

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO FLORES, ACCUSED-APPELLANT.

G.R. No. 58170. June 06, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a prosecution for rape with homicide based on information reading as follows:

That on or about October 4, 1972, in Sitio Veterans, Barrio Dado, Municipality of Alamada, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one Jesusa Maning, a virgin, thirteen years of age, against her will and without her consent; that on the occasion of the said rape and for the purpose of enabling him to have carnal knowledge of the said Jesusa Maning as above mentioned, the herein accused, taking advantage of his superior strength and with intent to kill, did then and there, wilfully, unlawfully and feloniously stuff her mouth with a (sic) soil to prevent her from shouting and making any outcry and then choke her by the neck, which as a result thereof (sic) said Jesusa Maning died of asphyxia shortly thereafter.

Contrary to law particularly Article 335, paragraph 6, as amended, of the Revised Penal Code, with the further aggravating circumstance that the crime was committed in an uninhabited place which was especially sought for to facilitate the commission of the crime.[1]

The accused in this case is Ernesto Flores, born on April 12, 1949, an elementary school graduate, a farmer, and a resident of Dado, Alamada, North Cotabato. His alleged victim was Jesusa Maning, thirteen years of age at the time of her death, and the late daughter of Felicisimo Maning, also of Dado, Alamada, North Cotabato.

The prosecution relied on the testimonies of six witnesses, and various documentary evidence, among which was a one-page (alleged) extrajudicial confession of the accused. (Actually, there were two confessions.)

Felicisimo Maning testified that he went looking for the victim on October 4, 1972 when she failed to arrive home at five o'clock in the afternoon from Dado Elementary School. He alleged that he, together with several companions, among them Arturo Molina and Juanito Estella, inquired from residents if they had seen Jesusa. He was told that his daughter was seen earlier on her way home. He related that he continued his search and chanced upon a certain Pilo who informed him that he saw his daughter with the accused near a cornfield. He testified that he searched the cornfield, and that at about eleven o'clock in the evening, he (and his companions) found Jesusa's cadaver.

Another prosecution witness, Juanito Estella, then a sixth grade student, testified that he saw Jesusa that fateful day with the accused. The accused was allegedly four or five meters ahead of Jesusa. He asked where the accused came from and the accused allegedly answered that he came from a councilor's house where a party was held. He said that in the middle of the cornfield where Jesusa's dead body was recovered, there laid a trail. The trail, which

was about twenty meters from the body, was the pathway along which Jesusa and the accused were purportedly seen walking.

Arturo Molina, another witness for the prosecution, submitted his sworn statement wherein he stated that on the day in question, Felicisimo Maning[2] sought his assistance in locating his missing daughter, and that on their way, they bumped into Juanito Estella, who allegedly informed them that he saw her with the accused. He said that they found Jesusa's corpse at the cornfield nearby at about eleven o'clock late in the evening.

The following day, October 5, 1972, Dr. Victor Castronueva, a physician, examined Jesusa's corpse and rendered his medico-legal report and post-mortem findings. The same are hereinbelow reproduced:

Name : Jesusa Maning

Age : 13 years

Sex : Female

Status : Single

Address: Veterans Area, Alamada, Cotabato

Date – Time and Place of Death and alleged commission of rape, October 4, 1972-6:00 P.M., Veterans Area, Alamada, Cotabato.

Alleged Case - Rape with Homicide.

Date, time and place of post mortem examination:

October 5, 1972-3:30 P.M., at the Municipal building, Alamada, Cotabato.

Requesting Officer: Sgt. Marcelo H. Concepcion.

Preliminary Findings:

The deceased is a female appearing at about the stated age with fairly developed body, black hair, wearing a checkered red and white cotton dress with jersey (sic) under garment and white cotton panty with blood stains at the back portion. The mouth is full of dark-brown soil (mud). There is evident marked lividity of the lips, fingers and toe nails and on the skin. The forearms are flexed (sic) with evident rigor mortis.

Post Mortem Findings:

1. Abrasion - 3.5 cm. by 1/2 cm. located at the left face from the lateral angle of the eyelids extending laterally and backward;
2. Abrasion - Contused 4.5 cm. by 2 cm located at the right antero--lateral aspect subhyoid region of the neck with its medial tip at the median line extending laterally;
3. Abrasion - 1 cm by 1/4 cm located at the antero lateral aspect of the neck left side, 4 cm from the median line at the subhyoid region;
4. Contusion- 2 cm by 1 cm located at the dorso-lateral side of left elbow joint;
5. Contusion - 1 cm by 1/2 located at mid portion of left arm lateral side;
6. Contusion - 1 cm in diameter located at the distal portion of the right forearm medial side;
7. Lacerated wound 5 cm by 2 cm located at the right leg on the region of the calf directed parallel to the leg;

8. Contusion - 2 cm in diameter located at the posterior thigh, right, midway between its distal and proximal ends;

9. Multiple abrasions popliteal area left knee;

10. Multiple abrasions and contusions left gluteal area and proximal portion posterior aspect left thigh;

11. Genital Findings:

The deceased has no pubic hair. Labia majora and minora are coaptated. Separation of the labias revealed complete hyminal (sic) lacerations corresponding to 6 and 3:00 o'clock at the face of the watch. Vagina admits a tube of 2 cm with moderate resistance. Its rugosities are almost obliterated. There is a scanty white clear fluid coming out of the vaginal opening.

Cause of Death: -Asphyxia (Anoxia)

Remark - Recent hymenial (sic) lacerations were noted on the deceased.[3]

Cause of death was established as asphyxia, brought about, in the opinion of Dr. Castronuevo, by "hands pressed in the neck." [4] He also found the mouth of the victim filled with mud, a testimony corroborated by Felicisimo Maning, Juanito Estella, and Arturo Molina. According to him further, the victim suffered "hyminal [sic] lacerations" [5] and that her vaginal opening yielded secretions. It was not however determined whether the secretions were vaginal or seminal fluids. He also saw blood stains at the back portion of Jesusa's torn panties.

The records allege that on the same day the accused was brought to the station commander of Alamada, North Cotabato, Ernesto Concepcion, by the barrio captain and "some of the army officials." [6] He was allegedly interrogated there and shortly after which, he allegedly confessed authorship of the offense. He also allegedly signed a statement (an extrajudicial confession) admitting the rape of Jesusa Maning. The statement was later forwarded to Judge Jesus Reyno of the Municipal Court of Alamada.

The records also show, however, that on the same day, the accused had been brought to the Philippine army headquarters at Alamada, and interrogated there by Sgt. Rogelio Bonifacio, First Lt. Ricardo Referente, and Second Lt. Ricardo Kierulf. [7] It also appears that he executed a confession there. [8]

Judge Reyno asserted that the accused was presented to him on October 6, 1972. He (Judge Reyno) claimed to have interpreted his confession in Cebuano, a language allegedly known to him (the accused), and later translated into English. He also said that he personally investigated the accused but did not put his question to writing. According to him "he was in a hurry because the life of the accused was in danger because of the gravity of the crime." [9]

He alleged that he also subsequently called the accused to the witness stand where the latter allegedly affirmed his sworn statement. He allegedly also advised the accused of his right to counsel but the latter allegedly insisted that they proceed. [10] He then ordered the forwarding of the case to the then Court of First Instance for trial. His order reads as follows:

Above-named accused having voluntarily admitted in open court and under oath that he raped and choke (sic) the neck of the victim - Jesusa Maning, resulting in the latter's death, the Court is of the opinion that there is a probable cause to believe that the crime of "Rape with Homicide" has been committed by the accused.

Case remanded to the Court of First Instance, Cotabato City for further action.

The Chief of Police, is hereby directed to cause the transfer of the accused to the Provincial Jail and likewise to cause the records of the case to be delivered to the Clerk of Court, Court of First Instance, Branch 11, Cotabato

City.

SO ORDERED.[11]

The accused denied the charges against him and insisted that he was forced to sign the confession(s) in question. He also claimed that he was maltreated by the authorities.

The records show that the reception of the evidence for the accused was postponed fifteen times. The accused himself testified on June 2, 1977, but failed, for one reason or another, to present the supporting testimonies of his witnesses, Vivencio Munar, Aurora Flores, and Leopoldo Flores. On the same date, the trial court issued subpoenas directing the above witnesses to appear under pain of arrest. However, in spite of the subpoenas, none of them appeared in court. On November 8, 1977, his case was rested with only his testimony on record.

In his testimony, he stated that he never knew the victim, Jesusa Maning. He alleged that at about two in the morning of October 5, 1972, he was picked up by certain policemen and armed soldiers of Alamada. He was taken with his wife to the army headquarters. He was not allegedly informed why he was being taken except that he would be "ask[ed] something".[12] Upon reaching the army headquarters, however, he was allegedly "beaten," "kicked," and "maltreated",[13] while his wife watched. He also declared that he was "burned"[14] on the face and his hand "buttstroked" against cement.[15] He averred that he was hit on the head with a bottle and suffered a cut lip because of punching.[16] He did not allegedly recognize his tormentors because it was "dark".[17]

He was later transferred to the municipal jail where he claimed he was likewise manhandled, kicked, and beaten on the breast, back, and abdomen. He claimed that he complained later to the chief of police who allegedly promised to take him to a doctor. He claimed, however, that "if I will be out of jail, they [would] shoot me, according to the chief of police." [18]

He also said that he signed his confession(s) "because if I [would] not ... they [would] kill me." [19] He alleged that he did not complain to Judge Reyno because he was allegedly "warned that ... if I [did], they [would] kill me." [20] He insisted that his alleged confession(s) was (were) not his voluntary statement(s).

It was likewise his contention that on October 4, 1972, he was harvesting corn with his brother-in-law, Vivencio Munar, and his (the accused's) brother, Leopoldo Flores. They were allegedly through by six o'clock in the afternoon. He, the accused, allegedly arrived home at seven o'clock in the evening.

He declared that he was not informed why he was being held by the authorities. At the trial, he alleged that his wife has since left him.[21] He stated, finally, that he did not furnish the information narrated in his alleged confession(s).

On February 21, 1978, the trial court rendered judgment, the dispositive part of which reads as follows:

WHEREFORE, in view of the foregoing, the Court hereby finds the accused Ernesto Flores guilty beyond reasonable doubt, of the crime of rape with homicide, as charged, and hereby sentences him to death. He is further sentenced to indemnify the heirs of the victim in the sum of TWELVE THOUSAND PESOS (P12,000.00), Philippine Currency, in concept of moral and exemplary damages, and to pay the costs; without subsidiary imprisonment in case of insolvency.

SO ORDERED.[22]

It can not be over-emphasized that no eyewitness report was submitted to the court. The only eyewitness, as it appears, was the victim herself, the lamented Jesusa Maning, whose death has muted all possible eyewitness accounts.

In convicting the accused, the trial court relied on first, circumstantial evidence, and second, the former's extrajudicial confession.

It is the opinion of this Court that in so holding, the trial court erred and hence, the accused is entitled to an acquittal.

We do not believe that the fourfold circumstances invoked by the lower court, as follows:

The circumstances were: (1) he was the last person seen with the victim alive, by two person - by prosecution witness Juanito Estella, and by Pilo, the information given by Pilo was testified to by Felicisimo Maning. As stated above, the testimony of Felicisimo Maning that Pilo informed him that he saw the daughter, Jesusa Maning, together with Ernesto Flores in the afternoon of October 4, 1972, was not objected to even if it is hearsay; therefore, this information is admitted and considered as evidence for the prosecution. Furthermore, this information given by Pilo tallies with the testimony of Juanito Estella. Pilo's information that he saw Jesusa Maning following the accused in a cornfield is, therefore, corroborated by the testimony of Juanito Estella.

This information of Pilo and this testimony of Juanito Estella contradict the uncorroborated testimony of the accused that in the whole afternoon of October 4, 1972, he was harvesting corn in Upper Valley.

(2) The circumstances that the accused was with the victim in a cornfield as indicated by the information of Pilo and the testimony of Juanito Estella is further corroborated by the fact that the dead body of Jesusa Maning was found in the cornfield pointed by Pilo and Juanito Estella.

(3) The circumstances that Pilo and Juanito Estella saw the accused on the afternoon of October 4, 1972 with the victim in the cornfield is not denied directly by the accused. All that accused said was that he did not know Juanito Estella and that he was harvesting corn in the afternoon of October 4, 1972, and that he left the cornfield at 6:00 p.m. and reached his house at 7:00 and from 7:00 pm. of October 4, 1972 to 2:00 a.m. October 5, 1972, when he was picked by military men he had been in his house. Neither the wife nor the brother-in-law, Vivencio Munar, nor the brother, Leopoldo Flores, came to Court to corroborate the claims of accused, Ernesto Flores. As shown by the records and by the orders copied above, the accused was given all the chances to present his witnesses. Why even his own brother and his own wife, not to mention his brother-in-law, did not testify for the accused has never been explained. The court could have issued the warrant of arrest for the witnesses of the accused considering the constitutional right of the accused "to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf "; but the accused did not avail of this right and did not ask for the compulsory process in spite of the offer of the court to do so, the moment it was asked for. At once [sic] instance, counsel for the accused wanted the Court to have the witnesses come at government expenses, but counsel did not submit evidence to show that the witnesses are entitled to that privilege; and, as may be seen on page 40 of this judgment, counsel said that while he was aware of the constitutional right of the accused he would not like to avail thereof, if possible, because of his past sad experiences.

As testified by the prosecution witness Arturo Molino, the accused Ernesto Flores during the investigation in the SEMP admitted that he raped and killed the victim. (4) As testified by prosecution witness Arturo Molino, the accused had to admit because he was seen to have scratches on his face during the investigation at the SEMP.[23]

are sufficient under the Rules of Court[24] to justify a conviction. With regard to the first, that is, that the accused was the last person seen with the victim alive, our opinion is that it does not reasonably lead to the conclusion that ergo, the accused forcibly took the victim, ravished her, and later killed her. All that "Pilo" and Estella said that the accused and the victim were together when the former was last seen alive.

"Pilo"'s and Estella's accounts, in our view, do not establish in any rational manner a connection with the offense

of rape with homicide. Moreover, the lower court itself found that "Ernesto Flores was about 4 or 5 meters ahead of Jesusa Maning." [25] They can not be said therefore to have been "together".

Moreover, "Pilo" was never presented in court although obviously, he was a "star" witness for the prosecution. Albeit the defense registered no objection to the witness, Felicisimo Maning's, version of what "Pilo" told him, thereby making it admissible in evidence, it is nonetheless insufficient to prove the accused's liability. It would have been different had "Pilo", assuming he exists, seen the accused taking the victim to the scene of the crime, which would have brought about the fair inference (though debatable) that the accused shortly raped and killed her there, but to see them near there is not enough to give rise to this inference.

The fact that Jesusa's dead body was later found in the cornfield (circumstance no. two) neither satisfies our rule on the appreciation of circumstantial evidence. In the first place, it is by itself an inference that since the victim's body was found in the cornfield, the accused must have brought her there simply because the accused, moments before, was seen near it. The legal theorem, however, is that one can not draw an inference from another inference. If so, and in Moran's words "we would be entering upon a sea of inferences with no rudder or compass to control the direction." [26]

The trial court's attack (circumstance no. three) on the weakness of the defense is not well-taken. Again, the legal rule is that the prosecution can not rely on the vulnerability of the defense evidence but on the strength of its own proofs. [27]

The fact, finally, that the accused was seen with scratches on his face at the time he was picked up for questioning (circumstance no. four) can not by any means be taken against him as evidence of guilt. The prosecution has not demonstrated the link with the accused's injuries and the offenses charged. It is plain conjecture to say the accused must have been guilty of rape with homicide because he had scratches in his face.

Under the Rules of Court:

SEC. 5. Circumstantial evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. [28]

According to Moran further, "the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion," [29] that is, that the accused is guilty beyond reasonable doubt. In other words, the circumstances themselves, or a combination thereof, should point to overt acts of the accused that would logically point to the conclusion, and no other, that he is guilty of the crime charged. In this case, the fact that the accused was seen with the victim (it can not indeed be said that he was "with" the victim because he was walking four or five meters ahead of her), and no more, does not remotely point to this conclusion.

It must also be noted that in criminal cases, the guilt of the accused must be shown "beyond reasonable doubt." [30] In the absence of such a showing, the Constitution presumes him to be innocent. [31] The chain of circumstances above, in our opinion, has not overthrown this presumption.

We come to the accused's alleged extra-judicial confession(s). In his statement given to the police, he supposedly said:

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Q - Will you narrate in brief detail as to how rape and killed Jesusa Maning?

A - Yesterday sir at about 4:30 in the afternoon of October 4, 1972 while I was standing near the House of Mr. Estela, Jesusa Maning passed by, then I followed her until we reach the corn field. While I was follow-ing her I asked her where she would go, then she answered that she is looking for a mushrooms. While she was still in the cornfield, I force her to lie down. While she was lying I ride on her, but when she shouted I place a soil in the mouth, then I squeeze her neck. That when that girl did not shout I already started my purpose on raping her until I succeed.[32]

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In his statement given at the army headquarters, however, he allegedly declared:

9. Q - Will you relate to us the unusual incident?

A - Yes sir, at around 5:15 in the afternoon while I was on my way to my house, it so happened that I followed Jesusa Maning who came from Dado. I was following Jesusa Maning and while we were in the middle of the route, a corn planted area, Jesusa stopped and waited for me. When I reached the place where she stopped she told me "Ondang usa ta nang magpahulay una ta" meaning, "We will stop first nong, we will rest for a-while". She added "Ondang usa ta nong kay mangihe una ko", meaning, "We will stopped nong because I am going to urinate". I answered "Sige lang kay maghulat ko", meaning, "Go ahead and I'll just wait". She went to the corn field right at trail around 15 yards from the way. I waited for about 5 minutes then I heard her calling for me. She said "Dali na nong" meaning "come over here," I went to her and saw her lying with her panty on her cover thigh and her shirt raised just below her breast. Beefe I went to her I lowered my pants and underwear just above my knees. From there I laid on top of her and tried to insert my penis on her vagina. I also fondled and kissed her. When she felt the pain, she resisted by pushing me but I held both of her hand, embraced and kissed her. When the head of my penis entered her vagina, she shouted and cried but I placed soil into her mouth. She was not able to shout anymore and when I was through with the sexual intercourse I raised her panty and left her in the corn field. She was unconscious when I left her. Then I went directly to my home.[33]

The lower court ruled that the above confession(s) was (were) conclusive against him. It also admitted it although there was no information thereon that he was advised of his rights to remain silent and to counsel.

We have held that the provisions of the 1973 Constitution requiring law enforcers to apprise the accused of his constitutional rights during custody have only prospective application.[34] Confessions extracted prior to January 17, 1973, the date the 1973 Charter was ratified, so we have held, are not covered by these provisions.[35] The confession at bar having been taken on October 6, 1972, is beyond the ambit of the Constitution of 1973.

To be sure, the counsel de oficio, in her well-written brief for the accused, urges us to reexamine Magtoto, but the Court sees no need for it. Since its promulgation, Magtoto seems to have firmly settled as correct jurisprudence.[36]

It does not follow, however, that since the alleged confession was taken prior to January 17, 1973, it is, hence, admissible. The right against self-incrimination, by way of an extrajudicial confession, is nevertheless subject to the condition sine qua non that the confession had been given voluntarily and freely. As early as 1913, we have rejected involuntary confessions and proclaimed them worthless as a piece of evidence.[37] Thus:

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x x x Involuntary confessions are rejected by all courts--by some on the ground that a confession so obtained is unreliable; and by some on the grounds of humanitarian principles which abhor all forms of torture or unfairness toward the accused in criminal proceedings. But either theory arrives at the same goal. Such a confession is not legal evidence and must be rejected. If the accused satisfactorily shows that it was made involuntarily, the confession stands discredited in the eyes of the law and is as a thing which never existed. It was therefore error to reject the testimony of the accused in the present case because it was in conflict with her

confession. The admissibility of that confession should have been first decided. If admissible as evidence, it is unnecessary to further consider the evidence of record, as it is virtually equivalent to a plea of guilty in open court. But if not admissible as evidence, the prosecution must rely on other evidence to sustain a conviction.[38]

In the present case, the Court finds evidence that the accused has been forced to sign his "confession(s)". The following circumstances convince the Court: (1) the accused was picked up by armed soldiers at two o'clock in the morning of October 5, 1972; (2) the arrest was supported by no warrant of arrest; (3) he was later surrendered to the custody of the police; he was not informed why he was being taken; (4) on the same day, he supposedly signed his confessions; and (5) the confessions were taken under questionable circumstances: (a) the confession at the army camp was preceded by a questioning in English, translated into Chavacano, a dialect with which the accused has not been shown to be conversant; (b) the confession taken by the police on the other hand was in plain English, a language not shown to be known to the accused.

The accused also said that while in army custody, he was allegedly maltreated and hurt. While we can not accept this testimony at face value because it is likely a story, the fact alone that the accused was taken by armed men (in the small hours of the morning) is to us, a kind of compulsion that indeed makes men do things they would not voluntarily do. It does not moreover appear disputed that the accused was not told why he was being arrested or being held for questioning. Assuming that he was not physically abused as he claimed, the circumstances surrounding his arrest, to our mind, are enough mental torture that would taint any subsequent confession.

We have ruled that compulsion is not always to be understood as a violent act.[39] Compulsion may also be mental, in which by mere overpowering of the will one is made to perform an act not truly his own.

It must be stressed that the accused was arrested with no warrant. This makes, so we hold, the arrest invalid, and his subsequent two-day interment, under duress. We can not likewise discount the fact that martial law had just been proclaimed, and truth to tell, martial law signified the power of the gun.[40] We hold that, under such circumstances, the accused could not have validly made a voluntary confession.

The haste in which the accused was furthermore made to "confess" has not eluded the Court. It is noteworthy that the accused was picked up for interrogation at two o'clock in the morning. He was investigated there, and though the time of the investigation is hazy (his army confession indicates a time of "0550M"), the Court presumes that it was done in the early hours of October 5, 1972, since at or about 3:20 P.M., he was at the office of the station commander. The Court finds it indeed strange that this episode was not recounted in the decision, and much more, with respect to the army confession which was not taken up at the trial.

It is also strange that the accused made two confessions, when obviously, one would have sufficed. There was no point in executing the police admission, when evidently, the accused's military captors could have turned over his (the accused's) army confession to the police when he himself was bodily surrendered to the station commander. There is no explanation in the records for what we find to be suspicious conduct on the part of the military and/or police. It likewise reinforces our belief that the twin confessions did not come from the lips of the accused.

For the same reason, we equally condemn the precipitousness of Judge Reyno. He admitted in open court that he was "in a hurry" to terminate the investigation at first, because "the life of the accused was in danger because of the gravity of the offense"--whatever that meant-- but later, because "the relatives might go to jail." [41] There was no basis for this alleged apprehension because the accused was under military custody. Secondly, it was no reason at all to terminate the proceedings (although the accused allegedly insisted that his "confession" be admitted forthwith); His Honor should have nonetheless satisfied himself that the accused was not making, as it were, an improvident plea of "guilty".

The records also show that aside from the admission, there was no hard evidence against the accused before the judge.[42] It was therefore incumbent upon Judge Reyno to content himself that the accused was prima facie guilty by further investigation.

Under the premises, we can not say that the accused was given his day in court. We have no choice but to overturn his conviction.

It is true that in a number of cases, we sustained confessions based on replete details only the accused could have known.[43] We can not, however, apply this teaching in this case, first and last, because at the time the accused signed his alleged confession(s), the circumstances behind the victim's death were already well-known, on the strength of the report of Dr. Castronuevo and the open disclosures of the corpus delicti a day before.

It is not necessary to dwell on the other errors assigned by the defense, notably, the trial court's failure to compel the attendance of witnesses on behalf of the accused. We find that based on the very evidence for the prosecution, conviction is not warranted.

On April 25, 1989, the Court received a "motion to withdraw appeal" signed by the accused alleging that "his appeal efforts [are] fruitless ... and [that] to pursue [it] ... is tantamount to delaying the execution of his sentence." [44] On June 19, 1989, the Court directed the accused's counsel de oficio to verify the genuineness of the accused's signature on the motion and the voluntariness of the withdrawal. On October 23, 1989, the counsel for the accused filed a manifestation informing the Court that the accused did sign the motion after "he learned about the demise of his father and believing that nobody cares for him anymore, including his counsel who seems to have abandoned his case." [45]

At this point, the Court genuinely commiserates with accused for what indeed boils down to delay in the administration of justice through no fault of his own (or the Court's either) but on account simply of the slow wheels of justice in the country. Let him not be misled, however, that "nobody cares for him anymore" because if nobody else is indeed left, he can count on the Supreme Court. If it is any consolation, let the accused be reminded that if his labors were an uphill battle, they were not a bad fight, and perhaps the price we all pay for freedom.

WHEREFORE, the accused is ACQUITTED on reasonable doubt.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), see attached dissent.

[1] Original Record, 19.

[2] Id., 5. Jesusa's father is referred to therein as "Teodoro Maning".

[3] Id., 6-7.

[4] Rollo, 28.

[5] Id.

[6] Id., 31.

[7] Record, id., 13-14.

- [8] Id., 13.
- [9] Id., 29.
- [10] Id.
- [11] Record, id., 9.
- [12] Rollo, id., 44.
- [13] Id., 45.
- [14] Id.
- [15] Id.
- [16] Id.
- [17] Id.
- [18] Id., 46.
- [19] Id.
- [20] Id. Subsequently, however, he admitted that Judge Reyno inquired about his alleged injuries.
- [21] Id., 59.
- [22] Id., 69.
- [23] Id., 66-68.
- [24] RULES OF COURT (Revised Rules on Evidence), Rule 133, sec. 5.
- [25] Rollo, id., 36.
- [26] VI MORAN, COMMENTS ON THE RULES OF COURT 164 (1980 ed.).
- [27] People v. Saavedra, No. L-48738, May 18, 1987, 149 SCRA 610, 636, and cases cited there.
- [28] RULES OF COURT, supra, Rule 133, sec. 5.
- [29] MORAN, id., 165.
- [30] RULES OF COURT, supra, Rule 133, sec. 2.
- [31] CONST. (1987), art. III, sec. 14(2); CONST. (1935), art. IV, sec. 1(17).
- [32] Record, id., 4.
- [33] Id., 13.
- [34] Magtoto v. Manguera, Nos. L-37201-02, 37424, 38929, March 3, 1975, 63 SCRA 4. See CONST. (1973), art. IV, sec. 20.
- [35] Supra.
- [36] See People v. Decierdo, No. L-46956, May 7, 1987, 149 SCRA 496, 502, and cases cited there.
- [37] U.S. v. De los Santos, 24 Phil. 34 (1913).

[38] Supra, 359. See also *People v. Decierdo*, supra, and cases cited there; also *U.S. v. Navarro*, 3 Phil. 140 (1904).

[39] *Chavez v. Court of Appeals*, No. L-29169, August 19, 1968, 24 SCRA 663, 679; *People v. Olvis*, No. 71092, September 30, 1987, 154 SCRA 513.

[40] See *Javellana v. Executive Secretary*, Nos. L-36142, 36164, 36165, 36236, 36283, March 31, 1973, 50 SCRA 30, 132, Concepcion, C.J.

[41] T.s.n., Session of August 26, 1975, 50.

[42] Id., 53-54.

[43] See, e.g., *People v. Ribajado*, No. L-40294, July 11, 1986, 142 SCRA 637.

[44] Rollo, id., 212.

[45] Id., 223.

People vs Flores : 58170 : June 6, 1990 : J. Melencio-Herrera : Second Division : Dissenting Opinion Normal Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I am constrained to dissent.

The extrajudicial confession of the accused, obtained on October 6, 1972, prior to the effectivity of the 1973 Constitution, is admissible in evidence against him although he may not have been informed of his right to silence and to counsel (*Magtoto vs. Manguera*, 63 SCRA 4). That confession, detailing the manner in which he consummated the dastardly act, including the choking of the victim on the neck and the stuffing of soil into her mouth in order to silence her, taken together with the chain of circumstances analyzed by the Trial Court, sufficiently establish culpability.

A confession is presumed to be voluntary until the contrary is shown (*People vs. Dorado*, 30 SCRA 63). The involuntariness of the accused's confession in this case has not been adequately proven by the defense. Its rejection now is based on surmises and not on facts.

That the accused may have been picked up at the wee hours of the morning does not necessarily bespeak haste. An arrest may be made on any day and at any time of the day or night (Section 6, Rule 113). A known suspect of a grievous offense must not be allowed to fly the coop. A lawful arrest may even be made without a warrant provided an offense has in fact been committed and there is reasonable ground to believe that the person to be arrested has committed it (*People vs. Francisco*, 93 SCRA 351; Section 5, Rule 113, prior to its amendment in 1985). That the accused was not informed of the cause of his arrest is only his self-serving statement besides the fact that it runs counter to human experience as the authorities lost no time in picking him up the day after the commission of the offense. Truth to tell, he cannot feign ignorance of that cause.

There is nothing strange about the accused's second confession either. It is obvious that he was trying to exculpate himself by varying the admissions in his first confession. This even belies involuntariness.

Death may have sealed the victim's lips. But the offense against her honor and person has been proven. The accused has expressly acknowledged his culpability. It is not indispensable that the victim should testify as to the circumstances attending the commission of the crime before an accused may be held liable under his own confession. The affirmance of the trial court's verdict of guilt is called for. A hapless victim cries out for justice, too.

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