

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDINO DOMANTAY, @ “JUNIOR OTOT,”
ACCUSED-APPELLANT.**

G.R. No. 130612. May 11, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here on appeal from the decision[1] of the Regional Trial Court of Dagupan City (Branch 57), finding accused-appellant guilty of rape with homicide and sentencing him to death, and to indemnify the heirs of the victim in the amount of P480,000.00, and to pay the costs.

The facts hark back to the afternoon of October 17, 1996, at around 4 o'clock, when the body of six-year old Jennifer Domantay was found sprawled amidst a bamboo grove in Guilig, Malasiqui, Pangasinan. The child's body bore several stab wounds. Jennifer had been missing since lunch time.

The medical examination conducted the following day by Dr. Ma. Fe Leticia Macaranas, the rural health physician of Malasiqui, showed that Jennifer died of multiple organ failure and hypovolemic shock secondary to 38 stab wounds at the back. Dr. Macaranas found no lacerations or signs of inflammation of the outer and inner labia and the vaginal walls of the victim's genitalia, although the vaginal canal easily admitted the little finger with minimal resistance. Noting possible commission of acts of lasciviousness, Dr. Macaranas recommended an autopsy by a medico-legal expert of the NBI.[2]

The investigation by the Malasiqui police pointed to accused-appellant Bernardino Domantay, a cousin of the victim's grandfather, as the lone suspect in the gruesome crime. At around 6:30 in the evening of that day, police officers Montemayor, de la Cruz, and de Guzman of the Malasiqui Philippine National Police (PNP) picked up accused-appellant at the Malasiqui public market and took him to the police station where accused-appellant, upon questioning by SPO1 Antonio Espinoza, confessed to killing Jennifer Domantay. He likewise disclosed that at around 3:30 that afternoon, he had given the fatal weapon used, a bayonet, to Elsa and Jorge Casingal, his aunt and uncle respectively, in Poblacion Sur, Bayambang, Pangasinan. The next day, October 18, 1996, SPO1 Espinoza and another policeman took accused-appellant to Bayambang and recovered the bayonet from a tricycle belonging to the Casingal spouses. The police officers executed a receipt to evidence the confiscation of the weapon.[3]

On the basis of the post-mortem findings of Dr. Macaranas, SPO4 Juan Carpizo, the Philippine National Police chief investigator at Malasiqui, filed, on October 21, 1996, a criminal complaint for murder against accused-appellant before the Municipal Trial Court (MTC) of Malasiqui. On October 25, 1996, Dr. Ronald Bandonill, medico-legal expert of the NBI, performed an autopsy on the embalmed body of Jennifer. The result of his examination of the victim's genitalia indicated that the child's hymen had been completely lacerated on the right side. Based on this finding, SPO4 Carpizo amended the criminal complaint against accused-appellant to rape with homicide. Subsequently, the following information was filed:[4]

That on or about the 17th day of October, 1996, in the afternoon, in barangay Guilig, Municipality of Malasiqui, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and armed with a bayonnette, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with Jennifer Domantay, a minor of 6 years old against her will and consent, and on the same occasion, the said accused with intent to kill, then and there, wilfully, unlawfully and feloniously stab with the use of a bayonnette, the said Jennifer Domantay, inflicting upon her multiple stab wounds, which resulted to her death, to the damage and prejudice of her heirs.

At the trial, the prosecution presented seven witnesses, namely, Edward, Jiezl, Lorenzo, all surnamed Domantay, Joselito Mejia, Antonio Espinoza, Celso Manuel, and Dr. Ronald Bandonill, to establish its charge that accused-appellant had raped and killed Jennifer Domantay.

Edward Domantay testified that in the morning of October 17, 1996, accused-appellant and his two brothers-in-law, Jaime Caballero and Daudencio Macasaeb, had a round of drinks in front of the latter's house in Guilig, Malasiqui, Pangasinan. Edward Domantay said that he was in front of Macasaeb's house, tending to some pigeons in his yard.[5] After the group had consumed several bottles of San Miguel gin, accused-appellant gave money to Edward Domantay and asked him to buy two bottles of gin and a bottle of Sprite.[6] Edward said he joined the group and sat between Daudencio Macasaeb and accused-appellant.[7] Edward said that accused-appellant, who, apparently had one too many then, rolled up his shirt and said: "No diad Antipolo tan L[i]pa et walay massacre, diad Guilig wala, walay massacren kod dia, walay onakis-akis" ("In Antipolo and Lipa, there were massacres; here in Guilig, there will also be a massacre. I will massacre somebody here, and they will cry and cry"). Edward Domantay saw that tucked in the left side of accused-appellant's waistline was a bayonet without a cover handle.[8] It was not the first time that Edward had seen accused-appellant with the knife as the latter usually carried it with him.[9]

Jiezl Domantay, 10, likewise testified. She said that, at about 2 o'clock in the afternoon on October 17, 1996, she and four other children were playing in front of their house in Guilig, Malasiqui, Pangasinan. Jiezl saw accused-appellant and Jennifer Domantay walking towards the bamboo grove of Amparo Domantay where Jennifer's body was later found. Accused-appellant was about two meters ahead of Jennifer. The bamboo grove was about 8 to 10 meters from the house of Jiezl Domantay.[10]

Lorenzo Domantay, a relative of the victim, corroborated Jiezl's testimony that accused-appellant had gone to Amparo Domantay's bamboo grove in the afternoon of October 17, 1996. Lorenzo said that that afternoon, on his way to his farm, he saw accused-appellant about 30 meters away, standing at the spot in the bamboo grove where Jennifer's body was later found. Accused-appellant appeared restless and worried as he kept looking around. However, as Lorenzo was in a hurry, he did not try to find out why accused-appellant appeared to be nervous.[11]

Prosecution witness Joselito Mejia, a tricycle driver, said that, in the afternoon of October 17, 1996, he was about to take his lunch at home in Alacan, a neighboring barangay about half a kilometer from Guilig, when accused-appellant implored Mejia to take him to Malasiqui at once. Mejia told accused-appellant that he was going to take his lunch first, but the latter pleaded with him, saying they will not be gone for long. Mejia, therefore, agreed. Mejia noticed that accused-appellant was nervous and afraid. Accused-appellant later changed his mind. Instead of going to the town proper, he alighted near the Mormon's church, outside Malasiqui.[12]

In addition, the prosecution presented SPO1 Antonio Espinoza and Celso Manuel who testified that, on separate occasions, accused-appellant had confessed to the brutal killing of Jennifer Domantay.

SPO1 Espinoza testified that he investigated accused-appellant after the latter had been brought to the Malasiqui police station in the evening of October 17, 1996. Before he commenced his questioning, he apprised

accused-appellant of his constitutional right to remain silent and to have competent and independent counsel, in English, which was later translated into Pangasinense.[13] According to SPO1 Espinoza, accused-appellant agreed to answer the questions of the investigator even in the absence of counsel and admitted killing the victim. Accused-appellant also disclosed the location of the bayonet he used in killing the victim.[14] On cross-examination, Espinoza admitted that at no time during the course of his questioning was accused-appellant assisted by counsel. Neither was accused-appellant's confession reduced in writing.[15] Espinoza's testimony was admitted by the trial court over the objection of the defense.

Celso Manuel, for his part, testified that he is a radio reporter of station DWPR, an AM station based in Dagupan City. He covers the third district of Pangasinan, including Malasiqui. Sometime in October 1996, an uncle of the victim came to Dagupan City and informed the station about Jennifer Domantay's case.[16] On October 23, 1996, Manuel went to Malasiqui to interview accused-appellant who was then detained in the municipal jail. He described what transpired during the interview thus:[17]

PROS. QUNIT:

Q Did you introduce yourself as a media practitioner?

A Yes, sir.

Q How did you introduce yourself to the accused?

A

I showed to Bernardino Domantay alias "Junior Otot" my I.D. card and I presented myself as a media practitioner with my tape recorder [in] my hand, sir.

Q What was his reaction to your request for an interview?

A He was willing to state what had happened, sir.

Q

What are those matters which you brought out in that interview with the accused Bernardino Domantay alias "Junior Otot"?

A

I asked him what was his purpose for human interest's sake as a reporter, why did he commit that alleged crime. And I asked also if he committed the crime and he answered "yes." That's it.

....

PROS. QUNIT:

Q You mentioned about accused admitting to you on the commi[ssion] of the crime, how did you ask him that?

A I asked him very politely.

Q More or less what have you asked him on that particular matter?

A

I asked "Junior Otot," Bernardino Domantay, "Kung pinagsisisihan mo ba ang iyong ginawa?" "Opo" sabi niya, "Ibig mo bang sabihin Jun, ikaw ang pumatay kay Jennifer?", "Ako nga po". The [l]ast part of my interview, "Kung nakikinig ang mga magulang ni Jennifer, ano ang gusto mong iparating?", "kung gusto nilang makamtan ang hustisya ay tatanggapin ko". That is what he said, and I also asked Junior Otot, what was his purpose, and he said, it was about the boundary dispute, and he used that little girl in his revenge.

On cross-examination, Manuel explained that the interview was conducted in the jail, about two to three meters away from the police station. An uncle of the victim was with him and the nearest policemen present were about two to three meters from him, including those who were in the radio room.[18] There was no lawyer present. Before interviewing accused-appellant, Manuel said he talked to the chief of police and asked permission to interview accused-appellant.[19] On questioning by the court, Manuel said that it was the first time he had been called to testify regarding an interview he had conducted.[20] As in the case of the testimony of SPO1 Espinoza, the defense objected to the admission of Manuel's testimony, but the lower court allowed it.

Dr. Bandonill, the NBI medico-legal who conducted an autopsy of the victim on October 25, 1996, testified that Jennifer Domantay died as a result of the numerous stab wounds she sustained on her back,[21] the average depth of which was six inches.[22] He opined that the wounds were probably caused by a "pointed sharp-edged instrument." [23] He also noted contusions on the forehead, neck, and breast bone of the victim.[24] As for the results of the genital examination of the victim, Dr. Bandonill said he found that the laceration on the right side of the hymen was caused within 24 hours of her death. He added that the genital area showed signs of inflammation.[25]

Pacifico Bulatao, the photographer who took the pictures of the scene of the crime and of the victim after the latter's body was brought to her parents' house, identified and authenticated the five pictures (Exhibits A, B, C, D, and E) offered by the prosecution.

The defense then presented accused-appellant as its lone witness. Accused-appellant denied the allegations against him. He testified he is an uncle of Jennifer Domantay (he and her grandfather are cousins) and that he worked as a janitor at the Malasiqui Municipal Hall. He said that at around 1 o'clock in the afternoon of October 17, 1996, he was bathing his pigs outside the house of his brother-in-law Daudencio Macasaeb in Guilig, Malasiqui, Pangasinan. He confirmed that Daudencio was then having drinks in front of his (Macasaeb's) house. Accused-appellant claimed, however, that he did not join in the drinking and that it was Edward Domantay, whom

the prosecution had presented as witness, and a certain Jaime Caballero who joined the party. He also claimed that it was he whom Macasaeb had requested to buy some more liquor, for which reason he gave money to Edward Domantay so that the latter could get two bottles of gin, a bottle of Sprite, and a pack of cigarettes.[26] He denied Edward Domantay's claim that he (accused-appellant) had raised his shirt to show a bayonet tucked in his waistline and that he had said he would massacre someone in Guilig.[27]

Accused-appellant also confirmed that, at about 2 o'clock in the afternoon, he went to Alacan passing on the trail beside the bamboo grove of Amparo Domantay. But he said he did not know that Jennifer Domantay was following him. He further confirmed that in Alacan, he took a tricycle to Malasiqui. The tricycle was driven by Joselito Mejia. He said he alighted near the Mormon church, just outside of the town proper of Malasiqui to meet his brother. As his brother did not come, accused-appellant proceeded to town and reported for work. That night, while he was in the Malasiqui public market, he was picked up by three policemen and brought to the Malasiqui police station where he was interrogated by SPO1 Espinoza regarding the killing of Jennifer Domantay. He denied having owned to the killing of Jennifer Domantay to SPO1 Espinoza. He denied he had a grudge against the victim's parents because of a boundary dispute.[28] With respect to his extrajudicial confession to Celso Manuel, he admitted that he had been interviewed by the latter, but he denied that he ever admitted anything to the former.[29]

As already stated, the trial court found accused-appellant guilty as charged. The dispositive portion of its decision reads:[30]

WHEREFORE, in light of all the foregoing, the Court hereby finds the accused, Bernardino Domantay @ "Junior Otot" guilty beyond reasonable doubt with the crime of Rape with Homicide defined and penalized under Article 335 of the Revised Penal Code in relation and as amended by Republic Act No. 7659 and accordingly, the Court hereby sentences him to suffer the penalty of death by lethal injection, and to indemnify the heirs of the victim in the total amount of Four Hundred Eighty Thousand Pesos (P480,000.00),[31] and to pay the costs.

SO ORDERED.

In this appeal, accused-appellant alleges that:[32]

I.

THE COURT A QUO ERRED IN APPRECIATING THE EXTRAJUDICIAL CONFESSION[S] MADE BY THE ACCUSED-APPELLANT.

II.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

First. Accused-appellant contends that his alleged confessions to SPO1 Antonio Espinoza and Celso Manuel are inadmissible in evidence because they had been obtained in violation of Art. III, §12(1) of the Constitution and that, with these vital pieces of evidence excluded, the remaining proof of his alleged guilt, consisting of circumstantial evidence, is inadequate to establish his guilt beyond reasonable doubt.[33]

Art. III, §12 of the Constitution in part 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.

....

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

This provision applies to the stage of custodial investigation, that is, "when the investigation is no longer a general inquiry into an unsolved crime but starts to focus on a particular person as a suspect." [34] R.A. No. 7438 has extended the constitutional guarantee to situations in which an individual has not been formally arrested but has merely been "invited" for questioning. [35]

Decisions [36] of this Court hold that for an extrajudicial confession to be admissible, it must satisfy the following requirements: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.

In the case at bar, when accused-appellant was brought to the Malasiqui police station in the evening of October 17, 1996, [37] he was already a suspect, in fact the only one, in the brutal slaying of Jennifer Domantay. He was, therefore, already under custodial investigation and the rights guaranteed in Art. III, §12(1) of the Constitution applied to him. SPO1 Espinoza narrated what transpired during accused-appellant's interrogation: [38]

[I] interrogated Bernardino Domantay, prior to the interrogation conducted to him, I informed him of his constitutional right as follows; that he has the right to remain silent; that he has the right to a competent lawyer of his own choice and if he can not afford [a counsel] then he will be provided with one, and further informed [him] that all he will say will be reduced into writing and will be used the same in the proceedings of the case, but he told me that he will cooperate even in the absence of his counsel; that he admitted to me that he killed Jennifer Domantay, and he revealed also the weapon used [and] where he gave [it] to.

But though he waived the assistance of counsel, the waiver was neither put in writing nor made in the presence of counsel. For this reason, the waiver is invalid and his confession is inadmissible. SPO1 Espinoza's testimony on the alleged confession of accused-appellant should have been excluded by the trial court. So is the bayonet inadmissible in evidence, being, as it were, the "fruit of the poisonous tree." As explained in *People v. Alicando*: [39]

... According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegal obtained evidence taints all evidence subsequently obtained.

We agree with the Solicitor General, however, that accused-appellant's confession to the radio reporter, Celso Manuel, is admissible. In *People v. Andan*, [40] the accused in a rape with homicide case confessed to the crime during interviews with the media. In holding the confession admissible, despite the fact that the accused gave his answers without the assistance of counsel, this Court said: [41]

[A]ppellant's [oral] confessions to the newsmen are not covered by Section 12(1) and (3) of Article III of the Constitution. The Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents.

Accused-appellant claims, however, that the atmosphere in the jail when he was interviewed was "tense and intimidating" and was similar to that which prevails in a custodial investigation. [42] We are not persuaded. Accused-appellant was interviewed while he was inside his cell. The interviewer stayed outside the cell and the

only person besides him was an uncle of the victim. Accused-appellant could have refused to be interviewed, but instead, he agreed. He answered questions freely and spontaneously. According to Celso Manuel, he said he was willing to accept the consequences of his act.

Celso Manuel admitted that there were indeed some police officers around because about two to three meters from the jail were the police station and the radio room.[43] We do not think the presence of the police officers exerted any undue pressure or influence on accused-appellant and coerced him into giving his confession.

Accused-appellant contends that "it is . . . not altogether improbable for the police investigators to ask the police reporter (Manuel) to try to elicit some incriminating information from the accused." [44] This is pure conjecture. Although he testified that he had interviewed inmates before, there is no evidence to show that Celso was a police beat reporter. Even assuming that he was, it has not been shown that, in conducting the interview in question, his purpose was to elicit incriminating information from accused-appellant. To the contrary, the media are known to take an opposite stance against the government by exposing official wrongdoings.

Indeed, there is no showing that the radio reporter was acting for the police or that the interview was conducted under circumstances where it is apparent that accused-appellant confessed to the killing out of fear. As already stated, the interview was conducted on October 23, 1996, 6 days after accused-appellant had already confessed to the killing to the police.

Accused-appellant's extrajudicial confession is corroborated by evidence of corpus delicti, namely, the fact of death of Jennifer Domantay. In addition, the circumstantial evidence furnished by the other prosecution witnesses dovetails in material points with his confession. He was seen walking toward the bamboo grove, followed by the victim. Later, he was seen standing near the bamboo grove where the child's body was found. Rule 133 of the Revised Rules on Evidence provides:

§3. Extrajudicial confession, not sufficient ground for conviction. ¾ An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti.

§4. Evidence necessary in treason cases. ¾ No person charged with treason shall be convicted unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Accused-appellant argues that it was improbable for a brutal killing to have been committed without the children who were playing about eight to ten meters from Amparo Domantay's grove, where the crime took place, having heard any commotion.[45] The contention has no merit. Accused-appellant could have covered the young child's mouth to prevent her from making any sound. In fact, Dr. Bandonill noted a five by two inch (5" x 2") contusion on the left side of the victim's forehead, which he said could have been caused by a hard blunt instrument or by impact as her head hit the ground.[46] The blow could have rendered her unconscious, thus precluding her from shouting or crying.

Accused-appellant also contends that the testimony of Jiezl Domantay contradicts that of Lorenzo Domantay because while Jiezl said she had seen accused-appellant walking towards the bamboo grove, followed by the victim, at around 2 o'clock in the afternoon on October 17, 1996, Lorenzo said he saw accused-appellant standing near the bamboo grove at about the same time.

These witnesses, however, did not testify concerning what they saw at exactly the same time. What they told the court was what they had seen "at around" 2 o'clock in the afternoon. There could have been a difference in time, however little it was, between the time Jiezl saw accused-appellant and the victim walking and the time Lorenzo saw accused-appellant near the place where the victim's body was later found. Far from contradicting each other, these witnesses confirmed what each had said each one saw. What is striking about their testimonies is that while

Jiezl said she saw accused-appellant going toward the bamboo grove followed by the victim "at around" 2 o'clock in the afternoon on October 17, 1996, Lorenzo said he had seen accused-appellant near the bamboo grove "at around" that time. He described accused-appellant as nervous and worried. There is no reason to doubt the claim of these witnesses. Lorenzo is a relative of accused-appellant. There is no reason he would testify falsely against the latter. Jiezl, on the other hand, is also surnamed Domantay and could also be related to accused-appellant and has not been shown to have any reason to testify falsely against accused-appellant. At the time of the incident, she was only 10 years old.

For the foregoing reasons, the Court is convinced of accused-appellant's guilt with respect to the killing of the child. It is clear that the prosecution has proven beyond reasonable doubt that accused-appellant is guilty of homicide. Art. 249 of the Revised Penal Code provides:

Any person who, not falling within the provisions of Article 246 [parricide] shall kill another without the attendance of any of the circumstances enumerated in the next preceding article [murder], shall be deemed guilty of homicide and be punished by reclusion temporal.

The killing was committed with the generic aggravating circumstance of abuse of superior strength. The record shows that the victim, Jennifer Domantay, was six years old at the time of the killing. She was a child of small build, 46" in height.[47] It is clear then that she could not have put up much of a defense against accused-appellant's assault, the latter being a fully grown man of 29 years. Indeed, the physical evidence supports a finding of abuse of superior strength: accused-appellant had a weapon, while the victim was not shown to have had any; there were 38 stab wounds; and all the knife wounds are located at the back of Jennifer's body.

But we think the lower court erred in finding that the killing was committed with cruelty.[48] The trial court appears to have been led to this conclusion by the number of wounds inflicted on the victim. But the number of wounds is not a test for determining whether there was cruelty as an aggravating circumstance.[49] "The test . . . is whether the accused deliberately and sadistically augmented the victim's suffering thus . . . there must be proof that the victim was made to agonize before the [the accused] rendered the blow which snuffed out [her] life." [50] In this case, there is no such proof of cruelty. Dr. Bandonill testified that any of the major wounds on the victim's back could have caused her death as they penetrated her heart, lungs and liver, kidney and intestines.[51]

Second. There is, however, no sufficient evidence to hold accused-appellant guilty of raping Jennifer Domantay. Art. 335 of the Revised Penal Code, as amended, in part provides:

ART. 335. When and how rape is committed. $\frac{3}{4}$ 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.

As the victim here was six years old, only carnal knowledge had to be proved to establish rape. Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman.[52] For this purpose, it is enough if there was even the slightest contact of the male sex organ with the labia of the victim's genitalia.[53] However, there must be proof, by direct or indirect evidence, of such contact.

Dr. Ronald Bandonill's report on the genital examination he had performed on the deceased reads:[54]

GENITAL EXAMINATION; showed a complete laceration of the right side of the hymen. The surrounding genital area shows signs of inflammation.

....

REMARKS: 1) Findings at the genital area indicate the probability of penetration of that area by a hard, rigid instrument.

Hymenal laceration is not necessary to prove rape;^[55] neither does its presence prove its commission. As held in *People v. Ulili*,^[56] a medical certificate or the testimony of the physician is presented not to prove that the victim was raped but to show that the latter had lost her virginity. Consequently, standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence proving carnal knowledge that rape may be deemed to have been established.^[57]

This conclusion is based on the medically accepted fact that a hymenal tear may be caused by objects other than the male sex organ^[58] or may arise from other causes.^[59] Dr. Bandonill himself admitted this. He testified that the right side of the victim's hymen had been completely lacerated while the surrounding genital area showed signs of inflammation.^[60] He opined that the laceration had been inflicted within 24 hours of the victim's death and that the inflammation was due to a trauma in that area.^[61] When asked by the private prosecutor whether the lacerations of the hymen could have been caused by the insertion of a male organ he said this was possible. But he also said when questioned by the defense that the lacerations could have been caused by something blunt other than the male organ. Thus, he testified:^[62]

PROS. F. QUNIT:

Q Now, what might have caused the complete laceration of the right side of the hymen, doctor?

A Well, sir, if you look at my report there is a remark and it says there; findings at the genital area indicated the probability of penetration of that area by a hard rigid instrument.

Q Could it have been caused by a human organ?

A If the human male organ is erect, fully erect and hard then it is possible, sir.

....

ATTY. VALDEZ:

Q

In your remarks; finding at the genital area indicates the probability of penetration of that area by a hard rigid instrument, this may have also been caused by a dagger used in the killing of Jennifer Domantay is that correct?

A

Well, sir when I say hard rigid instrument it should not be sharp pointed and sharp rigid, it should be a hard blunt instrument.

Q Do you consider a bolo a blunt instrument, or a dagger?

A The dagger is a sharp rigid but it is not a blunt instrument, sir.

Q

This Genital Examination showed a complete laceration of the right side of the hymen, this may have been possibly caused by a dagger, is it not?

A

No, sir. I won't say that this would have been caused by a dagger, because a dagger would have made at its incision . . . not a laceration, sir.

Q But this laceration may also have been caused by other factors other the human male organ, is that correct?

A A hard blunt instrument, sir could show.

Q My question is other than the human male organ?

A Possible, sir.

....

COURT:

Q

You mentioned that the hymen was lacerated on the right side?

A Yes, your Honor.

Q

And if there is a complete erection by a human organ is this possible that the laceration can only be on the right side of the hymen?

A Yes, your Honor, its possible.

Q How about if the penetration was done by a finger, was it the same as the human organ?

A

Well, it depends on the size of the finger that penetrat[es] the organ, if the finger is small it could the superficial laceration, and if the finger is large then it is possible your honor.

Q How about two fingers?

A Possible, sir.

To be sure, this Court has sustained a number of convictions for rape with homicide based on purely circumstantial evidence. In those instances, however, the prosecution was able to present other tell-tale signs of rape such as the location and description of the victim's clothings, especially her undergarments, the position of the body when found and the like.[63] In *People v. Macalino*,^[64] for instance, the Court affirmed a conviction for the rape of a two year-old child on the basis of circumstantial evidence:^[65]

The Court notes that the testimony or medical opinion of Dr. Gajardo that the fresh laceration had been produced by sexual intercourse is corroborated by the testimony given by complainant Elizabeth that when she rushed upstairs upon hearing her daughter suddenly cry out, she found appellant Macalino beside the child buttoning his own pants and that she found some sticky fluid on the child's buttocks and some blood on her private part. (Emphasis in the original)

In contrast, in the case at bar, there is no circumstantial evidence from which to infer that accused-appellant sexually abused the victim. The only circumstance from which such inference might be made is that accused-appellant was seen with the victim walking toward the place where the girl's body was found. Maybe he raped the girl. Maybe he did not. Maybe he simply inserted a blunt object into her organ, thus causing the lacerations in the hymen. Otherwise, there is no circumstance from which it might reasonably be inferred that he abused her, e.g., that he was zipping up his pants, that there was spermatozoa in the girl's vaginal canal.

Indeed, the very autopsy report of Dr. Bandonill militates against the finding of rape. In describing the stab wounds on the body of the victim, he testified:^[66]

[A]fter examining the body I took note that there were several stab wounds . . . these were all found at the back area sir . . . extending from the back shoulder down to the lower back area from the left to the right.

Considering the relative physical positions of the accused and the victim in crimes of rape, the usual location of the external bodily injuries of the victim is on the face,^[67] neck,^[68] and anterior portion^[69] of her body. Although it is not unnatural to find contusions on the posterior side, these are usually caused by the downward

pressure on the victim's body during the sexual assault.[70] It is unquestionably different when, as in this case, all the stab wounds (except for a minor cut in the lower left leg) had their entry points at the back running from the upper left shoulder to the lower right buttocks.

It is noteworthy that the deceased was fully clothed in blue shorts and white shirt when her body was brought to her parent's house immediately after it was found.[71] Furthermore, there is a huge bloodstain in the back portion of her shorts.[72] This must be because she was wearing this piece of clothing when the stab wounds were inflicted or immediately thereafter, thus allowing the blood to seep into her shorts to such an extent. As accused-appellant would naturally have to pull down the girl's lower garments in order to consummate the rape, then, he must have, regardless of when the stab wounds were inflicted, pulled up the victim's shorts and undergarments after the alleged rape, otherwise, the victim's shorts would not have been stained so extensively. Again, this is contrary to ordinary human experience.

Even assuming that Jennifer had been raped, there is no sufficient proof that it was accused-appellant who had raped her. He did not confess to having raped the victim.

From the foregoing, we cannot find that accused-appellant also committed rape. In the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt.[73]

Third. The trial court ordered accused-appellant to pay the heirs of Jennifer Domantay the amount of P30,000.00 as actual damages. However, the list of expenses produced by the victim's father, Jaime Domantay, only totaled P28,430.00. Of this amount, only P12,000.00 was supported by a receipt. Art. 2199 of the Civil Code provides that a party may recover actual or compensatory damages only for such loss as he has duly proved. Therefore, the award of actual damages should be reduced to P12,000.00.

In addition, the heirs of Jennifer Domantay are entitled to recover exemplary damages in view of the presence of the aggravating circumstance of abuse of superior strength. Art. 2230 of the Civil Code provides for the payment of exemplary damages when the crime is committed with one or more aggravating circumstance. An amount of P25,000.00 is deemed appropriate.[74]

In accordance with our rulings in *People v. Robles*[75] and *People v. Mengote*,[76] the indemnity should be fixed at P50,000.00 and the moral damages at P50,000.00.[77]

WHEREFORE, the judgment of the trial court is SET ASIDE and another one is rendered FINDING accused-appellant guilty of homicide with the aggravating circumstance of abuse of superior strength and sentencing him to a prison term of 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum, and ORDERING him to pay the heirs of Jennifer Domantay the amounts of P50,000.00, as indemnity, P50,000.00, as moral damages, P25,000.00, as exemplary damages, and P12,000.00, as actual damages, and the costs.

SO ORDERED.

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

Purisima, and Buena, JJ., took no part in the deliberations.

[1] Per Judge Bienvenido R. Estrada.

[2] Records, p.15. Dr. Macaranas was not presented as a witness and her post-mortem report was not offered in evidence by either party.

- [3] Folder of Exhibits, p. 5; Exh. G.
- [4] Records, p. 1.
- [5] TSN, pp. 3-4, March 4, 1997.
- [6] Id., pp. 8,13.
- [7] Id., p. 19.
- [8] Id., pp. 13-15 (Translation by the trial court).
- [9] Id., pp. 20-21.
- [10] TSN, pp. 4-7, 13, March 3, 1997.
- [11] TSN, pp. 4-5, 13, April 3, 1997.
- [12] TSN, pp. 4-7, March 13, 1997.
- [13] TSN, p. 6, Feb. 28, 1997.
- [14] TSN, p. 4, Feb. 25, 1997.
- [15] TSN, p. 8, Feb. 28, 1997.
- [16] TSN, p. 14, April 10, 1997.
- [17] Id., pp. 6-9.
- [18] TSN, p. 10, April 10, 1997.
- [19] Id., p. 13.
- [20] Id., p. 15.
- [21] Records, p. 20.
- [22] TSN, pp. 12-13, April 8, 1997.
- [23] Id., p. 16.
- [24] Id., pp. 10-11.
- [25] Records, p. 20.
- [26] TSN, pp. 8-11, April 15, 1997.
- [27] Id., p. 26-27.
- [28] Id., pp. 17-18, 27-29.
- [29] Id., p. 31.
- [30] Rollo, p. 32; Decision, p. 14.
- [31] Broken down as follows: P200,000.00 as moral damages; P200,000.00 as exemplary damages; P50,000.00 as civil indemnity; and P30,000.00 for funeral and related expenses.
- [32] Rollo, p. 50; Appellant's Brief, p. 1.

[33] Id., pp. 54-60; Id., pp. 5-11.

[34] *People v. Andan*, 269 SCRA 95 (1997).

[35] *Sanchez v. Demetriou*, 227 SCRA 627 (1993).

[36] *People v. Deniega*, 251 SCRA 626 (1995); *People v. Española*, 271 SCRA 689 (1997); *People v. Cabiles*, 284 SCRA 199 (1998); *People v. Tan*, 286 SCRA 207, 214 (1998) citing cases.

[37] Accused-appellant was picked up by the police without any warrant of arrest, although his case did not fall under any of the three instances where warrantless arrests are authorized under Rule 113, §5 of the Revised Rules of Criminal Procedure.

[38] TSN, p. 4, Feb. 25, 1995.

[39] 251 SCRA 293, 314 (1995).

[40] 269 SCRA 95 (1997).

[41] Id., at 314. Reiterated in *People v. Cabiles*, 284 SCRA 199 (1998).

[42] Rollo, p. 59; Appellant's Brief, p. 10.

[43] TSN, p. 10, April 10, 1997.

[44] Rollo, p. 59; Appellant's Brief, p. 10.

[45] Rollo, pp. 62-63, Appellant's Brief, pp. 13-14.

[46] TSN, pp. 10-11, April 18, 1997.

[47] Records, p. 13.

[48] Rollo, p. 32; Decision, p. 14.

[49] *People v. Tonog*, 205 SCRA 772 (1992); *People v. Manzano*, 58 SCRA 250 (1974).

[50] *People v. Ferrer*, 255 SCRA 19, 36 (1996), citing *People v. Lacao*, 60 SCRA 89 (1974).

[51] TSN, p. 16, April 8, 1997.

[52] *People v. Alib*, 222 SCRA 517 (1993); *People v. Orita*, 184 SCRA 105 (1990).

[53] *People v. Evangelista*, 282 SCRA 37 (1997); *People v. Orita*, *supra*.

[54] Records, p. 20.

[55] *People v. Butron*, 272 SCRA 352 (1997); *People v. Gabris*, 258 SCRA 663 (1996); *People v. Alimon*, 257 SCRA 658 (1996); *People v. Lazaro*, 249 SCRA 234 (1995); *People v. Salinas*, 232 SCRA 274 (1994).

[56] 225 SCRA 594 (1993).

[57] *People v. Castillo*, 197 SCRA 657 (1991).

[58] See *People v. Macalino*, 209 SCRA 788, 795 (1992).

[59] HERZOG, MEDICAL JURISPRUDENCE, 617 (1931).

[60] Records, p. 20.

[61] TSN, p. 20, April 8, 1997.

[62] TSN, pp. 15-19, April 8, 1997 (emphasis added).

[63] See *People v. Develles*, 208 SCRA 101 (1992); *People v. Magana*, 259 SCRA 380 (1996).

[64] 209 SCRA 788 (1992).

[65] *Id.*, at 797.

[66] TSN, pp. 12-13, April 8, 1997.

[67] *People v. Advincula*, 96 SCRA 875, 878 (1980); *People v. Lood*, 117 SCRA 467, 471 (1982); *People v. Aguirre*, 143 SCRA 572, 578 (1986); *People v. Gecomo*, 254 SCRA 82, 92 (1996).

[68] *People v. Garcia*, 89 SCRA 440, 448 (1979); *People v. Saligan*, 101 SCRA 264, 269 (1980); *People v. Vizcarra*, 115 SCRA 743, 746 (1982); *People v. Umali*, 116 SCRA 23, 32 (1982); *People v. Aguirre*, *supra.*; *People v. Dawandawan*, 184 SCRA 264, 269 (1990); *People v. Magana*, *supra.*

[69] *People v. Saligan*, *supra.*; *People v. Empleo*, 226 SCRA 454, 459 (1993).

[70] See *People v. Madridano*, 227 SCRA 363, 363 (1993); *People v. Empleo*, *supra.*; *People v. Garcia*, *supra.*

[71] Exh. C.

[72] Exh. B.

[73] See *People v. Dino*, 160 SCRA 197, 209 (1988).

[74] *People v. Espanola*, 271 SCRA 689 (1997).

[75] G.R. No. 124300, March 25, 1999.

[76] G.R. No. 130491, March 25, 1999.

[77] *Supra* note 74.

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