

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELO ALMENARIO @ “TOTOY”;
DEFENDANT-APPELLANT.**

G.R. No. 91491. August 12, 1992

Ponente: NOCON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-91491/>

NOCON, J.:

This is an appeal from a decision of Branch 10 of the Regional Trial Court of Abuyog, Leyte, wherein accused-appellant, Marcelo Almenario was found guilty beyond reasonable doubt of the crime of rape with homicide under an information which reads:

"That on or about 8:00 o'clock in the evening of March 10, 1989, in Barangay Calzada, Javier, Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused Marcelo Almenario alias "Totoy" did, then and there, willfully, unlawfully and feloniously and by means of force, violence, and intimidation, to wit: by the use of a bladed weapon masculine [sic] force, and threats then and there pinning down one VISITACION GARES an unmarried woman, succeeded in having carnal knowledge with her and by reason or occasion thereof and in order to silenced [sic] her, willfully, unlawfully and feloniously strangled her by the neck, which was the direct cause of her death.

CONTRARY TO LAW."[1]

Accused-appellant was arraigned in open court duly assisted by counsel, and entered a plea of guilty. Considering the nature of the charge as well as the plea entered by the appellant, the trial court set the case for hearing for the presentation of the prosecution's evidence.

After the presentation of evidence by the prosecution, accused-appellant asked the trial court that he be allowed to testify and explain certain matters. In his testimony, accused-appellant narrated the circumstances in justifying the killing of Visitacion Gares but denied having raped her.[2]

After trial, the Court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds the accused guilty beyond reasonable doubt and the accused MARCELO ALMENARIO alias "Totoy" is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of Visitacion Gares the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs."[3]

The facts of the case are as follows:

On March 10, 1989 at around one o'clock in the afternoon, Alicia Briones had some of her friends namely, Jaime Silvio and his wife, Aparicia, a certain Isabelo Herbas alias "Beloy", Arcadio Tesado, Marcelo Almenario alias "Totoy", (herein appellant) and Visitacion Gares (victim) drinking in her house. The drinking spree started at about noontime and lasted up to one o'clock that afternoon. The group left Alicia's house, and decided to go

instead to the house of Marcelo Almenario, herein accused-appellant.

It was around four o'clock in the afternoon when Jaime and Aparicia Silvio together with "Beloy" went back to the house of Alicia Briones, leaving Marcelo "Totoy" and Visitacion behind.

The following day, Visitacion Gares was nowhere to be found. Upon learning that accused-appellant was the person last seen with Visitacion, Alicia Briones approached Almenario and inquired whether Visitacion slept in their house that evening of March 10, 1989. Accused-appellant replied in the negative and even told Alicia that he accompanied Visitacion back to her house.

Alicia Briones then went to the house of Barangay Captain Anacleto Tisado to report the incident. The incident was brought to the attention of the police authorities, and Marcelo Almenario, being the sole suspect, was arrested.

Accused-appellant confessed his participation in the killing and raping of Visitacion Gares and told the police authorities where the body of the deceased can be found. Hence, appellant together with Barangay Captain Tisado and Alicia Briones went to the place pointed by herein appellant. The body of Visitacion Gares was found dumped in a ricefield hidden between the "talahib" or cogon grass. From there, the body was brought to the chapel and subsequently buried.

Upon the request of the Station Commander of the Leyte Integrated National Police, the body of the victim was exhumed.

Dr. Floro Camenforte Jr., medico-legal officer of the National Bureau of Investigation, Tacloban City, conducted the exhumation and proceeded to examine the body of the victim. The findings of the Exhumation Report[4] are:

"FINDINGS:

Body in moderate stage of post-mortem decomposition, attired with a white T-shirt and black long pants, buried underground without a coffin wrapped with a buri mat.

CONTUSIONS: 2.0 x 2.5 cm. and 2.0 x 1.0 cm. neck, antero lateral aspect, right and left side respectively; 2.0 x 3.0 cm. posterior aspect middle third arm, left.

LACERATION: hymen, incomplete, deep, edges sharp and coaptible, located at three o' clock position according to the face of the watch.

Heart and lungs with Tardieu's spots.

Other visceral organs in starting autolyzes.

Stomach empty.

CAUSE OF DEATH:

Asphyxia by manual strangulation."

The witness also found not only lacerations of the hymen but penetration of the vaginal wall caused by sexual intercourse as a result of rape.

Dr. Ernest Lajara, Municipal Health Officer of Javier, Leyte likewise testified on examining the accused-appellant Marcelo Almenario on March 16, 1969 for some injuries he sustained and which he described in a medical certificate, Exhibits "D" and "D-1", and which wounds are reflected in the sketch of the human form, Exhibit "E", to wit:

"1. Linear wound at the right side of the neck, 3 cm. below the right ear.

Length - 2 cm.

Depth - skin deep

"2. Linear wound at the right side of the back, 15 cm. below the base of the nape and 3 cm. free from the vertebral column.

Length - 5 cm.

Depth - skin deep

"3. Linear wound at the right side of the back, 14 cm. below the right shoulder and 14 cm. from the vertebral column.

Length - 2 cm.

Depth - skin deep

"4. Linear wound at the upper border of the left deltoid.

Length - 4 cm.

Depth - skin deep

Barring complications said injuries will require medical attendance for a period of less than nine (9) days.[5]

Since said injuries sustained by the accused-appellant are "linear wounds" which are skin deep, said injuries according to the good doctor could have been caused by fingernails or any sharp grass.

Appellant assigns the lone error of the trial court:

"The trial court erred in convicting the accused of the complex crime of rape with homicide, despite the insufficiency of evidence with respect to the commission of rape."

There is no dispute as to the fact that appellant killed Visitacion Gares. The issue raised on appeal is whether or not appellant raped the victim thereby qualifying the crime of rape with homicide thereby justifying the maximum penalty imposable.

Accused-appellant, Marcelo Almenario testified that on their way home that evening of March 10, 1989, upon reaching an isolated place. Visitacion pulled out a nine (9) inch stainless knife and said, "Cousin, we will not see each other again." [6] He further testified that the deceased attempted three times to stab him but was able to evade the thrusts. Why the deceased Visitacion pulled out a knife and attempted to kill the accused-appellant, the latter failed to fully explain and elucidate.

Although there may be no eye-witness in the actual commission of rape, there is ample evidence clearly and unmistakably linking the accused as the author of the crime.[7]

As found by the court a quo:

"And, granting for the sake of argument, by following the claim of the accused that the victim Visitacion was a

"tomboy" who carried with her a stainless steel knife, she must have tried to thrust said knife at the accused to defend her honor when accused overcame by the lustful desire which he could no longer control, tried to have sexual intercourse with Visitacion who rebuffed him. This angered the accused, and after having grappled for possession of the knife, and was able to wrest it from Visitacion, when she had fallen to the ground, the accused then choked Visitacion to weaken her resistance so he could rape her.

"If, indeed, we follow this claim of the accused that he only killed Visitacion because he got angry when she thrust a knife at him three (3) times, but denied he raped her, why then, did he choke Visitacion as proven by the autopsy conducted by prosecution witness Dr. Floro Camenforte, Jr.? Why did accused not stab Visitacion with the knife she was wielding which he allegedly wrested from her? Why was she choked? Why did accused sustain skin deep linear wounds at his back, neck, vertebral column and the upper border of the left deltoid, which Dr. Ernesto Lajara Municipal Health Officer of Javier, Leyte, who treated the accused, testified that said linear wounds could have been caused by fingernails or sharp type of grass?

"If Visitacion Cares were alive today, she would have given a clear and straight forward account of how accused raped her instead of the muddled, confused story reflected in accused's testimony. It is quite obvious that accused merely, made up the story regarding the knife wielding victim Visitacion for which reason he killed her. The Court can only deduce that said linear skin deep wounds sustained by the accused were caused by the fingernails of Visitacion when she vainly tried to ward off and resist the lustful advances of the accused, when the latter then choked her to stifle all resistance from her." [8]

WHEREFORE, the guilt of the accused-appellant having been proved beyond reasonable doubt, the Decision appealed herefrom is hereby **AFFIRMED** with the modification that the indemnity to be paid to the heirs of the deceased be increased to P50,000.00.[9]

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Records, p. 25.

[2] T.S.N., August 23, 1989, pp. 10-14.

[3] Rollo, p. 35.

[4] Exhibit "B-1", Records, p. 17.

[5] Decision, pp. 4-5; Rollo, pp. 48-49.

[6] T.S.N., August 23, 1989, pp. 11-13.

[7] *People vs. Marquez*, G.R. No. L-48834, 153 SCRA 700, (1987).

[8] Decision, pp. 7-8; Rollo, pp. 51-52.

[9] *People vs. Sison*, G.R. No. 86455, 189 SCRA 643, (1990).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.