

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERRICO VALLEJO Y SAMARTINO @ PUKE, ACCUSED-APPELLANT.***G.R. No. 144656. May 09, 2002*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144656/>**PER CURIAM:**

This is an appeal from the decision[1] of the Regional Trial Court, Branch 88, Cavite City, sentencing Gerrico Vallejo y Samartino to death and ordering him to indemnify the heirs of the victim in the amount of P100,000.00 as civil indemnity and P50,000.00 as moral damages for the rape-slaying of a 9-year old child, Daisy Diolola, in Rosario, Cavite on July 10, 1999.

The Information charging accused-appellant Gerrico Vallejo with the crime of Rape with Homicide alleged:

“That on or about the 10th day of July 1999, in Barangay Ligdong I, Municipality of Rosario, Province of Cavite, Philippines and within the jurisdiction of this Honorable Trial Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with DAISY DIOLOLA Y DITALO, a nine-year old child against the latter’s will and while raping the said victim, said accused strangled her to death.”

“CONTRARY TO LAW.”[2]

Accused-appellant was arraigned on July 26, 1999 and, with the assistance of counsel, pleaded not guilty to the crime charged, whereupon trial ensued.

Ten (10) witnesses testified for the prosecution, namely, Ma. Nida Diolola, the victim’s mother; Dr. Antonio S. Vertido, medico-legal officer of the NBI; Atty. Lupo Leyva; Mayor Renato Abutan of Rosario, Cavite; Atty. Sikat Agbunag of the Public Attorney’s Office; Pet Byron Buan, NBI Forensic Biologist; Aida Vilorio-Magsipoc, NBI Forensic Chemist; SPO1 Arnel Cuevas of the Rosario, Cavite police station; and Jessiemina Mataverde and Charito Paras-Yepes, both neighbors of the victim.

The victim’s mother, Ma. Nida Diolola, testified that at around 1:00 o’clock in the afternoon of July 10, 1999, she sent her 9-year old daughter Daisy Diolola to their neighbor’s house in Pilapil, Ligdong I, Rosario, Cavite, so that Aimee Vallejo, the sister of accused-appellant, could help Daisy with her lessons. Aimee’s house, where accused-appellant was also staying, is about four to five meters away from Daisy’s house. Ma. Nida saw her daughter go to the house of her tutor. She was wearing pink short pants and a white sleeveless shirt. An hour later, Daisy came back with accused-appellant. They were looking for a book which accused-appellant could copy to make a drawing or a poster that Daisy would submit to her teacher. After finding the book, Daisy and accused-appellant went back to the latter’s house. When Ma. Nida woke up at about 5:30 o’clock after an afternoon nap, she noticed that Daisy was not yet home. She started looking for her daughter and proceeded to the house of Aimee, Daisy’s tutor. Aimee’s mother told Ma. Nida that Daisy was not there and that Aimee was not able to help Daisy with her lessons because Aimee was not feeling well as she had her menstrual period. Ma. Nida looked for Daisy in her brother’s and sister’s houses, but she was not there, either. At about 7:00 o’clock that evening, Ma. Nida went back to her neighbor’s house, and there saw accused-appellant, who told her that Daisy

had gone to her classmate's house to borrow a book. But, when Ma. Nida went there, she was told that Daisy had not been there. Ma. Nida went to the dike and was told that they saw Daisy playing at about 3:30 o'clock in the afternoon. Jessiemin Mataverde also told Ma. Nida that Daisy was playing in front of her house that afternoon and even watched television in her house, but that Daisy later left with accused-appellant.

Ma. Nida and her brother and sister searched for Daisy the whole evening of June 10, 1999, a Saturday, until the early morning of the following day, June 11, 1999, a Sunday, but their search proved fruitless. Then, at about 10:00 o'clock in the morning of June 11, 1999, she was informed that the dead body of her daughter was found tied to the root of an aroma tree by the river after the "compuerta" by a certain Freddie Quinto. The body was already in the barangay hall when Ma. Nida saw her daughter. Daisy was wearing her pink short pants with her sleeveless shirt tied around her neck. Barangay Councilmen Raul Ricasa and Calring Purihin reported the incident to the Rosario police. The other barangay officers fetched accused-appellant from his house and took him to the barangay hall. At the barangay hall, Ma. Nida pointed to accused-appellant Gerrico Vallejo as the probable suspect since he was with the victim when she was last seen alive.[3]

Another witness, Jessiemin Mataverde, testified that at around 3:00 o'clock in the afternoon of that day, she saw Daisy playing with other children outside her house. She asked Daisy and her playmates to stop playing as their noise was keeping Jessiemin's one-year old baby awake. Daisy relented and watched television instead from the door of Jessiemin's house. About five minutes later, accused-appellant came to the house and told Daisy something, as a result of which she went with him and the two proceeded towards the "compuerta."

Jessiemin testified that at around 5:00 o'clock that afternoon, while she and her daughter were in front of a store across the street from her house, accused-appellant arrived to buy a stick of Marlboro cigarette. Accused-appellant had only his basketball shorts on and was just holding his shirt. They noticed both his shorts and his shirt were wet. After lighting his cigarette, accused-appellant left.[4]

Charito Yepes, another neighbor of Ma. Nida, also testified. She said that at about 4:30 o'clock in the afternoon of July 10, 1999, while she and her husband and children were walking towards the "compuerta" near the seashore of Ligton, Rosario, Cavite, they met a fisherman named Herminio who said that it was a good day for catching milkfish (bangus). For this reason, according to this witness, they decided to get some fishing implements. She said they met accused-appellant Gerrico Vallejo near the seashore and noticed that he was uneasy and looked troubled. Charito said that accused-appellant did not even greet them, which was unusual. She also testified that accused-appellant's shorts and shirt (sando) were wet, but his face and hair were not.[5]

SPO1 Arnel Cuevas testified that upon receipt of the report, Rosario Police Chief Ricardo B. de la Cruz, Jr. responded to the call together with his men, PO2 Garcia, SPO1 Araracap and PO2 Lariza. When they arrived, Daisy's body was already in the barangay hall. SPO1 Cuevas took photographs of the body. At that time, Daisy was wearing pink short pants and a dirty white panty with a dirty white sleeveless shirt wrapped around her neck. The body was afterwards taken to the Samson Funeral Parlor in Rosario, Cavite. The inquiries conducted by the police showed that one Freddie Quinto was fishing near the compuerta when he accidentally hit the body of Daisy, which was in the mud and tied to the root of an aroma tree.

Accused-appellant was invited by the policemen for questioning. Two others, a certain Raymond and Esting, were also taken into custody because they were seen with accused-appellant in front of the store in the late afternoon of July 10 1999. Later, however, the two were released. Based on the statements of Jessiemin Mataverde and Charito Paras-Yepes, the policemen went to the house of accused-appellant at about 4:00 o'clock in the afternoon of July 11, 1999 and recovered the white basketball shirt, with the name Samartino and No. 13 printed at the back, and the violet basketball shorts, with the number 9 printed on it, worn by accused-appellant the day before. The shirt

and shorts, which were bloodstained, were turned over to the NBI for laboratory examination.[6]

Dr. Antonio S. Vertido, NBI Medico-Legal Officer, testified that at about 9:00 o'clock in the evening of July 11, 1999, he conducted a physical examination of accused-appellant. His findings[7] showed the following:

“PHYSICAL FINDINGS:

“Abrasions: thigh, right, antero-lateral aspect, lower 3[rd] 5.0 x 0.1 cm., knee, left, 7.0 x 6.0 cm. legs, right anterior aspect, 28.0 x 8.0 cms., left anterior aspect, 24.0 x 10.0 cms., feet, plantar aspects; right, 9.0 x 3.0 cms. and left, 13.0 x 5.0 cms.

“Hematoma, left ring finger, posterior aspect, 1.0 x 0.5 cm.

“Lacerations, left ring finger, posterior aspect, 0.3 cm.

“(Living Case No. BMP-9902, p. 101, records)”

At about 10:00 o'clock in the evening, Dr. Vertido went to the Samson Funeral Parlor in Rosario, Cavite for an autopsy on the cadaver of the victim Daisy Diolola. The autopsy revealed the following postmortem findings:[8]

“Body in early stage of postmortem decomposition characterized by foul odor, eyes and tongue protruding, bloating of the face and blister formation.

“Washerwoman's hands and feet.

“Contusion, (pinkish) face, right, 14.0 x 10.0 cms. and left, 13.0 x 6.0 cms. Contused abrasions, forehead, 13.0 x 5.0 cms. upper lip, 5.0 x 22.0 cms., lower lip, 3.0 x 2.0 cms., neck (nailmarks) anterior aspect, 8.0 x 5.0 cms., arms, right antero-medial aspect, middle 3rd 3.0 x 15.0 cms. posterior aspect, upper 3rd, 1.5 x 1.0 cms., left posterior aspect, 20.0 x 9.0 cms., forearm, left, posterior aspect, 21.0 x 8.0 cms. left thumb, anterior aspect, 1.5 x 1.0 cms., left middle, ring and little fingers, dorsal aspect, .50 x 4.0 cms. knees, right, 3.0 x 2.0 cms. and left, 8.0- x 5.0 cms., legs, right anterior aspect, upper and middle 3rd 3.0 x 2.5 cms. foot right, dorsal aspect.

“Hematoma, periorbital right, 5.0 x 3.0 cms. and left, 4.5 x 3.0 cms.

“Fracture, tracheal rings.

“Hemorrhages, interstitial, neck, underneath, nailmarks. “Petechial hemorrhages, subendocardial, subpleural.

“Brain and other visceral organs are congested.

“Stomach, contains ½ rice and other food particles.

“CAUSE OF DEATH: -Asphyxia by Manual Strangulation.

“GENITAL EXAMINATION: - Pubic hair, no growth. Labia majora and minora, gaping and congested. Hymen, moderately tall, thick with fresh lacerations, complete at 3:00, 6:00 and 9:00 o'clock positions, edges with blood clots.” [Autopsy Report No. BTNO-99-152]

Renato Abutan, Municipal Mayor of Rosario, Cavite, testified that he was informed of the rape and murder at past 10:00 o'clock in the evening of June 11, 1999. The mayor said he immediately proceeded to the municipal jail, where accused-appellant was detained, and talked to the latter. Accused-appellant at first denied having anything to do with the killing and rape of the child. The mayor said he told accused-appellant that he could not help him if he did not tell the truth. At that point, accused-appellant started crying and told the mayor that he killed the victim by strangling her. Accused-appellant claimed that he was under the influence of drugs. The mayor asked accused-appellant if he wanted to have the services of Atty. Lupo Leyva, a resident of Rosario, as his lawyer. When accused-appellant said he did, Mayor Abutan fetched Atty. Leyva from his house and took him to the police station about 11:00 o'clock that evening.[9]

Atty. Lupo Leyva corroborated Mayor Abutan's testimony. He said that upon arriving at the police station, he asked accused-appellant if he wanted his services as counsel in the investigation. After accused-appellant assented, Atty. Leyva testified that he “sort of discouraged” the former from making statements as anything he said could be used against him. But, as accused-appellant was willing to be investigated, Atty. Leyva said he

advised him to tell the truth. PO2 Garcia, the investigator, informed accused-appellant of his constitutional rights to remain silent and to be assisted by counsel and warned him that any answer he gave could and might be used against him in a court of law. PO2 Garcia asked questions from accused-appellant, who gave his answers in the presence of Atty. Leyva. After the statement was taken, Atty. Leyva and accused-appellant read it and afterwards signed it. Atty. Leyva testified that he did not see or notice any indication that accused-appellant had been maltreated by the police. In his sworn statement (Exh. M), accused-appellant confessed to killing the victim by strangling her to death, but denied having molested her.[10]

Pet Byron Buan, Forensic Biologist of the NBI, testified that on July 12, 1999, he took blood samples from accused-appellant in his office for laboratory examination to determine his blood type. Likewise, the basketball shorts and shirt worn by accused-appellant on the day the victim was missing and the victim's clothing were turned over to the Forensic Chemistry Division of the NBI by PO1 Amoranto of the Rosario, Cavite police for the purpose of determining the presence of human blood and its groups.[11]

The results of the examinations conducted by Pet Byron T. Buan showed accused-appellant to belong to Group "O". The following specimens: (1) one (1) white no. 13 athletic basketball shirt, with patches "Grizzlies" in front and "SAMARTINO" at the back; (2) one (1) violet no. 9 athletic basketball short pants; (3) one (1) white small "Hello Kitty" T-shirt with reddish brown stains; (4) one (1) "cut" pink short pants with reddish brown stains; (5) one (1) "cut" dirty white small panty with reddish brown stains, were all positive for the presence of human blood showing the reactions of Group "A".[12]

Pet Byron Buan also testified that before he took the blood samples, he had a conversation with accused-appellant during which the latter admitted that he had raped and later killed the victim by strangulation and stated that he was willing to accept the punishment that would be meted out on him because of the grievous offense he had committed. Mr. Buan observed that accused-appellant was remorseful and was crying when he made the confession in the presence of SPO1 Amoranto at the NBI laboratory.[13]

When accused-appellant was brought before Inquest Prosecutor Elpidia J. Itoc at around noon of July 13, 1999 in Cavite City, accused-appellant had with him a handwritten confession which he had executed inside his cell at the Municipal Jail of Rosario. In his confession, accused-appellant admitted not only that he killed the victim but that he had before that raped her. Accused-appellant said he laid down the victim on a grassy area near the dike. He claimed that she did not resist when he removed her undergarments but that when he tried to insert his penis into the victim's vagina, she struggled and resisted. Accused-appellant said he panicked and killed the child. He then dumped her body in the shallow river near the "compuerta" and went home.[14]

Atty. Sikat Agbunag, a lawyer from the Public Attorney's Office, testified that at noon of July 13, 1999, while she was in their office in Cavite City, Prosecutor Itoc came together with accused-appellant and some policemen. Prosecutor Itoc asked Atty. Agbunag to assist accused-appellant about his confession. Atty. Agbunag read the document, informed accused-appellant of his constitutional rights, and warned him that the document could be used against him and that he could be convicted of the case against him, but, according to her, accused-appellant said that he had freely and voluntarily executed the document because he was bothered by his conscience. Accused-appellant, assisted by Atty. Agbunag, then affixed his signature to the document and swore to it before Prosecutor Itoc.[15]

At the instance of City Prosecutor Agapito S. Lu of Cavite City, NBI Forensic Biologist Pet Byron Buan took buccal swabs and hair samples from accused-appellant, as well as buccal swabs and hair samples from the parents of the victim, namely, Ma. Nida Diolola and Arnulfo Diolola. The samples were submitted to the DNA Laboratory of the NBI for examination.

Aida Viloria-Magsipoc, Forensic Chemist of the NBI, conducted DNA tests on the specimens collected by Dr. Vertido. She testified that the vaginal swabs of the victim taken by Dr. Vertido during the autopsy contained the DNA profiles of accused-appellant and the victim.[16]

The defense then presented as witnesses accused-appellant Gerrico Vallejo and his sister Aimee Vallejo. Their testimonies show that at about 1:00 o'clock in the afternoon of July 10, 1999, accused-appellant, Aimee, and their sister Abigail were in their house in Barangay Talisay, Ligdong I, Rosario, Cavite when Daisy Diolola came to ask accused-appellant to draw her school project. After making the request, Daisy left.[17] Accused-appellant did not immediately make the drawing because he was watching television. Accused-appellant said that he finished the drawing at about 3:00 o'clock in the afternoon and gave it to the victim's aunt, Glory. He then returned home to watch television again. He claimed he did not go out of the house until 7:00 o'clock in the evening when he saw Ma. Nida, who was looking for her daughter. Accused-appellant said he told her that he had not seen Daisy. After that, accused-appellant said he went to the "pilapil" and talked with some friends, and, at about 8:00 o'clock that evening, he went home.

At 9:00 o'clock in the morning of July 11, 1999, barangay officials fetched accused-appellant from his house and took him to the barangay hall, where he was asked about the disappearance of Daisy. He claimed that he did not know anything about it. Accused-appellant was allowed to go home, but, at 11:00 o'clock that morning, policemen came and invited him to the police headquarters for questioning. His mother went with him to the police station. There, accused-appellant was asked whether he had something to do with the rape and killing of Daisy. He denied knowledge of the crime.

At 4:00 o'clock that afternoon, accused-appellant accompanied the police to his house to get the basketball shorts and shirt he was wearing the day before, which were placed together with other dirty clothes at the back of their house. According to accused-appellant, the police forced him to admit that he had raped and killed Daisy and that he admitted having committed the crime to stop them from beating him up. Accused-appellant claimed the police even burned his penis with a lighted cigarette and pricked it with a needle.

Accused-appellant confirmed that Mayor Renato Abutan and Atty. Lupo Leyva went to see him in the investigation room of the police station and told him that they would help him if he told the truth. Atty. Leyva asked him whether he wanted him to be his counsel, and accused-appellant said he answered in the affirmative. He said Atty. Leyva informed him of his constitutional rights. Accused-appellant claimed that, although he admitted to Mayor Abutan and Atty. Leyva the commission of the crime, this was because the police had maltreated him. Accused-appellant said he did not tell the mayor or Atty. Leyva that he had been tortured because the policemen were around and he was afraid of them. It appears that the family of accused-appellant transferred their residence to Laguna on July 12, 1999 because of fear of reprisal by residents of their barangay.[18] According to accused-appellant, Mayor Abutan and Atty. Leyva were not present when he gave his confession to the police and signed the same. Accused-appellant claims that although Exhibit "N" was in his own handwriting, he merely copied the contents thereof from a pattern given to him by the police.[19]

On July 31, 2000, the trial court rendered a decision finding accused-appellant guilty of the offense charged. The dispositive portion of its decision reads:

"WHEREFORE, in view of all the foregoing considerations, the Court finds the accused Gerrico Vallejo y Samartino GUILTY beyond reasonable doubt of the crime of Rape with Homicide, as charged in the Information, accordingly hereby sentences him to the supreme penalty of DEATH. The accused is directed to indemnify the heirs of the victim in the amount of P100,000.00 as civil indemnity and P50,000.00 as moral damages.

“SO ORDERED.”[20]

Hence this appeal. Accused-appellant contends that:

“I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE THE INSUFFICIENCY AND WEAKNESS OF THE CIRCUMSTANTIAL EVIDENCE OF THE PROSECUTION.

“II.

THE TRIAL COURT GRAVELY ERRED IN GIVING EVIDENTIARY WEIGHT TO THE ALLEGED ORAL CONFESSIONS OF THE ACCUSED-APPELLANT DESPITE ITS BEING HEARSAY IN NATURE.

“III.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GIVING PROBATIVE VALUE TO THE WRITTEN EXTRA-JUDICIAL CONFESSION OF THE ACCUSED-APPELLANT DESPITE THE FACT THAT THE SAME WAS OBTAINED THROUGH FORCE AND INTIMIDATION AND THAT THE LAWYER WHO ASSISTED HIM DURING HIS CUSTODIAL INVESTIGATION DID NOT AND COULD NOT POSSIBLY GIVE HIM EFFECTIVE LEGAL ASSISTANCE.”

We find accused-appellant’s contentions to be without merit.

First. An accused can be convicted even if no eyewitness is available, provided sufficient circumstantial evidence is presented by the prosecution to prove beyond reasonable doubt that the accused committed the crime.[21] In rape with homicide, the evidence against an accused is more often than not circumstantial. This is because the nature of the crime, where only the victim and the rapist would have been present at the time of its commission, makes the prosecution of the offense particularly difficult since the victim could no longer testify against the perpetrator. Resort to circumstantial evidence is inevitable and to demand direct evidence proving the modality of the offense and the identity of the perpetrator is unreasonable.[22]

Under Rule 133, section 4 of the Revised Rules on Evidence, circumstantial evidence is sufficient to sustain a conviction if:

“(a)

there is more than one circumstance;

“(b)

the facts from which the inferences are derived are proven; and

“(c)

the combination of all circumstances is such as to produce conviction beyond reasonable doubt.”[23]

In the case at bar, the following circumstantial evidence establish beyond reasonable doubt the guilt of accused-appellant:

- The victim went to Aimee Vallejo’s house, where accused-appellant was residing, at 1:00 o’clock in the afternoon of July 10, 1999, for tutoring.

- At around 2:00 o'clock in the afternoon, accused-appellant and Daisy went together to the latter's house to get a book from which the former could copy Daisy's school project. After getting the book, they proceeded to accused-appellant's residence.
- From accused-appellant's house, Daisy then went to the house of Jessiemin Mataverde where she watched television. Accused-appellant thereafter arrived and whispered something to Daisy, and the latter went with him towards the "compuerta."
- At about 4:30 o'clock in the afternoon, the spouses Iluminado and Charito Yepes saw accused-appellant coming out of the "compuerta," with his clothes, basketball shorts, and t-shirt wet, although his face and hair were not. According to these witnesses, he looked pale, uneasy, and troubled (balisa). He kept looking around and did not even greet them as was his custom to do so.
- The fishing boat which accused-appellant used as a bomber (a boat for catching fish with dynamite) was docked by the seashore.
- A little before 5:00 o'clock in the afternoon, Jessiemin Mataverde also saw accused-appellant buying a Marlboro cigarette from a store. Jessiemin also noticed that accused-appellant's clothes were wet but not his face nor his hair.
- By 5:30 o'clock in the afternoon, as Ma. Nida Diolola looked for her daughter, she was told by accused-appellant that Daisy had gone to her classmate Rosario's house. The information proved to be false.
- Daisy's body was found tied to an aroma tree at the part of the river near the "compuerta."
- During the initial investigation, accused-appellant had scratches on his feet similar to those caused by the thorns of an aroma tree.
- The clothes which accused-appellant wore the day before were bloodstained. The bloodstains on accused-appellant's clothes and on Daisy's clothes were found positive of human blood type "A."
- Accused-appellant has blood type "O."
- The vaginal swabs from Daisy's body contained her DNA profile as well as that of accused-appellant.

Accused-appellant contends that the bloodstains found on his garments were not proven to have been that of the victim as the victim's blood type was not determined.

The contention has no merit. The examination conducted by Forensic Biologist Pet Byron Buan of both accused-appellant's and the victim's clothing yielded bloodstains of the same blood type "A".[24] Even if there was no direct determination as to what blood type the victim had, it can reasonably be inferred that the victim was blood type "A" since she sustained contused abrasions all over her body which would necessarily produce the bloodstains on her clothing.[25] That it was the victim's blood which predominantly registered in the examination was explained by Mr. Buan, thus:[26]

"ATTY. ESPIRITU

Q:

But you will agree with me that more probably than not, if a crime is being committed, and it results in a bloody death, it is very possible that the blood of the victim and the blood of the assailant might mix in that particular item like the t-shirt, shorts or pants?

A:

It is possible when there is a huge amount of blood coming from the victim and the suspect, Sir. It is possible. It will mix. Whichever is the dominant blood in it, it will be the one which will register. For example, if there is more blood coming from the victim, that blood will be the one to register, on occasions when the two blood mix.

Q:

But in these specimens number 1 to 5, it is very clear now that only type A and no type O blood was found?

A:

Yes, sir.”

Accused-appellant also questions the validity of the method by which his bloodstained clothes were recovered. According to accused-appellant, the policemen questioned him as to the clothes he wore the day before. Thereafter, they took him to his house and accused-appellant accompanied them to the back of the house where dirty clothes were kept.[27] There is no showing, however, that accused-appellant was coerced or forced into producing the garments. Indeed, that the accused-appellant voluntarily brought out the clothes sought by the police becomes more convincing when considered together with his confessions. A consented warrantless search is an exception to the proscription in Section 2 of Article III of the Constitution. As we have held, the consent of the owner of the house to the search effectively removes any badge of illegality.[28]

The DNA analysis conducted by NBI Forensic Chemist Aida Vilorio-Magsipoc is also questioned by accused-appellant. He argues that the prosecution failed to show that all the samples submitted for DNA testing were not contaminated, considering that these specimens were already soaked in smirchy waters before they were submitted to the laboratory.

DNA is an organic substance found in a person's cells which contains his or her genetic code. Except for identical twins, each person's DNA profile is distinct and unique.[29]

When a crime is committed, material is collected from the scene of the crime or from the victim's body for the suspect's DNA. This is the evidence sample. The evidence sample is then matched with the reference sample taken from the suspect and the victim.[30]

The purpose of DNA testing is to ascertain whether an association exists between the evidence sample and the reference sample.[31] The samples collected are subjected to various chemical processes to establish their profile.[32] The test may yield three possible results:

- 1) The samples are different and therefore must have originated from different sources (exclusion). This conclusion is absolute and requires no further analysis or discussion;
- 2) It is not possible to be sure, based on the results of the test, whether the samples have similar DNA types (inconclusive). This might occur for a variety of reasons including degradation, contamination, or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or a different sample, to obtain a more conclusive result; or
- 3) The samples are similar, and could have originated from the same source (inclusion).[33] In such a case, the samples are found to be similar, the analyst proceeds to determine the statistical significance of the Similarity.[34]

In assessing the probative value of DNA evidence, therefore, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the

samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

In the case at bar, the bloodstains taken from the clothing of the victim and of accused-appellant, the smears taken from the victim as well as the strands of hair and nails taken from her tested negative for the presence of human DNA,[35] because, as Ms. Viloria-Magsipoc explained:

“PROSECUTOR LU:

Q:

I noticed that specimens 1 to 5 consisting of bloodstains taken from the clothing of the victim and of the accused gave negative results for the presence of human DNA. Why is it so? What is the reason for this when there are still bloodstains on the clothing?

A:

After this Honorable Court issued an Order for DNA analysis, serological methods were already conducted on the said specimens. And upon inquiry from Mr. Buan and as far as he also knew of this case, and we also interviewed the mother who came over to the laboratory one time on how was the state of the specimens when they were found out. We found that these specimens were soaked in smirchy water before they were submitted to the laboratory. The state of the specimens prior to the DNA analysis could have hampered the preservation of any DNA that could have been there before. So when serological methods were done on these specimens, Mr. Byron could have taken such portion or stains that were only amenable for serological method and were not enough for DNA analysis already. So negative results were found on the clothings that were submitted which were specimens no. 1 to 5 in my report, Sir.

Q:

I also noticed that specimen no. 6-B consisting of the smears taken from the victim also proved negative for human DNA, why is it so?

A:

Because when we received the vaginal smears submitted by Dr. Vertido, the smear on the slide was very, very dry and could have chipped off. I already informed Dr. Vertido about it and he confirmed the state of the specimen. And I told him that maybe it would be the swab that could help us in this case, Sir. And so upon examination, the smears geared negative results and the swabs gave positive results, Sir.

Q:

How about specimen no. 7, the hair and nails taken from the victim, why did they show negative results for DNA?

A:

The hair samples were cut hair. This means that the hair did not contain any root. So any hair that is above the skin or the epidermis of one's skin would give negative results as the hair shaft is negative for DNA. And then the nails did not contain any subcutaneous cells that would be amenable for DNA analysis also, Sir.

Q:

So it's the inadequacy of the specimens that were the reason for this negative result, not the inadequacy of the examination or the instruments used?

A:

Yes, Sir."

Thus, it is the inadequacy of the specimens submitted for examination, and not the possibility that the samples had been contaminated, which accounted for the negative results of their examination. But the vaginal swabs taken from the victim yielded positive for the presence of human DNA. Upon analysis by the experts, they showed the DNA profile of accused-appellant:[36]

"PROSECUTOR LU:

Q:

So based on your findings, can we say conclusively that the DNA profile of the accused in this case was found in the vaginal swabs taken from the victim?

A:

Yes, Sir.

Q:

That is very definite and conclusive?

A:

Yes, Sir."

In conclusion, we hold that the totality of the evidence points to no other conclusion than that accused-appellant is guilty of the crime charged. Evidence is weighed not counted. When facts or circumstances which are proved are not only consistent with the guilt of the accused but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court.[37] This is how it is in this case.

Second. Accused-appellant challenges the validity of the oral and written confessions presented as evidence against him. He alleges that the oral confessions were inadmissible in evidence for being hearsay, while the extrajudicial confessions were obtained through force and intimidation.

The claim is untenable. Section 12 of Art. III of the Constitution provides in pertinent parts:

"(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.

"(2)

No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

“(3)

Any confession or admission obtained in violation of this or Section 17 shall be inadmissible in evidence against him.”

There are two kinds of involuntary or coerced confessions treated in this constitutional provision: (1) coerced confessions, the product of third degree methods such as torture, force, violence, threat, and intimidation, which are dealt with in paragraph 2 of Section 12, and (2) uncounselled statements, given without the benefit of Miranda warnings, which are the subject of paragraph 1 of the same section.[38]

Accused-appellant argues that the oral confessions given to Mayor Abutan of Rosario, Cavite and to NBI Forensic Biologist should be deemed inadmissible for being violative of his constitutional rights as these were made by one already under custodial investigation to persons in authority without the presence of counsel. With respect to the oral confessions, Atty. Leyva testified:[39]

“PROSECUTOR LU:

Q:

Upon meeting this Gerrico Vallejo at the police station were you able to confer with him?

A:

Yes, Sir.

Q:

Did you ask him whether he really wants you to represent or assist him as a lawyer during that investigation?

A:

I did, as a matter of fact, I asked him whether he would like me to represent him in that investigation, Sir.

Q:

And what was his answer?

A:

He said “yes”.

Q:

After agreeing to retain you as his counsel, what else did you talk about?

A:

I told him that in the investigation, whatever he will state may be used against him, so it’s a sort of discouraging him from making any statement to the police, Sir.”

Upon cross-examination, Atty. Leyva testified as follows:[40]

Q:

You stated that you personally read this recital of the constitutional rights of the accused?

A:

Yes, Sir.

Q:

But it will appear in this recital of constitutional rights that you did not inform the accused that the statement that he will be giving might be used against him in a court of justice?

A:

I did that, Sir.

Q:

But it does not appear in this statement?

PROSECUTOR LU

The best evidence will be the statement, your Honor.

ATTY ESPIRITU

The only thing that is stated here is that “Maaaring gamitin pabor o laban sa iyo.”

COURT

Let the witness answer.

A:

I told him that, as a matter of fact, and I also told him to tell the truth and nothing but the truth.”

The testimony of Atty. Leyva is not only corroborated by the testimony of Mayor Renato Abutan,[41] it is also confirmed by accused-appellant who testified as follows:[42]

“ATTY. ESPIRITU:

Q:

Did Atty. Leyva explain to you the meaning and significance of that document which you are supposed to have

executed and signed?

A:

Yes, Sir.

Q:

What did Atty. Leyva tell you?

A:

That they are allowing me to exercise my constitutional right to reveal or narrate all what I know about this case, Sir.

Q:

Did Atty. Leyva tell you that if you do not want, nobody can force you to give that statement?

A:

Yes, Sir.

Q:

And did he tell you that what you would be giving is an extra-judicial confession?

A:

Yes, Sir.”

Clearly, accused-appellant cannot now claim that he was not apprised of the consequences of the statements he was to make as well as the written confessions he was to execute. Neither can he question the qualifications of Atty. Lupo Leyva who acted as his counsel during the investigation. To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false. Indeed, counsel should not prevent an accused from freely and voluntarily telling the truth.[43]

Indeed, accused-appellant admitted that he was first asked whether he wanted the services of Atty. Leyva before the latter acted as his defense counsel.[44] And counsel who is provided by the investigators is deemed engaged by the accused where the latter never raised any objection against the former's appointment during the course of the investigation but, on the contrary, thereafter subscribed to the veracity of his statement before the swearing officer.[45] Contrary to the assertions of accused-appellant, Atty. Leyva was not the municipal attorney of Rosario, Cavite but only a legal adviser of Mayor Renato Abutan.[46]

Accused-appellant contends that the rulings in *People vs. Andan*[47] and *People vs. Mantung*[48] do not apply to this case. We disagree. The facts of these cases and that of the case at bar are similar. In all these cases, the accused made extrajudicial confessions to the municipal mayor freely and voluntarily. In all of them, the extrajudicial confessions were held admissible in evidence, being the spontaneous, free, and voluntary admissions

of the guilt of the accused. We note further that the testimony of Mayor Abutan was never objected to by the defense.

Indeed, the mayor's questions to accused-appellant were not in the nature of an interrogation, but rather an act of benevolence by a leader seeking to help one of his constituents. Thus, Mayor Abutan testified:[49]

“PROSECUTOR LU:

Q:

And during the conversation you had with Accused Gerrico Vallejo, what exactly did he tell you?

A:

At first he said that he did not do that. That was the first thing he told me. Then I told him that I will not be able to help him if he will not tell me the truth.

Q:

And what was the reply of the accused?

A:

He had been silent for a minute. Then we talked about the incident, Sir.

Q:

And what was the reply of the accused?

A:

He had been silent for a minute. Then we talked about the incident, Sir.

Q:

What else did he tell you?

A:

I told him, “What reason pushed you to do that thing?” x x x

Q:

Please tell us in tagalog, the exact words that the accused used in telling you what happened.

A:

He told me that he saw the child as if she was headless at that time. That is why he strangled the child, Sir. (“Ang sabi niya po sa ‘kin, nakita niya raw ‘yung bata na parang walang ulo na naglalakad. Kaya po sinakal niya.”)

x x x x x x x x

COURT:

Q:

When you told the accused that you will help him, what kind of help were you thinking at that time?

A:

I told him that if he will tell the truth, I could help give him legal counsel.

Q:

And what was the answer of the accused?

A:

Yes, he will tell me the truth, Your Honor.”

In *People vs. Mantung*,^[50] this Court said:

“Never was it raised during the trial that Mantung’s admission during the press conference was coerced or made under duress. As the records show, accused-appellant voluntarily made the statements in response to Mayor Marquez’ question as to whether he killed the pawnshop employees. Mantung answered in the affirmative and even proceeded to explain that he killed the victims because they made him eat pork. These circumstances hardly indicate that Mantung felt compelled to own up to the crime. Besides, he could have chosen to remain silent or to do deny altogether any participation in the robbery and killings but he did not; thus accused-appellant sealed his own fate. As held in *People v. Montiero*, 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.”

And in *People vs. Andan*, it was explained:

“Thus, it has been held that the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Section 12 are guaranteed to preclude the slightest use of coercion by the state as would lead the accused to admit something false, not prevent him from freely and voluntarily telling the truth.”^[51]

For the same reason, the oral confession made by accused-appellant to NBI Forensic Biologist Pet Byron Buan is admissible. Accused-appellant would have this Court exclude this confession on the ground that it was uncounselled and that Mr. Buan, who initiated the conversation with accused-appellant, was part of the NBI. The issue concerning the sufficiency of the assistance given by Atty. Leyva has already been discussed. On the other hand, the questions put by Mr. Buan to accused-appellant were asked out of mere personal curiosity and clearly not as part of his tasks. As Buan testified:^[52]

“PROSECUTOR LU:

Q:

What was the subject of your conversation with him?

A:

It is customary when we examine the accused. During the examination, we talk to them for me to add

knowledge on the case, Sir.

Q:

What did you talk about during your conversation?

A:

I asked him if he was the one who did the killing on this victim, Daisy Diolola, Sir.

Q:

And what was the reply of the accused?

A:

He said yes, Sir.

Q:

What else did you ask the accused?

A:

I remember that while asking him, he was crying as if feeling remorse on the killing, Sir.

. . . .

Q:

And it was you who initiated the conversation?

A:

Yes, Sir.

Q:

Do you usually do that?

A:

Yes, Sir. We usually do that.

Q:

Is that part of your procedure?

A:

It is not SOP. But for me alone, I want to know more about the case, Sir. And any information either on the victim or from the suspect will help me personally. It's not an SOP, Sir."

The confession, thus, can be likened to one freely and voluntarily given to an ordinary individual and is, therefore, admissible as evidence.

Third. The admissibility of the extrajudicial confessions of accused-appellant is also attacked on the ground that these were extracted from him by means of torture, beatings, and threats to his life. The bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient. The standing rule is that "where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim," all these will be considered as indicating voluntariness.[53] Indeed, extrajudicial confessions are presumed to be voluntary, and, in the absence of conclusive evidence showing that the declarant's consent in executing the same has been vitiated, the confession will be sustained.[54]

Accused-appellant's claim that he was tortured and subjected to beatings by policemen in order to extract the said confession from him is unsupported by any proof:[55]

"ATTY. ESPIRITU:

Q:

Did they further interrogate you?

A:

Yes, sir.

Q:

What else did they ask you?

A:

They were asking me the project, Sir.

Q:

What else?

A:

That is the only thing, Sir.

Q:

Who was doing the questioning?

A:

The investigator, Sir.

Q:

How many were they inside that room?

A:

Five, Sir.

Q:

They are all policemen?

A:

Yes, Sir.

x x x x x x x x

Q:

Until what time did they keep you inside that room?

A:

Up to 11:00 in the evening, Sir.

Q:

Between 10:30 in the morning up to 11:00 o'clock in the evening, what did you do there?

A:

They were interrogating and forcing me to admit something, Sir.

Q:

In what way did they force you to admit something?

A:

They were mauling me, Sir.

Q:

The 5 of them?

A:

Yes, Sir.

Q:

The 5 of them remained inside that room with you throughout the questioning?

A:

Yes, Sir.

Q:

In what way did they hurt you?

A:

They burned my private part with a lighted cigarette butt and pierced me with a needle, Sir.

Q:

Who did these things to you?

A:

Mercado, Sir.

Q:

Who is this Mercado?

A:

EPZA policemen, Sir.

Q:

Did the other policemen help in doing these things to you?

A:

No, Sir.

Q:

Were you asked to undress or you were forced to do that?

A:

They forced me to remove my clothes, Sir.

Q:

In what way did they force you to remove your clothes?

A:

They were asking me to take off the pants which I was wearing at the time, Sir.

Q:

Did they do anything to you to force you to remove your pants?

A:

Yes, Sir.

Q:

What?

A:

They boxed me, Sir.

Q:

What else, if any?

A:

They hit me with a piece of wood, Sir.

Q:

What did you feel when your private part was burned with a cigarette butt?

A:

It was painful, Sir.

Q:

In what part of your body were you pricked by a needle?

A:

At my private part, Sir.”

These bare assertions cannot be given weight. Accused-appellant testified that he was made to stay in the municipal hall from 10:00 o’clock in the morning until 11:00 o’clock that night of July 10, 1999, during which time he was boxed, tortured, and hit with a piece of wood by policemen to make him admit to the crime. However, accused-appellant was physically examined by Dr. Antonio Vertido at about 9:00 o’clock in the evening of the same day. While the results show that accused-appellant did sustain injuries, the same are incompatible with his claim of torture. As Dr. Vertido testified:[56]

“PROSECUTOR LU:

Q:

What were your findings when you conducted the physical examination of the suspect?

A:

I found abrasions, your Honor, abrasions on the thigh, knees, legs and feet of the suspect, and I also found hematoma on the left ring finger, posterior aspect and at the same time, a laceration on the left ring finger.

x x x x x x x x

Q:

In your findings, it appears that the accused in this case suffered certain physical injuries on his person like this abrasion on the thigh, right anterior lateral aspect lower third of the knee, what could have caused this injury?

A:

Abrasions are usually caused when the skin comes in contact with a rough surface, Sir. Hematoma are usually caused by a blunt instrument or object and laceration is the forcible contact of the skin from that blunt object.

Q:

I am particularly interested in your findings hematoma on the left ring finger, posterior aspect and laceration left ring finger posterior aspect, what could have caused those injuries on the accused?

A:

My opinion to these hematoma and laceration found on the said left ring finger was that it was caused by a bite, Sir.”

If the account of accused-appellant that he was beaten up is true, Dr. Antonio Vertido would have found more than mere abrasions and hematoma on his left finger. Dr. Vertido’s findings are more consistent with the theory that accused-appellant sustained physical injuries as a result of the struggle made by the victim during the commission of the rape in the “compuerta.”

At all events, even if accused-appellant was truthful and his assailed confessions are inadmissible, the circumstantial evidence, as already shown, is sufficient to establish his guilt beyond all reasonable doubt. The

prosecution witnesses presented a mosaic of circumstances showing accused-appellant's guilt. Their testimonies rule out the possibility that the crime was the handiwork of some other evil mind. These witnesses have not been shown to have been motivated by ill will against accused-appellant.

On the other hand, no other witness not related to accused-appellant was ever called to corroborate his claim. The defense presented only accused-appellant's sister, Aimee Vallejo, to corroborate his story. We have held time and again that alibi cannot prosper if it is established mainly by the accused and his relatives, and not by credible persons.[57] It is well settled that alibi is the weakest of all defenses as it is easy to contrive and difficult to disprove. For this reason, this Court looks with caution upon the defense of alibi, especially when, as in this case, it is corroborated only by relatives or friends of the accused.[58]

Article 266-B of the Revised Penal Code provides that "When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death." [59] Therefore, no other penalty can be imposed on accused-appellant.

WHEREFORE, in view of all the foregoing considerations, the decision of the Regional Trial Court, Branch 88, Cavite City, finding accused-appellant Gerrico Vallejo y Samartino GUILTY beyond reasonable doubt of the crime of Rape with Homicide and sentencing him to the supreme penalty of DEATH and directing him to indemnify the heirs of the victim in the amount of P100,000.00 as civil indemnity and P50,000.00 as moral damages, is hereby AFFIRMED.

In accordance with Section 25 of R.A. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

De Leon, Jr., J., abroad, on official business.

[1] Per Judge Christopher O. Lock.

[2] Rollo, p. 22.

[3] TSN (Ma. Nida Diolola), August 27, 1999, pp. 60-65, 69-74.

[4] TSN (Jessiemin Mataverde), August 13, 1999, pp. 7-12., 14-15.

[5] TSN (Charito Yepes), August 13, 1999, pp. 79-86.

[6] TSN (SPO1 Arnel Cuevas), December 7, 1999, pp. 7-13, 17-23, 25-26.

[7] Exh. "J"; Records, p. 101.

[8] Exh. "H", Id., p. 99.

[9] TSN (Mayor Renato Abutan), August 13, 1999, pp. 55-61.

[10] TSN (Atty. Lupo Leyva), September 10, 1999, pp. 7-15.

[11] TSN (Pet Byron Buan), November 15, 1999, pp. 12-15.

[12] Exh. "R"; Records, p. 70.

- [13] TSN (Pet Byron Buan), November 15, 1999, pp. 16-20.
- [14] Exh. “N”; Records, p. 106.
- [15] TSN (Atty. Sikat Agbunag), September 20, 1999, pp. 6-14.
- [16] TSN (Aida Vilorio-Magsipoc), January 18, 2000, p. 25; Exh. “Z”; Records, p. 108.
- [17] TSN (Aimee Vallejo-Gontinos), February 15, 2000, pp. 6-7.
- [18] TSN (Aimee Vallejo-Gontinos), February 15, 2000, p. 30.
- [19] TSN (Gerrico Vallejo), February 28, 2000, pp. 4-47.
- [20] RTC Decision, p. 22; Rollo, p. 42.
- [21] People vs. Cabug, G. R. No. 123149, March 27, 2001.
- [22] People vs. Rayos, G. R. No. 133823, Feb. 7, 2001.
- [23] People vs. Hermoso, 343 SCRA 567 (2000).
- [24] TSN, (Pet Byron Buan), November 15, 1999, pp. 41, 54.
- [25] Exh “H”; Record, p. 99.
- [26] TSN (Pet Byron Buan), November 15, 1999, p. 66 (emphasis supplied).
- [27] TSN (Gerrico Vallejo), February 28, 2000, pp. 46-47.
- [28] People vs. Deang, 338 SCRA 657 (2000).
- [29] William C. Thompson, Guide to Forensic DNA Evidence, in Expert Evidence: A Practitioner’s Guide to Law Science and the FJC Manual (1997).
- [30] Charles R. Swanson, Criminal Investigation (6[th] ed., 1996).
- [31] Keith Inman & Norah Rudin, An Introduction to Forensic DNA Analysis (1997).
- [32] Id.
- [33] Id.
- [34] Id.
- [35] TSN (Aida Vilorio-Magsipoc), January 18, 2000, pp. 9, 25-29 (emphasis supplied).
- [36] Id., (emphasis supplied).
- [37] People vs. Gallarde, 325 SCRA 835 (2000).
- [38] People vs. Obrero, 332 SCRA 190 (2000).
- [39] TSN (Atty. Lupo Leyva), September 10, 1999, pp. 8-9.
- [40] Id., pp. 16-17.
- [41] TSN (Mayor Renato Abutan), August 13, 1999, p. 63.
- [42] TSN (Gerrico Vallejo), February 28, 2000, pp. 30-31.

[43] *People vs. Gallardo*, 323 SCRA 218 (2000)

[44] TSN (Gerrico Vallejo), February 28, 2000, p. 59.

[45] *People vs. Base*, G.R. No. 109773, March 30, 2000.

[46] TSN (Atty. Lupo Leyva), September 10, 1999, p. 6.

[47] 269 SCRA 95 (1997).

[48] 310 SCRA 819 (1999).

[49] TSN (Mayor Renato Abutan), August 13, 1999, pp. 58-59, 75.

[50] *People vs. Mantung*, supra, pp. 832-833.

[51] *People vs. Andan*, supra, p. 110.

[52] TSN (Pet Byron Buan), November 15, 1999, p. 67 (emphasis supplied).

[53] *People vs. Del Rosario*, G.R. No. 131036, June 20, 2001.

[54] *People vs. Maneng*, 343 SCRA 88 (2000); *People vs. Obrero*, 332 SCRA 190 (2000).

[55] TSN (Gerrico Vallejo), February 28, 2000, pp. 22-24 (emphasis supplied).

[56] TSN (Dr. Antonio Vertido), August 27, 1999, pp. 43, 47-48 (emphasis supplied).

[57] *People vs. Rivera*, G.R. No.139180, July 31, 2001.

[58] *People vs. Libo-on*, G.R. No. 136737, May 23, 2001.

[59] Three (3) Members of the Court. although maintaining their adherence to the separate opinion expressed in *People vs. Echegaray* (267 SCRA 682 (1997)) that R.A. 7659 insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

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