

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PACITO ORDOÑO Y NEGRANZA ALIAS ASING AND APOLONIO MEDINA Y NOSUELO ALIAS POLING, ACCUSED-APPELLANTS.*G.R. No. 132154. June 29, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-132154/>**PER CURIAM:**

COURTS are confronted, repeatedly, with the difficult task of scrutinizing the sufficiency of extrajudicial confessions as basis for convicting the accused. The drive to apprehend the culprits at any cost, particularly in crimes characterized by brutality and savagery, not too infrequently tempts law enforcement agencies to take unwarranted shortcuts and disregard constitutional and legal constraints that are intended to ensure that only the guilty are punished. In the delicate process of establishing guilt beyond reasonable doubt, courts play a crucial role in assuring that the evidence gathered by government agents scrupulously meets the exacting constitutional standards which if not met impose a strict exclusionary rule, i.e., "any confession or admission obtained in violation of Art. II, Sec. 12 (1), shall be inadmissible in evidence."

This case is on automatic review of the 11 December 1997 Decision of the Regional Trial Court, Br. 34, Balaoan, La Union, in Crim. Case No. 2415 finding both accused Pacito Ordoño y Negranza alias Asing and Apolonio Medina y Nosuelo alias Poling guilty beyond reasonable doubt of rape with homicide and imposing upon each of them two (2) separate death penalties.

The records show that on 5 August 1994 the decomposing body of a young girl was found among the bushes near a bridge in Barangay Poblacion, Santol, La Union. The girl was later identified as Shirley Victore, fifteen (15) years old, a resident of Barangay Guesset, Poblacion, Santol, La Union, who three (3) days before was reported missing. Post-mortem examination conducted by Dr. Arturo Llavore, a medico-legal officer of the NBI, revealed that the victim was raped and strangled to death.

Unidentified sources pointed to Pacito Ordoño and Apolonio Medina as the authors of the crime. Acting on this lead, the police thereupon invited the two (2) suspects and brought them to the police station for questioning. However, for lack of evidence then directly linking them to the crime, they were allowed to go home.

On 10 August 1994 the accused Pacito Ordoño and Apolonio Medina returned to the police station one after another and acknowledged that they had indeed committed the crime. Acting on their admission, the police immediately conducted an investigation and put their confessions in writing. The investigators however could not at once get the services of a lawyer to assist the two (2) accused in the course of the investigation because there were no practicing lawyers in the Municipality of Santol, a remote town of the Province of La Union. Be that as it may, the statements of the two (2) accused were nevertheless taken. But before doing so, both accused were apprised in their own dialect of their constitutional right to remain silent and to be assisted by a competent counsel of their choice. Upon their acquiescence and assurance that they understood their rights and did not require the services of counsel, the investigation was conducted with the Parish Priest, the Municipal Mayor, the Chief of Police and other police officers of Santol, La Union, in attendance to listen to and witness the giving of the

voluntary statements of the two (2) suspects who admitted their participation in the crime.

The first to confess was Apolonio Medina who in addition to the Parish Priest, the Mayor, the Chief of Police and the other police officers was also accompanied by his wife and mother. Apolonio Medina narrated that in the morning of 2 August 1994 while he was walking towards the house of Pacito Ordoño in Sitio Buacao, Poblacion, Santol, La Union, he noticed a young woman walking towards the school at the Poblacion. Upon reaching Sitio Buacao, he saw Pacito Ordoño standing along the road. When the woman reached him he suddenly grabbed her, held her tightly and covered her mouth with his right hand. As Medina neared them, Ordoño turned to him and said, "Come and help me, I am feeling uneasy."

Although Medina claimed he was surprised at the request, he nonetheless went to Ordoño, helped him hold the legs of the young woman including her bag and umbrella and together they carried her to the bushes where they laid her down. Medina held her legs as requested while Ordoño continued to cover her mouth with his hand and boxing her many times on the head. When she was already weak and weary Ordoño knelt near her, raised her skirt and lowered her panty down to her knees. Medina continued to remove her panty as Ordoño removed his short pants, then his briefs. Ordoño then raped her, boxed her head continuously, with Medina continuously pinning her legs down and boxing those legs every time she struggled.

After Ordoño had satiated himself Medina took his turn in raping the same victim with Ordoño holding her legs. After they were through, Medina left to watch out for intruders while Ordoño tied a vine around the girl's neck, hanged her on a tree that ended her life. Then, they went back to the road and parted ways.

After Medina said his piece, his wife and mother suddenly burst into tears. He then affixed his signature on his statement and so did his wife, followed by all the other witnesses who listened to his confession.

Pacito Ordoño narrated his story in the afternoon. According to him, in the morning of 2 August 1994 he was on his way to Sitio Guesset, Barangay Manggaan, Santol, La Union, when he saw a girl followed by Apolonio Medina. When the girl was near him he immediately grabbed her and covered her mouth. Medina drew near, held her two legs, bag and umbrella and together they carried her into the thicket. After laying her down Ordoño boxed her breasts and face while Medina boxed her legs. When she became weak Ordoño raised her skirt and lowered her panty while Medina completely removed it. Ordoño then removed his pants and walker briefs, went on top of Shirley and as Medina spread her legs Ordoño immediately inserted his penis into her vagina. After ejaculating Ordoño turned to Medina for him to take his turn in raping the girl. Ordoño was now holding her legs. At the end of his narration Ordoño affixed his thumbmark on his statement in lieu of his signature as he did not know how to write.

Thereafter, Apolonio Medina and Pacito Ordoño were detained at the Santol police station. News about the apprehension and detention of the culprits of the rape-slay of Shirley Victore soon spread that Roland Almoite, leading radio announcer of radio station DZNL, visited and interviewed them. In the interview which was duly tape-recorded both accused admitted again their complicity in the crime and narrated individually the events surrounding their commission thereof. According to Medina, his remorse in having committed the crime was so great but his repentance came too late.[1] He and Ordoño hoped that the parents of Shirley Victore would forgive them.[2] Upon conclusion of the interview, Roland Almoite immediately went to radio station DZNL and played the taped interview on the air. The same interview was played again on the air the following morning and was heard by thousands of listeners.

A couple of days later, the police brought the two (2) accused to the office of the PAO lawyer in Balaoan, La Union, for assistance and counseling. In a closed-door session, PAO lawyer Oscar B. Corpuz apprised each of the accused of his constitutional rights and, even though their confessions were already written in their dialect,

explained to them each of the questions and answers taken during the investigation. He likewise advised them to ponder the consequences of their confessions, leading them to defer the affixing of their second signature/ thumbmark thereon.

After a week or so, the two (2) separately went back to Atty. Corpuz and informed him of their willingness to affix their signatures and thumbmarks for the second time in their respective confessions. Once again Atty. Corpuz apprised the two (2) accused of their constitutional rights, explained the contents of their respective statements, and finally, accompanied them to Judge Fabian M. Bautista, MTC judge of Balaoan, La Union, who further apprised the two (2) accused of their constitutional rights and asked them if they had been coerced into signing their confessions. They assured Judge Bautista that their statements had been given freely and voluntarily. Upon such assurance that they had not been coerced into giving and signing their confessions, Judge Bautista finally asked the accused Pacito Ordoño and Apolonio Medina to affix their signatures/ thumbmarks on their respective confessions, and to subscribe the same before him. Atty. Corpuz then signed their statements as their assisting counsel, followed by a few members of the MTC staff who witnessed the signing.

On arraignment, in a complete turnabout, the two (2) accused pleaded not guilty.

In his defense, Pacito Ordoño testified that on 5 August 1994, while he was cooking at home, the police arrived and invited him to the headquarters for questioning. The police asked him his whereabouts on 2 August 1994 and he answered that he worked in the farm of Barangay Captain Valentin Oriente. According to Ordoño, the questioning took one (1) hour with the police boxing him several times on his stomach and on his side. They even inserted the barrel of a gun into his mouth in an effort to draw out answers from him. This being fruitless, he was placed in jail and released only the following morning, 6 August 1994. Three (3) days later, or on 9 August 1994, the police once again invited him to the headquarters where he was told that he was responsible for the rape and death of Shirley Victore.

Accused Pacito Ordoño insisted on his innocence and maintained that he was working with a certain barangay captain; nonetheless, he was detained. Later that night the police took him out from jail and brought him to the room of investigator SPO4 Alfredo A. Ominga where he was hit with the butt of an armalite and forced to admit to the rape and slay of Shirley Victore. On 10 August 1994 SPO4 Alfredo A. Ominga took a typewriter and asked questions from him for one (1) hour without a lawyer assisting him nor a priest witnessing the investigation. A barrel of a gun was placed inside his mouth forcing him to admit the commission of the crime and to affix his thumbmark on the document. He was also brought to the office of the PAO lawyer twice but did not affix his thumbmark on any document because he could not understand its contents. A radio announcer visited him inside his cell for an interview but he declined to answer his questions. He only answered the radio announcer during his fourth visit when SPO4 Alfredo A. Ominga threatened to hit him if he did not admit to the commission of the crime. As to Apolonio Medina, he heard from the police that he was also detained but maintained that he (Ordoño) did not know Apolonio.

For his part, Apolonio Medina testified that on 5 August 1994 while he was pasturing his carabaos at Barangay Guesset, in Santol, La Union, the police came and invited him for questioning. They asked him where he was on 2 August 1994 and he replied that he was carrying bananas for his aunt Resurreccion. The interrogation lasted for about an hour with neither a lawyer assisting him nor a relative being present, after which he was placed in jail. Later, he was brought out and taken to a hut near the headquarters where he was boxed, kicked and hit with a nightstick. He lost consciousness and recovered only after he was brought back to his cell. That same night he was returned to the hut outside the police headquarters where he was again boxed. On 8 August 1994, with his legs tied to the ceiling beam, he was hanged upside down. His breast was hit with the butt of a gun which was fired near his ear. A barrel of a gun was inserted into his mouth. He was threatened that he would be salvaged if he did

not admit to killing the victim. He was forced to sign a statement but could not recall its date of execution. He was brought to the office of the PAO lawyer twice but he did not sign the document. The investigator warned him that if he did not sign he would be buried in the pit which he himself dug. On his third visit to the office of the PAO lawyer he signed the document. He could not remember having gone to the office of the MTC Judge of Balaoan; La Union. He was interviewed by a radio announcer and was instructed by the investigator to narrate those that were in his statement. He admitted he knew Pacito Ordoño. He showed his bruises to his mother when the latter visited him in jail, prompting the latter to request medical treatment for her son but the request was denied.

On 11 December 1997 the trial court adjudged accused Pacito Ordoño and Apolonio Medina guilty of the crime of rape with homicide attended with conspiracy, and imposed upon each of them two (2) death penalties on the basis of their extrajudicial confessions.

The accused are now before us assailing their conviction on the ground that constitutional infirmities attended the execution of their extrajudicial confessions, i.e., mainly the lack of counsel to assist them during custodial investigation thereby making their confessions inadmissible in evidence.

Under the Constitution[3] and the rules laid down pursuant to law[4] and jurisprudence,[5] a confession to be admissible in evidence must satisfy four (4) fundamental requirements: (a) the confession must be voluntary; (b) the confession must be made with the assistance of competent and independent counsel; (c) the confession must be express; and, (d) the confession must be in writing.[6] Among all these requirements none is accorded the greatest respect than an accused's right to counsel to adequately protect him in his ignorance and shield him from the otherwise condemning nature of a custodial investigation. The person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation for the commission of the offense.[7] Hence, if there is no counsel at the start of the custodial investigation any statement elicited from the accused is inadmissible in evidence against him. This exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere and runs through menacing police interrogation procedures where the potentiality for compulsion, physical and psychological, is forcefully apparent.[8]

In the instant case, custodial investigation began when the accused Ordoño and Medina voluntarily went to the Santol Police Station to confess and the investigating officer started asking questions to elicit information and/or confession from them. At such point, the right of the accused to counsel automatically attached to them. Concededly, after informing the accused of their rights the police sought to provide them with counsel. However, none could be furnished them due to the non-availability of practicing lawyers in Santol, La Union, and the remoteness of the town to the next adjoining town of Balaoan, La Union, where practicing lawyers could be found. At that stage, the police should have already desisted from continuing with the interrogation but they persisted and gained the consent of the accused to proceed with the investigation. To the credit of the police, they requested the presence of the Parish Priest and the Municipal Mayor of Santol as well as the relatives of the accused to obviate the possibility of coercion, and to witness the voluntary execution by the accused of their statements before the police. Nonetheless, this did not cure in any way the absence of a lawyer during the investigation.

In providing that during the taking of an extrajudicial confession the accused's parents, older brothers and sisters, his spouse, the municipal mayor, municipal judge, district school supervisor, or priest or minister of the gospel as chosen by the accused may be present, RA 7438 does not propose that they appear in the alternative or as a substitute for counsel without any condition or clause. It is explicitly stated therein that before the above-mentioned persons can appear two (2) conditions must be met: (a) counsel of the accused must be absent, and, (b) a valid waiver must be executed. RA 7438 does not therefore unconditionally and unreservedly eliminate

the necessity of counsel but underscores its importance by requiring that a substitution of counsel with the above-mentioned persons be made with caution and with the essential safeguards.

Hence, in the absence of such valid waiver, the Parish Priest of Santol, the Municipal Mayor, the relatives of the accused, the Chief of Police and other police officers of the municipality could not stand in lieu of counsel's presence. The apparent consent of the two (2) accused in continuing with the investigation was of no moment as a waiver to be effective must be made in writing and with the assistance of counsel.[9] Consequently, any admission obtained from the two (2) accused emanating from such uncounselled interrogation would be inadmissible in evidence in any proceeding.

Securing the assistance of the PAO lawyer five (5) to eight (8) days later does not remedy this omission either. Although there was a showing that the PAO lawyer made a thorough explanation of the rights of the accused, enlightened them on the possible repercussions of their admissions, and even gave them time to deliberate upon them, this aid and valuable advice given by counsel still came several days too late. It could have no palliative effect. It could not cure the absence of counsel during the custodial investigation when the extrajudicial statements were being taken.[10]

The second affixation of the signatures/ thumbmarks of the accused on their confessions a few days after their closed-door meeting with the PAO lawyer, in the presence and with the signing of the MTC judge, the PAO lawyer and other witnesses, likewise did not make their admissions an informed one. Admissions obtained during custodial investigation without the benefit of counsel although reduced into writing and later signed in the presence of counsel are still flawed under the Constitution.[11] If the lawyer's role is diminished to being that of a mere witness to the signing of a prepared document albeit an indication therein that there was compliance with the constitutional rights of the accused, the requisite standards guaranteed by Art. III, Sec. 12, par. (1), are not met. The standards utilized by police authorities to assure the constitutional rights of the accused in the instant case therefore fell short of the standards demanded by the Constitution and the law.

It should further be recalled that the accused were not effectively informed of their constitutional rights when they were arrested, so that when they allegedly admitted authorship of the crime after questioning, their admissions were obtained in violation of their constitutional rights against self-incrimination under Sec. 20, Art. IV, of the Bill of Rights.

As testified to, the police informed the accused of their rights to remain silent and to counsel in a dialect understood by them, but despite the accused's apparent showing of comprehension, it is doubtful if they were able to grasp the significance of the information being conveyed. Pertinent portions of the extrajudicial confessions of Pacito Ordoño and Apolonio Medina, translated into English, read -

PRELIMINARY -

Mr. Pacito Ordoño, I am informing you that you are being investigated of an offense but before we continue, I tell you that you have the right to remain silent under the new Constitution of the Philippines.

And you are also herein reminded that all statements you give may be used for or against you in any Philippine court as evidence and it is herein likewise reminded that you have the right to secure the services of a lawyer of your own choice to represent you in this investigation, do you understand all these?

A: Yes, sir because all that I will state will only be the truth.

Q: Do you want that we will continue with this investigation after having been appraised of all your rights?

A: Yes, sir.

Q: And, do you want that we continue wit the investigation even without a lawyer of your own choice to represent you?

A: Yes, sir.

Q: Are you now prepared to give your voluntary statement consisting only the truth, without any lies whatsoever?

A: Yes, sir x x x x

PRELIMINARY -

Mr. Apolonio Medina, I inform you that you are being investigated of an offense but before we proceed with this investigation, I am informing you that you have the right to remain silent to all questions asked of you, according to the new Philippine Constitution.

And you are likewise reminded that all statements you give may be used for or against you in any Philippine court and you have a right to have a lawyer of your own choice to represent you in this investigation, do you understand this?

ANSWER - Yes, sir.

Q: After having known all your rights, do you want that we continue with the investigation?

A: Yes, sir.

Q: Do you want that we continue with this investigation even without a lawyer to represent you?

A: Yes, sir because all that I will state are the truth.

Q: Are you now prepared to give your voluntary statement consisting only the truth, nothing but the truth?

A: Yes, sir.

The advice proffered by the investigating officer to Ordoño starkly resembles that given to Medina, thus leading us to conclude that the advice was given perfunctorily and belonged to the stereotyped class - a long question by the investigator informing the appellant of his right followed by a monosyllabic answer - which this Court has condemned for being unsatisfactory.[12] The desired role of counsel in the process of custodial investigation is rendered meaningless if the lawyer gives an advice in a cursory manner as opposed to a meaningful advocacy of the rights of the person undergoing questioning. If advice is given casually and tritely as to be useless, understanding on the part of the accused is sacrificed and the unconstrained giving up of a right becomes impaired.

To be informed of the right to remain silent and to counsel contemplates "the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle." It is not enough for the interrogator to merely enumerate to the person under investigation his rights as provided in Sec. 12, Art. III, of the Constitution; the interrogator must also explain the effect of such provision in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands.[13]

With the extrajudicial confession of the accused rendered inadmissible in evidence, we are left with the interview taken by DZNL radio announcer Roland Almoite as evidence. The taped interview was offered to form part of the testimony of witness Roland Almoite to whom the admissions were made and to prove through electronic device the voluntary admissions by the two (2) accused that they raped and killed Shirley Victore. The defense objected

to its acceptance on the ground that its integrity had not been preserved as the tape could easily have been spliced and tampered with.[14] However, as Roland Almoite testified, it was the original copy of the taped interview; it was not altered; the voices therein were the voices of the two (2) accused; and, the defense never submitted evidence to prove otherwise. Under the circumstances, we are inclined, as was the lower court, to admit the authenticity of the taped interview.

A review of the contents of the tape as included in Roland Almoite's testimony reveals that the interview was conducted free from any influence or intimidation from police officers and was done willingly by the accused. Despite allegations to the contrary, no police authority ordered or forced the accused to talk to the radio announcer. While it may be expected that police officers were around since the interview was held in the police station, there was no showing that they were within hearing distance nor within the vicinity where the interview was being conducted. At most, the participation of the police authorities was only to allow Roland Almoite to conduct an interview.

The taped interview likewise revealed that the accused voluntarily admitted to the rape-slay and even expressed remorse for having perpetrated the crime. We have held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence.[15] By analogy, statements made by herein accused to a radio announcer should likewise be held admissible. The interview was not in the nature of an investigation as the response of the accused was made in answer to questions asked by the radio reporter, not by the police or any other investigating officer. When the accused talked to the radio announcer, they did not talk to him as a law enforcement officer, as in fact he was not, hence their uncounselled confession to him did not violate their constitutional rights.

Sections 12, pars. (1) and (3), Art. III, of the Constitution do not cover the verbal confessions of the two (2) accused to the radio announcer. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights enumerated under Sec. 12, Art. III, are guaranteed to preclude the slightest use of coercion by the state as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth.[16]

The Bill of Rights does not concern itself with the relation between a private individual and another individual.[17] It governs the relationship between the individual and the State. The prohibitions therein are primarily addressed to the State and its agents. They confirm that certain rights of the individual exist without need of any governmental grant, rights that may not be taken away by government, rights that government has the duty to protect.[18] Governmental power is not unlimited and the Bill of Rights lays down these limitations to protect the individual against aggression and unwarranted interference by any department of government and its agencies.

The admissions of the accused before the radio announcer and duly tape-recorded are further bolstered and substantiated by the findings of the NBI Medico-Legal Officer as reflected in the Autopsy Report/Post Mortem Findings. The narration of the accused Apolonio Medina that Asing boxed the victim, who was struggling as she was being raped,[19] was proved by the Autopsy Report stating that the victim suffered contusions on the leg, right, lateral aspect, middle third, etc.;[20] that accused Pacito Ordoño boxed the face of the victim to make her weak[21] was proved by the testimony of the NBI Medico-Legal Officer that there was blackening on the face of the victim due to hematoma caused by violence or boxing on her face;[22] and, that accused Pacito Ordoño hanged the victim on a tree by tying a vine around her neck,[23] was proved by the finding of a depressed mark involving the anterior and lateral portions of the neck.[24]

As to the assertion of the accused that they were tortured and subjected to inhuman treatment, we find such

allegations baseless. The accused were given several opportunities to decry the maltreatment they allegedly suffered in the hands of the police but at no time did they complain about it. First, they could have told the radio announcer outright of the abuses they were subjected to before signing their confessions. Second, when they were brought before the PAO lawyer they likewise did not make any such claims but instead chose to ponder over the lawyer's advice and deferred the signing of their confessions. Lastly, they had the chance to tell the MTC judge about the fatal defect of their confessions, if there was any, when the latter asked them whether they voluntarily signed the same and whether coercion was used in extracting their confessions; however, they answered in the negative. The accused cannot therefore on a later date make assertions that they were maltreated when at no time - during their detention and when they were in the presence of persons who could have helped them - did they make such complaints.

The doctor who physically examined them further disproved their assertions when she testified thus -

FISCAL TECAN:

Q: Now, you said that you talked with the prisoners, Pacito Ordoño and Apolonio Medina, what did you actually tell them?

A: I said, "What do you feel on your body?" and I also said, "What part of your body are (sic) painful?"

Q: What did they answer?

A: They did not answer me, sir.

Q: More or less, how many questions did you ask?

A: Only that, sir.

Q: After you have observed the prisoners, did you notice any injury?

A: None, sir x x x x

Q: x x x x You noticed any injury on their bodies?

A: None, sir, that is why I looked to see what was really painful.[25]

Considering that the doctor was a witness for the defense, it was surprising that she never mentioned about any maltreatment. She saw not a single scratch on the bodies of the accused. She even inquired into their physical well-being but they did not tell her of any pain or injury. They could have easily asked the doctor for immediate treatment if indeed they were physically harmed, but they did not. This puts their claim of maltreatment into serious doubt. With this, the testimony of the mother of the accused Apolonio Medina alleging that the police refused treatment for her son despite his critical condition becomes a fabrication, a mere figment of the imagination. As found by the lower court, her tale of buying an antibiotic for her son, all on her own, without the prescription of a doctor, is hard to believe since she is already an elderly woman, seventy-three (73) years of age, unschooled and illiterate.[26]

To further exculpate themselves, the accused invoked alibi. Ordoño testified that at the time of the incident he was at work in the place of Barangay Captain Valentin Oriente,[27] while Medina claimed that he went to carry bananas for a certain aunt Resurreccion.[28] However, such allegations deserve no credit as alibi becomes worthless when it is established mainly by the accused themselves.[29] The defense of alibi is always considered with suspicion and received with caution, not only because it is inherently weak and unreliable, but also because it can easily be fabricated.[30]

Quite interestingly, Bgy. Capt. Valentin Oriente was presented as a witness for the prosecution, not for the defense, while "aunt Resurreccion" was not presented at all. Bgy. Capt. Oriente testified that Pacito Ordoño did not work with him on 2 August 1994; on the contrary, he saw him on the bridge at Sitio Guesset.[31]

Other than their lame assertions that they were with the above-mentioned persons, the accused failed to substantiate their defense and to give details on what transpired that fateful day, especially since they were in the same town where the crime happened. For alibi to Prosper, it must be convincing, enough to preclude any doubt about the physical impossibility of the presence of the accused at the locus criminis or its immediate vicinity at the time of the incident.[32] Since the accused failed to convince the Court otherwise, their defense must fall.

The lack of prior design or plan to rape and kill the victim prior to the commission of the crime does not negate conspiracy. For conspiracy to exist, proof of an actual planning of the perpetration of the crime is not a condition precedent. It is sufficient that at the time of the commission of the offense the accused had the same purpose and were united in its execution. From the foregoing, it is evident that the accused helped each other in carrying out their beastly acts. The taped interview as played in open court clearly revealed thus -

(STATEMENT OF ACCUSED APOLONIO MEDINA) -

INTERPRETER:

When I was walking there already about to be near him, he was already holding the woman and said, come and help me because I was (sic) not feeling well. Well, I was shocked of what I saw, sir. But later on, as usual I regained my composure and so I finally went to help him, sir.

FISCAL TECAN: We will continue, Your Honor.

INTERPRETER:

And then we laid her down among the bushes then Asing boxed her because she was struggling, Your Honor. And Asing did what he wanted, sir. And then he asked me to take my turn and then I went outside to look and see if there are (sic) people and then Asing went to get a vine, sir. And when I arrived at their place, he was already tying (sic). After that, we left for home, sir.[33]

x x x

(STATEMENT OF ACCUSED PACITO ORDOÑO)

Q: But Apolonio Medina was already there as your companion?

A: He was there already, sir. He was the one who held her legs, sir.

Q: Who was the first one to rape or use her?

A: Me, sir. And after that, Apolonio Medina, sir.

Q: And after you were through, what did you do, was she still conscious?

A: She was practically unconscious, sir.

Q: What did you do then?

A: We tied her neck and hanged her on a tree, sir.[34]

The modifying circumstance of conspiracy being present, each of the accused shall be liable for the other's acts as well. Article 335 of the Revised Penal Code provides that "when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death."

In 1971, in *People v. Jose*[35] this Court convicted the four (4) accused with forcible abduction with rape, and three (3) counts of simple rape, and imposed upon each of the accused four (4) death penalties in view of the existence of conspiracy.

In 1981, in *People v. Yutila*[36] this Court affirmed the judgment of the court a quo declaring each of the three (3) accused guilty of the special complex crime of rape with homicide and sentenced each of them to suffer a single penalty of death. However, Justice Barredo in his separate opinion interposed that in accordance with the doctrine laid down in the *Jayme Jose* case, three (3) death penalties should have been imposed on each of the accused.

In *People v. Vizcarra*[37] where the four (4) accused were charged with rape with homicide, the Court held that only one of them should be held liable for the crime of rape with homicide and all the rest for simple rape. But since four (4) successive offenses were charged and proved, each of the accused was imposed four (4) death sentences for four (4) separate and distinct crimes of rape. The existence of conspiracy among them, the overwhelming evidence as to the nature and the number of crimes committed, as well as the attendance of the aggravating circumstances, fully justified the imposition of four (4) death penalties.

In 1988, in *People v. Diño*[38] where the three (3) accused took turns in ravishing the victim and thereafter killed her, the Court declared each of them guilty of three (3) crimes of rape with homicide and sentenced each of them to three (3) penalties of reclusion perpetua. The penalty in fact should have been death but with its proscription in the 1987 Constitution the penalty imposed was reduced to reclusion perpetua.

In 1991, in *People v. Flores*[39] a registered nurse was successively raped by four (4) men and then killed. The trial court convicted each of them with the special complex crime of multiple rape with homicide on four (4) counts and as a consequence thereof sentenced each of them to four (4) death penalties. This Court affirmed the decision of the lower court with the modification that the accused should instead suffer four (4) penalties of reclusion perpetua by reason of the constitutional proscription on the imposition of the death penalty. The four (4) death penalties for each of the appellants were explained to be ordained by the fact that conspiracy had been established beyond reasonable doubt.

In 1996, in *People v. Laray*[40] this Court convicted two (2) of the accused charged therein with multiple rape and sentenced each of them to suffer two (2) counts of reclusion perpetua because of the existence of conspiracy.

Accordingly, herein accused Pacito Ordoño and Apolonio Medina should be held liable for the special complex crime of rape with homicide on two (2) counts as defined and penalized in Art. 335 of the Revised Penal Code as amended by RA 7659.

We have held that the indemnification of the victim shall be in the amount of P100,000.00 if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.[41] In addition, this Court has likewise ruled that in crimes of rape the amount of P50,000.00 as moral damages must be awarded to the victim without need of proof nor even pleading the basis thereof.[42]

Four (4) Justices of the Court however continue to maintain the unconstitutionality of RA 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the 11 December 1997 Judgment rendered by the Regional Trial Court-Branch 34, Balaoan, La Union, is **AFFIRMED** with the **MODIFICATION** that the two (2) accused **PACITO ORDONO y NEGRANZA** alias **ASING** and **APOLONIO MEDINA y NOSUELO** alias **POLING** are held guilty beyond reasonable doubt of the special complex crime of rape with homicide on two (2) counts and are sentenced each to two (2) **DEATH**

PENALTIES. Each of the accused is further ordered to indemnify the heirs of Shirley Victore in the amount of P200,000.00 as civil indemnity and P100,000.00 for moral damages for both counts of rape. Costs against both accused.

In consonance with Sec. 25 of RA 7659 amending Art. 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 the 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, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] TSN, 6 April 1995, p. 42.

[2] Id., pp. 42 and 47.

[3] Art. III, Sec. 12, Constitution.

[4] RA 7438, "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers, and Providing Penalties for Violations thereof." It took effect 27 April 1992.

[5] *Morales v. Enrile*, G.R. Nos. 61016-61107, 26 April 1983, 121 SCRA 538.

[6] *People v. Deniega*, G.R. No. 103499, 29 December 1995, 251 SCRA 626.

[7] *Gamboa v. Judge Cruz*, G.R. No. 56291, 27 June 1988, 162 SCRA 642 as cited in *People v. Bandula*, G.R. No. 89223, 27 May 1994, 232 SCRA 566.

[8] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 410 (1996); *Miranda v. Arizona*, 384 U.S. 436, 16 L. ed. 2d 694 (1966)

[9] RA 7438, (e)

[10] Ibid.

[11] *People v. Bandula*, G.R. No. 89223, 27 May 1994, 232 SCRA 566, citing *People v. De Jesus*, G.R. No. 91535, 2 September 1992, 213 SCRA 345. In this case we ruled that admissions obtained during custodial interrogations without the benefit of counsel although later reduced to writing and signed in the presence of counsel are still flawed under the Constitution.

[12] *People v. Basay*, G.R. No. 86941, 3 March 1993, 219 SCRA 404, citing *People v. Galit*, G.R. No. 51770, 20 March 1985, 135 SCRA 465.

[13] Ibid.

[14] Records, p. 132.

[15] *People v. Vizcarra*, No. L-38859, 30 July 1982, 115 SCRA 743.

[16] *People v. Barlis*, G.R. No. 101003, 24 March 1994, 231 SCRA 426; *People v. Layuso*, G.R. No. 69210, 5 July 1989, 175 SCRA 47.

- [17] *People v. Marti*, G.R. No. 81561, 18 January 1991, 193 SCRA 57.
- [18] *People v. Maqueda*, G.R. No. 112983, 22 March 1995, 242 SCRA 565.
- [19] TSN, 6 April 1995, pp. 37-38.
- [20] Exh. I, "Autopsy Report," 2 February 1995; Records, p. 103.
- [21] See Note 24, p. 45.
- [22] TSN, 2 February 1995, p. 5.
- [23] *Ibid.*
- [24] TSN, 8 October 1997, p. 12.
- [25] *Ibid.*
- [26] TSN, 13 March 1997, p. 7.
- [27] TSN, 21 May 1996, p. 32.
- [28] TSN, 16 October 1996, p. 4.
- [29] *People v. Panganiban*, G.R. No. 97969, 6 February 1995, 241 SCRA 91, as cited in the decision; Records, p. 315.
- [30] *People v. Batidor* G.R. No. 126027, 18 February 1999, citing *People v. Tulop et al.*, G.R. No. 124829, 21 April 1998; *People vs. Balane*, G.R. No. 116721, 29 May 1997, 272 SCRA 782; *People v. Salvador*, G.R. No. 113025, 16 September 1997, 279 SCRA 164.
- [31] TSN, 27 July 1995, p. 4.
- [32] See Note 30.
- [33] TSN, 6 April 1995, pp. 37-38.
- [34] *Id.*, p. 45.
- [35] No. L-28232, 6 February 1971, 37 SCRA 450.
- [36] No. L-32791, 27 January 1981, 102 SCRA 264.
- [37] See Note 15.
- [38] No. L-41462, 15 April 1988, 160 SCRA 197.
- [39] G.R. No. 71980, 18 March 1991, 195 SCRA 295.
- [40] G.R. No. 101809, 20 February 1996, 253 SCRA 654.
- [41] *People v. Robles, Jr.*, G.R. No. 124300, 25 March 1999, 305 SCRA 273; *People v. Payot*, G.R. No. 119352, 8 June 1999, 308 SCRA 43; *People v. Tahop*, G.R. No. 125330, 29 September 1999.
- [42] *People v. Aquino*, G.R. Nos. 123550-51, 19 July 2000; *People v. Mahinay*, G.R. No. 122485, 1 February 1999 citing *People v. Perez*, G.R. No. 122764, 24 September 1998, and *People v. Bernaldez*, G.R. No. 109780, 17 August 1998.

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