

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO R. MULETA, ACCUSED-APPELLANT.

G.R. No. 130189. June 25, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An extra-judicial confession extracted in violation of constitutionally enshrined rights is inadmissible in evidence. During custodial investigation, suspects have the rights, among others, (1) to remain silent, (2) to have an independent and competent counsel, (3) to be provided with such counsel, if unable to secure one, (4) to be assisted by one in case of waiver, which should be in writing, of the foregoing; and (5) to be informed of all such rights and of the fact that anything he says can and will be used against him. Where the remaining pieces of evidence are insufficient to determine guilt with moral certainty, the appellant is entitled to an acquittal. A conviction must rest on the strength of the admissible evidence of the prosecution, not on the weakness or insufficiency of the defense.

The Case

Domingo R. Muleta appeals the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 14, in Criminal Case No. 3264-M-93, finding him guilty of the complex crime of rape with homicide and sentencing him to reclusion perpetua.

The Information, dated October 1, 1993 and signed by Prosecution Attorney Emmanuel Y. Velasco, charged appellant as follows:

"That on April 30, 1993, between the hours of 12:05 past midnight to 2:00 in the morning, at a house in Malolos, Bulacan and within the jurisdiction of this Honorable Court, accused DOMINGO MULETA y ROCERO willfully, unlawfully and feloniously had carnal knowledge of a woman in the person of Charito M. Delgado without her consent, by using force and intimidation and while the latter was unconscious; and thereafter accused Domingo Muleta y Rocero by reason or on occasion of the said rape incident, taking advantage of his superior strength, stab[bed] Charito M. Delgado in the neck and at the back causing the instantaneous death of the latter." [1]

Upon arraignment on December 10, 1993, the appellant [2] pleaded not guilty to the charge. [3]

After trial, the lower court rendered its assailed August 15, 1997 Judgment, [4] the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds accused Domingo R. Muleta guilty beyond reasonable doubt of the complex crime of [r]ape with [h]omicide and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.

"The accused is hereby ordered to pay the heirs of the deceased victim Charito Delgado death indemnity of P50,000.00, actual damages of P44,000.00, exemplary damages of P20,000.00 and moral damages of P20,000.00.

"No pronouncement as to costs." [5]

Hence, this appeal. [6]

The Facts

Version of the Prosecution

The facts, as viewed by the prosecution, are summarized in the Appellee's Brief [7] thus:

"On April 15, 1993, nineteen-year-old Charito Delgado, a native of Oriental Mindoro, went to Manila to find work. Once in Manila, Charito proceeded to 1347 Banaba Street, Moriones, Tondo, Manila, where her uncle, Ruben Delgado lived. There, she stayed with her sister Marissa. Shortly thereafter, Charito landed a job as a saleslady at the Ali Mall, in Cubao, Quezon City.

"In the afternoon of April 29, 1993, Charito left Tondo, Manila and moved to Valenzuela, Metro Manila, bringing with her some of her sister's baggage. She, however, returned to Tondo, Manila to pick up their remaining baggage. It was the last time she was seen alive by her relatives.

"On April 30, 1993, Charito's lifeless body was found naked in Mojon, Malolos, Bulacan, tied to a post with the use of a pair of pants and both her hands were tied with a bra. Charito's body bore five (5) stab wounds, three (3) in the left side of her neck and two (2) at her back.

"The initial investigation on Charito's death was conducted by the police in Malolos, Bulacan but the National Bureau of Investigation (NBI), Manila, later took over and the case was assigned to NBI Agent Ely Tolentino on May 19, 1993.

"Based on Tolentino's investigation, appellant is Charito's uncle, [appellant] being the brother of Charito's mother, Milagros Delgado; that on April 29 and 30, 1993, appellant was working at the Loadstar Shipping Lines located at Pier 16, North Harbor, Tondo, Manila; that on April 29, 1993, appellant left his work at 9:30 in the evening; that appellant reported for work on April 30, 1993 at 8:00 in the evening; that according to appellant's wife, he left for work on April 29, 1993 but returned only in the morning of April 30, 1993.

"On September 19, 1993, Tolentino went to appellant's house in Oriental Mindoro and requested appellant to go with him to the NBI, Manila for investigation. Appellant readily obliged. Danilo Delgado, Charito's paternal uncle, accompanied Tolentino and appellant to Manila.

"During his custodial investigation on September 19, 1993, appellant was assisted by counsel, Atty. Deborah [D]aquis [8], with address at Room 401, D & D Building, Pedro Gil and San Marcelino Street, Manila. There, he admitted having raped and later killed Charito Delgado.

"Another prosecution witness, Danilo Delgado, testified that during the wake of Charito Delgado on May 13, 1993 in Valenzuela, Metro Manila, appellant became hysterical, crying, shaking his head and muttering: 'Patawarin mo ako Charito, ikaw kasi lumaban pa, nakakahiya, mabuti pang mamatay na'.

"Delgado saw appellant drink a bottle of 'chlorux', after which he fell to the ground. Appellant was brought to the Fatima Hospital." [9] (citations omitted)

Version of the Defense

The appellant, on the other hand, submits the following as the facts of the case:

"xxx [T]he defense presented the accused himself [Domingo Muleta] who testified that he was not the one who committed the crime [he was] being charged [with]; that he was just unscrupulously picked up by the NBI and forced to admit the crime in question; that on April 30, 1993, he was in their rented house at Camias St., Magsaysay, Tondo, Manila; that on that day, he left the house at 5:30 in the afternoon and went to the house where Charito Delgado was then residing; that he learned from his sister Milagros Delgado that the latter's

daughter Charito transferred to another house and she was then missing; that he reported the matter to the police authorities; first, to the PNP Headquarters in Tondo; second, to the PNP Headquarters at U.N. Avenue; and third, to the PNP Headquarters situated at Caloocan; that on May 8, 1993, he found the body of Charito Delgado already lying in state at Valenzuela, Metro, Manila; that he learned from his sister Milagros that her body was found somewhere in Malolos; that he was working in the Load Star shipping as a welder on a contractual basis; that from April to May, 1993, he was applying to another company because Load Star Shipping closed shop; that on September 19, 1993, he was picked up by the NBI at Banos Gloria, Oriental Mindoro; that he was brought at Taft Avenue; that he was tortured; that aside from boxing and kicking him, [they] brought [him] to a secluded place; that he was blindfolded; that he was told to lie down on his back, his feet were tied and water was poured on his nose; that he was forced to sign a document which he was not able to read, that he was forced to sign the document because he [could] no longer bear the torture; that he did not have a lawyer at that time; that the NBI agent's name is Ely Tolentino who testified earlier in this case; that he knows that the reason why he was accused of raping his niece is that he gave an information about a woman he saw in the room of his brother-in-law Rolando Delgado.

"xxx [T]hat the last time he [accused] visited his niece in her residence in Moriones was April 26, 1993; that Marissa was present when he visited Charito Delgado; that he used to work at Lawang Bato, Bagbaguin, Valenzuela, Bulacan; that he did not work in Malolos; that when he saw the cadaver of Charito, he was so sad about her condition, that he [could] no longer recall what he did because of his anger.

"xxx Emelinda Muleta testified that her husband, the accused-appellant, never left the house in Tondo, Manila in the evening of April 29, 1993." [10]

Ruling of the Trial Court

Despite the absence of an eyewitness, the trial court held that the circumstantial evidence in this case was enough to establish the guilt of the appellant. In so holding, it referred to the following as sufficient circumstantial evidence to convict:

"First, the accused is familiar with the place VOP Compound, Bo. Mojon, Malolos, Bulacan, where the crime was committed and where the body of the victim was found;

"Second, the accused left his place of work at around 9:30 in the evening of April 29, 1993;

"Third, the accused did not go home in the evening of April 29, 1993 but went home only in the morning of April 30, 1993;

"Fourth, that during the wake of Charito, the accused went wild and hysterical and uttered these words: 'Patawarin mo ako Charito, ikaw kasi lumaban pa, nakakahiya ako, mabuti pang mamatay na.';

"Fifth, the accused admitted in his sworn statement, that he uttered these words;

"Sixth, the accused admitted that he drank chlorox and was brought to the Fatima Hospital for treatment; and

"Seventh, the sworn statement executed by the accused contains details of the manner in which the crime was committed which only he could have known." [11]

In upholding the validity of the extrajudicial confession, the lower court further ruled:

"The contention of the accused that his extra-judicial confession [was] inadmissible because it was obtained through force and without the assistance of counsel is untenable. Well-settled is the rule that a confession is presumed to be voluntary until the contrary is proved. In th[is] case, the presumption has not been overcome. The narration contained in the sworn statement bespeaks spontan[ei]ty and truth. Not only is the [confession of the accused] replete with details only he could have supplied, but the circumstances surrounding its execution belie his claim. Indubitably established is the fact that accused was assisted by Atty. Deborah Daquis who even

signed the statement; that before accused made his extrajudicial confession he was first asked if he was amenable to the services of Atty. Daquis to which query he answered affirmatively. Finally, while accused recited a litany of alleged acts of maltreatment, no medical certificate had been shown to prove that he did suffer inhuman treatment. Nor was there any proof that he even initiated the filing of an administrative or criminal complaint against his alleged tormentors. Neither did accused present any eyewitness to the alleged torture. In short, his allegation, obviously self-serving, hardly deserves consideration. Noteworthy too, is the fact that he did not repudiate said confession at the earliest opportunity and did so only during trial, thus indicating that his repudiation [was] only a last-ditch effort to avoid the consequences of the crime.

"The court upholds the admissibility of accused's extrajudicial confession which, by itself, is sufficient basis for his conviction.

"The rule is, a confession constitutes evidence of high order since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience.

"Finally, accused's defense of denial and alibi cannot negate his culpability because these are not supported by any credible evidence other than his bare assertion. Additionally, there was no evidence of any ulterior or evil motive on the part of the prosecution witnesses that might have led them to give fabricated testimony against the accused." [12] (citations omitted)

Assignment of Error

Appellant presents this lone assignment of error:

"THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION AND IN THE PROCESS DISREGARDING THE DEFENSE OF ALIBI OF THE ACCUSED-APPELLANT." [13]

A reading of the Appellant's Brief, however, yields the following issues to be resolved: (1) the validity and admissibility of the extrajudicial confession of the appellant, (2) the sufficiency of the prosecution's evidence to prove appellant's guilt beyond reasonable doubt, and (3) alibi as a defense.

This Court's Ruling

The appeal is meritorious. The extrajudicial confession of appellant is inadmissible, and the remaining circumstantial evidence presented by the prosecution is sorely insufficient to prove his guilt beyond reasonable doubt.

First Issue:

Validity of Extrajudicial Confession

The appellant claims that "it is not true that [he] had executed an extra-judicial confession" [14]. As correctly pointed out by the solicitor general, however, the appellant actually admits to the execution of the said confession, albeit without the assistance of counsel. But unlike the solicitor general, we are not ready to declare that such "ambivalence only indicates the unreliability of [appellant's] claim." [15] Indeed, confessions extracted without the assistance of counsel are taboo and useless in a court of law.

To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the following rights of persons under custodial investigation: to remain silent, to have independent and competent counsel preferably of their own choice, to be provided with counsel if they are unable to secure one, to be assisted by such counsel during the investigation, to have such counsel present when they decide to waive these rights, and to be informed of all these rights and of the fact that anything they say can and will be used against them in court. In *People v. Santos*, [16]

we held:

"A confession is not admissible unless the prosecution satisfactorily shows that it was obtained within the limits imposed by the 1987 Constitution. Section 12, Article III thereof, provides:

`(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

xxx xxx xxx

(3) Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him.'

"If the extrajudicial confession satisfies these constitutional standards, it is subsequently tested for voluntariness, i.e., if it was given freely -- without coercion, intimidation, inducement, or false promises; and credibility, i.e., if it was consistent with the normal experience of mankind.

"A confession that meets all the foregoing requisites constitutes evidence of a high order because no person of normal mind will knowingly and deliberately confess to be the perpetrator of a crime unless prompted by truth and conscience.[17] Otherwise, it is disregarded in accordance with the cold objectivity of the exclusionary rule." [18] (citations omitted)

Flagrantly violated in the present case were the appellant's right to be informed of his rights under custodial investigation, his right to counsel, as well as this right to have said counsel present during the waiver of his rights under custodial investigation.

The Right to Be Apprised of Constitutional Rights

The right to be informed of one's constitutional rights during custodial investigation refers to an effective communication between the investigating officer and the suspected individual, with the purpose of making the latter understand these rights. Understanding would mean that the information transmitted was effectively received and comprehended. Hence, the Constitution does not merely require the investigating officers to "inform" the person under investigation; rather, it requires that the latter be "informed." [19]

The prosecution's purported compliance with this requisite appears in the following portion of the extrajudicial confession:

"SINUMPAANG SALAYSAY NI DOMINGO MULETA y ROCERO NA IBINIGAY KAY NBI AGENT ELY T. TOLENTINO DITO SA TANGGAPAN NG NBI, ANTI-ORGANIZED CRIME DIVISION NGAYONG IKA-19 NG SETYEMBRE, 1993 SA HARAP NG ILANG SAKSI.

x-----x

01. TANONG: Bago kita tanungin hinggil sa pagkamatay ni CHARITO DELGADO y MULETA ay nais ipabatid sa iyo ang iyong mga karapatan na itinatadhana ng ating saligang batas, at ito ay ang mga sumusunod:

01. Ikaw ay may karapatang manahimik at huwag sumagot sa mga katanungan sa iyo sa imbestigasyong ito[.] Nauunawaan mo ba ito? (Sgd. Domingo Muleta)

02. Ikaw ay may karapatan na kumuha ng abogado na sarili mong pili, pero kung wala kang ikakaya ay bibigyan ka namin ng abogado para matulungan ka sa imbestigasyong ito[.] Nauunawaan mo ba ang karapatan mong ito? (Sgd. Domingo Muleta)

03. Ang lahat ng bagay na sasabihin mo sa imbestigasyong ito ay maaaring gamitin laban sa iyo sa alinmang hukuman[.] Nauunawaan mo ba ito? (Sgd. Domingo Muleta)

Matapos na malaman mo ang iyong mga karapatan ikaw ay nakahanda pa ring magbigay ng pahayag?

SAGOT: Nakahanda po akong sabihin lahat ng totoo.

02. Ikaw ba ay may abogado na matatawagan ngayon na sarili mong pili?

S: Wala po.

03. T: Nais mo bang bigyan ka namin ng abogado?

S: Opo.

04. T: Gusto naming ipakilala sa iyo si Atty. Deborah Z. Daquiz isang abogada na pribado na handang asistihan at tulongan ka sa imbestigasyong ito. Gusto mo bang tawagin natin siya bago natin ituloy ang pagbibigay mo ng pahayag?

S: Opo. (At this juncture, Atty. Daquiz was called first and the statement taking was temporarily stopped until after her arrival).

05. T: Ngayong naririto na si Atty. DEBORAH DAQUIZ, ikaw ba ay nais pa ring magbigay ng salaysay na bukal sa iyong kalooban?

S: Opo.

06. T: Atty. Daquiz: Gusto mo bang talikdan ang iyong mga karapatan na ibinibigay sa iyo ng ating Konstitusyon?

S: Tinatalikdan ko na po iyon dahil gusto ko nang ipagtapat ang pangyayari kay CHARITO DELGADO na pamangkin ko. (Sgd. Domingo Muleta)

xxx xxx xxx

SUBSCRIBED AND SWORN to before me this 19th day of September, 1993 at the Office of the NBI Anti-Organized Crime Division, NBI Building, Taft Avenue, Manila and I hereby certify that I have personally examined the herein Affiant and found him to have fully read and understood the contents of his statement containing three (3) pages and that he executed the same out of his own volition.

(Sgd.) Atty. ARTEMIO M. SACAGUING

Chief AOCD

(By Authority of Rep. Act 157)

xxx xxx xxx"[20] (emphasis ours)

The questions propounded to the appellant did not satisfy the strict requirements mandated by the Constitution.[21] Such "terse and perfunctory statements"[22] implied a superficial reading of the rights of the accused, without the slightest consideration of whether he understood what was read to him. This Court will not subscribe to such manner of "informing" the accused of his constitutional rights. We have stated this then,[23] and we reiterate it now:

"[The] stereotyped 'advice' appearing in practically all extrajudicial confessions which are later repudiated has assumed the nature of 'legal form' or model. Police investigators either automatically type it together with the curt 'Opo' as the answer or ask the accused to sign it or even copy it in their handwriting. Its tired, punctilious,

fixed and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving up of a right is missing." (emphasis supplied)

The Right to Counsel

The prosecution contends that this constitutional requirement was satisfied because appellant executed the confession with the assistance and in the presence of Atty. Deborah Daquiz.[24] The participation of the counsel was described in the confession in this manner:

"xxx xxx xxx

04. T: Gusto naming ipakilala sa iyo si Atty. Deborah Z. Daquiz, isang abogado na pribado na handang asistihan at tulongan ka sa imbestigasyong ito. Gusto mo bang tawagin natin siya bago natin ituloy ang pagbibigay mo ng pahayag?

S: Opo. (At this juncture, Atty. Daquiz was called first and the statement taking was temporarily stopped until after her arrival).

xxx xxx xxx"

However, the testimony of Tolentino, the investigating NBI agent, clearly contradicts the claim of the prosecution. The agent testified:

"xxx xxx xxx

Q

Did you inform her [Atty. Deborah Daquiz] x x x thr[ough] the phone x x x why you were soliciting her assistance?

A Yes [,] sir. We told her that we have a subject to confess what he [did,] will you kindly assist him in this investigation[?]

Q

What was the response of Atty. Daquis?

A She [asked] me [if it] could xxx be made the following day.

Q What was you[r] answer?

A It is up to you, I said.

Q

If the request of Atty. Daquis was the following day[,], meaning September 20, are you saying that the statement of Muleta was given the following day[,], on September 20?

A September 19, I started taking the statement. I think I just finished the question the following day I continued. [sic]

xxx xxx xxx"[25] [Emphasis ours]

Atty. Quintana amplified this point on cross-examination:

"xxx xxx xxx

Q In the direct examination, you claimed that the accused Domingo Muleta gave his statement and made a confession?

A Yes, madam.

Q You also claimed that you started taking the statement of Domingo Muleta, the accused, without the presence of counsel?

A No, madam. I took his statement in the presence of Atty. Daquis.

Q

In the direct examination on May 27, 1994, page 81, last paragraph and I quote: `A. September 19, I started taking the statement. I think I just finished the question the following day I continued.' Now, do you want to change now your answer that you took the accused' [sic] statement with the presence of counsel?

A

No, madam. Although I started to take his statement on the night of September 19, I continued it when Atty. Daquiz arrived xxx the following morning wherein the accused conferred with the accused, madam. [sic]

Q

But, [is it] not true that on the night of September 19, 1993 you started taking the statement of the accused without the presence of Atty. Daquiz and only continued the same on the early morning of September 20, 1993 when Atty. Daquiz arrived?

A Yes, madam.

Q Don't you know that as a police officer NBI a[t] that, that before a suspected person can give his statement, a counsel must be present at all times?

A Yes, madam.

xxx xxx xxx"[26] (emphasis ours)

Despite Agent Tolentino's claim that the confession of the accused started to be taken on September 19, 1993 and continued the next day, the sworn statement itself clearly showed that what began on the 19th of September ended on the same day. According to the jurat, the extrajudicial confession was subscribed and sworn to on September

19, 1993. The importance of the jurat must be stressed.[27]. In *People v. Relucio*,[28] we observed:

"At this point, it must be noted that Exhibit 2-A, the statement which Padrones claimed above to have been admittedly taken by Vilorio on October 5, 1972 but, supposedly signed by him later and not on the same day before Judge Vicencio as he had previously stated, bears the following heading:

‘SINUMPAANG SALAYSAY NI MIGUEL PADRONES y ESPEJO SA PAGTATANONG NI P/CPL J. S. VILORIA DITO SA HIMPILAN NG PULISYA NG KABANATUAN NGAYONG IKA-19 NG OKTUBRE 1972 SA GANAP NA IKA 5:15 NG HAPON ...’

and ends with the following jurat:

‘NILAGDAAN AT PINANUMPAAN sa aking harap ngayong ika 20 ng Oktubre 1972, dito sa Lunsod ng Kabanatuan.’

With the dates October 19 and 20 thus appearing in this statements, how could there be any proximity to the truth in the assertion of Padrones that his statement was first taken by Vilorio on October 5, 1972 and that it was signed by him before Fiscal del Rosario on October 9, 1972 and that it was the very statement he had been referring to earlier as having been signed by him before Judge Vicencio?" (emphasis in the original)

We note that the heading of the sworn statement refers to the same date: September 19, 1993. It is thus daylight clear that the purported sworn statement of the appellant was prepared prior to the arrival of his NBI-procured counsel.[29] In other words, the sworn statement was executed and completed on September 19, 1993, while Atty. Daquiz arrived only the following day, September 20, 1993. Thus, when the appellant executed and completed his purported extrajudicial confession on September 19, 1993, he was not assisted by counsel.

As observed by this Court in *People v. Lucero*,[30] "[w]e have constitutionalized the right to counsel because of our hostility against the use of duress and other undue influence in extracting confessions from a suspect. Force and fraud tarnish confessions and render them inadmissible." This Court has consistently held, without equivocation, that no custodial investigation shall be conducted unless it is done in the presence of counsel.[31] The failure of the prosecution[32] to present Atty. Daquiz to testify on the validity of the confession substantiates the conclusion that the sworn statement is constitutionally suspect and invalid. In relation to this, we stress that the right to counsel refers to competent and independent lawyers preferably chosen by the accused persons themselves.[33] This Court, as well as the court a quo, did not have the opportunity to determine the competence and the independence of the NBI-procured lawyer because, despite the denial of the accused that he was assisted by counsel, the prosecution failed to present Atty. Daquiz.[34]

Based on the prosecution's own evidence, the accused was already singled out as the perpetrator of the crime. The supposed "invitation" by NBI Agent Ely Tolentino was in reality a custodial investigation targeting the accused for the purpose of procuring a confession. Republic Act 7438 includes as an integral part of custodial investigation the practice of issuing "invitations" to persons being investigated in connection with an offense they are suspected to have committed.[35] Under the present factual milieu, Domingo Muleta should have been accorded the right to counsel (and all the constitutional rights of the accused), from the time that he was brought to the NBI office in Manila.

No Valid Waiver

The illegality of the alleged confession is further demonstrated by the fact that appellant exercised no satisfactory waiver of his rights. As stated in our earlier discussions, since he was not assisted by a lawyer when the waiver was made, there was no valid waiver to speak of.[36]

Furthermore, even if we were to assume that the appellant was assisted by counsel when he waived his rights, the

waiver itself was lamentably insufficient. After Atty. Daquiz was allegedly called to assist the appellant, she posited this question: "Gusto mo bang talikdan ang iyong mga karapatan na ibinibigay sa iyo ng ating Konstitusyon?"[37] To this, the appellant replied: "Tinatalikdan ko na po iyon dahil gusto ko nang ipagtapat ang pangyayari kay CHARITO DELGADO na pamangkin ko."[38]

To the Court, this was not the waiver that the Constitution clearly and strictly required. Such waiver failed to show his understanding of his rights, his waiver of those rights, and the implications of his waiver. The waiver, in order to be valid, should have been in a language that clearly manifested his desire to do so.[39] The part of the sworn statement in which the accused "waived" his rights referred to them as "mga karapatan na ibinibigay sa iyo ng ating Konstitusyon" and "iyon" - words that were utterly vague and insufficient to satisfy the Constitutional requirements.[40] As presented, the prosecution would have us refer to the first part of the sworn statement for guidance, as if it were a footnote saying "Please see first part." Such stratagem is woefully insufficient to constitute a waiver of rights cherished and enshrined in our basic law.

Moreover, Atty. Daquiz raised only one question: whether appellant would like to waive his rights. This was odd, because she had been called to assist appellant in making his confession, not his waiver. Atty. Daquiz made no effort to determine whether the accused was treated well, or if he understood his rights. Such perfunctory, even cavalier, attempt falls short of constitutional requirements.

Second Issue:

Sufficiency of Evidence for the Prosecution

Having ruled the alleged confession as unconstitutional and inadmissible, we now determine whether the other pieces of evidence - all circumstantial in nature - would be sufficient to overturn yet another constitutional right: to be presumed innocent unless otherwise proven.

The rule is that "x x x in the absence of direct proof, conviction may be based on circumstantial evidence, but to warrant such conviction, the following requisites must concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."[41]

Here, the solicitor general, as well as the trial court, posits that the conviction of the appellant was sufficiently warranted by the aggregate of the following circumstantial evidence:

- The appellant was familiar with the place where the crime was perpetrated.
- The appellant left work around 9:30 on the evening of April 29, 1993 and did not return home until the morning of April 30, 1993.
- The appellant, during the victim's wake, became hysterical and allegedly uttered: "Patawarin mo ako Charito, ikaw kasi lumaban pa, nakakahiya ako, mabuti pang mamatay na," after which he drank "chlorox."

We do not agree. At the outset, we stress that a careful review of the records of this case reveals that these pieces of circumstantial evidence were controverted by the defense and, even more important, they were not sufficiently established.[42]

Despite the efforts of the fiscal during cross-examination,[43] the appellant consistently denied that he worked in the place where the victim's body was found. Also, the prosecution failed to prove that he was at work around 9:30 p.m. on April 29, 1993 and that he went home on April 30, 1993.[44] All it could present was the testimony of NBI Agent Ely Tolentino, who merely testified on what appellant's co-workers related to him: that appellant left work earlier.[45] This is clearly hearsay. The affidavits of these co-workers do not help the prosecution's case, since they themselves were not presented during the trial. An affidavit is hearsay if the affiant is not presented in

court and subjected to cross-examination.[46] Besides, the appellant's wife, Emelinda Muleta, stated categorically that her husband was with her at home on April 29 and 30, 1993.[47] The appellant himself steadfastly affirmed this during his cross-examination.[48]

The appellant's rather strange behavior during the wake was, according to his testimony, due to his perceived failure to take care of his niece.[49] This was corroborated by the testimony of Danilo Delgado.[50] Moreover, the defense claims that the words he said during the wake were ambiguous. "Patawarin mo ako Charito" could have meant that the appellant was blaming himself for being unable to protect the victim. "Ikaw kasi lumaban pa" could have connoted frustration with what he imagined could have saved the life of his niece. "Nakakahiya ako, mabuting mamatay na" also shows the appellant's for blaming himself inutile, indicating his desire to take his own worthless life. If these words merit anything, it is this: it places the appellant under suspicion. But suspicion or accusation is not synonymous with guilt.[51]

Most importantly, even if we were to assume that all the foregoing were proven, they are still not enough to establish an unbroken chain leading inexorably to the guilt of the appellant. That the appellant could have been familiar with the place where the body was found did not legally prove anything. That he left work at 9:30 p.m. on April 29 1993 did not necessarily mean he was at the scene of the crime. So many other possible conclusions could be made regarding this circumstance. As for his statements during the wake, they are ambiguous.

We have said that "[i]n the absence of an eyewitness, the guilt of an accused may be established by circumstantial evidence. Such evidence, however, must still pass the test of moral certainty. When inadequate and uncorroborated, circumstantial evidence cannot sustain a conviction. Specifically, where the state's evidence does not constitute an unbroken chain leading beyond reasonable doubt to the guilt of the accused, the constitutional presumption of innocence prevails and the accused is entitled to an acquittal." [52] Thus, in *People v. Bato*, [53] the pieces of circumstantial evidence presented there - those showing that the accused brothers invited the victim (and his son) for a drink, suddenly tied his hands and took him away; after which his body was recovered from the river the next day -- were ruled to be inadequate to sustain a conviction based on guilt beyond reasonable doubt.[54]

In this case, the circumstantial evidence presented acquires significance only when taken together with the appellant's confession. The pattern of the tapestry, [55] which the prosecution would want us to see, is bound by only a single thread -- the confession of the appellant. Due to constitutional infirmity, that one strand has been cut, and thus the pattern disintegrates. The tapestry becomes an unreadable puzzle.

Third Issue:

Alibi as a Defense

True, we have always considered alibi inherently weak, [56] because it can be either easily fabricated or difficult to disprove. [57] However, we have consistently held that the prosecution must convict the accused based on the strength of its own case, not on the weakness of the defense:

"True, alibi is a weak defense. But then, so also is the prosecution's evidence in this case. x x x Indeed, it is when the evidence is purely circumstantial that the prosecution is much more obligated to rely on the strength of its own case and not on the weakness of the defense, and that conviction must rest on nothing less than moral certainty." [58] (emphasis supplied)

Presumption of Innocence

"Where the state fails to meet the quantum of proof required to overcome the constitutional presumption, the accused is entitled to acquittal, regardless of the weakness or even the absence of his defense, for any conviction must rest on the strength of the prosecution's case and not on the weakness of the defense." [59] Here, without the

confession of the appellant, the presumption of innocence prevails.

This principle is well-articulated in *People v. Mejia*.^[60] "In our jurisdiction accusation is not synonymous with guilt. The freedom of the accused is forfeit[ed] only if the requisite quantum of proof necessary for conviction be in existence. This, of course, requires the most careful scrutiny of the evidence for the State, both oral and documentary, independent of whatever defense is offered by the accused. Every circumstance favoring the accused's innocence must be duly taken into account. The proof against the accused must survive the test of reason. Strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the accused could be laid the responsibility for the offense charged. If the prosecution fails to discharge the burden, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him."

One final note. In acquitting appellant, the Court is not saying that he did not commit the offense charged. We are only saying that the prosecution failed to present credible and admissible evidence of appellant's guilt. The strongest evidence of the prosecution is the extrajudicial confession of appellant. But the Constitution is clear -- a confession obtained in violation of the rights of an accused cannot be used as evidence. Without Muleta's confession, the other pieces of circumstantial evidence lose their significance. Had the National Bureau of Investigation followed the law in extracting appellant's admission of guilt, perhaps - just perhaps - the result of this case would have been different. The Court is saddened that law enforcement agents transgress the law which they have sworn to defend and uphold. A mockery of the law - which was manifestly perpetrated in this case -- must not be allowed to sully the country's quest for peace and order.

WHEREFORE, the appeal is hereby GRANTED. The assailed Decision is hereby REVERSED and VACATED. Appellant Domingo R. Muleta is hereby ACQUITTED for insufficiency of evidence. The director of the Bureau of Corrections is hereby directed to cause the release of appellant forthwith, unless the latter is being lawfully held for another cause; and to inform the Court of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.
Romero, (Chairman), J., abroad on official business.

[1] Records, p. 1; Rollo, p. 4.

[2] Assisted by Counsel de Parte Joey R. Galit.

[3] Records, Vol. I, pp. 41-42.

[4] Rollo, pp. 21-33; records, pp. 367-379. The decision, captioned "Judgment," was penned by Judge Petrita Braga-Dime, although the case was tried by several judges, namely: Judge Felipe N. Villajuan who retired on October 1, 1995; Judge Gregorio S. Sampaga; Judge Amado M. Calderon; and Judge Roland B. Jurado.

[5] Decision, p. 13; Rollo, p. 33; records, p. 379.

[6] Atty. Ma. Elenita R. Quintana, the subsequent counsel for the accused, erroneously filed a Notice of Appeal on August 28, 1997 to the Court of Appeals (CA). Likewise, the court a quo erred in forwarding the records of this case to the CA instead of the Supreme Court, considering that the penalty imposed was reclusion perpetua. Said records were, however, later on transmitted to and received by this Court on September 2, 1997. The case was deemed submitted for resolution after the Court's receipt of the Appellant's Reply Brief on April 6, 1999.

[7] Signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Amparo M. Cabotaje-Tang and Associate Solicitor Christopher B. Arpon.

[8] Also spelled "Daquiz" in appellant's sworn statement and other parts of the records.

[9] Appellee's Brief, pp. 3-6; Rollo, pp. 96-99.

[10] Appellant's Brief, pp. 7-9; Rollo, pp. 57-59. Signed by Atty. Ma. Elenita R. Quintana.

[11] Decision, pp. 11-12; Rollo, pp. 31-32.

[12] Decision, pp. 11-13; Rollo, pp. 31-33.

[13] Appellant's Brief, p. 9; Rollo, p. 59.

[14] Appellant's Brief, p. 10; Rollo, p. 60.

[15] Appellant's Brief, p. 7; Rollo, p. 100.

[16] 283 SCRA 443, December 22, 1997, per Panganiban, J.

[17] U.S. v. De los Santos (24 Phil. 329, 358, February 15, 1913) first enunciated this presumption in this manner:

"If a confession be free and voluntary -- the deliberate act of the accused with full comprehension of its significance, there is no impediment to its admission as evidence, and it then becomes evidence of a high order; since it is supported by the presumption -- a very strong one -- that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, especially if it be a serious crime, unless prompted by truth and conscience." (emphasis ours)

See also Magtoto v. Manguera, 63 SCRA 4, 15, March 3, 1975; People v. Castañeda, 93 SCRA 56, 64, August 31, 1979; People v. Salvador, 163 SCRA 574, 582, July 26, 1988; People v. Pamon, 217 SCRA 501, 511-512, January 25, 1993; People v. Jerez, 285 SCRA 393, 399, January 29, 1998.

[18] Ibid., pp. 453-454 (citations omitted).

[19] See People v. Pinlac, 165 SCRA 674, September 26, 1988; People v. Rojas, 147 SCRA 169, January 8, 1987.

[20] Records, p. 18, Vol. II; sworn statement of Domingo Muleta y Rocero, p. 1.

[21] In People v. Santos, supra, p. 454; the accused was apprised of his rights in this manner:

"01. TANONG: Bb. MERCY SANTOS y ENTIENZA, ikaw ay iimbestigahan namin sa pagkakasangkot mo sa kasong 'kidnapping', bago kami magpatuloy sa pagsisiyasat na ito ay nais naming ipaalam sa iyo ang iyong mga karapatan sa ilalim ng ating Saligang Batas. Ikaw ay may karapatang manahimik at di magpahayag ng anumang salaysay kung nais mo, naiintindihan mo ba ito?

SAGOT: Opo sir.

02. T: Ikaw ay mayroong ding karapatan na kumuha at tulungan ng isang abogado na pili mo upang umasiste sa iyo sa pagsisiyasat na ito. Kung hindi mo naman kayang bumayad ng serbisyo ng isang abogado ay ikaw ay bibigyan namin ng isa na siyang tutulong sa iyo sa pagsisiyasat na ito ng walang bayad, naiintindihan mo ba ito?

S: Opo sir.

03. T: Ngayon, ikaw ba ay mayroong abogado na sarili mong pili para tumulong sa iyo sa pagsisiyasat na ito?

S: Opo sir, Nandito ang aking abogado, si ATTY. GORDON UY na siyang tutulong sa akin sa pagsisiyasat na

ito."

[22] *People v. Santos*, supra, p. 455.

[23] *People v. De Jesus*, 213 SCRA 345, 352, September 2, 1992, per Nocon, J., quoting the case of *People v. Jara*, 144 SCRA 516, September 30, 1986. See also *People v. Tan*, 286 SCRA 207, February 11, 1998; *People v. Santos*, supra; *People v. Deniega*, 251 SCRA 626, December 29, 1995; *People v. Pinlac*, 165 SCRA 674, September 26, 1988; *People v. Nicandro*, 141 SCRA 289, February 11, 1986; and as early as *People v. Ramos*, 122 SCRA 312, May 17, 1983.

[24] Appellee's Brief, p. 7; Rollo, p. 100.

[25] TSN, May 27, 1994, p. 81.

[26] TSN, February 13, 1995, pp. 7-9.

[27] See *Gamido v. New Bilibid Prisons (NBP) Officials*, 242 SCRA 83, March 1, 1995.

[28] 86 SCRA 227, 258, November 9, 1978, per Barredo J.

[29] See *People v. Deniega*, 251 SCRA 626, December 29, 1995.

[30] 244 SCRA 425, 434, May 29, 1995, per Puno, J.; citing *People v. Rous*, 242 SCRA 732, March 27, 1995.

[31] *People v. Tan*, 286 SCRA 207, February 11, 1998. See also *Gamboa v. Cruz*, 162 SCRA 642, June 27, 1988; *People v. Galit*, 135 SCRA 465, March 20, 1985 and *Morales, Jr. v. Enrile*, 121 SCRA 538, April 26, 1983. Note that cases decided before the 1987 Constitution also required the presence of counsel, thus underlining the importance of this constitutional requirement.

[32] See *People v. Tolentino*, 145 SCRA 597; interpreting the ruling in the en banc case of *People v. Duero*, 104 SCRA 379; where we clearly stated that the rule on the presumption of regularity of official acts relating to statements taken during custodial investigation was abrogated. See also *People v. Inguito*, 117 SCRA 641, all cited in *Bernas, The 1987 Constitution of the Republic of the Philippines*, 1996 ed., pp. 410-411.

[33] *People v. Deniega*, 251 SCRA 626, December 29, 1995.

[34] *People v. Santos*, 283 SCRA 443, December 22, 1997.

[35] *Cruz*, *Constitutional Law*, 1995 ed., p. 291. See also *People v. Tan*, 286 SCRA 207, 213-214, February 11, 1998.

[36] *People v. Tan*, supra.

[37] Records, p. 18, Vol. II; Sworn Statement of the accused, p. 1.

[38] *Ibid.*

[39] *Bernas, The 1987 Constitution of the Republic of the Philippines*, 1996 ed., p. 420.

[40] See *People v. Broquesa*, 125 SCRA 545, October 31, 1983.

[41] *People v. Bato*, 284 SCRA 223, 231-232, January 16, 1998, per Panganiban, J.; Section 4, Rule 133, Rules of Court. See also *People v. Caparas, Jr.*, 290 SCRA 78, May 14, 1998; *People v. Cipriano*, 290 SCRA 581, June 5, 1998; *Abad v. Court of Appeals*, 291 SCRA 56, June 18, 1998.

[42] Note that the judge who penned the Decision was not the one who heard the case from the beginning of trial.

[43] TSN, August 13, 1996, pp. 6-7.

[44] TSN, August 13, 1996, pp. 4-6.

[45] TSN, May 27, 1994, pp. 51-53, 62-64.

[46] See *People v. Fernandez*, 275 SCRA 49, July 4, 1997, citing *People v. Damaso*, 212 SCRA 547, August 12, 1992.

[47] TSN, March 4, 1997, pp. 3-4.

[48] TSN, August 13, 1996, pp. 3-4.

[49] TSN, March 4, 1997, pp. 15-16.

[50] TSN, February 14, 1994, p. 11.

[51] See *People v. Mejia*, 275 SCRA 127, July 7, 1997.

[52] *People v. Bato*, 284 SCRA 223, 225, January 16, 1998, per Panganiban, J.

[53] *Supra*.

[54] See *People v. Roluna*, 231 SCRA 720, September 16, 1996; *People v. Argawanon*, 215 SCRA 652, November 13, 1992; *People v. Ragon*, 282 SCRA 90, November 18, 1997, cited in *People v. Bato*, *supra*. Also *People v. Geron*, 281 SCRA 36, 47, October 17, 1997.

[55] *People v. Caparas Jr.*, 290 SCRA 78, 89, May 14, 1998, citing *People v. Cabrera*, 241 SCRA 28, February 1, 1995.

[56] *People v. Sta. Ana*, 291 SCRA 188, 217, June 26, 1998.

[57] *People v. Banguis*, 291 SCRA 279, June 26, 1998, citing *People v. Caguiao, Sr.*, 259 SCRA 403, July 26, 1996.

[58] *People v. Caparas Jr.*, 290 SCRA 78, 90, May 14, 1998, per Melo, J., citing *People v. Payawal*, 247 SCRA 424, August 16, 1995.

[59] *Cosep v. People*, 290 SCRA 378, 385, May 21, 1998, per Romero, J.; citing *People v. Alcantara*, 240 SCRA 122, January 17, 1995.

[60] 275 SCRA 127, July 7, 1997, per Davide, Jr., J. (now CJ.).

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