

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIO LUMAYOK, DEFENDANT-APPELLANT.*G.R. No. 54016. October 01, 1985*

Ponente: ALAMPAY, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-54016/>**ALAMPAY, J.:**

In an information dated March 14, 1978, the accused-appellant herein Lucio Lumayok, was charged with the crime of Rape with Murder, it being alleged that on or about November 11, 1977, in the afternoon thereof, and in the Municipality of Hagonoy, Province of Davao del Sur, by means of force and intimidation, he did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Gloria Bemos, against the latter's will while the latter was on her way home from school; and that to conceal the commission of said crime, the accused with abuse of superior strength and evident premeditation strangled said Gloria Bemos, thereby causing her death. It was also alleged that these offenses were committed in an uninhabited place which the accused purposely availed of to facilitate the accomplishment of the said felonies.

After said accused entered a plea of not guilty, the case proceeded to trial. On April 11, 1980, the trial court rendered its decision finding the accused guilty as charged with the dispositive portion thereof reading as follows:

"FOR ALL THE FOREGOING, the guilt of the accused LUCIO LUMAYOK for the crime of rape and by reason or on the occasion of the rape he killed Gloria Bemos otherwise known also as Gloria Vimos within the purview of the last sentence of Article 335 of the Revised Penal Code as amended by Republic Acts Nos. 2632 and 4111, this Court is left with no alternative but to impose as it hereby imposes upon the accused herein the supreme penalty of DEATH, to indemnify the heirs of the deceased Gloria Bemos (Gloria Vimos) in the amount of P12,000.00 and to pay the costs."

The present case is an appeal by way of automatic review, from the aforestated decision of the court below. The facts of this case as presented to this Court in the Appellee's Brief, are substantially the same matters related by the trial court in its decision, and these are the following:

"In the evening of November 11, 1977, Mansueto Bemos went to the house a Edwin Rico at Lapu-Labao, Hagonoy, Davao del Sur. Bemos told Edwin Rico that his (Bemos') daughter, Gloria Bemos, was lost (missing). Edwin Rico and neighbors numbering 50 people all in all conducted a continuous search for the missing girl. At quarter to 6:00 o'clock in the morning of November 12, searchers found the hand bag of Gloria Bemos at a canal around 300 meters from Gloria's house at Lapu-Labao, Hagonoy (pp. 6-17, tsn., June 28, 1978). Inside the handbag were, among other things, notebooks and a comb (exhs. A, A-1, A-2, A-3, A-4 and A-5). Aside from the comb inside the bag, another comb, colored black, was found some 100 meters away from the bag (Exh. A-7). The owner of the black comb was accused Lucio Lumayok (pp. 26-30, tsn., id.).

"The searching group eventually found the body of Gloria Bemos at 3:00 o'clock in the afternoon of November 12, 1977. The body was around two hundred meters from where the black comb belonging to the accused was found. The body was on a hilly portion of Lapu-Labao. It was buried and covered with stones but with one foot protruding out of the ground. The search group accordingly informed Mansueto Bemos and the police

authorities in Hagonoy. The group also contacted Dr. Ramon Dineros, Hagonoy Rural Health Officer, to examine the body. (pp. 30-35, tsn., id.).

"Dr. Dineros came to examine the dead body of Gloria Bemos. As per his examination, cause of death was respiratory arrest due to manual strangulation (Exh. C). Other significant conditions contributing to the death but not related to the disease or condition causing death were: Physical injuries, rape (Exh. C-2).

"Accused Lucio Lumayok was invited by the police authorities of Hagonoy to the municipal building to shed light on what he knew of the crime (pp. 215-219, tsn., Nov. 15, 1979). Patrolman Andres Bajao, a childhood acquaintance of the accused made a casual investigation. The accused admitted to the police officer that he raped Gloria Bemos and after the sexual intercourse, he killed her by using his two hands in choking the neck of the victim. On being asked by Pat. Bajao as to why he did the offense, the accused replied that his bride-to-be had left her residence without informing the accused (pp. 141-144, tsn., Oct. 24, 1978). The accused thereafter gave a statement to the police wherein he admitted having committed the offense (Exhs. F and F-1). When asked why he committed the offense, accused answered thus: "During the incident I was under the influence (sic) of liquor and my girl friend named Elizabeth Salipagan left their residence without my knowledge thereby causing me to be in despair." (Exh. F). (Appellee's Brief, pp. 3-5; Rollo, 64).

The foregoing allegations or statement of facts submitted by the prosecution are vigorously denied by the accused-appellant, Lucio Lumayok.

His version of the said incident is that in the afternoon of November 11, 1977, he and Edwin Rico and other companions played basketball at Lapu-Labao, Hagonoy, Davao del Sur. Thereafter he left ahead of the group. On that occasion, his black comb was borrowed by Edwin Rico, one of the prosecution witnesses. (Tsn., 209 November 15, 1979). Said comb was never returned by Edwin Rico and it was this comb that was later said to have been 200 meters away from the scene of the rape and murder incident. According to the accused, after playing basketball, he went directly to his home and in the evening of the said day, Edwin Rico went to his house and asked herein accused to help look for Gloria Bemos who was then reported to be missing. The accused helped to look for the girl together with Edwin Rico and others but they were unable to find Gloria Bemos. (pp. 212-213, Tsn., November 19, 1979; Tsn., June 28, 1978). The search for the missing girl continued on the following day. In the afternoon of November 12, 1977, the body of Gloria Bemos was found by Edwin Rico, in company with others, buried inside a hole on a hilly portion covered by grass. It was Edwin Rico's group that found the foot of the victim protruding from the stones covering the burial place. (Tsn., pp. 31-32, June 28, 1978). About two hundred (200) meters away from the place where the body of Gloria Bemos was discovered a black comb was found by Edwin Rico and his group.

Based upon the identification made by Edwin Rico that the said comb belonged to the herein accused, the local policemen on a pretext that they needed Lucio Lumayok to accompany them in buying petroleum, invited him. The accused readily went with the policemen, but he was then taken to the police station in the municipal hall of the town of Hagonoy at about 4:00 o'clock in the afternoon of November 12, 1977, (Tsn., p. 216, November 15, 1979). At the municipal building the policemen imputed to Lucio Lumayok the rape and killing of Gloria Bemos, which accusation said accused denied outright. Because of his denial, the accused-appellant averred that he was maltreated for about an hour by the policemen investigating him. The portion of the testimony regarding the maltreatment and torture he received are hereunder reproduced:

"Q. What happened in the municipal building or municipal hall in the poblacion of Hagonoy when you were brought there by the policemen?

"A. They told me to tell them that I was the one who killed Gloria Bemos.

"Q. And what was your answer, if any, to that?

"A. I told them that I did not kill her.

"Q. When you told them that you did not kill her, what happened next, if any?

"A. I was maltreated.

"Q . How were you maltreated?

"A.

I was maltreated by the police by boxing me on my chest.

"Q. Who was this policeman who boxed you on your chest?

"A. Sarona, Sir.

"Q. How many times did he box you, if you can remember?

"A. Many times by them. Not only one.

"Q. You said "by them", why was there any other policeman who boxed you?

"A. Two policemen, Sir.

Q. "Do you know their names?

"A.

Yes, Sir.

"Q. Who were they?

"A. Andit Mambajao, Perhaps Mambajao.

"Court:

Both of them are policemen?

"A. I don't know if they are policemen because I don't know how to read their names.

"Court:

What particular place in the municipal building, in the office of the Mayor or police where in the the building?

"A. In the office of the police, Sir.

"Court:

Proceed.

"ATTY. APORTADERA (continuing):

"Q. What happened since they repeatedly, according to you, boxed you, what happened after that?

"A. I felt the pain.

"Q. How long did they box you, if you remember?

"A. May be around one (1) hour, Sir.

"Q. Was that the only thing they were doing to you, boxing you only?

A. "There was that another thing that they did to me.

"Q.

What was that another thing they did to you?

"A. They got a gasoline and poured it on my penis and then they lighted it.

"Q. Do you know why they poured gasoline on your penis and then lighted it? Do you know why they did it to you?

"A. Yes, Sir, I know.

"Q. Why?

"A. Because they wanted, they said that if I will not tell them what happened, they will kill me.

"Q. What portion of your organ did they pour gasoline and lighted the same?

"A.

On the hair.

"Court:

Not the penis?

"A. Including the penis.

"ATTY. APORTADERA (Continuing):

"Q. After that, what happened after they lighted the gasoline poured on your organ?

"A. After that I felt the pain and they did another thing to me.

"Q. What happened to you next after that?

"A.

Because I did not tell them that I was the malefactor, after they burned my penis, they shaved my hair.

"Q. While they were shaving your head, did they say anything?

"A. Yes, Sir.

"Q. What was that?

"A. They said that if I will not tell them, they will get the skin off my head.

"Q. And when you heard that, what happened, if any?

"A. I told them falsely.

"Q. When you told them ... what what did you tell them falsely?

"A.

I told them that I will tell that I was the one who did it although the truth is that I did not.

"Q. When you told them that you were the one who did it, what happened after that?

"A. They stopped maltreating me.

"Q. After they stopped maltreating you, what happened after that, if you can remember?

"A. They prepared, they typed something.

"Q. And do you know what was being typed?

"A. I don't know, Sir.

"Q. And after that, after they typed, what happened, if you can remember?

"A.

I was told to follow that.

"Q. What do you mean to "follow that"?

"A. They said you will follow this because they will help me.

"Q. Did they tell you what help they will extend if you will follow what was being typed?

"A. Yes, they told me that they will help me as long as I will sign that.

"Q. My question was: what help, if you can remember, did they tell you they would extend if you would sign that thing they typewrote?

"A. They promised to help me in court.

"Q. The prosecution presented here a sworn statement of Lucio C. Lumayok, thumbmarked, can you remember or can you recall having thumbmarked any document before the police in connection with this case?

"A.

I don't know whether this is the paper because I don't know actually the contents but I signed in thumbmark in Hagonoy.

"Q.

Why did you not sign this in your usual signature, if you have any, when they asked you to sign?

"A. I don't know how to write.

"Q.

You said you don't know how to write, why, Mr. Lumayok, what is your educational attainment, if any?

"A. I have not gone to school, Sir.

"Q.

Can you understand English?

"A. I don't know, Sir.

"Q. What is your tribe, if you belong to any?

"A. Calagan tribe, Sir.

"Q. Do you know how to ... where did you ... according to you, you thumbmarked something that was typewritten, where did you thumbmark that piece of paper that was typewritten?

"A. That I don't know exactly because it was quite a long time. I don't remember. xxx" (Tsn., Hearing of Nov. 15, 1979, pp. 219-229) (Underlining supplied).

It is a fact beyond question that the crime of rape with murder had been perpetrated against Gloria Bemos. The severity of the death penalty imposed by the trial court would be commensurate with the heinousness of the crime committed against the victim but precisely with the loss already of the life of said victim, it is equally imperative that justice be done to her by punishing the person or persons definitely established to be responsible for the dastardly crime and no other. To mete out punishment to the wrong person would compound the wrongs already done. The governing rule is for this tribunal to assess the totality of the evidence adduced against the accused herein and judiciously consider whether such evidence constitute proof sufficient to establish the guilt of the accused-appellant, Lucio Lumayok, beyond reasonable doubt. Otherwise, a hasty and rash judgment could lead to a miscarriage of justice. Another tragedy would then be added to that which had happened to Gloria Bemos. Affirmance of a judgment condemning to death a person that might have been falsely accused, would most probably close the door to further inquiry as to who is the real perpetrator or perpetrators of the subject crimes and thus render the wrongs done against Gloria Bemos without any vindication or proper retribution.

We are far from satisfied that it was the accused Lumayok who committed the rape against Gloria Bemos, and that it was he who killed said girl. It is readily evident and accepted even by the prosecution that there is no direct evidence that herein appellant committed the offense charged (Appellee's Brief, pg. 11). In fact, this Court finds absent any direct evidence that the accused was seen together with the victim or that he was even in the vicinity of the scene of the crime. As testified by the accused, and even confirmed by prosecution witness, Edwin Rico, the accused herein was playing basketball with other young men up to about five o'clock in the afternoon of November 11, 1977 and that afterwards he proceeded home.

By the evidence on record, it is clearly shown that in that same afternoon of November 11, the prosecution witness Edwin Rico borrowed the comb of the accused. (Tsn., 29, 45 46, Hearing of June 28, 1978). In this regard, it is claimed by Edwin Rico that after borrowing said comb, he returned the same to the accused-appellant.

On the other hand, appellant denies that the comb was ever returned by Edwin Rico to him.

After the accused had gone home that afternoon, it was Edwin Rico who went to the appellant's house sometime in the evening thereof of that day, to inform and to invite the latter to help in the search for the missing Gloria Bemos. The herein accused readily acceded to said request but their search made that day, November 11, 1977, proved fruitless. It was only on the afternoon following the day November 12, 1977 that the body of Gloria Bemos was discovered by Edwin Rico himself.

As already mentioned, there is no positive or direct evidence indicating the actual commission of the crime of rape with murder by Lucio Lumayok. The initial and circumstantial evidence that prompted the investigating officers to impute the crime to him constitutes only of the black comb which Edwin Rico found about two-hundred (200) meters away from the mound in a hilly portion where the dead body of Gloria Bemos was discovered in the afternoon of November 12, 1977. Only the information supplied by Edwin Rico that the said comb belong to herein accused, gave rise to and directed suspicion on the latter.

The consideration given by the trial court to this comb as incriminatory evidence against the accused-appellant Lucio Lumayok, in our view, assumes no strong probative value. Said comb even argues against the guilt of the herein accused for it is just as much compelling to also consider that said comb was admittedly borrowed and used by Edwin Rico from Lucio Lumayok in the very afternoon when Gloria Bemos was killed.

At the trial, Edwin Rico declared and admitted that he borrowed the black comb from the accused as he used to borrow said comb before. (Tsn., 29, 45, 46; Hearing of June 28, 1978). He claims to have returned the said comb to the accused on that same occasion. On the other hand, this allegation of Edwin Rico that he had returned said comb is refuted and controverted by Lucio Lumayok who testified that after the comb was borrowed from him by Edwin Rico, the same was no longer returned by the latter to him. (Tsn., 210-211, November 15, 1979). Significantly, Edwin Rico did not testify or offer rebuttal evidence to refute the declaration of the accused that said comb was not returned to him by Edwin Rico that afternoon of November 11, 1977. There is no evidence of any kind or nature whatsoever introduced by the prosecution to establish positively the return by Edwin Rico of said comb to the accused. Nothing at all negates the emphatic assertion of the appellant Lucio Lumayok, that said comb remained with Edwin Rico as it was not returned to him.

After Edwin Rico had admitted that he had borrowed said comb from the accused, then the burden of proving the return thereof rests in Edwin Rico. He who alleges a fact has the burden of proving it and a mere allegation is not evidence. (*Legasca vs. Devesa*, 79 Phil. 376).

But even if the evidence as to who had actual possession of said comb, is inconclusive, due to the contradicting claims of the accused and Edwin Rico regarding the supposed return thereof to the accused, it will be easy to realize that the finger of suspicion can equally point to Edwin Rico, enough to create the element of doubt and weaken the case against the herein accused.

The other circumstantial evidence considered by the trial court in declaring the accused guilty is because the body of Gloria Bemos was found buried in a portion of a hilly land belonging to the Lumayok family. From this circumstance, the court below made an inference that Lucio Lumayok was aware that Gloria Bemos would pass along that way when she returned home from school. We fail to see how mere knowledge of the route the victim takes in returning from school necessarily serves as an indicia of appellant's guilt. Assuming that appellant was aware of this fact, still it would not necessarily follow that the accused is the author of the crime imputed to him. Edwin Rico, as a matter of fact, acknowledge while testifying at the trial that he personally knows where Gloria Bemos pass everyday in going to and from her school (Tsn., 48, Hearing of June 28, 1978). It is a mistake for the trial court to draw ill-informed inferences and direct this exclusively to the accused-appellant.

Although the deceased was discovered buried in a denuded portion of a hill in a land belonging to the Lumayok family, such a circumstance cannot also serve as proof of appellant's guilt. As to who owns the land where the body was discovered may not properly be utilized as a premise to establish the guilt of Lucio Lumayok. That the body of the victim was purposely buried in that hilly portion was only because it was the most convenient hiding place then where to put the corpse. It may even be argued that the culprit would probably conceal the body of the victim in a place other than his own land to dispel or divert suspicion from him. The circumstances which the trial court considered against the accused are, therefore, of dubious value.

Discounting the circumstantial evidence relied upon by the trial court, the appealed judgment would now rest only on the purported confession of the accused taken from him while he was under custodial investigation by the police authorities. The first of these confessions is said to have been given in the afternoon of November 12, 1977 after the appellant herein had been tricked into accompanying Policeman Arabo and CHDF Montefalcon to go to the police station of Hagonoy, Davao del Sur. Accused is said to have acknowledged his guilt verbally to one Policeman Andres Bajao. This first admission of guilt allegedly made by Lucio Lumayok was, however, rejected by the trial court as inadmissible evidence. The trial court stated: —

"It is true that the accused denied having committed the crime when he was interviewed by Patrolman Arabo and Rojo when he was brought to the police station in Hagonoy in the evening of November 12, 1977. While the accused confessed to Patrolman Andres Bajao about his having raped and killed Gloria Bemos, such a confession is inadmissible because the accused was not only tricked into making the confession but also the accused was not informed of his constitutional rights to remain silent, not to testify against himself and to be assisted by counsel.."

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Paradoxically, even with the observation of the trial court that the initial spontaneous reaction of the accused was a denial of having raped and killed Gloria Bemos, said court, nevertheless, extended full faith and credit to a subsequent thumbmarked and unsubscribed extrajudicial confession written in English and supposedly given also that very same day to another policeman, Patrolman Saron. Said confession was obtained while the accused was detained and under custodial investigation without him being afforded the benefit of counsel or even any form of assistance from any member of his family.

To begin with, it is dubious that appellant was truly informed of his constitutional rights against self-incrimination or that he was afforded opportunity to avail himself of assistance of a counsel. The purported confession, typewritten as it is in the English language, could not have been understood by the accused-declarant, a member of the Calagan cultural minority tribe, because he does not even know how to read and write. Consequently, it would be rash and wrong for this Court to accept as factually correct the preliminary statements typewritten in English in said Exh. "F", to the effect that the said accused was duly informed of his rights under the constitution; that he had signified his willingness to proceed with his investigation without the help of any counsel; and that the accused-appellant fully knew and acknowledged willingly whatever answer he may give may be used against him in any court or tribunal in the Philippines. That the stereo-type preliminary questions or statements with the corresponding answers — all in English were understood at all by an illiterate accused, is undeserving of belief. It is shallow and crude attempt to mask the absence of legality in the taking of the alleged confession.

No where in the statements of the accused, Exh. "F", is there any mention that the question propounded to and answered by the accused had been translated by anyone to a dialect or language known to the accused. The attestation of Patrolman Domingo Saron and Patrolwoman Marilyn Putong that they were witnesses to the taking down of the said written confession and that the accused-appellant voluntarily affixed his signature thereto in their presence is of dubious value because Exhibit "F" was not actually signed by Lucia Lumayok but carries only his

supposed thumbmark. Again puzzling is the fact that the investigating policemen who prepared said document, Exh. "F", never presented the same to Municipal Judge Lucio B. Martinez for ratification by the accused as intended by these investigators. Patrolman Sarona claims that he gave said Exh. F to the Station Commander and "after that he did not know anymore." (Tsn., pp. 185-186, Hearing of October 24, 1978). On the other hand, Station Commander, Lt. Alalong, testifying on the alleged confession, Exh. "F", acknowledged that police investigators, Patrolmen Bajao and Sarona, reported to him the outcome of their investigation after they have had finished the same and he was given documents together with the investigation report and affidavits which he studied and forwarded to the Municipal Court, but he did not see the unsworn affidavit of Lucio Lumayok, referring to Exh. "F", (Tsn., pp. 358-378, Hearing of January 3, 1980).

Reflective of Lt. Alalong's awareness of the legal infirmities attaching to the alleged extrajudicial confession, Exh. "F", is his own acknowledgment that he will not allow any statement not voluntarily given by a declarant to be brought before the municipal judge because that will be against the constitutional right of the accused. (Tsn., 370, 371, Ibid.) By this Lt. Alalong thus unwittingly supplied the explanation why said Exh. F was not presented to the municipal judge. Asked why he did not even inquire where such statements of Lucio Lumayok after when he learned about it, Lt. Alalong replied that he was "not so interested because it was not submitted and I was afraid it will not be admitted by the court." (Tsn., 379, Ibid.) All the more is this Court therefore, persuaded to uphold the appellant's contention that the trial court erred in finding the alleged extrajudicial confession, Exh. F, of the appellant herein to be voluntary in character and in admitting the same in evidence against him.

Patrolman Andres Bajao, testifying for the prosecution declared that during the investigation of Lucio Lumayok conducted by Patrolman Rojo and Arabo, no member of the family of the said accused nor any lawyer was present and the accused was not apprised that his statements may be used against him or of his right to remain silent and to have a lawyer. (Tsn., pp. 165-168, Oct. 24, 1978).

In the case of *People versus Francisco Galit*, G.R. No. L-51770, promulgated on March 20, 1985, which cited the case of *Morales vs. Ponce Enrile*, 121 SCRA 538, this Court reiterated the correct procedures for peace officers to follow when making arrest and in conducting a custodial investigation. Therein We said: —

"7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, x x x. He shall be informed of his constitutional rights to remain silent and to counsel and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means — by telephone if possible — or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory in whole or in part shall be inadmissible in evidence." (Underlining supplied).

Considering the non-observance of the requisites above prescribed and the impairment of the basic rights of the herein accused-appellant, his alleged confession constitute inadmissible evidence.

But what most strongly militates against acceptance of the alleged confession, Exh. F, is the fact that the same was obtained from the accused by means of torture and threats.

That Lucio Lumayok was maltreated and intimidated while under detention and confinement in the municipal jail in order that he would confess to the crimes imputed to him is easily believable. Even the trial court in its decision made mention that the private parts of the appellant had been indeed burned. During his trial, there was even an

ocular examination made by the court of the penis and pubic hair of the accused Lucio Lumayok, and this was duly noted in the decision and in the transcript of the proceedings. (Tsn., 232, Nov. 15, 1979). It will but provoke sadness to narrate again the other horrible experiences suffered by the accused-appellant at the hands of the police investigators which have been already quoted in the earlier part of this decision.

The error into which the trial court had fallen is in attributing the burning of the accused-appellant to one Sanciano Satorre, a person implicated in a murder case, who was at that time also confined in the Hagonoy Municipal Jail. He was presented as a prosecution rebuttal witness so he can acknowledge that it was he who caused the burns of the accused and not the policemen. The testimony of Sanciano Satorre, a cousin of Policeman Roberto Satorre (Tsn., 47-48, Hearing of Jan. 9, 1980) is certainly far from satisfactory. Nevertheless, it was given credit by the trial judge instead of the declarations of the accused-appellant who steadfastly pointed to policemen as the ones who coerced him into admitting his guilt and this was only because of the pains he suffered and the further threats that the skin of his head would be peeled off after his hair had been shaved. (Tsn., 224-225, Hearing of November 15, 1979).

It was clearly a mistake for the trial court to accept the testimony of Sanciano Satorre and arbitrarily reject that of the accused. Firstly, Sanciano Satorre declared that when he met Lucio Lumayok in the municipal jail, it was on November 9 or 10, 1979. (Tsn., 26, Hearing of January 9, 1980). All other evidence uniformly establish however, that Lucio Lumayok was brought to the police station for investigation only in the evening of November 12, 1977 at about 6:00 o'clock. (Tsn., 149-150, October 24, 1978). Manifestly, Lucio Lumayok could not have been brought to the jail on November 9 or November 10, and become the cellmate of Sanciano Satorre when the crime for which the accused had been charged occurred only on November 11, 1977. He could not have been brought to jail on November 9, 1977 for a crime that was only committed on November 11, 1977. This significant falsity in Satorre's testimony discredits completely this witness.

The explanation given by Satorre for his having burned the pubic hair and penis of herein accused borders on the incredible. His fantastic testimony in this regard is as follows:

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"ATTY. APORTADERA: (On Cross Examination)

"Q. And after you learned that Saturday evening that he (Lucio Lumayok) was the perpetrator of the crime against your niece, you slept together in the cell, is that correct?

"A. Yes, Sir.

"Q. Why did you not burn his public hair immediately when you came to know that he was the one who raped your niece in the evening of Saturday?

"A. I just allowed him to sleep because he was tired and hungry, Your Honor.

"ATTY. APORTADERA:

"Q. Why did you not burn his pubic hair that Sunday morning?

"A.

Because I allowed him first to take a bath.

"Q. But you would not have burned his pubic hair had he not offered you to burn it?

"A. Yes, Sir.

"Q. You want this Court to believe that Lucio Lumayok was the one who offered to you that his pubic hair will be burned?

"A. No, I told him, "Bay, I'm going to burn your pubic hair", He said, "All right, burn it."

So I burned it, Sir." (Tsn., pp. 55-57, Hearing of January 9, 1980). (Parenthesis supplied).

Considering basic human instincts and the ordinary normal behavior of persons, We find difficult to conceive that anyone would willingly permit another to burn his pubic hair and penis or that Sanciano Satorre allegedly affronted by the murder and rape of his niece would first allow the offender to rest, sleep and take a bath before maltreating Lucio Lumayok. The version of Sanciano Satorre of said incident becomes more incredulous for he maintained that while he was burning the pubic hair of the accused, the latter did not even shout because of the pain. (Tsn., 50, Jan. 9, 1980).

The Court finds more plausible and closer to truth the averments of Lucio Lumayok that after being boxed and maltreated, his pubic hair and penis were burned by persons and/or policemen (whose names he could not ascertain as he doesn't know how to read), and that after his hair was shaved, he was threatened that they will get the skin of his head (Tsn., 223-225, November 15, 1979) if he would not confess to the wrongs imputed to him. Despicable practices and methods resorted to by overzealous, malevolent investigators are not altogether rare. In fact, the physical mark of such police brutality was actually noted by the trial judge in his decision thereby strengthening appellant's testimony in this regard. The trial judge, however, discounted the resulting scar simply because it was already small at the time he inspected the same. Clear error was committed by him. He failed to realize and take into account that the interval of fully two years from the time the accused suffered those burns could naturally have reduced the visible size of such scar. That the hair of the appellant was shaved off (Tsn., 31, Jan. 9, 1980) is accepted by the prosecution but again responsibility for this indignity was again attributed to another prisoner, obviously to remove responsibility for the brutality of the policemen investigators pointed to by appellant.

That the accused was gravely maltreated can be deduced again from the fact that when the appellant's father,

Angel Lumayok, tried to visit Lucio Lumayok three days after the latter's arrest, he, (Angel Lumayok) was advised to desist from visiting as the police were still "hot" or ill-tempered. Thus it was only after ten days had passed when Angel Lumayok was finally able to meet his son (Tsn., 405-406, Jan. 16, 1980). Upon meeting his son, he, Angel Lumayok, found the herein accused weak from maltreatment. Then, upon meeting each other, the accused described to his father the various forms of punishment he received to compel him to confess his guilt. Because the appellant told his father that he was placed in a barrel of water and a gun poked into his mouth by Patrolmen Bajao and Sarena does not necessarily render false his other assertion that his penis and pubic hair was burned. The harrowing forms of maltreatment mentioned by the accused to his father could be in addition to the burning he suffered. What is significant is that each harm inflicted on the accused remains sufficient to render his alleged extrajudicial confession worthless and inadmissible. The totality of the coercion in this case would be beyond doubt, irresistible and lasting and more than sufficient to compel the accused to falsely admit what he had from the very start persistently disavowed.

We can find no logical basis for the trial court's pronouncement that the purported confession, Exh. F, should be accepted because there are details mentioned therein which the accused knew but are not known to others. The confession of the accused, Exh. F, was extracted and prepared on November 13, 1985 after the body of the victim had already been found on November 12, 1977 by others. The discovery of and the place where the victim was discovered cannot, therefore, be said to be on account of the alleged extrajudicial confession of Lucio Lumayok. Similarly, the description of the injuries of the body of the deceased mentioned in Exh. F, could easily have been supplied by the investigators who already knew of these injuries even before they started investigating the accused. The embellishments in the confession as to the alleged conversation by the accused with the deceased have absolutely no corroboration whatsoever and all such matters stand denied by the accused. What were placed by the investigators as to a supposed conversation that happened between the accused and the deceased and the motive attributed to appellant could well be to supply support to a theory they had conceived in the absence of any factual or direct evidence linking the accused to the crime charged.

Aside from the two confessions of the accused above-mentioned, one of which was rejected and the other accepted by the trial court, mention is made of a verbal admission of guilt made by the accused in the afternoon of December 6, 1977, to one Antonio Lopez, an employee of the Court of First Instance of Davao, Branch V, Digos Branch, when the accused was brought to that court by the policemen of Hagonoy. According to Antonio Lopez, he asked Lucio Lumayok why he killed the victim and appellant said it was because he was desperate of his situation because his fiancée just separated from him and that he will just plead guilty. (Tsn., 130, July 26, 1978).

It would be imprudent and reckless for this Court to affirm the conviction of the accused on the basis of such brief conversation. Although the accused candidly admitted having had a conversation with Antonio Lopez, significantly, he stated during his trial, the following:

x x x x x x x x x x

"Q. You said you were brought before this Honorable Court two months after being detained in the Hagonoy Municipal jail, can you remember or according to Mr. Antonio Lopez, when you were brought here, you were asked by him whether you were the one who killed Gloria Bemos and according to him, you answered "yes"; now, did you remember having given such an answer to a person here in court when you were brought here?

"A. Yes, Sir, I remember.

"Q. Why did you tell him that you were the one who killed Gloria Bemos?

"A. Because I was afraid, Sir.

"Q. You were afraid of what, Mr. Lucio Lumayok?

"A. Of the police.

"Q.

Why were you afraid of the police?

"A. Because the policeman told me that if I will not tell that I was the one who was the malefactor, I will be brought back to the municipal building.

"Q. Why were you afraid to be brought back to the municipal building?

"A. They will again maltreat me there.

"Q. Do you have a fiancée, Mr. Lucio Lumayok, before this incident of November 11, 1977?

"A. Yes, Sir, I have.

"Q. And according to the statement which you allegedly volunteered, the reason for killing this Gloria Bemos was because you were, your girl friend left without your knowledge, that is why in desperation you killed Gloria Bemos, what can you say about that?

"A. That is not true, Sir." (Tsn., pp. 233-237, Hearing of November 15, 1979; Underscoring supplied).

After having been subjected to various forms of maltreatment and inhuman indignities while detained at the Hagonoy Municipal Jail, the trauma of that experience understandably could compel the accused to acknowledge whatever is asked of him to do so as to avoid a repetition of the acts done to him. On that occasion, as admitted by Mr. Antonio Lopez himself, there were two policemen from Hagonoy, one of whom was in uniform accompanying the accused. (Tsn., 131-132; Hearing of July 26, 1978).

It has been stated in the case of *People vs. Alto*, 26 SCRA 342, 364, that:

x x x x x x x x

"When the threat or promise was made by, or in the presence of, a person in authority, who has, or is supposed by the accused to have power or authority to fulfill the threat or promise, the confession of the accused will be presumed inadmissible. A confession made under the influence of threat or promise of reward or leniency is inadmissible."

What further beclouds this alleged confession is that subsequent actions taken by the accused directly contradicts what the accused is claimed to have voluntarily told Antonio Lopez. At the trial, the accused pleaded not guilty which is inconsistent with his alleged willingness and desire to plead guilty, as said so by Antonio Lopez. Lucio Lumayok also denied at the trial that he even became desperate when his girl friend left without his prior knowledge and for this reason he killed Gloria Bemos. (Tsn., 237, Hearing of November 15, 1979). We find it rather unbelievable that after continuously denying his guilt to the policemen-investigators, thus resulting in his torture and maltreatment, the herein appellant would hastily acknowledge in a chance conversation his guilt to Antonio Lopez, who was not even an investigator but a mere curious by-stander and employee of the Court with whom appellant had no previous familiarity with. It is far more believable that if appellant did affirm his guilt to Antonio Lopez, it was because of the appellant's lasting fear of the threats made on him by the policemen who brought him and who were then present, that he, Lucio Lumayok, would be brought back to the municipal building and again maltreated if the latter will disavow responsibility for the stated crimes.

Moreover, apart from the alleged statements attributed to the accused by the policemen that the fiancée of the appellant had actually abandoned him, We find no actual evidence of this fact, or any corroborative proof to overcome the denials made by the appellant of such matters. Likewise, there is no independent proof nor any testimonial evidence of the herein accused regarding the alleged drunkenness. His alleged intoxication appears to be baseless considering that in the very evening of November 11, 1977, he was even invited to join in the search for the missing Gloria Bemos and no one ever declared that the accused manifested then any sign of drunkenness or had any appearance of having been earlier intoxicated.

But even assuming that appellant's fiancée left without first advising Lucio Lumayok, it is extremely improbable that only because of this simple circumstance, the herein accused would suddenly go berserk and commit murder and rape. There is no indication at all that the accused ever became despondent or was in despair. The undisputed fact is that even in the afternoon of November 11, 1977, the accused was playing basketball with his other companions and behaving normally. Nothing at all in the case records reflect that the accused had a disordered mind which brought about the commission of the crimes imputed to him as theorized by the prosecution.

What restores our faith in the innate goodness of simple ordinary folks is their instinctive desire to help the poor and oppressed even if they themselves are weighted down with the same misfortune being suffered by the accused. It is Lucio Lumayok's co-prisoners in the provincial jail who manifested special concern for the plight of the herein appellant by urging a visiting missionary priest from Davao City, Rev. Steven Morgan, to help and assist Lucio Lumayok. Said missionary priest, after interviewing the accused, was convinced of the latter's innocence and Lucio Lumayok's protestations that he was coerced into acknowledging his guilt for crimes he did not commit. (Tsn., 300, Hearing of November 15, 1979). Father Morgan, faithful to his calling and desire to serve God by helping the poor and the oppressed, thereupon contacted and obtained the services of the Aportadera Law Office in Davao City which then very generously rendered legal services to the accused without charging any fee (Tsn., 285-289, Ibid). The Christian charity and kindness extended to a member of a cultural minority tribe by a visiting missionary priest and by others who are all strangers to the accused serve as a redeeming saving grace in this case.

It is also but proper and fitting that this Court commend the unfaltering and very able assistance rendered to the accused, seen from the excellent presentation made of his case, particularly by his defense counsel, Atty. Alfredo

L. Aportadera of Davao City, who unstintedly and magnanimously contributed his legal talents and efforts in the hope that justice may ultimately prevail.

To close, in the absence therefore of any evidence, direct or circumstantial, satisfactorily establishing the guilt of the herein accused and considering that his involuntary confessions or admissions can be attributed to the violence, torture and lingering threats inflicted on him and as the recitals in the supposed admissions, tainted with dubiousness are attached to a weak and improbable motivation, We conclude that the guilt of the herein accused has not been established beyond reasonable doubt.

The palpable violation of human rights by the policemen who investigated the herein accused should be dealt with by the Office of the Provincial Fiscal of Davao del Sur, as well as by the National Police Commission and thereafter, the corresponding appropriate disciplinary action should be instituted against all parties responsible therefor, if so warranted by the evidence found.

The task of ferreting out the facts relative to the death of Gloria Bemos, now that the responsibility for the heinous crimes committed against her remains a question mark, should once more receive the attention of the proper agencies of the government, such as the Philippine Constabulary and the National Bureau of Investigation.

Let a copy of this decision be also furnished the Minister of Justice, for whatever action he deem proper to take on the matter.

WHEREFORE, the judgment appealed from is hereby set aside and another one entered acquitting the accused Lucio Lumayok of the crimes charged against him. His immediate release from custody is hereby ordered unless he is held on other charges. With costs de oficio.

SO ORDERED.

Makasiar, C.J., Teehankee, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and Patajo, JJ., concur.

Aquino, J., no part.

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