

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO GOLE CRUZ, ACCUSED-APPELLANT.*G.R. No. 69251. September 13, 1989*

Ponente: REGALADO, J.

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The anguish of bereavement is the inevitable consequence of the loss of a loved one, the normal response to which is resignation. Where, however, the deceased was snatched by death through a bestial and ignominious crime, the assuagement of the distress of those left behind cannot just be consigned to the balm of sublimation or the elixir of time. The intervening hand of justice must allay the grievous wrong. Nothing less is expected in this case by the relatives of the deceased Teresita Gumapay, who was married to Marcelo Buenaventura and a mother of a then six months old child, said decedent having been the victim, according to the trial court of a most detestable crime.

The brutalities inflicted upon her are reflected in the post-mortem report[1] and vividly depicted in the testimony of Dr. Benito Caballero, as summarized by the trial court, to the effect "that the deceased was strangled as evidenced by the multiple abrasions on the anterior portion of her neck that were caused by fingernails; that she was stabbed with a pointed and sharp instrument as evidenced by a 5-inch deep incised wound near her right jaw that cut her right jugular vein and carotid (sic) artery and by the three skin-deep incised wounds on the right and front sides of her neck that her head was bumped and hit against a hard object; or objects thereby causing external hematoma on the head and internal hemorrhage in the frontal, right parietal and occipital sides; that those injuries, altogether contributed to the cause of the victim's death; and that the assailant, who inflicted those injuries, was on the victim's right, side while the latter was lying on her back." [2] Further examination reveals an incised wound located across her right index and right middle fingers, and the fingernails of her right hand contained tissues, dirt and other materials. A "sticky substance simulating semen" was found inside the vagina although there was no sign of force on her vagina abdomen and lower extremities.[3]

The deplorable incident occurred in Caypombo, a barrio several kilometers from the poblacion of Sta. Maria, Bulacan, on December 22, 1977. Witness Antonio San Victores testified that at around 4:30 in the afternoon of that day, while he was walking towards an uninhabited rest house of one Antonio Pantaleon to get a pail to water his plants, he saw the accused Danilo Gole Cruz suddenly run away from the direction of the washing area located beside the resthouse and jump over the fence surrounding the premises.[4] Finding it unnecessary to greet the accused because the latter used to frequent the place. San Victores proceeded to the resthouse and entered the kitchen area.[5] What followed, according to the court a quo, was recounted by San Victores in his own way thus:

"As he was leaving the kitchen with the pail, he heard someone moaning. The sound led him outside the resthouse, to the adjacent washing area, where he found a woman lying on her back, wounded in the neck, and bleeding profusely. He recognized her to be Teresita Gumapay, his first cousin. She was nude from the waist down, her vagina exposed; she was wearing a T-shirt raised up to her lower ribs, and her pair of shorts was found on one foot, with the lone front button missing. Sari Victores asked her what happened; and Teresita said

she had been raped and stabbed by Danilo Gole Cruz, the son of Pio. San Victores then asked her who did it, and Teresita repeated the name Danilo Gole Cruz, the son of Pio.

"After putting her shorts back to cover the lower part of her body, San Victores lifted Teresita and carried her inside her father's house, which was situated about 25 brazas away, and laid her on the floor. Teresita's moaning stopped; she did not utter anything, and no one talked to her. Meanwhile her father procured a jeepney, driven by a certain Jose, which took Teresita to Dr. Totoy Hermogenes St. Mary's Hospital at the Poblacion. None of the four persons aboard the jeepney --Teresita, her father, San Victores, and driver Jose. -- said anything on the way. Upon reaching the hospital, Teresita was carried to the emergency room; and 15 minutes later, the father and San Victores were told that she was dead." [6]

Pathetically, retrieved from the scene of the crime were a pair of rubber slippers, a comb and a partial denture, all of which belonged to or were otherwise used by the victim at the time of her death.[7] It does not appear that there was any other person seen or reported to have been in the vicinity of the scene of the crime at or about the time of its commission.

On the same night of the incident, the police investigator, Pat. Eliseo de Jesus, and chief police investigator, Cpl. Rufino Buenviaje, proceeded to the hospital where the former was informed by San Victores that it was Danilo Gole Cruz who killed Teresita. When Pat. De Jesus went to the house of the accused, the father Pio Gole Cruz, told him that the accused was not at home; nevertheless he promised to surrender Danilo later. That same night, the accused, in the company of his father, surrendered at the police station.[8]

The following day, December 23, 1977, Danilo Gole Cruz was interrogated by Cpl. Buenviaje in the police station reportedly in the presence of Pat. De Jesus, which interrogation was reduced into a written; statement in Pilipino designated as "Sinumpaang Salaysay." The statement was signed by the accused in the presence of his sister, Benilda Gole Cruz, and Pat. Jose de los Santos who both signed as witnesses thereto. However, the statement was not placed under oath because according to Cpl. Buenviaje, when he brought the accused, to the office of Sta. Maria municipal judge Alfredo C. Perez before noon and in the afternoon of that day, the judge was not in his office; and when the accused was eventually presented to said municipal judge on December 26, 1977, the latter refused to administer the oath, which refusal he allegedly also resorted to in past occasions. On its face, the statement states that the inquiry started with questions purporting to constitute compliance with Section 20, Article IV of the 1973 Constitution. In said statement, the accused admitted having killed Teresita Gumapay, then resorted to the discreditable non mi ricordo; answers to the other questions asked by the investigator.[9]

The information for rape with homicide, dated June 6, 1978, was filed against Danilo Gole Cruz with the then Court of First Instance of Sta. Maria, Bulacan, Branch V, at that time presided over by Judge Jesus Elbinias. While bail of P40,000.00 was recommended, the accused was not released for failure to post the same.[10]

Accused pleaded not guilty in the arraignment held on July 25, 1978 and trial on the merits followed wherein several witnesses were presented. The accused took the stand on September 18, 1979 and on January 14, 1980. In both instances, however, after the accused had testified for some time, the hearings were suspended and reset for another date on the claim of the accused that he was feeling dizzy and could not concentrate on the witness stand.[11]

Thereafter, on January 18, 1980 defense counsel filed by mail a motion to submit the accused to psychiatric examination.[12] After hearing, on February 12, 1980 the "trial court ordered the director of the National Mental Hospital to cause the examination of the accused and to submit the corresponding report to the court.[13] Subsequently, a report on the mental and physical condition of the accused, dated March 18, 1980 and signed by Dr. Simplicio Masikip, Medical Specialist I and Physician-in-Charge and Dr. Arturo Merit, Chief of Forensic Psychiatry Service, was submitted in compliance with the order of the court.[14] The report states that the accused

was admitted to the National Mental Hospital in Mandaluyong, Rizal on February 16, 1980. As remarks, the report states that the accused "was found suffering from a mental disorder called schizophrenia, manifested by underactivity, vacuous (sic) stares, mumbling alone by himself, indifference, dullness of affect, thought blocking, perceptual aberration of hearing strange voices, disorientation and lack of insight. He is psychotic or insane hence cannot yet stand trial in court. He needs further hospitalization and treatment."

The accused escaped from the hospital on October 13, 1980 but was apprehended the next day by the security force and police agencies of said institution.[15]

On March 22, 1982, Dr. Eduardo T. Maaba, Medical Specialist and Physician-in-Charge, submitted a report with respect to the mental and physical condition of the accused remarking that based on the examinations and observation conducted, "Danilo Gole Cruz y Santos is now free from sign and symptoms of psychosis, and hence he can now stand trial. He is therefore recommended for discharge from this hospital and return, to the Provincial Jail of Bulacan." [16]

Nevertheless, at the hearing in the trial court on September 20, 1982, counsel for the accused manifested that he had been conferring with the accused and the latter refused to further testify, hence another defense witness would be presented. Consequently, the prosecution moved that the testimony of the accused be stricken from the records for lack of cross-examination. The accused was never presented again in court because on October 29, 1982, an order was issued by the court below granting the motion of the defense counsel himself to terminate the testimony on direct examination of the accused, with a request for a five-day period from the date of the order to file his offer of evidence in writing.[17] In addition, the court granted the motion of the private prosecutor to expunge the direct testimony given by the accused for lack of cross-examination. The prosecution was also given the same period to file an opposition to the offer of evidence and to, thereafter present rebuttal evidence at the next hearing set on December 28, 1982.[18]

In its order of December 28, 1982, the private prosecutor having waived the right to present rebuttal evidence, the trial court declared the case submitted for decision, granting the parties thirty days from the completion of the transcript to submit simultaneous memoranda[19] In spite of this, the said court later issued an order *motu proprio* on January 7, 1983 reopening the case "to enable it to, receive further expert testimony from psychiatrists on the mental condition of the accused at about the time he committed the instant offense as well as at the time he was placed on the witness stand during trial of this case, but who refused to continue testifying x x x." [20] For such purpose a subpoena was issued to the Director of the National Mental Hospital to appear and produce the clinical records of the accused and testify thereon at the hearing set on February 17, 1983.[21]

Before the scheduled hearing, however, the Judiciary Reorganization Act (Batas Pambansa Blg. 129) took effect and the case was subsequently re-raffled to the Regional Trial Court of Bulacan, Branch XIX, of the Third Judicial Region presided over by Judge Camilo R. Montesa, Jr. The judge set the case for hearing on July 12, 1983. Thereafter, as recited in the court's order of October 3, 1983, a subpoena was issued to the Director of the National Mental Hospital in Mandaluyong, Rizal but instead of Dr. Masikip, Dr. Maaba appeared and explained that the former had already been transferred to another department. Considering that Dr. Maaba had not actively taken part in the mental examination of the accused, his testimony was not taken and, as prayed for by the fiscal and the private prosecutor, the trial court granted them fifteen days within which to submit their opposition to or comment on the aforesaid January 7, 1983 order of Judge Elbinias. The defense counsel was given a like period of time to file his reply thereto.[22] The hearing of the case was reset to August 9, 1983.[23]

At the scheduled hearing, both parties instead of filing their comments, argued and opposed the reopening of the case and reiterated their stand that they were submitting the case for decision. Hence, as likewise stated in the

aforesaid order of October 3, 1983, Judge Montesa further directed the Clerk of Court to forward the expediente of the case to Judge Elbinias for rendition of the decision "(c)onsidering that said judge wholly tried and heard this case from beginning up to the time when both parties submitted the same for decision and in line with the resolution of the Supreme Court en banc dated February 14, 1983." [24]

About five months later, counsel for the accused filed a "motion to reopen the case and allow accused to adduce additional evidence," praying that "the case be reopened and the accused be allowed to continue testifying should the expert certifies (sic) that he can stand trial; and/or adduce additional evidence in order to afford him full opportunity to be heard and complete his evidence." [25]

The promulgation of the decision having been set on May 7, 1984, notice whereof was given on April 10, 1984, [26] that motion to reopen the case was denied for lack of merit in an order of the trial court dated May 4, 1984. As explained therein the decision in the case having been prepared and duly forwarded to said court for promulgation of judgment, the same was considered a *fait accompli*. [27]

Accordingly, the court promulgated the decision which found the accused Danilo Gole Cruz guilty beyond reasonable doubt of the crime of rape with homicide; declared his defense of insanity unavailing as an exempting circumstance; imposed the death penalty upon the accused; sentenced him to indemnify the heirs, of the victim in the amount of P12,000.00 for her death and P20,000.00 as moral damages; and ordered him to pay the costs. [28]

The accused seasonably appealed to this Court praying for his acquittal and, alternatively, for the remand of the case to the lower court for further proceedings.

We first consider the threshold issue raised by the accused that he was denied due process because he was not afforded full opportunity to exercise his constitutional right to be heard and present evidence. His thesis is that the joint agreement manifested in open court by the prosecution and the defense that the case be deemed submitted for decision should be considered as having been withdrawn in view of the filing of the motion to reopen the case about five months thereafter. [29]

The sheer untenability of this contention is apparent. The failure of the accused to complete his testimony was of his own making, on the initiation, confirmation and reiteration of his own counsel. As discussed earlier, the suspension of the direct examination of the accused was at his instance and as moved by his counsel. Later, Dr. Maaba recommended on March 22, 1982 the discharge of the accused from the mental hospital and for his return to the provincial jail of Bulacan he having been found fit to, stand trial. This un rebutted fact notwithstanding, the accused refused to take the witness stand without any plausible justification. In addition, it was the defense itself which moved to terminate the testimony of the accused, which fact became the basis for such testimony being stricken from the records for lack of cross-examination. In fact, when the former-presiding judge thereafter ordered the reopening of the case *sua sponte*, it was the defense that objected to the same and insisted that the case be deemed submitted for decision. Verily, the present stance of the accused is a blatant disregard of solemn agreements submitted to and approved by a court of justice and would make a mockery of the judicial Process.

Furthermore, the mere filing of a motion to reopen a case must not in any way automatically vacate an agreement and order submitting the case for decision. While the court may reopen a case for reception of further evidence after the parties have closed their evidence, such action is addressed to the sound discretion of the court, [30] to be exercised only on valid and justifiable reasons which undoubtedly are in-existent in this case.

Coming now to the conclusion of the trial court that the accused raped and, on the occasion thereof, killed Teresita Gumapay, the Court has painstakingly scrutinized the record, with the concomitant calibration of the evidence and the consequent determination as to whether the quantum thereof passes the test of moral certainty of

guilt.

There is no doubt that it was the accused who killed Teresita Gumapay, the evidence thereon being capped by his own written confession of the same before the investigating officers. The authenticity of and the fact that he and the witnesses thereto knowingly affixed their signatures on said extrajudicial confession were never questioned. The only objection belatedly raised when he testified was its alleged procurement through force and maltreatment, but no evidence of the supposed maltreatment was ever produced, other than the self-serving and uncorroborated testimony of the accused which was, however, stricken from the records. As pointed out by the court below, the policemen who allegedly maltreated the accused were never identified despite the fact that the accused and his parents have been residents of the same town long enough to easily identify them. Neither did the defense counsel try to discredit Cpl. Buenviaje's testimony, more particularly on the circumstances attendant to the interrogation of the accused in the course of which he voluntarily made his extrajudicial confession which was reduced to the statement in question.[31]

Then, there is the matter of the signature of his sister on the document as a witness to his having signed the same before her. It would be unlikely, if not incredible, for her to sign the same without having read and understood its clear implications and consequences, considering that the statement was written in the vernacular. Significantly, the probative value of said extrajudicial confession is not being assailed in the present petition.

Buttressing the foregoing evidence is the positive identification of the accused at the situs and during the occurrence of the crime. To recall, witness San Victores established the fact that the accused was running away from the scene of the crime shortly after its commission. Such information was disclosed by San Victores to Pat. De Jesus on the first opportunity when he was interviewed by the policeman in the hospital.

Understandably, because of its vital evidentiary significance, the defense assails the ante mortem statement of the deceased categorically identifying the accused as the author of the crime. The testimony of San Victores thereon and the circumstances thereof comply with the requirements for its admissibility as an exception to the hearsay evidence rule. Death was imminent and the declarant was conscious of that fact due to the gravity of her injuries, the declaration refers to the cause and surrounding circumstances of her death, relates to facts which the victim was competent to testify to, and was offered in the criminal case wherein her death was the subject of the inquiry.[32]

While the gravity of the injuries sustained by the victim in the present case makes it possible for her to have lost consciousness after sustaining said injuries, the same does not rule out the possibility that the victim could have recovered for a period of time or may not have lost consciousness right away. We agree with the Solicitor General that while there was evidence of "hemorrhage during post-mortem, it has not been, ascertained at what stage the hemorrhage became critical enough to induce coma;" and that the textbooks cited by the appellant do not say that the hemorrhage in the brain would instantaneously incapacitate the victim.[33] aside from the fact that the situations contemplated therein are hypothetical hence resolved by generalities based on individual variations. Likewise, Dr. Caballero who conducted the autopsy was categorical in his statement that taking into account the hematoma and damage, the deceased could still have regained consciousness. From fifteen to thirty minutes the victim may lose her consciousness and die but the loss of consciousness would be gradual. His testimony reads:

"Q

Now in this particular case, this victim suffered the bumping of the head, she also had hematoma, could she have regained consciousness?

A

She could have with the findings I made.

Q

Taking into account the hematoma and the damage, you still say that she could have regained her consciousness?

A

Yes, sir.

Q

Now, this 5 inches deep wound on the right mandible would that result to loss of consciousness?

A

Yes, sir.

Q

How long after the said vein is cut does the loss of consciousness usually occur?

A

After that she may lose her consciousness, sir.

Q

Now what is the rate of flow of blood through the jugular vein of the person normally situated?

A

Very fast, sir.

Q

Considering the two veins cut?

A

Yes, sir.

Q

How long more or less?

A

15 to 30 minutes she will lose consciousness and may die.

Q

In a case like this a person similarly situated the loss of consciousness from 15 to 30 minutes, will it be gradual or spontaneous?

A

It is gradual, sir."[34]

It bears noting, since the records do not clarify this, that a person has two carotid arteries, one on the left and the

other on the right side of the neck, which; convey the blood to the head, and likewise two jugular veins each on said sides of the neck[35] which carry blood from the head back to the heart. The post-mortem report shows that only the right jugular vein and carotid artery were cut, without even stating the extent or gravity of the lesions. The hypothetical questions aforequoted are even misleading for assuming that the two veins were cut, but this notwithstanding, the loss of consciousness would still be gradual. With more reason would the loss of consciousness be slower since, as already stated, only the right jugular vein and carotid artery were affected, hence the loss of blood was necessarily reduced and slower. Thus, from the evidence, the victim must have survived for more than one hour.

That period of time within which the victim could have lived, and did in fact live after the injuries were inflicted is certainly long enough for her to have uttered the very short answers as recalled by San Victores. In a manner of speaking, it was providential that while she was denied the mercy of a swift death, she was thereby granted the ultimate grace and opportunity to identify her assailant.

On these considerations, the trial court did not err in finding that the deceased did make those statements in articulo mortis. Perforce, we cannot also disturb the finding that the deceased was raped by the accused on the strength of her dying declaration to that effect. It can logically be concluded that the rape was the cause of or interrelated with the killing since no other reason appears for the murderous assault on the victim. In addition thereto, circumstantial evidence, such as the physical condition of the victim, provide ample corroboration that rape was committed. As may be recalled, San Victores found Teresita wounded and bleeding her shirt was raised to her lower ribs, she was nude from her waist down, only one foot of hers was in her pair of shorts which was unbuttoned and lowered, her vagina was exposed, and during the autopsy sticky a substance simulating semen was found in her vagina.[36]

It is conceded that said physician should have subjected the sticky substance to a laboratory test which may remove any doubt that it was in fact seminal fluid. There is no showing, however, that such laboratory facilities were available. Nevertheless, the declaration of the doctor, whose credentials and expertise were established, is clear that he could determine that the sticky substance was semen and not any other vaginal secretion, thus:

"Q

Did you see vaginal secretion in this particular case?

A

Yes, sir.

Q

You are sure of that?

A

Yes, sir, I got some.

Q

But you said sticky substance?

A

Yes sir, it is also sticky substance.

Q

This sticky substance is made up of two?

A

I cannot tell, sir.

Q

And how could you tell that it is secretion or semen or that it was a combination of both?

A

Because when you scoop the same you can determine the same."[37]

At any rate, this evidence is at least corroborative since the absence of spermatozoa does not disprove the consummation of rape. What is determinative is not the emission of semen but penetration of the female sexual organ.[38]

In fact, it is not even necessary that there be medical examination of the victim in case of rape. Whether or not the charge will prosper depends upon the evidence offered and so long as such evidence convinces the court, a conviction for rape is proper.[39] Nor should we lose sight of case law; rooted in experience and entrenched in our jurisprudence, that from the very nature of the crime of rape, the proof thereof often, requires and justifies recourse to circumstantial evidence. From the findings discussed herein, such proof exists in the case at bar, with the required circumstantial evidence ineluctably producing such a conclusion and no evidence whatsoever having been presented by the defense to controvert the same.

We turn now to the defenses of the accused. Contrary to his pretensions, the absence of any sign of force on the victim's vagina, abdomen and lower extremities do not negate the commission of rape. For rape to be committed, it is not necessary that there be marks of physical violence present on the victim's body.[40] For, it is not unlikely that after a long struggle with the assailant and after several wounds were inflicted, the victim would be so weak as to put up any semblance of resistance. Neither would it be improbable that the woman threatened with death would submit to such lustful designs. It is undeniable that, aside from physical force, fear may also overcome the victim's resistance.[41]

Expectedly, petitioner assails the credibility of San Victores, especially with respect to the charge of rape. We do not however, find such testimony unworthy of credit. While it did not occur to the witness to forthwith tell the investigator that the body of the victim was half naked, it is natural for a timid or reticent witness not to volunteer all information regarding the crime, especially since there were many things on his mind as Teresita had just been buried.[42] As correctly pointed out by the Solicitor General, there was a further plausible reason for the failure of San Victores to immediately inform the victim's father that it was the appellant who raped and killed his daughter. The witness explained that he did not readily mention the same for fear that drastic steps would be taken by the father,[43] a well-grounded apprehension under the circumstances.

Besides, we find no reason, or motive for San Victores to perjure himself and impute such a heinous crime to the accused. The incident cited by the accused wherein he allegedly quarrelled with Teresita and wherein San Victores intervened[44] is too trivial to constitute an inducement for the witness, or the victim for that matter, to accuse him as the author of a crime with the extreme penalty attached thereto.

On the contrary, what is not worthy of belief is the testimony of the accused, which was stricken from the records, but which nevertheless is inherently incredible and founded on alibi. Considering that the accused would allegedly want this Court to allow him to resume his testimony in this case, the following observations of the trial court have to be considered:

"No evidence was presented by the defense, however, to corroborate such alibi; nor did it explain why it did not do so. Any one or some of those who played basketball with accused in the afternoon of that day, as the latter claimed, should have been presented to testify; but this was not done. Any one or some of those who formed themselves into a group, which the accused claimed he joined to search for the assailant should have been called as witnesses; but this was not done either. The failure of accused to present any of those persons whom he was allegedly with in a basketball game and later in the search for Teresita's assailant at about the time Teresita was attacked and shortly after discovery of her wounded body, renders this alibi dubious. What can be inferred from such omission is that accused could not present those persons because what he claimed is not true.

"Moreover, to be accorded credence to alibi, which is easily susceptible of fabrication and very common defense in criminal cases, it does not suffice for accused to merely prove that he was at some other place, but that the distance was such as to render it physically impossible for him to be at the scene of the crime shortly before, during or after it was committed. In the case at bar, the distance between his father's farm and the resthouse on the one hand, and the distance between the said boundary, and the resthouse, on the other, which are 2 and 1/2 kilometers, respectively, are not such distances as were physically impossible for accused to negotiate or traverse; in fact, per his own testimony, he was able to travel from his father's farm to the said boundary to play basketball that same day. Besides, the house of -accused's parents where he was living was only 200 to 250 meters away from the resthouse, which distance accused could have easily negotiated if he in fact was in his house and not on the farm nor at the basketball game." [45]

The defense also failed to explain why there were scratches on the left face and wounds on the left palm of the accused. In fact, the accused even lied to the investigating officer about this. When Pat. De Jesus asked him how he sustained such injuries, the accused claimed that one Romy Natividad caused the scratches in a basketball game, but the person referred to specifically denied the same. [46] No other witness was even presented to confirm whether or not the accused was a participant in a basketball game.

We now dissect the claim that the accused is exempt from criminal liability under the first paragraph of Article 12, Revised Penal Code, for being allegedly insane. In *People vs. Aldemita*, [47] with a reiteration in *People vs. Aragon*, [48] the Court explained this exempting circumstance, as follows:

"As to what constitutes insanity in law, this Court has consistently hewed to the old, but still valid, parameters established in rulings of the Supreme Court of Spain interpreting paragraph 1, Article 8, of the old Penal Code of Spain from which Article 12 of our Revised Penal Code on this exempting circumstance is copied. In *People vs. Formigones*, (87 Phil. 658, 661) the following passage from Guevara's Commentaries on the Revised . Penal Code, 4[th] ed., pp. 42-43, was quoted with approval:

‘The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment; that there is a complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.

‘The allegation of insanity or imbecility must be clearly proved. Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved.’

"A line of later cases, notable among them, *People vs. Cruz* supra, *People vs. Renegado*, supra, *People vs. Ambal*,

and *People vs. Magallano*, reaffirmed adherence to the ruling in *Formigones*. Typical of these is *Renegado*, where it was held that:

'In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing act (sic), that is, the accused is deprived of reason, he acts without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of freedom of the will. Mere abnormality of the mental faculties will not exclude imputability. The onus probandi rests upon who invokes insanity as an exempting circumstance and he must prove it by clear and positive evidence.'"

We agree with the well-reasoned opinion of the trial court that the accused is not entitled to the exempting circumstance of insanity. The examinations made by Dr. Masikip, the main support of the defense, were far removed in time from the date of the crime. The accused was examined three times, on February 18, 1980, February 29, 1980 and March 17, 1980,[49] while the incident occurred on December 22, 1977. Thus, the results of the examination could not have been reflective of the real and actual state of mind of the accused at the time he committed the crime more than two years earlier.[50]

Aside from this, after an extensive analysis of the examinations conducted by and the report and testimony of the doctor, the court a quo correctly held the same to be "mere conclusions of his without corroboration in terms of verifiable factual evidence in the form of routinely recorded entries as required by the imperatives and ethics of medical science or at least in the form of testimonies from qualified persons who may have also observed the behavioral manifestations of accused while he was confined in the National Mental Hospital." [51] As accurately observed by the lower court, out of the four hundred patients to be visited by the doctor daily, he was simply selecting those who in his "clinically experienced eye" needed to be interviewed and the interview would last for only about thirty minutes to one hour.[52] In the case of the accused, who had then been confined for only one month, he was interviewed only three times on the proximate dates above stated, each lasting from thirty minutes to one hour.[53]

On top of these, Dr. Masikip himself testified that the intelligence of a schizophrenic is not affected; said person merely lacks mental concentration without being deprived of judgment and reason.[54] The doctor also declared that if a person talks to himself, stares blankly and is underactive, these would not be indicia that he is insane as it could happen to a perfectly normal person, and that the accused was coordinated in his activities with normal muscle reflexes.[55]

Against the effete efforts in the accused's after thought to create an insanity defense is the whole weight of the presumption of sanity provided by law,[56] amply supported by convincing circumstances laudably pointed out by the trial court with page references to the record, as follows:

"x x x the absence of any showing that he had ever been confined in a mental hospital or in any hospital for psychiatric or psychological treatment before the incident in question; the testimonies of provincial guards, Consuelo G. Santos and Leonardo Crisostomo to the effect that the accused had been a normally-behaved inmate, talking and joking with the others in the provincial jail since his first day of detention on January 18, 1978; that two months following his detention in said jail, accused was given special privileges and made one of the trustees by the warden to maintain order inside the jail; that he was never involved in any quarrel nor violated any prison rule; that, although he was brought to the provincial hospital for fever, accused was never recommended by the prison officials for any mental examination; that, if any jail inmate acted strangely, such inmate would immediately be brought to the doctor for examination or recommended for further examination and the accused had never been one such inmate; that no particular attention was paid to accused in said jail because he was observed not to be mentally deranged." [57]

Equally telling is the fact that the accused in his direct testimony could easily recall with specificity the details of

practically all relevant events and circumstances that occurred during the week before the incident, through the day of the incident and up to the time he first took the witness stand to testify.[58] The self-serving claim of the accused that he was losing his mind, his alleged failure to remember his father's name and his own personal circumstances, as well as his being confined in the mental hospital, smack of theatrical subterfuges feigned and contrived in a desperate effort to exempt him from liability on an insanity defense, a ploy well known in the annals of criminal justice here and in other jurisdictions.

We have embarked on this laborious task of evaluating every piece and specie of evidence presented in the court below, as well as in the disquisitions in the trial and appellate records of this case, in total response to appellant's plea for the reversal of his conviction. But, even the element of reasonable doubt so obviously sought by appellant is an ignis fatuus which has eluded any ratiocination in favor of his submissions. It is, therefore, a painful but inexorable conclusion that conscience can rest easy on an affirmation of the verdict, of the trial court, and not on the reversal thereof, in view of his clear culpability which demands retribution.

WHEREFORE, with the modifications that the death sentence imposed by the trial court is reduced to reclusion perpetua pursuant to Section 19(1), Article III of the Constitution, and the indemnification for the death of Teresita Gumapay is hereby increased from P12,000.00 to P30,000.00, consonant with present jurisprudence, the judgment of the lower court is AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Exhs. A & A-1, Folder of Exhibits, 1-2.

[2] Rollo, 19; TSN, Aug. 8, 1978, 10-14.

[3] Exh. A-1, *ibid.*

[4] TSN, March 16, 1979, 4-5.

[5] TSN, *id.*, 5, 47.

[6] Rollo, 15; TSN, *id.*, 10-30.

[7] Rollo, 16; TSN. *id.*, 10.

[8] Rollo. 15-16; TSN, Sept. 8, 1978, 8, 14-15.

[9] Rollo, 17; TSN, *id.*, 33; TSN. Feb. 2, 1979, 4-8, 13, 16-17; Exh. C, Folder of Exhibits 6.

[10] Original Record, 1-2.

[11] TSN, Sept. 18, 1979, 22-25; TSN. Jan 14, 1980, 7-10.

[12] Original Record, 202.

[13] *Ibid.*, 207.

[14] *Ibid.*, 211-212; Exh. 2.

[15] *Ibid.*, 247-249.

[16] *Ibid.*, 300.

- [17] TSN, Sept. 20, 1982, 2-4.
- [18] Original Record, 340.
- [19] Ibid., 387.
- [20] Ibid., 389.
- [21] Ibid., 390.
- [22] Ibid., 404.
- [23] Ibid., 402.
- [24] Ibid., 404.
- [25] Ibid., 414-417.
- [26] Ibid., 423.
- [27] Ibid., 426.
- [28] Ibid., 427-460.
- [29] Brief for Appellant. 11-13.
- [30] *People vs. Concepcion*, 84 Phil. 787 (1949).
- [31] Rollo, 30.
- [32] Sec. 31, Rule 130, 1964 Rules of Court; *People vs. Brioso, et al.*, 37 SCRA 337 (1971) *People vs. Garcia*, 89 SCRA 440 (1979); *People vs. Araya, et al.*, 105 SCRA 133 (1981); *People vs. Sarabia, et al.*, 127 SCRA 100 (1984).
- [33] Rollo, 164.
- [34] TSN, Aug. 8, 1979, 32-33.
- [35] See Cunningham's Textbook of Anatomy, 11[th] Ed., 863-865, 907-908.
- [36] Rollo, 27; TSN, Aug. 8, 1978, 25, 28; TSN, Mar. 16, 1979, 8-9.
- [37] TSN, Aug. 8, 1978, 38.
- [38] *People vs. Canastre*, 82 Phil. 488 (1948); *People vs. Jose*, 37 SCRA 450 (1971); *People vs. Carandang*, 52 SCRA 259 (1973); *People vs. Sato*, G.R. No. 47911, July 27, 1988.
- [39] *People vs. Carandang*, *supra.*, 207.
- [40] *People vs. Lat*, 99 SCRA 297 (1980), *People vs. Monteverde*, 142 SCRA 668 (1981); *People vs. Viray*, G.R. No. L-41085, Aug. 8, 1988.
- [41] *People vs. Sato*, *supra.*
- [42] TSN, Mar. 16, 1979, 20.
- [43] Ibid., *id.*, 30.
- [44] TSN, Sept. 18, 1979, 11-12.

[45] Rollo, 28-29.

[46] TSN, Sept. 8. 1978, 14-15.

[47] 145 SCRA 451 (1986).

[48] G.R. No. 51736, Aug. 4, 1988.

[49] TSN, Sept. 28, 1980, 27.

[50] See *People vs. Balondo*, 30 SCRA 111 (1969).

[51] Rollo, 36.

[52] TSN, Sept. 28, 1980, 25.

[53] TSN, *id.*, 27.

[54] TSN, Sept. 23, 1980. 13-14.

[55] TSN, *id.*, 22-23.

[56] Art. 800, Civil Code.

[57] Rollo, 39.

[58] *Ibid.*, 40.

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