact that he is entitled to the assistance of counsel?

A

Yes, I informed him of all his rights under the constitutional safeguards.

xxx xxx xxx

Q

When you informed him about his constitutional rights, where was Atty. Romero?

A

He was there in the office.

Q

You mean, Atty. Romero was present at the inception of your investigation of Rolando Barcelona?

A

From the beginning until the end.

Q

How did you conduct your investigation on Rolando Barcelona, what dialect did you use?

A

I used the Cebuano.

With regard to the extrajudicial confession of Rino, Agent Tomarong testified, as follows:[45]

Q

You said that Atty. Carpio told you that he would like to confer with Rino Castillo what happened after that?

A

We allowed Atty. Carpio and Rino Castillo to talk privately.

Q

After they talked with each other, what transpired next?

A

When Atty. Carpio finished talking with Rino Castillo he told us that his client is willing to give a statement.

Q

So what did you do next?

A

I took the statement of Rino Castillo.

Q

In whose presence did you take the statement?

A

In the presence of his lawyer.

Q

Did you inform him of his constitutional rights?

A

Yes, in the dialect, I informed him of his constitutional rights.

In addition to the extrajudicial confessions, Rino and Rolando reenacted on video the incident that happened at the crime scene.[46] Atty. Romero was present during the reenactment.[47]

Appellants, on the other hand, claim that the statements contained in the extrajudicial confessions were untrue and that they were executed without the assistance of counsel and were extracted through violence, threats and intimidation.[48] Rolando Barcelona testified as follows:[49]

Q

When you were investigated, who was with you in the Office of Atty. Tomarong?

A

Only the two of us.

Q

Was this the time that your affidavit [was] being prepared?

A

Yes, sir.

Q

From the time your affidavit started up to the time it ended or finished, were there the two of you in the office?

A

Yes, sir.

xxx xxx xxx

Q

You said that from the time this affidavit was being prepared from the beginning to the end, you were the only two inside the office of Atty. Tomarong, did Atty. Romero come to the Office of the NBI on that day?

A

Yes, sir.

Q

What time did he arrive more or less?

A

4:00 o'clock.

Q

When he arrived, was the affidavit already finished?

A

Yes, sir.

Q

What did he tell you?

A

He asked if the affidavit was voluntarily taken from me.

Q

What did you answer?

A

I told him I was forced to sign.

Q

And when Atty. Romero heard that you were forced to sign, what did he answer?

A

He said that he will countersign.

Q

Did he sign the affidavit?

A

Yes, sir.

On the part of Rino Castillo, he testified that he was forced execute his confession without his lawyer, and that he was physically abused by Atty. Tomarong:[50]

Q

Now, while at the NBI were you asked by Atty. Tomarong to admit the guilt of the crime charged?

A

Yes, sir.

Q

And did you admit or confess to him that you committed a crime?

A

No, sir.

Q

And after that you did not admit, what did he do to you?

A

He mauled me.

Q

What did he use in mauling you and where were you hit?

A

He handcuffed me and I was hit on my organ with his foot.

Q

Did you suffer the pain after you were hit at your organ?

A

Yes, sir.

Q

Eventually, your affidavit was being prepared?

A

Yes, sir.

Q

When your affidavit was being prepared, do you have a lawyer with Atty. Carpio assisting you?

A

No, sir.

xxx xxx xxx

Q

Where did Atty. Carpio sign that affidavit of yours?

A

In his office.

Q

When was it signed by Atty. Carpio?

A

The following day.

xxx xxx xxx

Q

Now your affidavit was prepared at the Office of the NBI?

A

Yes, sir.

Q

You were present when the affidavit was prepared?

A

Only the two of us, Atty. Tomarong and I.

Q

All the time from the beginning of the affidavit up to the end?

A

Yes, sir.

Q

Now, in your affidavit there are answers that were being made, who made those answers?

A

This answers were his fabrication.

The rule is that once the prosecution has shown there was compliance with the constitutional requirements on custodial investigations, a confession is presumed voluntary and the declarant bears the burden of destroying this presumption. The confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat, or promise of reward or leniency.[51]

In the case at bar, the admissibility of the confessions were established by the prosecution through the testimony of Agent Tomarong, who confirmed that the declarants Rino and Rolando were apprised of their constitutional rights and that their extrajudicial confessions were taken with the presence of their respective counsel. Each of the extrajudicial confession bears the signature of counsel, showing that it was executed in his presence and with his assistance.[52] Hence, it became incumbent upon appellants to overturn, through convincing evidence, the presumption of validity of the confessions.

Appellants, to support their claim, merely presented the bare allegations of Rino and Rolando. No other proof was presented that force and violence were employed to coerce them to sign their extrajudicial confessions or that such confessions were taken without the presence of their respective counsel. In fact, Rolando admitted on cross-examination that his claim that his counsel was not present during the investigation and that his confession was false and coerced were only brought out for the first time in his testimony.[53]

Plainly, appellants have failed to show convincing evidence that would bar the confessions from being admitted into evidence.[54] As we cannot declare the extrajudicial confessions invalid on the bare allegations of appellants, the confessions must be allowed to stand.

It bears noting that Atty. Romero was Rolando's counsel during the taking of his extrajudicial confession and continued on as his counsel during the presentation of the evidence-in-chief by the prosecution. He later withdrew his representation, because his client decided to "change his theory of defense." [55] This strongly indicates that appellants' claims that they were forced to execute their extrajudicial confessions, without the assistance of counsel, were mere afterthoughts.

The claims of Rino and Rolando are also belied by the fact that they took part in reenacting the crime, which was video taped and shown in court. The trial court, in viewing the video tape, was in a best position to observe the manner and behavior of the participants and it found nothing that would indicate that the reenactment was involuntary. Furthermore, in *People v. Tia Fong*, [56] we held that if the appellant had not really taken part in the commission of the crime, his immediate reaction should have been to protest or refuse to participate.

Appellants further assert that the letters of request, showing that Rolando and Rino had asked to be represented by counsel from the PAO, are dubious.[57] It is argued that Rolando and Rino were incapable of writing the letters themselves since they are ignorant as to who to write to and that they have no means to write from their cells. In their respective testimonies, Rino and Rolando claimed that they were just made to copy from a draft letter of request without knowing the contents thereof. On this basis, according to appellants, it can be surmised that no counsel was present during the taking of the confessions.

This argument has no merit. The possibility that Rolando and Rino merely copied the letters of request without understanding what it was for or knowing who was the lawyer they were requesting, does not prove that they executed their confessions without the assistance of counsel. To put it plainly, appellants' argument is pure speculation.

Moreover, even if Rolando and Rino did not choose their counsel, that fact alone does not vitiate their confessions. There is no requirement that their lawyers should be previously known to them. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the former's appointment during the course of the investigation and the accused subscribes to the veracity of his statement before the swearing officer.[58]

Appellants also argue that, even assuming the extrajudicial confessions are admissible against the declarants Rolando and Rino, they are considered hearsay and inadmissible as direct evidence against Dario,[59] who did not execute a confession.[60]

There is no dispute as to the fact that Dario did not execute an extrajudicial confession. While the extrajudicial confessions of Rolando and Rino implicated him as the person who held AAA's head in the water, the prosecution did not present any witness to say that he actually saw him kill AAA. Be that as it may, a confession may still be admitted against the co-accused as corroborative or circumstantial evidence.[61]

Second Issue: Sufficiency of the Evidence

In the present case, aside from the extrajudicial confessions, the following circumstantial evidence has been established:

- Dario, Rino and Rolando knew each other and were together beginning the evening of February 10, 1994 until the early morning of February 11, 1994.
- On February 11, 1994, at about 1:00 a.m., Dario, Rino and Rolando, were at the beach seine together with AAA, Ely and the other buseros.
- When AAA left the beach seine, Dario and Rino followed her.
- After an hour, Dario and Rino returned to the beach seine with wet clothes.
- There were footprints around the body of AAA, with one set creating deep impressions on the sand and two other sets going to the Dipane river.
- The post-mortem examination revealed that AAA died of "cardiorespiratory arrest secondary to asphyxia (submersion in water)" and the vaginal smear proved positive for sperm cells.
- AAA suffered hematoma on her right eye and contusions around her neck.
- The Certificate of Death[62] showed that AAA died at around 2:00 a.m. of February 11, 1994.

To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused.[63] After evaluating the evidence presented, we find that the extrajudicial confessions have been fully corroborated by the above circumstances which form an unbroken chain leading to the fair and reasonable conclusion that appellants are guilty of the crime of rape with homicide.

The extrajudicial confessions of Rino and Rolando corroborate the testimony of other witnesses that Dario and Rino followed AAA when she left the beach seine, and that Dario and Rino returned to the beach seine already wet.

The confessions also explained the other evidence that were found on the scene. Rolando's confession that he carried the body of AAA to the coconut trees explained the deep impression caused by footprints found on the seashore, leading to the body of AAA. Rino's confession that he and Dario crossed the Dipane river explained the two sets of footprints found near the river. The confession that AAA was submerged in water until she did not

move explains the medical finding that AAA died because of cardiorespiratory arrest secondary to asphyxia (submersion in water). The narration that Dario boxed AAA on her eye and twisted her neck explained the hematoma on her right eye and contusions around her neck. Rolando's confession that he carried AAA's body to the coconut trees explains the location where the body was found. Finally, AAA's time of death stated in the Certificate of Death, 2:00 a.m., is about the same time Dario and Rino returned to the beach seine.

All things considered, the totality of the evidence presented passes the test of moral certainty and establishes beyond reasonable doubt the guilt of appellants.

Appellant Dario, however, contends that the prosecution failed to prove that he was wet up to his waist when he returned to the beach seine.[64] He argues that the testimony of Ely, that he saw Dario wet, cannot be given credence because, on cross-examination, he admitted that it was somebody else who saw him wet. He also argues that the footprints found on the shore, alleged to be of appellants, are unreliable since they could have been made by anyone.[65]

We do not generally disturb the findings of fact of the trial court, which are entitled to great weight and respect.[66] In our analysis of the records of the case, we found nothing that would require us to depart from this well-established rule.

It may be true that Ely did not actually see Dario wet, but there were other witnesses[67] who testified that they personally saw Dario wet, thereby supporting the finding of the trial court. As for the assessment on the footprints, it is possible that they could have been made by anyone. Yet, even assuming that the footprints were not of appellants, such a finding alone would be insufficient to overturn their conviction, in the face of the other evidence presented by the prosecution.

Appellants also argue that Agent Tomarong's testimony should not be given credence because of his obvious motive to see to it that a conviction is produced at any expense.[68] Again, we state the well-entrenched rule that the findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by the appellate court.[69] The zeal of the agent investigating the case, pointed out by appellants, cannot be taken to mean that evidence was fabricated to support a conviction. Indeed, most of appellants' arguments attacking the credibility of Agent Tomarong are simply surmises and conjectures, and fail to prove that the witness was ill motivated to testify falsely against them.

Dario next faults the trial court for not giving credence to his alibi that he was just near the beach seine the whole time.[70] To corroborate his claim, Dario presented his twelve-year-old sister, Neslie, who testified that she was with Dario, Rino and Rolando from the time they went to the beach seine until the time they returned home.

The trial court found Dario's alibi to be suspect. Neslie claimed that she was with Dario, Rino and Rolando. However, when Rino and Rolando were on the witness stand, they declared that it was only the two of them and Dario who went to the beach seine. Never did they mention the presence of Neslie.[71]

Denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability. Otherwise, such denial is purely self-serving and without merit.[72]

We agree with the trial court, whose evaluation of the testimonial evidence is accorded great respect.[73] The testimonies of Dario and his sister do not establish by clear and convincing evidence the alibi of Dario against the positive testimonies of witnesses who saw Dario and Rino follow AAA. The failure of Rino and Rolando to state in their earlier testimony that Neslie was with them, strongly puts into question her claim that she was actually present near the beach seine. Moreover, Dario's alibi is further demolished by the fact that it was corroborated by a relative whose motive is suspect. An alibi, to be believed, must receive credible corroboration from disinterested

witnesses.[74] Conversely, an alibi becomes less plausible when it is corroborated by relatives and friends who may not be impartial witnesses.[75]

Dario finally contends that the prosecution failed to prove that he had any motive for committing the crime charged.[76] Suffice it to say that the lack of motive for committing the crime does not preclude conviction for such crime when the crime and participation of the accused are definitely proven.[77]

However, we find that the trial court erred in finding that the crime committed was aggravated by nighttime. The Revised Rules of Criminal Procedure, which took effect on December 1, 2000, requires that every complaint or information should specify the offense's qualifying and aggravating circumstances.[78] This rule may be given retroactive effect in the light of the settled doctrine that statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage.[79] Considering that the information in this case did not specify any qualifying or aggravating circumstances, the aggravating circumstance of nighttime cannot be appreciated.

Republic Act No. 7659, otherwise known as the new Death Penalty Law, took affect on December 31, 1993 and classifies the Rape with homicide as a heinous crime punishable by death. Considering the crime charged occurred on February 11, 1994, it was only proper for the trial court to impose the supreme penalty upon Dario. Rino and Rolando would have been meted out similar penalties were it not for the fact that they were minors when they perpetrated the crime.[80] Consequently, the penalty next lower in degree, reclusion perpetua, was properly imposed upon them.

Three of our Members maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed herein.

As for the civil liability of appellants, we find it necessary to modify the amounts awarded by the trial court.

We reiterate our ruling in *People v. Tablon*,[81] that judicial policy has authorized the mandatory award of P50,000 in case of death, and P50,000 upon the finding of the fact of rape. In the same case, we further declared that P50,000 may be awarded as moral damages without the need for pleading or proof of the basis thereof other than the fact of rape. Consequently, we maintain the award of P50,000 as death compensation but additionally award P50,000 for the rape. The award of moral damages is reduced to P50,000. An award of P25,000 as exemplary damages should also be added.

Evidence on record reveals that the heirs of AAA are entitled to more than the P200,000 awarded for loss of earning capacity. AAA was 30 years old at the time of her death. Eli testified that AAA was earning approximately P1,500 a month, or P18,000 annually, and would have lived to about 80 years old.[82] Applying the formula in *People v. San Pascual, et al.*,[83] the heirs are entitled to P600,000 for lost income:

$$\begin{aligned} 2/3 \times (80-30 \text{ [age at the time of death]}) &= 33.33 \text{ (life expectancy)} \\ 33.33 \times P18,000 \text{ (annual net income)} &= P600,000 \end{aligned}$$

WHEREFORE, in view of the foregoing, the conviction of appellants by the Regional Trial Court of Zamboanga del Norte in G.R. Nos. 128512 & 128963 are hereby AFFIRMED with MODIFICATION. As modified, appellant Dario Belonghilot is sentenced to suffer the penalty of death. Appellants Rino Castillo and Rolando Barcelona are both sentenced to suffer the penalty of reclusion perpetua. All the appellants are held jointly and severally liable to the heirs of AAA for the amounts of P100,000 as civil liability, P50,000 as moral damages, P25,000 as exemplary damages, and P600,000 for the victim's loss of earning capacity. Costs de oficio.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon

the finality of this decision, let the records of these cases be forthwith forwarded to the Office of the President of the Philippines for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Branch 7.

[2] Pursuant to Article 47 of the Revised Penal Code.

[3] Decision, Rollo, pp. 23-24.

[4] Id., p. 24.

[5] Id., p.25.

[6] Records, pp. 3-4.

[7] An information was filed without a preliminary investigation having been conducted pursuant to section 7 of Rule 112 of the Rules of Court in instances of warrantless arrests.

[8] Records, p. 27.

[9] Exhibit "A", Records, p. 82.

[10] TSN, July 13, 1994, pp. 3-7.

[11] Id., pp. 15-17.

[12] Id., pp. 17-19.

[13] TSN, July 14, 1994, pp. 4-8.

[14] Id., p. 10.

[15] Id., p. 28.

[16] Id., p. 30.

[17] Id., p. 11.

[18] Id., pp. 4-9.

[19] Id., pp. 12-16.

[20] Id., p. 17.

[21] Id., p. 26.

[22] Id., p. 37.

[23] TSN, December 8, 1994, pp. 4-7.

[24] Id., p. 14.

[25] Records, pp. 98-101, Exhibit "H".

- [26] A barangay in Manukan, Zamboanga del Norte.
- [27] One (1) fathom is equivalent to six (6) feet.
- [28] Id., pp. 110-113, Exhibit “J”.
- [29] TSN, November 10, 1996, p. 7.
- [30] Id., p. 9.
- [31] Id., pp. 17-18.
- [32] TSN, November 13, 1995, pp. 4-6.
- [33] Id., pp. 10-12.
- [34] TSN, November 15, 1995, pp. 16-22.
- [35] TSN, April 25, 1996, p. 3.
- [36] Id., p. 7.
- [37] Id., p. 12.
- [38] Id., p. 14.
- [39] Rollo, pp. 23-59.
- [40] Rino Castillo and Rolando Barcelona are represented in this appeal by Atty. Briones.
- [41] Rollo, p. 70.
- [42] Dario Belonghilot is represented in this appeal by the Movement of Attorney’s for Brotherhood, Integrity and Nationalism, Inc. (MABINI).
- [43] Rollo, pp. 194-196.
- [44] TSN, September 14, 1994, pp. 17-21.
- [45] Id., pp. 29-30.
- [46] Exhibit “M.” Not among the records forwarded to the Supreme Court but it was viewed by the trial court.
- [47] TSN, September 14, 1994, pp. 36-41.
- [48] Rollo, pp. 78-80 and 206-221.
- [49] TSN, November 10, 1995, pp. 7-9.
- [50] TSN, November 13, 1995, pp. 4-6.
- [51] People v. Ladao, et al., G.R. Nos. 100940-41, November 27, 2001.
- [52] Rollo, pp. 98-113, Exhibits “H” and “J”.
- [53] TSN, November 10, 1995, pp.19-20.
- [54] Santos v. Sandiganbayan, 347 SCRA 386 (2000).
- [55] Id., p.2.

- [56] G.R. No. L-7615, March 14, 1956.
- [57] Rollo, pp. 77-80 and 215.
- [58] *People v. Gallardo*, 323 SCRA 218 (2000).
- [59] *People v. Camat*, 256 SCRA 52 (1996).
- [60] Rollo, pp. 77-78 and 220-221.
- [61] *People v. Orpilla*, 110 SCRA 53 (1981); *People v. Tizon*, G.R. No. 133228-31, July 30, 2002.
- [62] Records, p. 84, Exhibit "C."
- [63] *People v. Acosta*, 326 SCRA 49 (2000).
- [64] Rollo, pp. 75 and 199.
- [65] *Id.*, pp. 200-203.
- [66] *People v. Nicolas*, 324 SCRA 748 (2000); *People v. Andales*, 322 SCRA 56 (2000).
- [67] Rolando M. Sevilista and Yolanda Mecoliar.
- [68] Rollo, pp. 83-85 and 221-224.
- [69] *People v. Tejada*, 170 SCRA 497 (1989).
- [70] Rollo, pp. 224-227.
- [71] Rollo, pp. 51-52, Decision.
- [72] *People v. Arlee*, 323 SCRA 210 (2000).
- [73] *People v. Sancha*, 324 SCRA 646 (2000).
- [74] *People v. Bato*, 325 SCRA 671 (2000).
- [75] *People v. Agomo-o*, 334 SCRA 262 (2000).
- [76] Rollo, pp. 390-391.
- [77] *People v. Quillosa*, 325 SCRA 747 (2000).
- [78] Rule 110, Section 8.
- [79] *People v. Avendaño*, G.R. No. 137407, January 28, 2003.
- [80] Revised Penal Code, Article 47.
- [81] G.R. No. 137280, March 13, 2002.
- [82] TSN, July 14, 1994, pp. 13-14.
- [83] G.R. No. 137746, October 15, 2002.

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