

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO
“TONY” SALONGA, ALFREDO “FRED”
DANGANAN AND EDUARDO “EDDIE” DANGANAN,
DEFENDANTS-APPELLANTS.**

G.R. No. 128647. March 31, 2000

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PER CURIAM:

The frailty of human flesh gives no excuse for the transgression of a woman's purity especially when rape was coupled with the taking of the victim's life. Such act is testament to a debased, perverted and savage minds which deserves a penalty no less than death.

For automatic review is the decision 'of the Regional Trial Court, Branch 65, Tarlac, Tarlac finding Antonio "Tony" Salonga, Alfredo "Fred" Danganan, and Eduardo "Eddie" Danganan, guilty of rape with homicide under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659[1] and imposing upon each of them the supreme penalty of death, in addition to ordering them to pay the heirs of the victim the amount of P50,000.00 as death indemnity, P100,000.00 as moral and exemplary damages, P83,900.00 as actual damages, P15,000.00 as attorney's fees, and the costs of the suit.

The amended information alleged -

"That on or about November 10, 1994, in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the use of a bladed instrument and other hard object, conspiring, confederating and helping with one another, did then and there willfully, unlawfully and feloniously by means of force, threat and intimidation succeeded in having carnal knowledge with Babylyn Garcia, 13 years old, single and virgin against her will, that on the occasion thereof, the above-named accused with the use of a bladed weapon and a hard object stab several times and hit her with hard object on her head inflicting skull fracture on her head and stab wound on the different parts of her body which cause her immediate death at the scene of the crime.

CONTRARY TO LAW."[2]

Upon arraignment the accused-appellants pleaded "not guilty" to the charge.

We quote with approval the facts of the case as summarized by the trial court, as such facts are supported by the evidence on record:

"xxx xxx xxx

"Prosecution evidence shows that in the morning of November 10, 1994, Babylyn Garcia, a 13-year old comely girl, 5 ft. 4 inches in height, left their house in Barangay Sta. Maria in Tarlac, Tarlac to attend her classes as a First Year High School in the Gerona Tarlac, about 14 km. from the capital town of Tarlac. Babylyn walked from their house to Sitio Maligaya in Barangay Sinit, Tarlac, Tarlac, then a kilometer away. From Sitio Maligaya, she stepped down the dike and crossed the almost 500-meter-wide Tarlac River, which

becomes passable by foot during the dry season, to reach Barangay Sta. Cruz Tarlac, where she took a ride to Gerona. She expected to be home as usual between 5:00 to 6:00 o' clock in the afternoon of that day. On that fateful day of November 10, 1994, her father Pablito Garcia, failed to go and meet her as he was wont to do [sic] at Brgy. Sta. Cruz and Babylyn must have decided to go home alone, walking along the same beaten path that she and some residents thereabouts usually take in crossing the river. Babylyn failed to come home at the expected time and her parents became worried. Her father then decided to look for her in her school, in the houses of some relatives in Brgy. Sinait and along the usual path that he and Babylyn used to take in crossing the river but did not find her.

Between 5:20 and 5:30 o' clock in the afternoon of November 10, 1994, Maximo Tabag, a resident of Brgy. Sinait went to gather firewood at the dry portion of the Tarlac River, some 150 meters from the river embankment in Sitio Maligaya where cogon grass and bamboos had already grown in clusters and a few kakawati and acacia had taken root. While in the process of gathering firewood, Tabag heard voices and peering through the tall cogon grasses, he saw three men about 12 to 15 meters away dragging an unconscious woman, whose head was bloody and her dress stained with blood. (TSN, March 6, 1995 p.7). As Tabag watched furtively behind tall cogon grasses, the three men whom he recognized as Antonio Salonga, Alfredo Danganan and Eduardo Danganan, who appeared unaware of his presence then dumped the unconscious woman, whom he also recognized as Babylyn Garcia amidst cogon grasses near an acacia tree. Moments thereafter, he saw them leaving together in a hurry towards Brgy. Sta. Cruz where Alfredo and his family reside.

Tabag did not attempt to approach the unconscious girl because he was afraid the three men might see him and decide to go after him. He instead went home about four minutes after they left and kept silent about what he saw because he feared the accused (TSN, March 15, 1995). Tabag personally knows accused Alfredo Danganan and his brother, Eduardo, because they are his barangay mates in Brgy. Sinait since they were yet young boys and their half-brother, accused Antonio Salonga, was his barangay mate in Brgy. Agusog where he (Tabag) once resided for sometime. At the time he saw them in the river, Antonio Salonga was wearing a brown hat made of bamboo and a sky-blue, long sleeved polo shirt, Alfredo Danganan was in white shorts and white T-shirt and Eduardo Danganan was in maong pants and naked from the waist up (TSN, March 6, 1995, pp. 27-28).

Romeo Garcia, a kagawad of Barangay Sta. Maria and an uncle of Babylyn, together with a barangay tanod, launched a search for his missing niece. They scoured out the pathway across the Tarlac River between Sitio Maligaya and Brgy. Sta. Cruz. At about 2:00 o' clock in the early morning of November 11, 1994, Kgd. Garcia and his companion found the lifeless body of Babylyn concealed amidst cogon grasses near an acacia tree about 150 meters from the river embankment in Sitio Maligaya. Aside from human footprints, the school identification card of the victim and a woman shoe were found near the place where the body was dumped. Kgd. Garcia then notified the police that the body of his niece had already been found. SPO4 Conrado Duenas of Tarlac PNP, together with the two policemen and some members of the Kababayan Center No. 9 in San Isidro, Tarlac, which has jurisdiction over Brgy. Sta. Maria and Sinait, went to the place. They were told that the victim's body which was already removed by relatives, was found in a cogonal area. At about 7:00 a.m., November 11, 1994, the cadaver was brought to the Enriquez funeral parlor in Tarlac for autopsy. Tabag, bothered by his conscience, decided to see Kgd. Garcia at about 6:00 p.m. of that day and informed him of what he saw and asked him to cause the investigation of the brothers Antonio, Alfredo and Eduardo in connection with the slaying of Babylyn. Kgd. Garcia brought Tabag to the police but Tabag did not reveal all the details of what he saw the three accused did, not until they were arrested and detained.

Thereafter, SPO4 Oscar Mayor, a member of the Tarlac PNP, conducted an investigation of the death of Babylyn Garcia. He conferred with the members of the Kababayan Center in Brgy. Sinait, who had earlier made an ocular inspection of the crime scene. They furnished Mayor the names of Antonio Salonga, Alfredo Danganan, Eduardo Danganan Ronald Salvador and Cirilo Ibanez as possible suspects in the killing. Ronald

Salvador and Cirilo Ibanez later were excluded from the list of suspects for lack of evidence against them, SPO4 Mayor, with SPO2 Estabillo, went to the house of Antonio Salonga in Brgy. Aguso on November 19, 1994, to inquire about his whereabouts and what he had used on November 10, 1994, but Antonio was not at home then. Antonio's wife, however, told Mayor, that her husband was wearing a brown hat made of bamboo when he and Alfredo went to Brgy. Sinait in the morning of November 10, 1994. When shown the hat, Mayor noticed what he suspected to be a bloodstain on the hat. Mayor then asked Antonio's wife if he could have the hat and the latter in the presence of Danilo Bulanditan and Kgd. Conrado Capitulo as witness voluntarily gave it to him after he issued a receipt dated November 10, 1994 (Exhibit `C'). Mayor then submitted the hat, together with the blood-stained handkerchief and a piece of cloth of the victim, to the National Bureau of Investigation (NBI) in Manila for laboratory examination. Based on the NBI Biology Report No. E-94-1423 (Exhibit 'D') the contents of which were admitted by the defense (TSN, March 13, 1995, p.61), test results disclosed that 'the above specimen all gave positive results for human blood showing the same reaction of Group A'.

xxx xxx xxx"[3]

After the trial on the merits, the trial court rendered judgment on February 27, 1996 convicting all the accused-

"WHEREFORE, this Court finds the accused Antonio "Tony" Salonga, Alfredo "Fred" Danganan and Eduardo "Eddie" Danganan GUILTY beyond reasonable doubt of the crime of Rape with Homicide defined and penalized in Article 335, as amended, of the Revised Penal Code, and hereby sentences each of them to suffer the penalty of death, and to jointly and severally pay the heirs of Babylyn Garcia the amount of P50,000.00 as death indemnity, the amount of P100,000.00 as moral and exemplary damages, the amount of P83,900.00 as actual damages and the amount of P15,000.00 as attorney's fees and to pay the costs.

SO ORDERED."[4]

On account of the penalty imposed, the records were elevated to this Court for automatic review.[5]

Accused-appellants seek the reversal of the judgment of conviction insisting that the circumstantial evidence presented by the prosecution against them is insufficient to prove their guilt beyond reasonable doubt. They denied the charge and claimed that they could not have committed the crime of rape with homicide and interposed the defense of alibi. Their testimonies are summarized in the following portion of the decision of the trial court:

"xxx xxx xxx.

"Accused Alfredo Danganan testified that he and his half-brother, Antonio Salonga, went to Sitio Maligaya, Brgy. Sinait, Tarlac, to visit their father, Benito Danganan, in the morning of November 10, 1994. He was then wearing white shorts and white boxer (TSN, Feb. 28, 1996, p.11). He left Antonio at the house of their father and went to collect the debts of his borrowers in Brgy. Sinait and Brgy. Maria. He returned at 1:00 o' clock in the afternoon. At 4:15 p.m., he and Antonio returned to Brgy. Sta. Cruz because he had to attend the 6:00 p.m. 'prayer and worship service' at the Iglesia Ni Cristo chapel in Brgy. Aguso where he also served as a deacon. In going home they took the 'short cut' route from Sitio Maligaya towards Alfredo's house in Brgy. Sta. Cruz. While crossing the river, Antonio heard the voices of two women quarrelling. He told Antonio the voices seemed to come from Brgy. Sinait. They arrived at his (Alfredo's) house at 4:45 p.m. by his watch. After taking a bath, he dressed up and proceeded to the chapel with his wife, Yolanda, at 5:30 p.m. and arrived their at 5:38 p.m. using his passenger jeep. After signing his name on a loose left purporting to be an attendance sheet, he performed his duties as a deacon. After the services, he and his wife proceeded to the 'big chapel' of the INC in San Roque, Tarlac, at 10:00 p.m. and went home at 11:00 p.m. The following morning, November 11, 1994, when he returned to Brgy. Sinait to collect the debts of his other borrowers, he learned from Kgd. Garcia, the uncle of Babylyn, that the latter, the daughter of Pablito Garcia, was killed. He informed Kgd. Garcia and the policemen who were with him that when he and Antonio were crossing the river on their way home the previous afternoon, his brother heard the voices of two women quarrelling and he told him they appeared to be

in Brgy. Sinait. Alfredo Danganan testified on the witness stand in a manner as if he already knew just what his counsel would ask and immediately gave his answer. At times, he seemed hesitant in answering questions propounded on cross examination. His countenance on the witness stand appeared troubled.

Accused Antonio Salonga testified that he and his brother, Alfredo Danganan, went to Sitio Maligaya in Brgy. Sinait at about 8:00 o' clock in the morning of November 10, 1994. After taking their launch (sic) in the house of their father, Benito, he and Alfredo went home at about 4:15 p.m. of that day, based on his calculation. As they were crossing the river, he heard the voices of two women who were quarreling and Alfredo told him they seemed to be in Brgy. Sinait. They reached the house of Alfredo at around 4:45 p.m., again based on his calculation. Later, his brother and his wife, Yolanda, went to the INC chapel. He stayed at their house up to the time when they returned at 11:00 o' clock in the evening. Then he went home in Brgy. Aguso. At about 6:00 o' clock in the morning of November 11, 1994, he drove Alfredo's passenger jeep to earn some money to Camiling, Tarlac where according to him, a couple, Cenon Ibanez and Fanny Limos, who managed a store in that town, stopped him and told him that the daughter of Pedro Garcia was 'raped and killed' (TSN, March 7, 1996, p.5). As closely observed by the Court, he appeared listless as he answered questions propounded to him by his counsel or by the prosecution, making the Court feel that he was not telling the truth. He admitted, however, that the brown hat made of bamboo given by his wife to SPO4 Mayor belonged to him.

Accused Eduardo Danganan testified that in the morning of November 10, 1994, his brothers Antonio and Alfredo came to their house in Sitio Maligaya, Brgy. Sinait. While Antonio stayed in the house, Alfredo went out to collect the debts of his borrowers and returned at about 1:00 p.m. of the same day. At about 2:00 p.m., he went to the house of Remegio Manoloto and helped his brother, Arcadio, pile up about 60 cavans of palay in Manoloto's house up to 6:00 p.m. Thereafter, he went home and slept. The following day November 11, 1994, Kgd. Garcia and the Brgy. Captain of Sinait passed by their house and asked him if he noticed a man who may have passed by their place and told him that the daughter of Pabling Garcia was killed. Together with Bong Dela Cruz and Ronald Dela Cruz, he went to the house of the victim but the body had not as yet been brought home. On November 12, 1994, he, Antonio Salonga and Alfredo Danganan were brought to the police station for investigation. Before he was made to talk, SPO2 Versoza punched him, hit him with a stick on his chest and kicked his feet. He then gave a statement and signed it. He claimed he does not know the victim (TSN, March 12, 1996, p.12). He said he was not also familiar with the place where they found the body of the victim, which is only about 200 meters away from their house. His source of income was farming and sometimes catching birds in the swamp near where the incident occurred. In giving his testimony, Eduardo appeared as if he knew what questions his counsel would asked and gave his answers as if he didn't care. The Court could not but feel insincerity in his voice. Although the Court could not describe it, still it could recognize if from his demeanor (sic) that the accused himself did not believe that his version would be accepted as true. In short he lacked conviction in the manner he testified.

Yolanda Danganan, Alfredo's wife, corroborated Alfredo's allegation that he and Antonio were already in their house at Brgy. Sta. Cruz at around 4:45 p.m. She was sure of the time because she was watching TV and had seen the time on the wall clock when Antonio and Alfredo arrived. Later, she and her husband went to attend the service at the chapel of the INC in Brgy. Aguso, and came home at about 11:00 in the evening. Salvacion Magallanes, who was at the house of Yolanda in the afternoon of November 10, 1994 to help a friend borrow some money from Yolanda, corroborated Yolanda's testimony that Antonio Salonga and Alfredo Danganan arrived at the latter's house at 4:45 p.m. because she was watching Channel 9 and happened to look also at the wall clock. Rolando dela Cruz, who appeared hesitant in testifying, alleged that he and Eduardo went to the house of the victim in the morning of November 11, 1994 and 'magosyoso' (to learn about the incident). Leopoldo Taberna, who appeared defensive, testified that Alfredo Danganan and his father, Benito, attended the funeral of Babylyn Garcia. Arcadio Danganan, brother of the accused, corroborated the testimony of Eduardo that he helped him carry palay from 4:00 to 6:00 p.m. in the house of Remigio Manoloto. Jeremias del Mar, and INC deacon, claimed he saw Alfredo Danganan at the INC chapel in Aguso at 5:45 p.m., November 10, 1994 and even signed the 'Lagda sa Pulong'. It appears, however, that the signatures, including that of

accused Alfredo Danganan, were written on November 6, 1994.

xxx xxx xxx"[6]

Accused-appellants harp on the alleged inconsistencies in the witness' testimonies. To bolster their defense, attention is drawn to the following alleged inconsistencies in the testimonies of the prosecution witness-

(1) They contend that the trial court failed to consider the serious discrepancies in Maximo Tabag's Sinumpaang Salaysay given on January 18, 1995 and his testimony in open court considering that in the Sinumpaang Salaysay he never mentioned that he saw the accused-appellants dragging the dead and bloodied body of Babylyn Garcia to the cogonal area as testified to in open court but merely stated therein that he saw the accused-appellants leaving the place where the dead body of the victim was found.

(2) From the date of the occurrence of the incident- November 10, 1994 up to the execution of the Sinumpaang Salaysay on January 18, 1995, a period of 69 days had elapsed and Maximo Tabag failed to mention this very important part in his Sinumpaang Salaysay.

(3) If Maximo Tabag saw the three (3) accused dragged the dead and bloodied body of the victim he would have done what a man should have normally done under the circumstances. Yet, he did not go to the place where the accused came from; he did not attempt to see whether the victim was still alive or not; he did not help the victim; he did not report to the police; he did not report to the barangay officials; and, he did not report to the parents of the victim.[7]

(4) When Jesusa Bartolome testified during the preliminary examination she declared that she could not identify the man he saw sitting on the river but in open court she said that if she could see the man again she could recognize him and pointed to accused-appellant Antonio Salonga.

We are not persuaded by the submissions of the accused-appellants. Accused-appellants assail the testimonies of prosecution witness Maximo Tabag when he failed to mention in his sworn statement, dated January 18, 1995 that he saw the accused-appellants dragging the lifeless body of the victim. There is no real discrepancy in the two statements made by Tabag. In his Sinumpaang Salaysay, he stated that he saw the accused-appellants leaving the cogonal area near the scene of the crime where the body of the victim was found[8] but Tabag was able to sufficiently explain in court that he did not reveal the details of the incident to the police when he gave the Sinumpaang Salaysay since he was afraid for his life, but revealed to the fiscal what had happened-

"Atty Quiaoit

Q:

And these (sic)sworn statement of yours was taken on January 18, 1995 and which statement is identified as exhibit 1 for the defense, do you agree with me Mr. Witness that you never state here that you saw the three persons dragging Babylyn Garcia to the Cogonal area on November 10, 1994?

Fiscal Capulong"

May we allow the witness to see the sworn statement?

A:

I did not state in my statement but I told the matter to Fiscal Cerezo, sir.

Q:

But your purpose in going to the police station on January 18, 1995 is to give a statement on what you saw on

November 10, 1994, is that correct?

A:

Yes sir, I told them what I saw but I did not tell all what I saw sir.

Q:

You did not tell all despite the fact that you were given the opportunity by SPO4 Oscar Mayor.

A:

because it was not asked of me of what I saw in the place of the incident?

Q:

I will read to you question no. 3 : Maari mo bang ilahad and buong pangyayari hingil sa nalalaman..."

Q:

this is your answer to that question?

A:

Yes sir.

Q:

Now, in this question you were asked to tell the whole incident of what you know and said you did not tell the police what you saw three persons dragged Babylyn Garcia to the cogonal area, is that correct?

A:

I did not tell them sir.

Q:

Now, you did not tell the police that you saw three (3) dragged Babylyn Garcia to the cogonal area and even to the policeman who were your relatives, to the Brgy. Officials in Brgy. Sinait because you did not actually see three (3) persons dragging a woman?

FISCAL CAPULONG

The question is misleading, as to how he told him to the policeman, as a matter of fact, he did not.

JUDGE:

The question is very clear.

You did not tell because you did not see three persons dragging a woman?

A:

I saw them sir but I did not tell the police but I told this to Fiscal Cerezo because I am trying to protect myself."[9]

Accused-appellants insist that the testimony of Maximo Tabag is contrary to human nature or ordinary course of things because he never helped the victim; never reported it to the relatives or barangay officials of Sinait; and he never went to the place where the victim was dragged despite opportunity to do the same. Tabag did not attempt to go to the place where the victim was dragged nor immediately report to the authorities the horrifying

experience he had witnessed because he was afraid that accused-appellants will harm him had they known that he was the one who saw them. Besides, there is no standard form of the human behavioral response to a startling or frightful experience^[10] and the delay in bringing up the matter to the authorities do not destroy the veracity and credibility of the testimony offered. The court takes judicial notice of some people's reluctance to be involved in criminal trials. Failure to volunteer what one knows to law enforcement officials does not necessarily impair a witness' credibility.^[11]

Accused-appellants assail the credibility of prosecution witness Jesusa Bartolome, a school principal, on the ground of being inconsistent. We emphasize that she has no interest in the case and it is inconceivable on her part to impute to innocent persons the commission of the crime, when she has no compelling reason to do so. Moreover, she was able to satisfactorily explain in court the reason why she stated in the preliminary investigation of the case that should the man whom she saw near the scene of the crime within a distance of ten (10) meters be presented to her, she would not be able to identify the same, for what she only distinctly remembered was the polo shirt and the hat he was wearing vis-a-vis her positive identification of accused-appellant Antonio Salonga, as the man she saw near the crime scene, as follows:

"Q:

Another question on that preliminary investigation on page 2 TSN

Q:

If you see him again could you identify this man?

A:

I have not seen his face only the polo and hat made me identify him.

Q:

Were you asked this question and you gave that answer?

A:

Yes sir.

Q:

In your testimony a while ago you stated that you saw the face of the man sitting on the water but your testimony in the Municipal Trial Court, Tarlac in that preliminary investigation, you did not see the face, you only saw the polo and the hat?

A:

That was made sir because of fear, because I was not then so serious with the statement given by me because of fear, I still have that fear that I felt when I saw the man it was right after the event when the police came and told me that somebody was raped and killed so I was not able to give the right answer.

Q:

When you testified before the Municipal Trial Court of Tarlac in the preliminary investigation you were not serious in your statement?

A:

Not so serious sir but the fear that come to my body then so I made myself confuse with the statement

given."[12]

Notably, her statement given to the police on December 12, 1994 did not fully negate the possibility of her capacity to identify the man seated on the edge of the river when she testified that:

Q:

In your statement before the police dated December 12, 1994 already marked as Exhibit"J", you were asked this question and you made this answer: "Kung kayo po ay mabibigyan ng pagkakataon na makita pa and taong inyong binabanggit, makilala o maituro mo ba ninyo? Sagot: Maari po siguro." Do you remember having stated that?

A:

Yes, sir."[13]

In fine, the issue boils down to the credibility of witnesses. Settled is the rule that the trial court's assessment thereon is accorded great respect because it heard the witnesses and observed their behavior and manner of testifying[14] unless it overlooked or misapplied some facts which could have affected the result of the case.[15] The proximate contact of the trial court with those who take the witness stand places them in a more competent position to discriminate between a true and false testimony.

Absence of direct proof relative to the commission of the crime does not negate any possibility of conviction on the part of the accused-appellants. While there is no direct evidence relative to the commission of the crime for which they were prosecuted, the circumstantial evidence proven in contrast with the excuse offered by the defense, are sufficient to sustain their conviction beyond reasonable doubt. Circumstantial evidence may alone be sufficient to prove elements of the crime so long as the following requisites concur:[16]

- there is more than one circumstance;
- the facts from which the inferences are derived are proven; and
- the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

In other words, the circumstances themselves, or a combination thereof, should point to overt acts of the accused that would logically point to the conclusion, and no other, that the accused is guilty of the crime charged and at the same time inconsistent with the hypothesis that they are innocent.[17]

After thorough review of the evidence, we find the following circumstantial evidence established by the prosecution, to have successfully overcome the constitutional presumption of innocence and established the guilt of the accused-appellants beyond reasonable doubt: that Eduardo Danganan, on two occasions uttered to the victim sometime prior to the brutal crime "Karagul mo na Lyn-lyn, apanaya da ka mo rin" (You are already a young woman, Lyn-Lyn, I have not tired waiting for you);[18] on the day of the bestial killing, November 10, 1994, at about 5:00 to 5:30 p.m., Jesusa Bartolome saw Antonio Salonga sitting in the shallow portion of the Tarlac river wearing a brownish hat made of bamboo and a sky-blue, long-sleeved polo shirt;[19] on the same day, between 5:20 to 5:30 in the afternoon, Maximo Tabag saw Antonio Salonga, Alfredo Danganan and Eduardo Danganan together dragging the body of the victim to the cogonal area near the Tarlac river;[20] when Maximo Tabag saw Antonio Salonga, the latter was wearing a brownish hat made of bamboo and a skyblue colored, long-sleeved polo shirt Alfredo Danganan was wearing white shorts and t-shirt and Eduardo Danganan was wearing maong pants and naked from the waist-up;[21] the wife of Antonio Salonga attests that the hat with suspected bloodstain belongs to her husband and the same was used on November 10, 1994 when Antonio Salonga and Alfredo Danganan went to Sitio Maligaya, Brgy. Sinait, Tarlac, Tarlac;[22] Alfredo Danganan

corroborated Tabag's description of his attire on November 10, 1994;[23] the NBI Biology Report revealed that the bloodstained hat of Antonio Salonga together with the bloodstained handkerchief and a piece of cloth belonging to the victim, all gave positive results for human blood showing reactions to Group "A";[24] the autopsy report on the cadaver of the victim revealed that the victim sustained cracked skull, injuries in neck and in thorax, multiple lacerated wounds, hematoma on labia majora and laceration of the hymen.[25]

Evidence is weighed not counted. When facts or circumstances which are proved are not only consistent with the guilt of the accused, but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court.[26] In the case at bar, we give credence to the foregoing circumstantial evidence which clearly established the crime of rape with homicide defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11, R.A. 7659 which took effect on December 31, 1993 as follows:[27]

"When and how rape is committed - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1.)

By using force or intimidation;

2.)

When the woman is deprived of reason or otherwise unconscious; and

3.)

When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1.)

When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of parent of the victim.

2.)

When the victim is under the custody of the police or military authorities.

3.)

When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4.)

When the victim is a religious or a child below seven (7) years old.

5.)

When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6.)

When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency.

7.)

When by reason or on occasion of the rape, the victim has suffered permanent physical mutilation.

Rape is perpetrated when the accused has carnal knowledge of the victim by force and without consent.[28] It is not essential that there be complete penetration of the female organ, it is enough that the labia of the female organ was penetrated.[29] Based on the evidence on record, sexual intercourse with the victim was sufficiently established, as shown in the testimony of the medical doctor who conducted the post mortem[30] examination on the child's body:

"Q:

On your page 2 exhibit a-1, you mentioned genitalia-hematoma, mas pubis-hematoma on labia majora, what do you mean by these doctor?

A:

There is a slight laceration at 10:00 o'clock of the hymen sir.

Q:

In your examination, you stated to this Honorable Court also at a certain degree of certainty whether in your opinion Babylyn Garcia was raped?

A:

It is possible sir.

Q:

Did you see any sign of rape in the body of Babylyn Garcia at the time of the examination?

A:

Those injuries found at the thorax with multiple lacerated wound and these are signs of force violence.

Q:

Now maybe you are in a position to state what cause the laceration at the ten o'clock of the hymen?

A:

Maybe due to any penetration that may cause the hymen to be lacerated at ten o'clock sir.

Q:

It maybe cause by any instrument or anything that maybe inserted in sir.

Q:

And these laceration could be caused deliberately or intentionally?

A:

It is possible sir that they were done intentionally.

Q:

Now, how about the hematoma in the genitalia?

A:

It is due to bite because this was a sign of kissmark sir.

Q:

Also this hematoma?

A:

Yes sir.

Q:

For a clearer understanding of your medical term, what do you mean by mona (sic) pubis hematoma on labia majora?

A:

Hematoma of the mona(sic) pubis will be due to socking and biting, labia majora due to biting-socking tension in the skin that cover the sex organ sir.

Q:

Following your line of answer what cause these injuries?

A:

Due to biting and socking sir."^[31]

The injuries, laceration of the hymen, contusions on labia majora and abrasions suffered by the victim clearly demonstrate that force was employed upon her to satisfy the prurient desires of the accused-appellants.

Coming now to the penalty, the trial court correctly imposed the penalty of death since Article 335 of the Revised Penal Code, as amended by R.A. 7659 provides that "when by reason or occasion of the rape, a homicide is committed, the penalty shall be death." Being a single indivisible penalty, the Court mandatorily applies the same in the light of Article 47 of the Revised Penal Code^[32] and "regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime."^[33]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

As to damages, the trial court awarded the heirs of the victim the sum of P50,000.00 as death indemnity, P100,000.00 as moral damages and exemplary damages, P83,900.00 as actual damages and P15,000.00 as attorney's fees plus costs of suit. In rape with homicide, the death indemnity was increased to P100,000.00 because the prevailing jurisprudence is that P50,000.00 for death and P50,000.00 for rape.[34] However, the award of moral damages is reduced to P50,000.00[35] while the exemplary damages and attorney's fees are deleted for lack of legal basis and the award of actual damages is likewise reduced to P18,000.00.[36]

WHEREFORE, the Decision of the trial court finding the accused-appellant Antonio Salonga alias Tony, Alfredo Danganan alias Fred, and Eduardo Danganan alias Eddie, guilty of rape with homicide under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659 and imposing upon each of them the supreme penalty of DEATH and to suffer the accessory penalties provided by law is AFFIRMED with the MODIFICATION that the accused shall indemnify the heirs of the victim, P100,000.00 as civil indemnity, P50,000.00 as moral damages, P18,000.00 as actual damages.

In accordance with Section 25 of the RA 7659, amending Article 83 of the Revised Penal Code, upon the finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of executive clemency or pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] R.A. 8353 "The Anti-Rape Law of 1997" was not yet in force when the crime was committed.

[2] Records, p. 33.

[3] Regional Trial Court Decision, pp. 2-5; Rollo, pp. 34 - 37; 99-102; Appellees Brief filed by the Solicitor General, pp. 3-7, Rollo, pp. 138-142; Record, pp. 329-332.

[4] Records, p. 347.

[5] Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. 7659 provides that: x x In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

[6] Regional Trial Court Decision, pp. 6-9; Rollo, pp. 38-41; 103-105.

[7] Brief for the Accused-Appellants, p. 14, Rollo, pp. 81-82.

[8] Tabag's Sinumpaang Salaysay, Records, p. 58.

"03. T- Maaari mo bang ilahad ang buong pangyayari hinggil sa nalalaman mong imponnasyon hinggil sa insidenteng ito?

S- Noong humigit kumulang alas 5:20 hanggang 5:30 ng hapon ng Nobiyembre 10, 1994, ako po noon ay nasa may ilog, sa talahibang bahagi at may mga kawayan doon, sa Sitio Maligaya, Brgy. Sinait, Tarlac, Tarlac upang buhatin ang mga kahoy panggatong na aking pinulot doon ng bigla akong may narinig na kaluskos at ingay subalit ng ako ay palapit, nakita ko na may tatlong kalalakihan na nagmamadaling paalis doon kaya't hindi ko na itinuloy

ang aking balak at bumalik sa lugar na kung saan ko iniwan ang bigkis ng kahoy at binuhat uli ito at umuwi na sa Brgy. Sinait, Tarlac, Tarlac."

[9] TSN, June 23, 1995, pp. 17-18.

[10] *People vs. Miranda*, 262 SCRA 351.

[11] *People vs. De Leon*, 248 SCRA 609 (1995) cited in *People vs. Alberca*, 257 SCRA 613, 631.

[12] TSN, pp. 11-12, Dec. 3, 1996.

[13] *Ibid.*, p. 9.

[14] *People of the Philippines vs. Efren Buendia*, G.R. 133949-51, September 16, 1999 citing *People v. de la Cruz*, 276 SCRA 191; *People v. Corea* 269 SCRA 76; *People v. Frago*, 232 SCRA 653.

[15] *People vs. Codillo*, 224 SCRA 104; *People vs. Matrimonio*, 215 SCRA 613.

[16] Section 4, Rule 133, Revised Rules on Evidence.

[17] *People vs. Contante*, 12 SCRA 653; *People vs. De Guia*, 280 SCRA 141.

[18] TSN, November 12, 1996, pp. 5-8.

[19] TSN, December 3, 1996, pp. 4-7.

[20] TSN, March 6, 1995, pp. 6-8.

[21] TSN, March 6, 1995, pp. 27-28.

[22] Exhibit "B", Records, pp. 120-121.

[23] TSN, February 28, 1996, p. 11.

[24] Exhibit "D", Records, p. 123.

[25] Exhibit "A", Records, pp. 52-53.

[26] *People v. Abitona*, 240 SCRA 335 (1995)

[27] This Article was further amended, modified and repealed by R.A. 8353 otherwise known as the "Anti-Rape Law of 1997" and was renumbered to Articles Article 266-A and 266-B of the Revised Penal Code as a crime against persons.

[28] *People of the Philippines vs. Efren Buendia*, G.R. 133949-51, September 16, 1999.

[29] *People vs. Oscar*, 48 Phil 527; *People vs. Hernandez*, 49 Phil 980.

[30] Result of postmortem examination conducted by Dr. Cesar Padlan, Municipal Health Officer of Tarlac: Consent of Autopsy:

The body is fairly developed fairly nourished measuring 5'4" in length (sic), the head is soaked with blood.

`Head - normocephalic, with equally distributed long black hair, soaked with her own blood.

`Scalp - there is open skull fracture measuring 4 cm. x 4cm. with brain tissues. Circular with rugged edges noted on left tempora- parietal occipital area.

`Face - multiple lacerated wound measuring 3 cm., 2 cm., 4 cm., 2 cm., at the upper and lower eyelid with exposure of the bony prominence noted at the left eye.

- multiple stab wound measuring 3 cm., 1cm., 1.2 cm. and 4 cm. and 4 cm. noted at the sub-maxillary aspect of

the left jaw.

- stab wound measuring 3 cm. left thru and thru at the base of the maxilla exited at the right maxillary area measuring 1.2 cm.

Neck - linear, circular abrasion with hematoma around the neck. The whole head is asphyxiated.

Thorax - both right and left breast are with multiple lacerated wound measuring 0.5 cm. with hematoma, noted on both nipples and areola.

Internal Examination - there is a slight laceration 10 o'clock of the hymen.

Cause of Death:

Asphyxia, hypovolemic shock secondary to severe blood loss due to multiple stab wounds.' Exhibit "A" Records, pp. 52-53; 110-111; 118-119.

[31] TSN, March 6, 1995, pp. 34-35.

[32] Article 47, RPC, as amended by Sec. 22, R.A. 7659.- In what cases the death penalty shall not be imposed; Automatic review of death penalty cases.- The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua. xxx.....xxx.

[33] Article 63, RPC, Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. xxx.....xxx.

[34] People vs. Tahop, G.R. No. 125330, September 29, 1999 citing People vs. Robles, G.R. No. 124300, March 25, 1995.

[35] People vs. Hivela, G.R. No. 132061, September 21, 1999 citing People vs. Ayo, G.R. No. 123540, March 30, 1999; People vs. Mengote, G.R. No. 130491, March 25, 1999; People v. Laray, G.R. No. 101809, February 20, 1996, 253 SCRA 654.

[36] Evidence on record showed that only P18,000.00 was incurred for the burial expenses, hence the award of actual damages is limited to said amount; Exhibit "F", p. 127.

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