

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIEVES CONSTANCIO Y BACUNGAY, ERNESTO BERRY Y BACUNGAY, ACCUSED-APPELLANTS.

G.R. No. 206226. April 04, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is an appeal from the February 24, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02709 which affirmed the January 22, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 258, Parañaque City, finding the appellants Nieves Constancio y Bacungay (Constancio) and Ernesto Berry y Bacungay (Berry) guilty of the crime of Rape with Homicide and sentencing them to suffer the penalty of reclusion perpetua.

Factual Antecedents

Constancio and Berry, along with co-accused Donardo Pagkalinawan (Pagkalinawan), Danny Darden (Darden), and alias Burog, were charged with the crime of Rape with Homicide committed against "AAA"[3] on the night of March 11, 2001.

The Information states:

That on or about the 11[th] day of March 2001, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and all of them mutually helping and aiding one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge [of "AAA"] against her will and consent.

That on said occasion, all the above-named accused, did then and there willfully, unlawfully and feloniously attack, assault and strangle and gang up on her thereby inflicting upon the latter traumatic injuries which caused her death.[4]

Constancio and Berry pleaded not guilty during their arraignment on May 3, 2001. Trial on the merits subsequently followed.

Version of the Prosecution

The prosecution presented the following witnesses:

1. "BBB," the mother of the victim "AAA," testified that on March 11, 2001, "AAA" was forcibly abducted, raped, brutally beaten, and strangled to death. Her body was later found at a creek under a bridge in San Antonio Valley 3, Brgy. San Antonio, Parañaque City. "BBB" further testified on the amount they spent for the wake and funeral expenses of "AAA."
2. Myra Katrina Dacanay (Dacanay) testified that she was a high school classmate of "AAA." On the night before "AAA" was killed, she and "AAA" planned to watch a movie at the Alabang Town Center but since they were

late for the last full show, they went to Cinnzeo instead where they were later joined by another friend, Tara Katrina Golez (Golez). After exchanging pleasantries, Golez left first. Thereafter, she (Dacanay) and "AAA" proceeded to the parking lot to get "AAA's" black Mazda 323 with plate number URN 855. "AAA" then brought her (Dacanay) home at Ayala Alabang. Dacanay testified that she tried to contact "AAA" to make sure that she arrived home safely but she could not be reached.

At around 5:30 in the morning, Dacanay received a call from "AAA's" father asking about "AAA's" whereabouts. She also, received a call from Golez who told her that "AAA" was not yet home. Dacanay stated that she was shocked when she learned about "AAA's" death.

3. Golez testified that "AAA" was her classmate and that they had been friends for about 10 years; that on March 10, 2001 at around 10:00 o'clock in the evening, she met with "AAA" and Dacanay at the Cinnzeo, Alabang Town Center, and stayed with them for about 30 to 40 minutes.

Golez added that at around 6:00 o'clock on the morning of March 11, 2001, "AAA's" father went to her house to inquire about "AAA's" whereabouts. Golez told him that she was with "AAA" and with Dacanay, the night before but that she left earlier than these two. Golez said that she learned about "AAA's" death at about 4:00 o'clock on the afternoon of the same day.

4. Janette Bales (Bales) testified that at around 3:00 o'clock in the early morning of March 12, 2001, she was at Unioil gas station in front of the Multinational Village, Ninoy Aquino Avenue, Brgy. Sto. Nino, Parañaque City waiting for a ride home when a black Mazda car suddenly stopped in front of her and a male person then alighted from the back seat and immediately grabbed her arm; that she was able to recognize the face of the person as the appellant Berry whom she identified in open court. Bales further testified that Berry's face was not covered at the time he grabbed her arm and that Berry attempted to pull her inside the black Mazda car and abduct her; that she shouted for help and tried to free herself from Berry's hold on her arm; that she then saw another man who was about to alight from the same black Mazda car but fortunately, a barangay tanod from behind the car shouted, "Hoy!" and Berry was not able to abduct her (Bales); and that Berry was however able to forcibly take her shoulder bag which contained her wallet, cellphone, necklace, and other personal belongings. On the same date, she reported the incident to the Parañaque Police Station and executed a sworn statement. When Berry was arrested on March 30, 2001, Bales identified him as the person who grabbed her arm and took her shoulder bag.

5. Dr. Emmanuel Reyes (Dr. Reyes) is the Medico-Legal Officer at the Southern Police District Crime Laboratory at Fort Bonifacio. He testified that he conducted an autopsy examination on the cadaver of "AAA." According to his Medico-Legal Report No. M-072-2001, the cause of death is asphyxia by strangulation with traumatic head injuries, with signs of drowning and recent loss of virginity. There was a fresh deep laceration of the genitalia with hematoma. Dr. Reyes was able to recover samples of sperm cells collected from the victim.

6. Chito Adarna[5] (Adarna) testified that he is a tricycle driver plying the San Antonio Valley area in Parañaque City; that on March 11, 2001, he transported a male passenger from the tricycle terminal to the corner of Sta. Escolastica and Sta. Teresa streets in Parañaque City, where he saw a black Mazda car parked by the bridge of San Antonio Valley; that he (Adarna) then saw two men carrying something that they threw over the bridge where the body of "AAA" was eventually found; and that thereafter, both men entered the Mazda car with its windows rolled down on the right side. He identified these two men in open court as the appellants Constancio and Berry.

7. P/Sr. Insp. Edgardo C. Ariate (PSI Ariate) testified that he is the Chief Investigator of the Investigation Division of Precinct No. 2 of the Parañaque City Police Station; that on March 11, 2001, he received a telephone call informing him about a body of a female found hogtied and lifeless at the creek of San Antonio Valley; that he (PSI Ariate) then ordered SPO2 Odeo Carino to conduct an investigation to verify the truth of the information;

that initially, the police officers did not have any suspects to the crime; but a few weeks later, an informant surfaced and relayed to them the identities of "AAA's" assailants. The informant came out after then-Parañaque Mayor Joey Marquez (Mayor Marquez) offered a reward to anyone who could provide any lead on the identities of "AAA's" assailants. PSI Ariate added that the informant identified Berry and Constancio as the persons responsible for the crime. The informant also gave the whereabouts of the suspects which led to Berry's arrest in Muntinlupa and Constancio's arrest in Cagayan province.

The informant positively identified Berry during the course of the arrest. At the police station, Bales likewise positively identified Berry as the person who attempted to abduct her and who also took off with her bag. PSI Ariate testified that Berry confessed his participation in the crime and provided the names of his companions namely: Pagkalinawan, one alias Burog, and Darden.

8. "CCC" is the father of "AAA." He testified that during the preliminary investigation, he was able to ask Berry what he did to his daughter. Berry replied that it was better to not let him ("CCC") know what happened as the details of the killing would only hurt him. "CCC" added that the impression he got from speaking with Berry was that the latter admitted to him that he and his companions were the ones responsible for his daughter's death. He also asked Berry why they had to kill his daughter. To this Berry simply responded that he would help him ("CCC").

9. Fernando Sanga y Amparo a.k.a. Dindo Amparo (Amparo) testified that he is a reporter of the ABS-CBN Broadcasting Corporation; that he covered the news on the murder case of "AAA," and that he personally interviewed Berry.

Amparo declared that during his interview, Berry revealed that his co-accused Constancio is his cousin, and his three companions were alias Burog, Pagkalinawan, and Darden, all three of whom he just met that very night; that he and his cousin Constancio, and their companions alias Burog, Pagkalinawan and Darden abducted "AAA" outside the Alabang Town Center after poking her with a knife; that he (Berry) at first thought that it would just be a hold-up; and that after threatening "AAA" with a knife, they placed "AAA" at the back seat of her black Mazda car and they all rode in her black car and drove to Constancio's vacant house.

During the same interview, Berry further revealed that while parked in Constancio's garage in Luxemburg Street at the Better Living Subdivision, Paranaque City, "AAA's" car was shaking with Constancio inside with "AAA;" that this led him to suspect that something was already happening inside the car. Berry also divulged that when the car door was opened, he saw "AAA" already apparently lifeless, her private parts exposed, and without her underwear. Then he (Berry) heard Constancio utter "wala na;" that when asked whether by that phrase "wala na" he meant that "AAA" was already dead, Berry replied, "yes."

In the same interview, Berry also disclosed that "AAA's" body was placed inside the trunk of her car and thrown over a bridge at San Antonio Valley III, Parañaque City; that he was prompted to reveal such information because he felt guilty about what happened. Berry claimed that he had nothing to do with "AAA's" killing and promised her family that he would help them obtain justice by becoming a witness in the case.

10. Atty. Rhonnel Suarez (Atty. Suarez) testified that he was the lawyer who assisted Berry during the custodial investigation at the Parañaque police station; that it was Berry himself who approached him at the police precinct and asked for his professional assistance during the custodial investigation; and that he fully explained to Berry and made the latter understand clearly his constitutional rights before the latter executed the Sinumpaang Salaysay containing his extrajudicial confession. Berry freely and voluntarily affixed his signature to the Sinumpaang Salaysay in the presence of Atty. Suarez and two of Berry's relatives, Estrella Corate (Corate) and Florinda Buenafe (Buenafe).

Version of the Defense

1. Pagkalinawan testified that he was surprised that Berry implicated him in this case because he does not know him; that he only met Berry inside the police precinct 13 days after his arrest; and that Berry might have been subjected to torture to give the names of other persons involved in the case.

With regard to Constancio, Pagkalinawan testified that he has known him for less than a year as he was a neighbor in Bayanan, Muntinlupa; but that several months before the case, he (Pagkalinawan) and Constancio were no longer neighbors because he (Pagkalinawan) transferred to another place.

Pagkalinawan claimed that he went into hiding because he was afraid that police officers were searching for him after a reward for information concerning his whereabouts was offered.

2. Napoleon Pagkalinawan (Napoleon) is Pagkalinawan's father. He testified that on the night of March 10, 2001, at around 8:00 o'clock in the evening, he was watching television with his children, including Pagkalinawan; and that after watching television until 11:00 o'clock that evening, he (Napoleon) claimed that Pagkalinawan went to his room to sleep.

Napoleon also averred that Pagkalinawan had been living with him since birth and that Constancio was not their neighbor. He said that Pagkalinawan transferred to the house of his in-laws which was less than a kilometer away from his house.

3. Aida R. Viloria-Magsipoc (Magsipoc) testified that she is a Forensic Chemist of the National Bureau of Investigation (NBI); and that she took the buccal swabs from the inner lining of Pagkalinawan's mouth. Her final report concluded that the vomit and hair samples from "AAA's" car did not match the profile of the suspects. Magsipoc however could not say whether Pagkalinawan and the other suspects were inside the car or not since their profile was not found in the car based on the submitted specimen.

4. Constancio testified that on February 24, 2001, his neighbor, the wife of his co-accused Pagkalinawan, informed him that NBI agents were looking for him regarding a kidnapping with murder case of a certain Calupig; that for fear of apprehension, he (Constancio) went to his cousin and co-accused Berry and stayed in the latter's house; that he then contacted his girlfriend Aiko Tiu (Aiko) and told her to stay in his house in Bayanan, Muntinlupa in the meantime; that Aiko later went to see him (Constancio) and informed him that his house had been ransacked; that his personal belongings had been taken including his wallet which contained his identification cards; that on February 27, 2001, he (Constancio) went to Baguio City to hide; that Aiko visited him there on March 14, 2001 as it was his birthday; that the next day, Aiko returned to Manila and they communicated only through text messages; that about a week later he (Constancio) was informed that his face was flashed on television with a reward offered to any person who could provide information regarding his whereabouts; that this prompted him (Constancio) to head further up north to Aparri, Cagayan on March 24, 2001; and that on March 29, 2001, he was arrested and brought to the office of Mayor Marquez where he saw his cousin Berry.

5. Aiko testified that Constancio is her live-in partner with whom she has two children; that from February 27, 2001 to March 14, 2001, while Constancio was in Baguio she called him everyday to make sure he was safe; that on March 14, 2001, she visited him in Baguio as this was his birthday; that upon her return to Manila, she learned that Constancio had been arrested; and that this surprised her since she believes that Constancio did not have anything to do with "AAA's" murder.

6. Berry testified that on March 10, 2001, he went home after work as a welder and did not go back to work the next day; that on March 29, 2001, two men in civilian clothing came to his house and informed him that they were police officers; that after opening the door, the police officers kicked him in the chest and thereafter

handcuffed him; that he asked them what crime he committed and if they were armed with a warrant of arrest but the alleged police officers failed to show him any document; that he was then brought to the Office of Mayor Marquez where he was asked about his cousin Constancio; that thereafter, he was brought to the Coastal Police Headquarters of Parañaque where he was threatened by PSI Ariate and forced to sign a Sinumpaang Salaysay, and that said sinumpaang salaysay is false.

Berry further testified that Atty. Suarez assisted him in the execution of his affidavit; that his relatives Corate and Buenafe also signed the affidavit; and that nonetheless he was not able to narrate the threats made by PSI Ariate on his life and the lives of his family. Berry stressed that he does not know who prepared the statements in his Sinumpang Salaysay.

7. Corate testified that Berry is her son-in-law; that while she was at the police station, police officers asked her to sign a document without informing her of its contents.

Summary of Facts

It appears that on March 10, 2001, "AAA" went to Alabang Town Center with her friends Dacanay and Golez. After parting ways with them, "AAA" was about to board her car when she found herself confronted by Berry then armed with a knife, who was then in the company of Constancio, Pagkalinawan, Darden and alias "Burog." These five forcibly seized "AAA's" car and drove her to Constancio's house where she was raped and killed.

In the course of an interview with ABS-CBN Reporter Amparo, Berry revealed that while "AAA's" car was parked in Constancio's garage, the said car was moving and shaking with "AAA" inside.[6] This led him to suspect that something was already happening; that when the door of the car was opened, (Berry) saw that "AAA" was without her underwear; and that Constancio then uttered the words, "wala na," indicating that "AAA" was already dead.[7]

"AAA's" body was then placed inside the trunk of her car. Adarna, a tricycle driver, saw Berry, Constancio, and their other companions, throw something over a bridge which turned out to be "AAA's" body upon investigation by the authorities.

On the evening of March 12, 2001, Bales almost became the next victim when Berry and his companions who were still using "AAA's" car, attempted to abduct her. Fortunately for Bales, a barangay tanod was present at the scene and was able to foil the abduction when he shouted at the malefactors and startled them. Nonetheless, Bales' bag was taken during this incident.

Eventually, Berry and Constancio were arrested after an informant surfaced and identified them as "AAA's" assailants. The informant came out after Mayor Marquez offered a reward for information leading to the identity of persons responsible for "AAA's" rape-slay.

During the custodial investigation, where Atty. Suarez advised him of his constitutional rights and the consequences of his statements, Berry executed an extrajudicial confession which was embodied in a Sinumpaang Salaysay. Berry also confessed to Amparo during an interview that he did take part in the execution of the crime.

At the trial, however, Berry denounced the Sinumpaang Salaysay as false, and claimed that he was coerced into signing the same.

For his part, Constancio contended that he was in Baguio at the time of the commission of the crime. Both appellants denied the charges against them. These two also asserted that Berry's extrajudicial confession was inadmissible in evidence.

Ruling of the Regional Trial Court

On January 23, 2007 the RTC of Parañaque City, Branch 258 rendered its Decision finding Constancio and Berry guilty beyond reasonable doubt of the crime of Rape with Homicide and sentenced them to suffer the penalty of reclusion perpetua.

As for Pagkalinawan, the RTC acquitted him of the crime for failure of the prosecution to prove his guilt beyond reasonable doubt. The RTC held that the prosecution witnesses were not at all able to positively identify Pagkalinawan as a participant in the crime, thus, he must be absolved of the crime charged.

The dispositive part of the Decision of the RTC reads:

WHEREFORE, premises considered, considering that the prosecution was able to prove the guilt of accused NIEVES CONSTANCIO y BACUNGAY and ERNESTO BERRY y BACUNGAY beyond reasonable doubt, both accused are hereby sentenced to suffer the penalty of RECLUSION PERPETUA pursuant to Republic Act 9346 which repealed the death penalty law. However pursuant to Section 3 thereof, they are not eligible for parole.

Accused, NIEVES CONSTANCIO y BACUNGAY and ERNESTO BERRY y BACUNGAY are also hereby ordered to jointly and severally pay the heirs of [AAA] the following amounts, to wit:

- P92,290.00 as actual damages;
- P50,000.00 as civil indemnity ex-delicto;
- P50,000.00 as moral damages; and
- P50,000.00 as exemplary damages;

For failure of the prosecution to prove the guilt of accused DONARDO PAGKALINAWAN y VILLANUEVA, he is hereby ACQUITTED of the crime charged against him.

Let alias warrant of arrest issue against Danny Darden and @ Burog, which need not be returned until after they have been arrested.

The City Jail Warden, this jurisdiction is hereby ordered to immediately release accused, DONARDO PAGKALINAWAN from further detention unless he is being held for some other cause or causes.

No pronouncement as to cost.

SO ORDERED.[8]

Ruling of the Court of Appeals

In its Decision of February 24, 2012, the CA affirmed the RTC. The CA found that Constancio and Berry conspired to abduct, rape, and kill "AAA." The CA accorded credence to the testimonies of prosecution witnesses Adarna and Bales, both of whom in the opinion of the CA positively established the identities of Constancio and Berry. The CA upheld the RTC's assessment of the credibility of these witnesses, because of the trial court's unique opportunity to observe their deportment and demeanor while on the witness stand.

Also, the CA gave credence to Berry's extrajudicial confession as contained in the Sinumpaang Salaysay which he executed with the assistance of Atty. Suarez. Berry's extrajudicial confession was admitted as corroborative evidence of facts that likewise tend to establish the guilt of his co-accused and cousin, Constancio as shown by the circumstantial evidence extant in the records.

Invariably therefore, the CA rejected the defences of alibi and denial interposed by Constancio in light of the positive identification by the prosecution witnesses.

The CA disposed as follows:

WHEREFORE, premises considered, the assailed Decision. finding accused-appellants Nieves Constancio y Bacungay and Ernesto Berry y Bacungay guilty of the crime charged is hereby AFFIRMED.

SO ORDERED.[9]

From the CA's Decision, Berry filed his notice of appeal[10] on March 8, 2012 while Constancio filed his own notice of appeal[11] on September 12, 2012.

Both appellants filed separate briefs. Berry opted not to file a Supplemental Brief and instead, adopted the arguments raised in the Appellant's Brief[12] that he filed before the CA. Constancio, on the other hand, filed a Supplemental Brief[13] raising substantially the same issues as those raised by Berry.

The issues raised by the appellants can be summarized as follows:

- I. Whether the CA erred in lending credence to the testimonies of the prosecution witnesses.
- II. Whether the CA erred in declaring Berry's extrajudicial confession admissible in evidence and in considering it against his co-accused Constancio.
- III. Whether the CA erred in finding the appellants guilty beyond reasonable doubt of the crime charged.

Our Ruling

Credibility of the Prosecution's Witnesses

Appellants claim that the testimonies of the prosecution witnesses, specifically those of Bales and Adarna, were unreliable and should not have been given credit by the CA in affirming the RTC's Decision; and that the identification of the appellants made by these witnesses was not believable given the circumstances of the case.

Constancio, in particular, assails the testimony of Adarna. He argues that, "[t]he distance of several meters between [Adarna] and accused-appellant at the time he allegedly saw the latter riding in the victim's car, as well as the position of [Adarna's] tricycle relative to the vehicle wherein accused-appellant was riding in, the negligible lighting, time of day, and other circumstances make it impossible for [Adarna] to positively identify accused-appellant." [14]

Berry, on the other hand, flays Bales's testimony, calling it unreliable since her description of the suspect, "i.e. 5'5" to 5'6" in height, with brush-up hair," [15] allegedly failed to match his own features. Berry harps on the fact that Bales was unable to state in court what the suspect was wearing at the time. Likewise, Berry labels Adarna's testimony as "mere afterthoughts and of doubtful veracity." [16]

The appellants' assaults upon the credibility of the prosecution witnesses will not succeed. Firmly settled is the rule that when factual findings of the RTC are affirmed by the CA, such factual findings should not be disturbed on appeal, unless some material facts or circumstances had been overlooked or their significance misconstrued as to radically affect the outcome of the case. We find no cogent reason to set aside the factual findings of the RTC as affirmed by the CA because these factual findings are in accord with the evidence on record. What is more, the appellants have not shown that either or both the RTC and the CA had overlooked some material facts or circumstances or had misappreciated their import or significance as to radically affect the outcome of the case.

Admissibility of Berry's Extrajudicial Confession

Both appellants also argue that Berry's extrajudicial confession is inadmissible in evidence against them.

Berry insists that when he executed his extrajudicial confession, he was not provided with a competent and independent counsel of his own choice in violation of Section 12, Article III of the Constitution which provides:

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

(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 the preceding section shall be inadmissible in evidence against him.

xxxx

Berry contends that Atty. Suarez does not qualify as a competent and independent counsel since the circumstances surrounding this lawyer's presence at the precinct during the custodial investigation was suspect. Berry specifically challenges, the competence and independence of Atty. Suarez and questions his presence at the police precinct at the very moment he underwent custodial investigation.

After a close reading of the records, this Court believes that Berry's confession is admissible because it was voluntarily executed with the assistance of a competent and independent counsel in the person of Atty. Suarez. In point of fact Atty. Suarez testified that he thoroughly explained to Berry his constitutional rights and the consequences of any statements he would give. Atty. Suarez testified as follows:

ATTY. ANTONIO:

Q:

So, what did you do upon your arrival at the police station?

A:

Upon my arrival there, I went to the desk and it so happened that there was another case, I identified myself to the police officer who was manning the desk. And there was another case, a small case between two (2) parties who also requested my assistance so, I assisted them. And then, I told the police that I was actually looking for an accused of a rape incident, and it was at that time that someone approached me and requested my assistance.

Q:

And who is this person that approached you, Mr. witness?

A:

It was the accused, Berry.

Q:

When he approached you what did he tell you, if any?

A:

He told me, "Sir, pwede ho bang tulungan ninyo ako?" That's what I recalled him saying.

x x x x

Q:

So, in short, Mr. witness, it was Ernesto Berry who initially approached you and asked you to represent him?

A:

That is correct because I was there in the precinct, I was in front... I was there in the front desk of the police precinct and when I arrived, he was not there in the general holding area or lobby. I don't know where he came from but he was the one who approached me.

Q:

Did you, in fact, represent this Ernesto Berry during his custodial investigation?

A:

Yes

Q:

There is testimony of Ernesto Berry during the time that he took the witness stand, Mr. witness, that he was tortured, coerced and/or forced to sign this extra-judicial confession. What can you say about that?

A:

What I can say is during the entire time that I was there, I made sure that we were alone first and foremost, and I explained to him his rights under our laws. I also remember that his relatives were present. Before I allowed the police to go inside the room, I asked that I be left alone with the accused together with his relatives, and I talked to him for a few minutes before anything happen.

x x x x

Q:

How was the extra-judicial confession taken, Mr. witness? In your presence or without your presence?

A:

I recall that I was there present from the start up to the end, and never left him precisely to protect his interest.[17]

It is clear from the foregoing testimony that Atty. Suarez is a competent and independent counsel and that he was in fact chosen by Berry himself during the custodial investigation; and that he was no stranger at all to the processes and methods of a custodial investigation. In default of proof that Atty. Suarez- was remiss in his duties, as in this case, this Court must hold that the custodial investigation of Berry was regularly conducted. For this reason, Berry's extrajudicial confession is admissible in evidence against him.

As expected, Berry now assails the extrajudicial confession he made to Amparo. Berry claims "he was under a very intimidating atmosphere" where "he was coerced by the police to confess and to even name 'names'." [18] Berry insists that the only incriminating part of his confession was his admission that he was present at the scene of the crime. Nonetheless, he claims that he was never privy to any of the plans involving the raping or killing of "AAA."

Berry's argument does not persuade. The CA correctly held:

It is already settled that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. In this case, there was no ample proof to show that

appellant Berry's narration of events to ABS-CBN reporter Dindo Amparo was the product of intimidation or coercion, thus making the same admissible in evidence.[19]

Berry's confession is admissible in evidence because it was voluntarily made to a news reporter and not to the police authority or to an investigating officer. Amparo testified that he requested Berry for an interview in connection with his confession, and that the latter freely acceded. Hence, Berry's confession to Amparo, a news reporter, was made freely and voluntarily and is admissible in evidence.

In an attempt to escape liability as a co-conspirator, Berry argues that although he was present at the scene of the crime, he was not at all privy to any plans to rape and kill "AAA."

This argument will not hold.

A closer examination of the prosecution's evidence compels the conclusion that Berry was a co-conspirator in the rape and killing "AAA." In *People v. Foncardas*,[20] the Court held that:

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. There is, however, no need to prove a previous agreement to commit the crime if by their overt acts, it is clear that all the accused acted in concert in the pursuit of their unlawful design. It may even be inferred from the conduct of the accused before, during and after the commission of the crime.

In this case, while there was no direct proof of a previous agreement to rape and kill "AAA," it was nonetheless clear from Berry's conduct that he acted in concerted effort and was united in intent, aim and purpose in executing the group's criminal design. This was established by Adarna's testimony stating that he saw Berry throw the body of "AAA" over a bridge and that he was in "AAA's" car the night she was killed. By helping his cousin and co-accused Constancio dispose of the body of "AAA," Berry became a co-conspirator by direct participation. It is immaterial that Berry was merely present at the scene of the crime since it is settled that in conspiracy, the act of one is the act of all. If it is true that Berry was not privy to the plan of raping and killing "AAA," he should have prevented the same from happening or at the very least, left the group and reported the crime to the authorities. Berry did neither and he even helped Constancio dispose of "AAA's" body. Clearly, Berry, by his overt acts, became a co-conspirator by directly participating in the execution of the criminal design.

On the other hand, Constancio argues that Berry's confession is inadmissible in evidence against him under the principle of *res inter alios acta* found in Section 28, Rule 130 of the Rules of Court, which provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Our ruling in *Tamargo v. Awingan*[21] pertinently explains the reason for this rule:

[O]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

The general rule is that an extra-judicial confession is binding only on the confessor and is inadmissible in evidence against his co-accused since it is considered hearsay against them.[22] However, as an exception to this rule, the Court has held that an extra-judicial confession is admissible against a co-accused when it is used as circumstantial evidence to show the probability of participation of said co-accused in the crime.[23]

In *People v. Aquino*,[24] this Court held that in order that an extra-judicial confession may be used against a co-accused of the confessor, "there must be a finding of other circumstantial evidence which when taken together with the confession would establish the guilt of a co-accused beyond reasonable doubt." Applying the rule to

Constancy's case, the Court finds that the prosecution was able to show circumstantial evidence to implicate him in the crime.

Significantly, Constancio was positively identified as among those who threw the body of "AAA" over a bridge. It is significant to note that eyewitness Adarna also attests that Constancio was riding in the very same car where "AAA" was raped and killed. This fact leaves this Court without a doubt that Constancio is guilty of the crime charged as the same qualifies as circumstantial evidence showing his participation in the execution of the crime.

Short shrift must be given to Constancio's alibi because he was not able to establish that it was physically impossible for him to be at the scene of the crime the night "AAA" was abducted, raped, and killed. As correctly held by the trial court:

xxx However, assuming arguendo that he went up to Baguio City on February 27,2001, there is no physical impossibility for the said accused to go down from Baguio City and proceed to Manila which will only take him at least [sic] six (6) hours to reach and then go up again after committing the crime, x x x[25]

In line with prevailing jurisprudence, this Court hereby modifies the awards of civil indemnity moral damages, and exemplary damages to P100,000.00 each.[26] In addition, interest is imposed on all damages awarded at the rate of 6% per annum.

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals dated February 24, 2012 in CA-G.R. CR-H.C. No. 02709 is AFFIRMED subject to the MODIFICATIONS that appellants are ordered to solidarity pay the heirs of "AAA" civil indemnity, moral damages, and exemplary damages in the increased amounts of P100,000.00 each. All damages awarded shall earn interest at the rate of 6% per annum from finality of this Decision until fully paid.

SO ORDERED.

Carpio, (Chairperson), Brion, Reyes,[*] and Leonen, JJ., concur.

[*] Per Raffle dated March 28, 2016.

[1] CA rollo, pp. 444-482; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla.

[2] Records, Vol. 4, pp. 1130-1162; penned by Judge Raul E. De Leon.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, as well as that of her/his immediate family members, is withheld and fictitious initials instead are used to represent her/him, both to protect their privacy. (People v. Cabalquinto, 533 Phil. 703 [2006]).

[4] Records, Vol. 1 ,p. 81.

[5] Arana in some parts of the records.

[6] Records, Vol. 5, TSN, July 17,2003, p. 15.

[7] Id.

[8] Records, Vol. 4, pp. 1161-1162.

[9] CA rollo, p. 481.

- [10] Id. at 483-484.
- [11] Id. at 523-524.
- [12] Id. at 86-111.
- [13] Rollo, p. 84-101.
- [14] CA rollo, p. 169.
- [15] Id. at 103.
- [16] Id. at 105.
- [18] TSN, August 22, 2006, pp. 10-14. CA rollo, p. 109.
- [19] Id. at 475, citing *People v. Andan*, 336 Phil. 91, 106 (1997).
- [20] 466 Phil. 992, 1009 (2004), citing *People v. Llanes*, 394 Phil. 911, 933 (2000).
- [21] 624 Phil. 312, 327 (2010), citing *People v. Vda. DeRamos*, 451 Phil. 214, 224 (2003).
- [22] *People v. Tizon, Jr.*, 434 Phil. 588, 614 (2002).
- [23] Id.
- [24] 369 Phil. 701, 725 (1999).
- [25] Records, Vol. IV, p. 1156.
- [26] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.

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