

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DINDO “BEBOT” MOJELLO, APPELLANT.

G.R. No. 145566. March 09, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

On automatic review is a decision of the Regional Trial Court (RTC) of Bogo, Cebu, Branch 61, finding appellant Dindo “Bebot” Mojello guilty beyond reasonable doubt of the crime of rape with homicide defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing him to the supreme penalty of death.[1]

Appellant Dindo Mojello, alias “Bebot” was charged with the crime of rape with homicide in an Information dated May 22, 1997, as follows:[2]

That on the 15[th] day of December 1996, at about 11:00 o’clock in the evening, at Sitio Kota, Barangay Talisay, Municipality of Santa Fe, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with Lenlen Rayco under twelve (12) years of age and with mental deficiency, against her will and consent, and by reason and/or on the occasion thereof, purposely to conceal the most brutal act and in pursuance of his criminal design, the above-named accused, did then and there willfully, unlawfully and feloniously with intent to kill, treacherously and employing personal violence, attack, assault and kill the victim Lenlen Rayco, thereby inflicting upon the victim wounds on the different parts of her body which caused her death.

CONTRARY TO LAW.

Appellant was arraigned on July 24, 1997, entering a plea of “not guilty.” Trial followed.

On January 21, 1999, the trial court rendered judgment finding appellant guilty beyond reasonable doubt of the crime of rape with homicide, and sentencing him to suffer the death penalty.

From the facts found by the court a quo, it appears that on December 15, 1996, at or around 9:00 p.m., Rogelio Rayco was having some drinks with a group which included Roger Capacito and his wife and the spouses Borah and Arsolin Illustrismo at the Capacito residence located at Barangay Talisay, Sta. Fe, Cebu.[3]

Rogelio Rayco left the group to go home about an hour later. On his way home, he saw his niece, Lenlen Rayco, with appellant Dindo Mojello, a nephew of Roger Capacito, walking together some thirty meters away towards the direction of Sitio Kota.[4] Since he was used to seeing them together on other occasions, he did not find anything strange about this. He proceeded to his house.[5]

On December 16, 1996, between 5:00 to 6:00 a.m., the Rayco family was informed that the body of Lenlen was found at the seashore of Sitio Kota. Rogelio Rayco immediately proceeded to the site and saw the lifeless, naked and bruised body of his niece. Rogelio was devastated by what he saw. A remorse of conscience enveloped him

for his failure to protect his niece. He even attempted to take his own life several days after the incident.[6]

Appellant was arrested at Bantayan while attempting to board a motor launch bound for Cadiz City. On an investigation conducted by SPO2 Wilfredo Giducos, he admitted that he was the perpetrator of the dastardly deed. Appellant was assisted by Atty. Isaias Giduquio during his custodial interrogation. His confession was witnessed by Barangay Captains Wilfredo Batobalanos and Manolo Landao. Batobalanos testified that after it was executed, the contents of the document were read to appellant who later on voluntarily signed it.[7] Appellant's extrajudicial confession was sworn before Judge Cornelio T. Jaca of the Municipal Circuit Trial Court (MCTC) of Sta. Fe-Bantayan.[8] On December 21, 1996, an autopsy was conducted on the victim's cadaver by Dr. Nestor Sator of the Medico-Legal Branch of the PNP Crime Laboratory, Region VII.[9]

Dr. Sator testified that the swelling of the labia majora and hymenal lacerations positively indicate that the victim was raped.[10] He observed that froth in the lungs of the victim and contusions on her neck show that she was strangled and died of asphyxia.[11] He indicated the cause of death as cardio-respiratory arrest due to asphyxia by strangulation and physical injuries to the head and the trunk.[12]

In this automatic review, appellant raises two issues: whether the extrajudicial confession executed by appellant is admissible in evidence; and whether appellant is guilty beyond reasonable doubt of the crime of rape with homicide.

We now resolve.

Appellant alleges that the lower court gravely erred in admitting in evidence the alleged extrajudicial confession which he executed on December 23, 1996. In his Brief, appellant avers that the confession which he executed was not freely, intelligently and voluntarily entered into.[13] He argues that he was not knowingly and intelligently apprised of his constitutional rights before the confession was taken from him.[14] Hence, his confession, and admissions made therein, should be deemed inadmissible in evidence, under the fruit of the poisonous tree doctrine.

We are not convinced.

At the core of the instant case is the application of the law on custodial investigation enshrined in Article III, Section 12, paragraph 1 of the Constitution, which provides:

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.

The above provision in the fundamental Charter embodies what jurisprudence has termed as "Miranda rights" stemming from the landmark decision of the United States Supreme Court, *Miranda v. Arizona*.^[15] It has been the linchpin of the modern Bill of Rights, and the ultimate refuge of individuals against the coercive power of the State.

The Miranda doctrine requires that: (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.

In the Philippines, the right to counsel espoused in the Miranda doctrine was based on the leading case of *People v. Galit*^[16] and *Morales, Jr. v. Enrile*,^[17] rulings subsequently incorporated into the present Constitution. The

Miranda doctrine under the 1987 Charter took on a modified form where the right to counsel was specifically qualified to mean competent and independent counsel preferably of the suspect's own choice. Waiver of the right to counsel likewise provided for stricter requirements compared to its American counterpart; it must be done in writing, and in the presence of counsel.

Verily, it may be observed that the Philippine law on custodial investigation has evolved to provide for more stringent standards than what was originally laid out in *Miranda v. Arizona*. The purpose of the constitutional limitations on police interrogation as the process shifts from the investigatory to the accusatory seems to be to accord even the lowliest and most despicable criminal suspects a measure of dignity and respect. The main focus is the suspect, and the underlying mission of custodial investigation – to elicit a confession.

The extrajudicial confession executed by appellant on December 23, 1996, applying Art. III, Sec. 12, par. 1 of the Constitution in relation to Rep. Act No. 7438, Sec. 2 complies with the strict constitutional requirements on the right to counsel. In other words, the extrajudicial confession of the appellant is valid and therefore admissible in evidence.

As correctly pointed out by the Solicitor General, appellant was undoubtedly apprised of his Miranda rights under the Constitution.[18] The court a quo observed that the confession itself expressly states that the investigating officers informed him of such rights.[19] As further proof of the same, Atty. Isaias Giduquio testified that while he was attending a Sangguniang Bayan session, he was requested by the Chief of Police of Sta. Fe to assist appellant.[20] Appellant manifested on record his desire to have Atty. Giduquio as his counsel, with the latter categorically stating that before the investigation was conducted and appellant's statement taken, he advised appellant of his constitutional rights. Atty. Giduquio even told appellant to answer only the questions he understood freely and not to do so if he was not sure of his answer.[21] Atty. Giduquio represented appellant during the initial stages of the trial of the present case.

Atty. Giduquio was a competent and independent counsel of appellant within the contemplation of the Constitution. No evidence was presented to negate his competence and independence in representing appellant during the custodial investigation. Moreover, appellant manifested for the record that Atty. Giduquio was his choice of counsel during the custodial proceedings.

The phrase “preferably of his own choice” does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise the tempo of custodial investigation will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest.[22]

We ruled in *People v. Continente*[23] that while the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel – or where the preferred lawyer is not available – is naturally lodged in the police investigators, the suspect has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.[24]

The right to counsel at all times is intended to preclude the slightest coercion as would lead the accused to admit something false. The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth. In *People v. Dumalahay*,[25] this Court held:

The sworn confessions of the three accused show that they were properly apprised of their right to remain silent and right to counsel, in accordance with the constitutional guarantee.

At 8:00 in the morning of the next day, the three accused proceeded to the office of Atty. Rexel Pacuribot, Clerk of Court of the Regional Trial Court of Cagayan de Oro City. All of the three accused, still accompanied by Atty. Ubay-ubay, subscribed and swore to their respective written confessions. Before administering the oaths, Atty. Pacuribot reminded the three accused of their constitutional rights under the Miranda doctrine and verified that their statements were voluntarily given. Atty. Pacuribot also translated the contents of each confession in the Visayan dialect, to ensure that each accused understood the same before signing it.

No ill-motive was imputed on these two lawyers to testify falsely against the accused. Their participation in these cases merely involved the performance of their legal duties as officers of the court. Accused-appellant Dumalahay's allegation to the contrary, being self-serving, cannot prevail over the testimonies of these impartial and disinterested witnesses.

More importantly, the confessions are replete with details which could possibly be supplied only by the accused, reflecting spontaneity and coherence which psychologically cannot be associated with a mind to which violence and torture have been applied. These factors are clear indicia that the confessions were voluntarily given.

When the details narrated in an extrajudicial confession are such that they could not have been concocted by one who did not take part in the acts narrated, where the claim of maltreatment in the extraction of the confession is unsubstantiated and where abundant evidence exists showing that the statement was voluntarily executed, the confession is admissible against the declarant. There is greater reason for finding a confession to be voluntary where it is corroborated by evidence aliunde which dovetails with the essential facts contained in such confession.

The confessions dovetail in all their material respects. Each of the accused gave the same detailed narration of the manner by which Layagon and Escalante were killed. This clearly shows that their confessions could not have been contrived. Surely, the three accused could not have given such identical accounts of their participation and culpability in the crime were it not the truth.

Concededly, the December 17, 1996 custodial investigation upon appellant's apprehension by the police authorities violated the Miranda doctrine on two grounds: (1) no counsel was present; and (2) improper waiver of the right to counsel as it was not made in writing and in the presence of counsel. However, the December 23, 1996 custodial investigation which elicited the appellant's confession should nevertheless be upheld for having complied with Art. III, Sec. 12, par. 1. Even though improper interrogation methods were used at the outset, there is still a possibility of obtaining a legally valid confession later on by properly interrogating the subject under different conditions and circumstances than those which prevailed originally.[26]

The records of this case clearly reflect that the appellant freely, voluntarily and intelligently entered into the extrajudicial confession in full compliance with the Miranda doctrine under Art. III, Sec. 12, par. 1 of the Constitution in relation to Rep. Act No. 7438, Sec. 2. SPO2 Wilfredo Abello Giducos, prior to conducting his investigation, explained to appellant his constitutional rights in the Visayan dialect, notably Cebuano, a language known to the appellant, viz:[27]

PASIUNA (PRELIMINARY) : Ikaw karon Dindo Mojello ubos sa usa ka inbestigasyon diin ikaw gituhon nga adunay kalabutan sa kamatayon ni LENLEN RAYCO ug nahitabong paglugos kaniya. Ubos sa atong Batakang Balaod, ikaw adunay katungod sa pagpakahilom ning maong inbesigasyon karon kanimo ug aduna usab ikaw ug katungod nga katabangan ug usa ka abogado nga motabang karon kanimo ning maong inbestigasyon. Imo ba nasabtan kining tanan? (DINDO MOJELLO, you are hereby reminded that you are under investigation in which you were suspected about the death and raping of LENLEN RAYCO. Under the Constitution you have the right to remain silent about this investigation on you now and you have also the right to have counsel of your own choice to assist you in this investigation now. Have you understood everything?)

TUBAG (ANSWER) : Oo, sir. (Yes, sir.)

PANGUTANA (QUESTION) : Human ikaw sayri sa imong katungod ubos sa atong Batakang Balaod sa pagpakahilom, gusto ba nimo nga ipadayon nato kining inbestigasyon karon kanimo? (After you have been apprised of your rights under our Constitution to remain silent, do you want to proceed this investigation on you now?)

TUBAG (QUESTION) : Oo, sir. (Yes, sir.)

PANGUTANA (QUESTION) : Gusto ba usab nimo ug abogado nga makatabang kanimo ning maong inbestigasyon? (Do you want counsel to assist you in this said investigation?)

TUBAG (ANSWER) : Oo, sir. (Yes, sir.)

APPEARANCE : Atty. Isaias Giduquio is appearing as counsel of the affiant.

PANGUTANA (QUESTION) : Ako usab ikaw pahinumdoman nga unsa man ang imo isulti karon dinhi magamit pabor o batok kanimo sa Hukmanan, nasabtan ba nimo kining tanan mo nga mga katungod nga walay naghulga, nagpugos o nagdagmal kanimo o nagsaad ba ug ganti sa kaulihan? (You are also hereby reminded that all your statements now will be used as evidence against or in your favor in any court of justice. Have you understood all your rights with nobody coercing or forcing you, or mauling or promising a reward in the end?)

TUBAG (ANSWER) : Oo (Yes.)

PANGUTANA (QUESTION) : Andam ka nga mohatag ug libre ug boluntaryo nga pamahayag? (Are you now ready to give your free and voluntary statement?)

TUBAG (ANSWER) : Oo, sir. (Yes, sir.)

x x x x x x x x

(START OF CUSTODIAL INVESTIGATION)

x x x x x x x x.

The trial court observed that as to the confession of appellant, he was fully apprised of his constitutional rights to remain silent and his right to counsel, as contained in such confession.[28] Appellant was properly assisted by Atty. Isaias Giduquio. The extrajudicial confession of appellant was subscribed and sworn to before Judge Cornelio T. Jaca, Municipal Judge of Medellin-Daanbantayan and acting Judge of MCTC Sta. Fe-Bantayan and Madredijos. Judge Jaca declared that he explained to the appellant the contents of the extrajudicial confession and asked if he understood it. He subsequently acknowledged that when appellant subscribed to his statement, Atty. Giduquio, witness Batobalonos and his Clerk of Court were present as well as other people.[29]

The extrajudicial confession executed by the appellant followed the rigid requirements of the Miranda doctrine; consequently, it is admissible as evidence. The lower court was correct in giving credence to the extrajudicial confession of the appellant.

On cross-examination, appellant Mojello claimed his life was threatened, thereby inducing him to execute an extrajudicial confession, yet he neither filed any case against the person who threatened him, nor he report this to his counsel. He further claimed that he did not understand the contents of the confession which was read in the Visayan dialect, yet he admits that he uses the Visayan dialect in his daily discourse.

In *People v. Pia*, [30] we held that “where appellants did not present evidence of compulsion or duress or violence on their persons; where they failed to complain to officers who administered the oaths; where they did not institute any criminal or administrative action against their alleged maltreatment; where there appears 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 should be considered as factors indicating voluntariness of confessions.” The failure of the appellant to complain to the swearing officer or to file charges against the persons who allegedly maltreated him,

although he had all the chances to do so, manifests voluntariness in the execution of his confessions.[31] To hold otherwise is to facilitate the retraction of his statements at the mere allegation of threat, torture, coercion, intimidation or inducement, without any proof whatsoever. *People v. Enanoria* further declared that another indicium of voluntariness is the disclosure of details in the confession which could have been known only to the declarant.[32]

The confessant bears the burden of proof that his confession is tainted with duress, compulsion or coercion by substantiating his claim with independent evidence other than his own self-serving claims that the admissions in his affidavit are untrue and unwillingly executed.[33] Bare assertions will certainly not suffice to overturn the presumption.[34]

The test for determining whether a confession is voluntary is whether the defendant's will was overborne at the time he confessed.[35] In cases where the Miranda warnings have been given, the test of voluntariness should be subsequently applied in order to determine the probative weight of the confession.

Accordingly, the presumption of voluntariness of appellant's confession remains un rebutted by his failure to present independent evidence that the same was coerced.

It cannot be gainsaid that the constitutional duty of law enforcement officers is to ensure that a suspect has been properly apprised of his Miranda rights, including the right to counsel. It is in the paramount public interest that the foundation of an effective administration of criminal justice relies on the faithful adherence to the Miranda doctrine. Compliance with Art. III, Sec. 12, par. 1 by police authorities is central to the criminal justice system; Miranda rights must in every case be respected, without exception.

Thus, the confession, having strictly complied with the constitutional requirements under Art. III, Sec. 12, par. 1, is deemed admissible in evidence against appellant. It follows that the admission of culpability made therein is admissible. It is therefore not "fruit of the poisonous tree" since the tree itself is not poisonous.

Appellant also alleges that the lower court gravely erred in holding him guilty beyond reasonable doubt of the crime of rape with homicide, thereby sentencing him to suffer the death penalty despite the glaring insufficiency of circumstantial evidence against him. In his Brief, he argues that the evidence against him is insufficient to warrant his conviction of rape with homicide.

The categorical admission of the appellant to the crime of rape, coupled with the corpus delicti as established by the Medico-Legal Report and the testimony of Rogelio Rayco, leads us to no other conclusion than that of appellant's guilt for the rape of Lenlen Rayco on December 15, 1996. It passes the test of moral certainty and must therefore be sustained.

However, the records do not adequately show that appellant admitted to killing the victim. Neither is the circumstantial evidence sufficient to establish that by reason or on the occasion of the rape a homicide was committed by the appellant. The lack of physical evidence further precludes us from connecting the slaying of the victim to her sexual assault, given the quantum of proof required by law for conviction. No estimated time of death was given, which is essential in making a connection with the appellant's story that he went home after a night of drinking. The time when he and the victim were headed towards the seashore at or about 9:00 to 10:00 p.m. of December 15, 1996 until the time when the victim's lifeless body was found at or about 4:00 a.m. of December 16, 1996 had a time variance of between six to seven hours. Although the circumstances may point to the appellant as the most likely perpetrator of the homicide, the same do not constitute an unbroken chain of events which would lead us to a reasonable conclusion that appellant was guilty of killing the victim. In other words, there are gaps in the reconstruction of facts and inferences surrounding the death of Lenlen. Appellant only

admitted to boxing the victim when she shouted, then hurriedly ran away. The cause of death of Lenlen was cardio-respiratory attack due to asphyxiation and physical injuries; she was strangled to death and left on the seashore as manifested by the frothing in her lungs. No physical, scientific or DNA evidence was presented to pinpoint appellant as the person who killed the victim. Fingerprints, if available, would have determined who committed the homicide. Thus, appellant cannot be convicted of rape with homicide considering the insufficiency of evidence which thereby created a reasonable doubt as to his guilt for the said special complex crime.

Appellant should instead be held liable only for the crime of statutory rape, the victim Lenlen Rayco being then eleven years old. The sexual assault was necessarily included in the special complex crime charged in the Information dated May 22, 1997.

The trial court should have awarded damages to the heirs of the victim. Civil indemnity in the amount of P50,000.00 is awarded upon the finding of the fact of rape.[36] Moral damages in the amount of P50,000.00 may likewise be given to the heirs of the victim without need of proof in accordance with current jurisprudence.[37]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Bogu, Cebu, Branch 61 in Criminal Case No. B-00224 is AFFIRMED with MODIFICATION. Appellant Dindo Mojello is found guilty beyond reasonable doubt of the crime of statutory rape and sentenced to suffer the penalty of reclusion perpetua. He is also ordered to pay the heirs of the victim, Lenlen Rayco, P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Puno, J., on leave.

Vitug, J., joins the dissent.

Panganiban, J., on official leave.

Quisumbing, J., please see dissenting opinion.

Tinga, J., joins the dissent of J. Quisumbing.

[1] Decision penned by Judge Ildefonso G. Mantilla.

[2] Original Records, pp. 1-2.

[3] TSN, 20 August 1998, p. 4.

[4] Id., p. 12.

[5] Id., p. 6.

[6] Id., p. 15.

[7] Id., February 26, 1998, pp. 14-20.

[8] Id., pp. 4-7. See also Exhibit "B", Original Records; pp. 18-20.

[9] Id., February 12, 1998, pp. 7-9.

[10] Id., p. 9.

[11] *Id.*, pp. 11-12.

[12] Original Records, p. 28.

[13] Rollo, p. 59-60.

[14] *Id.*, p. 60-64.

[15] 384 U.S. 436 (1966).

[16] G.R. No. L-51770, 20 March 1985, 135 SCRA 465.

[17] G.R. Nos. L-61016 and L-61107, 26 April 1983, 121 SCRA 538.

[18] Rollo, p. 107.

[19] *Id.*

[20] TSN, July 14, 1998, p. 3.

[21] *Id.* at 6-7.

[22] G.R. No. 109993, 21 January 1994; *People v. Barasina*, 229 SCRA 450.

[23] G.R. Nos. 100801-02, 25 August 2000, 339 SCRA 1.

[24] *Id.*

[25] G.R. Nos. 131837-38, 2 April 2002.

[26] Fred E. Inbau and John E. Reid, *Criminal Interrogation and Confessions* (2d Ed., 1967), p. 200 citing *Lyons v. Oklahoma*, 322 U.S. 596 (1944) and other cases.

[27] Original Records, pp. 18-23.

[28] Rollo, p. 211.

[29] TSN, February 26, 1998, p. 10.

[30] G.R. No. L-59604, 14 November 1986, 145 SCRA 581; See also *People v. Villanueva*, G.R. No. L-32274, 2 April 1984, 128 SCRA 488.

[31] *People v. Continente*, G.R. Nos. 100801-02, 25 August 2000, 339 SCRA 1.

[32] *People v. Enanoria*, G.R. No. 92957, 8 June 1992, 209 SCRA 594.

[33] *Id.*

[34] *Id.* at 594-595.

[35] 29 A Am Jur 2d, Evidence § 719, citing *United States v. Leby* (CA7 Wis) 955 F2d 1098, and other cases.

[36] *People v. Dumlao*, G.R. Nos. 130409-10, 27 November 2001, 370 SCRA 571; *People v. Caniezo*, G.R. No. 136594, 13 March 2001, 354 SCRA 298; *People v. Mangompit, Jr.*, G.R. Nos. 139962-63, 7 March 2001, 353 SCRA 833.

[37] *People v. Burgos*, G.R. Nos. 139959-60, 22 November 2001, 370 SCRA 325; *People v. Bismonte*, G.R. No. 139563, 22 November 2001, 370 SCRA 305.

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