

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMIE BANTILAN, ACCUSED-APPELLANT.

G.R. No. 129286. September 14, 1999

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PER CURIAM:

For automatic review by this Court is the Decision of Branch 32, Regional Trial Court, Surigao City finding accused-appellant Hermie Bantilan y Taganas guilty beyond reasonable doubt for the complex crime of rape with homicide and sentencing him to suffer the supreme penalty of death.

On February 17, 1995, the Provincial Prosecutor of Surigao del Norte filed with the Regional Trial Court, Surigao del Norte, an Information charging Bantilan with the crime of rape with homicide committed as follows:

That on December 27, 1994 at about 3:00 o'clock in the afternoon, in Bunyasan, Malimono, Surigao del Norte, and within the jurisdiction of this Honorable Court, the above-named accused, with full freedom, intelligence and voluntariness, did then and there willfully, unlawfully and feloniously, with lewd design, have sexual intercourse or carnal knowledge with one JITA QUINTO with force and intimidation and the employment of force caused several injuries on the victim thus resulting in the death of the victim to the damage and prejudice of the heirs, actual, moral and exemplary damages in amounts to be proven in court.

ACT CONTRARY TO ARTICLE 335, No. 3, par. 4 of the Revised penal Code.[1]

Upon arraignment on March 29, 1995, accused Bantilan assisted by Atty. Ombra Benaning from the Public Attorney's Office (PAO) pleaded not guilty. Thus, trial ensued.

The facts as established by the prosecution are as follows:

In the early morning of December 27, 1994, Nestor Agapay and Bernabe Humanoy went to the store of Jita Quinto, at Barangay Bunyasan, Malimono, Surigao del Norte. They ordered and drank a glass of Tanduay Rhum. They were attended to by Rosie Balabala, younger sister of Jita Quinto who was then washing clothes. The store is located at the ground floor of Quinto's residence.

At twelve o'clock noon, the two sisters took their lunch. They invited accused and his companions who were still drinking to join them. Only accused accepted the offer.

After lunch, Jita went to her room at the second floor to rest. Shortly, thereafter Bernabe went home leaving behind accused Bantilan and Nestor Agapay who were still drinking Tanduay Rhum.

At about two o'clock in the afternoon, accused Bantilan ordered another bottle of liquor. Rosie refused to give him another bottle because he was already drunk. Accused Bantilan suddenly asked where her sister Jita was. Rosie responded that she was sleeping at her room upstairs. Accused Bantilan left without being noticed by Rosie and Nestor who were conversing with each other. Rosie heard some noise upstairs; she just ignored it. A few minutes later, accused Bantilan appeared and informed Rosie that her sister Jita wanted her upstairs. Rosie immediately went up. She was followed by accused. As she entered her sister's room, she was shocked to see her sister sprawled on the floor unconscious. The pillows and beddings were in disarray and were strewn around Jita. Rosie ran towards her sister and shouted for help. Nestor rushed upstairs and carried Jita. Accused

Bantilan, however, did not help them.

Responding neighbors and barangay officials brought Jita to a nearby hospital. Accused Bantilan, on the other hand, was turned over by the barangay officials to the chief of police of Malimono, Surigao Del Norte, where he was detained at the municipal jail. The Police authorities took pictures of the scene of the crime. They found fresh bloodstains (Exh. "B") splattered and scattered all over. What caught their attention most was the victim's bloodied panty strewn on the floor.

At the police station, accused Bantilan denied any involvement in the killing of the victim. However, the investigating officer remembered the bloodied panty and thus, asked accused Bantilan to pull up his shirt. There were bloodstains at the edges of his shirt and his underwear (brief). He could not explain why and where he got those bloodstains.

That same afternoon, policemen brought accused Bantilan to the hospital to have the bloodstains found on his shirt and underwear (brief) examined. When accused Bantilan was asked to remove his pants, the investigators saw that the lower portion of his sexual organ contained several specks of fresh bloodstains, the size of a pinhead. What was even more noticeable were the bloodstains covering most of accused's brief (front portion) (exh. "H"). Likewise, he failed to explain why he had bloodstains on his genital organ.[2]

On the other hand, the version of the defense is as follows:

xxx. At the time of the incident, he was in Surigao City buying a meterstick which he needed as a carpenter. Thereafter, he went home arriving at their house in Bunyaran, Malimono at around 4 o'clock in the afternoon. The barangay captain, however, fetched him and brought him to the police station. From there, he was taken to the emergency hospital and then brought back to the police station and placed in jail (TSN, 10 July 1990, pp. 4-5).[3]

On February 10, 1997, the trial court rendered a decision, the dispositive portion of which reads as follows:

Wherefore, premises considered, the Court finds the accused, Hermie Bantilan, guilty beyond reasonable doubt as a principal of the complex crime of rape with homicide as defined and penalized in Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the mandatory penalty of DEATH by lethal injection as provided by law.

The accused is ordered to pay to the heirs of the victim, Jita Quinto, the sum of P14,000.00 as reimbursement of actual expenses for the burial of the deceased; the sum of P100,000.00 as indemnity for the rape and death of the said victim; and the costs.

SO ORDERED.[4]

In this appeal, appellant made the following assignment of errors:

I. THE TRIAL COURT ERRED IN HOLDING THAT THE VICTIM JITA QUINTO WAS RAPED.

II. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[5]

While the appellant concedes to the well-entrenched jurisprudential rule that in rape, it is sufficient to prove that there is penetration of the man's penis into the victim's sexual organ, no matter how slight, the fact of penetration of appellant's penis into the victim's vagina was not, however, established in the case at bar. The testimony of the examining doctor did not categorically state that the victim was indeed raped. She testified that the abrasions in the vaginal canal of the victim and the blood oozing from her vagina may have been caused by the insertion of some other objects and not necessarily by the forcible penetration of a man's penis. Thus, a reasonable doubt

exists on the prosecution's theory of rape which should be considered in favor of the accused. Moreover, appellant avers that the trial court erred in convicting him based on circumstantial evidence which was not sufficient to prove his guilt beyond reasonable doubt.

In convicting the appellant for the crime charged, the trial court gave particular emphasis on the following unrefuted facts established by the evidence, to wit:

The evidence stands undisputed that at about three o'clock in the afternoon of December 27, 1994, the lifeless or unconscious body of Jita Quinto was found in the bedroom of her house in barangay Bunyasan, Malimono, Surigao del Norte. At a postmortem examination conducted later at the Malimono District Hospital by Dr. Adoracion Mantilla, her death was ascribed to cardiac arrest resulting from asphyxia or suffocation as stated in her certificate of death (Exhibit E) and the medical findings of Dr. Mantilla (Exhibit D).

According to Rosie Balabala, the younger sister of the deceased victim, she found Jita lying on the floor where she had been sleeping. Present with her were the accused, Hermie Bantilan, and later Nestor Agapay. The sleeping mat, pillows, mosquito net and blanket of the deceased were in disarray as shown in the photographs (Exhibits A, A-1 and A-2). The victim's bloodied panties (Exhibit B) were found on top of the mat as appear in the photographs (Exhibit A-3 and A-1-A).

In her testimony, Dr. Adoracion Mantilla declared that upon making an internal examination of Jita Quinto, she found fresh abrasions in the latter's vaginal canal. Blood oozed from her vagina. The doctor opined that the abrasions were probably caused by a man having sexual intercourse forcibly with the deceased. For lack of the necessary laboratory equipment, she was unable to conduct an examination for the presence of spermatozoa.

The doctor further testified that she found marked bluish discolorations on the body, lips and fingernails of the deceased indicating a lack of oxygen in her blood. The eyes were dilated or open and bulging and there were various hematoma found around the victim's mouth, above her right nipple, at her extremities and her back, more specifically in the left and right scapular regions. The aforementioned findings showed that the deceased had to struggle for breath probably because of some object placed on her face by her assailant.[6]

The trial court also found that the evidence inevitably and inescapably linked the accused to the offense charged based on the following facts and circumstances:

(1)

The accused, Hermie Bantilan, was in the house of the victim, Jita Quinto, at the time she was criminally assaulted. Earlier, Bantilan had been drinking liquor with two friends in the store at the ground floor of the victim's house;

(2)

There was a commotion in the upstairs bedroom where Jita Quinto was resting. About ten minutes later the accused came out into the store;

(3)

Bantilan was the one who informed Rosie Balabala that she was needed by her elder sister, Jita Quinto, thereby admitting that he had just came from the latter;

(4)

There was nobody else with Jita Quinto in her bedroom except the accused;

(5)

Upon immediately responding, Rosie Balabala found Jita Quinto lying unconscious or dead on the floor with her beddings in disarray and her bloody panties on top of the mat;

(6)

While Balabala and Nestor Agapay frantically tried to revive the victim, Hermie Bantilan just stood nearby doing nothing to help;

(7)

Bantilan was brought by barangay Kagawad Severino Sacro escorted by two tanods in a jeepney from Bunyasan to the Malimono police station in the afternoon of December 27, 1994;

(8)

When Bantilan was physically examined by Chief of Police Eulogio Ferol, he saw bloodstains in the briefs and tiny specks of blood at the edge of the shirt of the said accused;

(9)

The foregoing findings of the Chief of police were confirmed and verified by Dr. Ramon D. Lafuente who found, in addition thereto, numerous specks of newly dried blood on the sexual organ of Hermie Bantilan; and,

(10)

The postmortem examination of Jita Quinto conducted by Dr. Adoracion Mantilla showed that the deceased sustained fresh abrasions in her vaginal canal and blood oozed from her vagina. In the doctor's opinion these were caused by someone having had forcible sexual intercourse with her.[7]

The testimony of prosecution witness Rosie Balabala established how the crime was committed. On direct examination, she testified as follows:

Prosecutor:

Q: Do you recall where were you last December 27, 1994 at around 3:00 o'clock in the afternoon more or less?

A: Yes, Sir.

Q: Where were you at that time?

A: I was at the store, Sir.

Q: Where is that store located?

A: At the ground floor of her house where I stayed.

Q: What barangay is that house located?

A: At Barangay Buniasan, Malimono, Surigal del Norte.

Q: By the way, who is the owner of that store?

A: Jita Quinto.

Q: Your sister?

A: Yes, Sir.

Q: The victim in this case?

A: Yes, sir.

Q: At that time, what were you doing at the store of your sister?

A: I was tending the store.

Q: While you were tending that store of your sister, at that time, do you remember of incident that happened at that time?

A: They were drinking.

Court: (to the witness)

Q: Who were drinking?

A: Hermie Bantilan, Nestor Agapay, and Bernabie Humanoy.

Prosecutor:

Q: While you were tending your store and your customers are Hermie Bantilan, Nestor Agapay, and Bernabie Humanoy, what happened, if any?

A: After they finished that drinks they ordered for another drinks, but I did not give them.

Q Do you remember who asked for another drinks?

A: Hermie Bantilan.

Court: (To the witness)

Q: What did they drink?

A: Tanduay Rhum.

Prosecutor:

Q: Now, when you told him that you will not give him drink any more, what did he do?

A: Then he asked the whereabouts of my ate.

Q: What did he tell you?

A: He said, where is your ate and I told him that she was upstairs sleeping?

Q: What did he do after you told him that she was upstairs sleeping?

A: I noticed that he move away from me.

Court: (to the witness)

Q: When you said, Ate, to whom are you referring to?

A: Jita Quinto.

Prosecutor:

Q When you said he went away from you, can you remember what did he do by that time?

A: After a while there was a commotion upstairs.

Q When you heard that there was a commotion upstairs what did you do?

A: After a while he arrived at the store and told me that my ate wanted me to go upstairs.

Q Who told you that?

A: Hermie Bantilan.

Q: You mean the accused in this case?

A: Yes, sir.

Court:

Q: Who told you that your sister wanted you to go upstairs?

A: Hermie Bantilan, Sir.

Prosecutor:

Q: From the time that you heard the commotion upstairs to the time that you were told (sic) by your Ate upstairs, how many minutes have elapsed?

A: About 10 minutes.

Q: From the time that you see that the accused went away from you and at the time he came back and said that you were wanted by your sister, how long did it take that period?

A: More than 30 minutes.

Q: When you said that the accused went away from you, do you remember where was the companion of Hermie Bantilan?

A: Bernabie Humanoy already went home.

Q: How about the other companion named, Nestor Agapay?

A: He was there in the ground floor of the store.

Q: What was he doing there?

A: We were conversing each other.

Q: When the accused told you to go upstairs because your Ate wanted you, what did you do?

A: I immediately went upstairs.

Q: When you went upstairs, where was Hermie Bantilan?

A: He was at my back following me.

Q: How about Nestor Agapay?

A: He remained at the store.

Q: Did you reach upstairs when the accused told you?

A: Yes, Sir.

Q: When you reached upstairs, what happened next?

A: I saw my sister lying in the floor.

Q: Which part of the house upstairs that you saw that your sister lying in the floor?

A: In the bedroom.

Q: How many bedroom of your house?

A: Two bedrooms.

Q: When you saw your sister lying on the floor, what did you notice anything?

A: I immediately run for her assistance and shouted for help.

Q: Why did you shout?

A: To ask for help.

Q: To whom did you direct your shout?

A: To our neighbors.

Q: When you shouted for help, where was the accused, Hermie Bantilan?

A: He was there at the house.

Q: What was he doing there in the house?

A: He was just standing.

Q: How about Nestor Agapay do?

A: When I shouted for help, Nestor Agapay ran upstairs.

Q: What did Nestor Agapay do?

A: And Nestor Agapay carried the body of my older sister.

Q: When you saw your sister for the first time in the room, did you notice anything inside the room?

A: When I entered the room, the pillows were disarranged, mosquito net was covering her body, and pillows was at her side and also at the other side.

Q: When you first saw your sister, what did you notice in her face?

A: Her face was bluish and eyes wide open (lig-at).

Q: Did you talk to her at that time?

A: No more.

Q: After that, what happened next, after Nestor Agapay carried the body of your elder sister?

A: I went down and shouted for help.

Q: When your sister was carried by Nestor Agapay, where was the accused at that time?

A: He just stayed and after awhile he went down.[8]

Another prosecution witness Dr. Ramon D. Lafuente, Medical Officer IV of Malimono District Hospital testified on the condition of the accused, thus:

Q: Were you able to examine Hermie Bantilan on that day of December 27, 1994?

A: I was able to examine Hermie Bantilan when he was brought to the hospital about 5:15 in the afternoon.

Q: Do you know who brought him there in the hospital if you can remember?

A: I don't know it was PNP members.

Q: Now, in your findings in this medical certificate that you had identified to have issued, here is in the diagnosis and findings, the patient appeared to be drunk. How did you conclude that the patient appeared to be drunk at that time?

A: His facial appearance, his face was red.

Court:

Q: How about his smell?

A: I cannot smell, your honor.

Q: Did you notice if he smell of an alcohol?

A: I did not notice, your honor.

Q: How did you conclude that he was drunk?

A: From his facial appearance his face was red, your honor.

Q: Is that all?

A: Yes, your honor.

Court:

That is all, doctor.

Prosecutor:

Q: The number two findings, it is stated, presence of fresh blood in the brief, anterior side. Will you elaborate on this findings doctor?

A: That is in front.

Court:

Q: Will you indicate in your person the part, you point to your body?

Court Interpreter:

Witness pointing in front portion of his sexual organ.

Prosecutor:

Q: How big was the fresh blood that you saw in his brief?

A: Specks of blood pinhead size.

Court:

Q: How many specks of blood?

A: So many, your honor.

Court:

Go ahead.

Prosecutor:

Q: Now, can you tell the Honorable Court the number two finding the size of the blood on the portion of his brief which contained specks of blood?

A: Around 2/3 of the front area of his brief.

Q: Did you ask this Hermie Bantilan when you examined why it happened that he has fresh blood on his brief?

A: I failed to ask on that.[9]

x x x.

There is no doubt that Jita Quinto was raped. The physical evidence in the instant case showing the use of brutal force on her when she was sexually assaulted certainly speaks louder than words. The failure to find the presence of spermatozoa in the victim's vagina does not in any way weaken the prosecution's theory of rape for, indeed, there was enough evidence to prove the existence of rape and that the appellant was the author of the crime. In fact, the most incriminating pieces of evidence against appellant were his bloodied shirt and underwear. Reminded by the bloodied panty of the victim strewn on the floor, the investigating officer told appellant to pull up his shirt. There were bloodstains at the edges of his shirt and on the front portion of his underwear (brief). Upon closer examination, there were also tiny specks of fresh bloodstains, many of which were the size of a pinhead on the lower portion of his sexual organ. Appellant could not explain how and why he got those bloodstains at the edge of his shirt and in the front portion of his underwear.

In a strained effort to seek an acquittal, counsel of appellant even argues that the prosecution failed to prove that these bloodstains were human bloodstains in the light of the ruling in *People v. Alicando*.^[10] The facts in that case are different and, therefore, cannot have any material bearing on this case. There, the police investigators found bloodstains on the pillow and on the t-shirt of the accused found in his house. The Court discarded the evidence because "there was no testimony that the stains were caused by either the blood of the appellant or the victim" and, "(i)n addition, there was no testimony that the t-shirt was the one worn by the appellant when he allegedly committed the crime x x x." Moreover, a material circumstance peculiar in *Alicando*, was the accused's

claim that he was a butcher in a market. In stark contrast, bloodstains in the case at bar were found not only on the shirt belonging to appellant, but, of all places, on his sexual organ and on the front portion of his brief. If, for instance, tomato sauce or a red substance (other than blood) accidentally spilled on him, why did it get into his sex organ and the front portion of his brief without his trousers being stained, as well, in the process? Yet, he could not even offer the lamest explanation why and how he got the red substance that had all the appearances of human blood. One other critical dissimilarity between this case and Alicando is that, here, the appellant was physically examined right after the brutal killing was committed; thus, the possibility of a smear getting into appellant's genitals and the front portion of his brief with something else other than blood belonging to the victim is nil. In Alicando, on the other hand, the accused therein was arrested at the meat section of a supermarket the morning following the commission of the rape; hence, the possibility was injected that he could have smeared his shirt in some place other than where the victim was raped and murdered.

It must be noted that direct evidence of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[11] Conviction can be had on the basis of circumstantial evidence if the established circumstances constitute an unbroken chain leading to one fair and reasonable conclusion proving that the appellant is the author of the crime to the exclusion of all others.[12] The law provides that circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance, (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[13] We agree with the trial court that all these requirements were adequately met in the case at bar to sustain the accused-appellant's conviction.

The prosecution has indubitably established appellant's culpability through the following circumstances: (1) Few minutes before the rape-slay of the victim, appellant asked Rosie (victim's younger sister) her whereabouts; (2) Appellant left unnoticed; (3) Shortly thereafter, Rosie heard a commotion upstairs; (4) About ten minutes later, appellant appeared and informed Rosie that her sister wanted her upstairs. (How else could he have told Rosie that Jita wanted to see her sister were it not for the fact that he had come from upstairs?); (5) The victim was seen sprawled dead in her bedroom; (6) Appellant did not lift a hand to help; (7) Few hours later, appellant was turned over to the police authorities for investigation, wherein it was discovered that his shirt, underwear and genital organ were sprinkled and splattered with bloodstains. He could not explain why and where he got those bloodstains; and (8) The victim, meanwhile, was found to have been brutally killed and sexually assaulted.[14]

Bantilan denied being at the scene of the crime. He interposed the alibi that he was in Surigao City buying a meter stick. Defenses of denial and alibi are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted.[15] On its face, these defenses are worthless considering that Rosie Balabala positively testified that the accused-appellant was in the house of the deceased at or about the time of the commission of the crime. No corroboration as to his whereabouts was ever presented. Neither can we impute bad faith or malice on the part of Rosie in testifying against Bantilan. Bantilan was a distant relative and a good friend of the two sisters and oftentimes went to visit them at the store.[16] The trial court found no motive for Rosie Balabala to wrongfully implicate Bantilan in so serious a charge as in the case at bar. In the light of the positive identification of the accused as the perpetrator of the crime, the defense of alibi must fail.

Appellant's evil intention was obvious. After inquiring from Rosie where her sister was, he slowly and stealthily moved away and disappeared. A good thirty minutes later, Rosie heard a commotion upstairs and after ten minutes, appellant appeared and informed Rosie that her sister wanted her upstairs. How did he know then that Jita was upstairs if he had not been there? Soon after, Jita was discovered sprawled on the floor. Appellant was the only person who came down from upstairs. No plausible theory was offered, much less evidence presented, to demonstrate the possibility that somebody else other than the appellant could have gone upstairs and raped the

victim.

The post-mortem examination revealed that the victim's death was caused by asphyxiation. When Rosie went upstairs, she discovered the room in disarray, her sister lifeless on the floor, her face bluish and eyes wide open. The examining doctor opined that there was an object placed on her face which prevented her from breathing which consequently, led to her death. The strength of the hands or object that smothered the victim's face must have been so great that the victim was not even able to bleat out cries, shouts, or shrieks of help which could have at least alerted the people downstairs. This is why Rosie heard only a small commotion from upstairs, which must have come from the desperate struggle to break away from his stronghold to reach for air. Given such established facts, this was the only way resorted to by the appellant in order to silence the victim while he succeeded in satisfying his lust on her. In the absence of a showing that anyone else, other than the appellant, had the opportunity to be at the scene of the crime during the very short period between the time appellant went upstairs and the moment Rosie heard a commotion coming from there, followed by the appellant telling her that Jita wanted to see her, appellant must necessarily be considered as the author of the rape and the resulting death of the victim.

The Court is satisfied with moral certainty that the trial court has established the guilt of the appellant for the crime charged beyond reasonable doubt.

Article 335 of the Revised Penal Code as amended by Section 11 of R.A. 7659 provides that:

X X X.

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

Thus, the Court is constrained to affirm the death penalty imposed by the trial court. Four justices of the Court have continued to maintain the unconstitutionality of Republic Act 7659 insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

In line with the recent jurisprudence, the civil indemnity to be awarded to the victim of rape with homicide is in the amount of P100,000.00 which is fully justified and properly commensurate with the seriousness of the said special complex crime.[17]

The award of P50,000.00 as moral damages is granted. Moral damages may be additionally awarded to the heirs of the victim in a criminal proceeding without the need for pleading or proof of the basis thereof; the fact that they suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages under the Civil Code are too obvious to still require the recital thereof at the trial.[18]

However, one Justice votes to acquit accused-appellant expressing the following:

DISSENTING OPINION

With much trepidation, I regret that I can not agree to the majority's decision to affirm the death penalty imposed on the accused.

It is a basic rule in criminal procedure that, ‘the burden of proving that an accused is guilty of the offense charged lies upon the prosecution, and that the burden must be discharged on the strength of its own evidence and not upon the weakness of the evidence submitted by the defense’ (People vs. Adofina, 239 SCRA 67, 81-82 [1994].) ‘The evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense’ (People vs. Ramirez, 266 SCRA 335, 347 [1997], citing People vs. Guamos, 241 SCRA 528, 531 [1995], citing People vs. Casinillo, 213 SCRA 777

[1992], *People vs. Pizarro*, 211 SCRA 325 [1992] and *People vs. De la Cruz*, 207 SCRA 449 [1992].) In the case at bar there is misplaced reliance by the majority on the presence of bloodstains in the undershirt and genital organ of the accused. This circumstance is inadequate to show that he committed the crime of rape with homicide.

‘The presumption of innocence is founded upon the basic principles of justice and is a substantial part of the law. Thus, it cannot be overcome by mere suspicion or conjecture, i.e., a probability that the accused committed the crime or that he had the opportunity to do so’ (*People vs. Isla*, 278 SCRA 47, 52 [1997]; see also *People vs. Salem*, 280 SCRA 841 [1997].)

We have held that the presence of bloodstains on the garments, without further proof that the same are necessarily the by-products of the rape committed and that they are the dried blood of either appellant or the victim, cannot for lack of connecting proof be considered, even as part of circumstantial evidence in determining appellant’s culpability (*People vs. Ilao*, G.R. No. 129529, September 29, 1998.) The conclusion of the trial court that the bloodstains were indicia of rape is speculative and conjectural because there is no evidence showing that blood was exuded from appellant or the victim during or after the sexual intercourse in question. With the failure of the prosecution to show that copulation necessarily leads to bleeding and that the stains were the victim’s or appellant’s dried blood, other circumstances and events cannot be excluded as the possible sources thereof (*People vs. Ilao*, supra.) This ruling may well be the rationalization in this case.

In the case at bar, the bloodstains were not submitted for examination; there was no finding that they belonged to the accused or to the victim, hence, as held in the above cited case, it should not have been considered as part of the circumstantial evidence. It can not be considered as an indicia that accused raped the victim much more that he killed the victim.

As emphatically ruled in *People vs. Isla* (Supra, on p. 570, citing *People vs. Jumao-as*, 230 SCRA 70), ‘mere speculations and probabilities cannot substitute for proof required to establish the guilt of an appellant beyond reasonable doubt.’ The probability that accused was the one who raped and killed the victim is based on speculation arising from the bloodstains found in the garments and person of the accused.

In imposing the supreme penalty of death, we must exercise utmost caution. We value human life no matter how heinous the crime may be attributed to the suspect. In *People vs. Godoy* (250 SCRA 676, 732 [1995]), we repeated the age old observation and experience of mankind on the penological and societal effect of capital punishment: ‘If it is justified, it serves as a deterrent; if injudiciously imposed, it generates resentment.’

I submit that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. I vote to acquit.

WHEREFORE, the Court hereby AFFIRMS the appealed decision sentencing the accused-appellant Hermie Bantilan to the supreme penalty of death. Accused-appellant is directed to indemnify the heirs of the victim in the amount of P50,000.00 as moral damages, in addition to the sums of P100,000 as civil indemnity and P14,000 as actual expenses awarded by the trial court.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of his pardoning power.

SO ORDERED.

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

[1] Rollo, p.7.

[2] Brief for the Appellee, Rollo, pp. 100-103.

[3] Brief for the Appellant, Id., at 67.

[4] Id., at 25.

[5] Id., at 68, 72.

[6] Id., at 21.

[7] Id., at 22-23.

[8] TSN, August 22, 1995, pp. 25-30.

[9] TSN, October 13, 1995, pp. 8-11.

[10] 251 SCRA 293 (1995).

[11] *People v. Danao*, 253 SCRA 146 (1996).

[12] *People v. Parel*, 261 SCRA 720 (1996); *People v. Tabag*, 268 SCRA 115 (1997); *People v. Villarin*, 269 SCRA 630 (1997); and *People v. Salvame*, 270 SCRA 766 (1997).

[13] Section 4, Rule 133, Rules on Evidence.

[14] Rollo, p. 154

[15] *People v. Henson*, 270 SCRA 634 (1997); *People v. Andal*, 279 SCRA 474 (1997).

[16] See Decision, Rollo, p. 17.

[17] *People v. Renante Robles y Burgos, Jr.*, alias “Titing”, G.R. No. 124300, March 25, 1999.

[18] *Ibid.*

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