

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AMADO BAGNATE, APPELLANT.

G.R. Nos. 133685-86. May 20, 2004

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PER CURIAM:

Before the Court is an automatic review of the Joint Judgment rendered by the Regional Trial Court (Branch 15) of Tabaco, Albay, finding appellant Amado Bagnate guilty beyond reasonable doubt of Murder in Criminal Case No. T-2874 and of Rape with Homicide in Criminal Case No. T-2875, sentencing him to suffer the penalty of Death in each case.

The Information against appellant in Criminal Case No. T-2874 reads as follows:

That on or about the 7th day of August, 1997 at 1:00 o'clock in the morning, more or less, at Barangay Buhian, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and while armed with a bolo, with nocturnity, treachery, superior strength, and with disregard of the respect due to the victim on account of age and sex, did then and there willfully, unlawfully and feloniously assault, attack and hack with said bolo one AURIA BROÑA,[1] a 70-year old blind woman, thereby inflicting upon the latter mortal wounds, which caused her death, to the damage and prejudice of her legal heirs.

ACTS CONTARY TO LAW.[2]

The Information in Criminal Case No. T-2875 reads:

That on or about the 7th day of August, 1997 at 1:00 o'clock in the morning, more or less, at Barangay Buhian, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of violence, force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with ROSALIE RAYALA, against her will and consent, and on the occasion thereof, with intent to kill, taking advantage of superior strength and while armed with a bolo, did then and there willfully, unlawfully and feloniously assault, attack and hack aforementioned Rosalie Rayala, thereby inflicting upon the latter mortal wounds on the different parts of her body, which caused her death, to the damage and prejudice of her heirs.

ACTS CONTRARY TO LAW.[3]

When arraigned on December 1, 1997, Bagnate pleaded “not guilty” to both charges against him,[4] and joint trial on the merits ensued.

The evidence for the prosecution established the following facts:

In the afternoon of August 7, 1997, appellant was turned over to SPO2 Junwel Ambion for custodial investigation. Without asking the name of appellant, SPO2 Ambion informed him in the Bicol dialect of his right to remain silent, to be assisted by counsel, that whatever he says may be used against or in his favor, and that he cannot be tortured or molested. Asked if he is willing to cooperate, the accused assented and gave his name as Amado

Magnate. SPO2 Ambion later learned that appellant's real name is Amado Bagnate. When appellant told SPO2 Ambion that he is willing to confess, SPO2 Ambion again informed appellant of his rights, and asked him further if he wants to be assisted by counsel but appellant said that his counsel was in Manila. SPO2 Ambion offered the services of Atty. Paterno Brotamonte, which appellant accepted. SPO2 Ambion then left to fetch Atty. Brotamonte whose office was located several meters away from the police station. However, Atty. Brotamonte told SPO2 Ambion that he will just follow as he was having his office blessing at that time. After some time, Atty. Brotamonte arrived at the police station. Before proceeding with the investigation, Atty. Brotamonte asked the policemen to leave the investigation room and conferred with appellant. He introduced himself to appellant and informed him of his rights. He also asked and examined appellant to see if he was physically harmed by the policemen and found none although Atty. Brotamonte noticed that appellant's left hand was handcuffed to the table. Appellant told Atty. Brotamonte that he is willing to give a statement. The investigation was then conducted in the Bicol dialect, with SPO2 Ambion asking the questions. It was translated thereafter into English with the help of Atty. Brotamonte, for the purpose of putting it into writing. After typing the first page of the confession, Atty. Brotamonte translated and explained the contents thereof to appellant, then Atty. Brotamonte and appellant signed thereon. While all this was going on, SPO1 Rogelio Gonzales was taking pictures.[5] The first page of the confession reads:

PRELIMINARY :

Mr. Amado Bagnate, you are in this office being investigated for your involvement in the crimes imputed against you particularly the killing of Aurea Bronia and Rosalie Rayala and at the same time having carnal knowledge of the two in Buhian, Tabaco, Albay. But before we proceed in this investigation, may I inform you that under our New Constitution, you have the right to remain silent, and that anything you may say may be used in your favor or against you in any court proceedings in the entire Philippines; that you have the right to be assisted by a counsel of your own choice or if you cannot afford to have one, the state represented by our office will provide you a competent counsel; that you are free from torture or any form of physical violence which will tend vitiate your statements. Do you clearly understand your constitutional rights which were related to you in Bicol dialect?

ANSWER :

Yes sir, I clearly understand my Constitutional Rights because it was related to me in Bicol dialect.

INVESTIGATOR : Do you want to avail of your Constitutional rights?

ANSWER : I want to be assisted by a competent counsel.

INVESTIGATOR : Do you have a counsel of your own choice?

ANSWER : I have none sir.

INVESTIGATOR : Since you do not have your own counsel, our office will provide you one, is this acceptable to you?

ANSWER : Yes sir.

INVESTIGATOR :

If our office will provide you the services of Atty. Paterno Brotamonte, who is a competent lawyer is this acceptable to you?

ANSWER : Yes sir.

INVESTIGATOR : May I again remind you that anything you say in this investigation may be used in favor or against you in any court proceedings in the entire Philippines. Do you still wish to give your free and voluntary statements?

ANSWER

: Yes sir.

INVESTIGATOR : :Do you understand the questions that were asked from you?

ANSWER : Yes sir, because they were related to me in Bicol dialect.

INVESTIGATOR

Are you willing to sign your given statements?

ANSWER : Yes sir.[6]

SPO2 Ambion then proceeded with the second and third pages of the confession, following the same procedure of propounding the questions in the Bicol dialect and translating it thereafter into English for each page.[7] Atty. Brotamonte again read and explained the contents thereof to appellant[8] after which they again separately signed on pages two and three thereof. The second and third pages are quoted in verbatim, to wit:

03.

Q-

Please state your name and other personal circumstances?

A-

AMADO BAGNATE Y BRONIA, 28 years old, single, duck caretaker presently working in Balatong Pulilan, Bulacan and a native of Buhian, Tabaco, Albay.

04. Q- When and where did the incident happened?

A- At on or about 12:30 A.M. August 7, 1997 at Buhian, Tabaco, Albay.

05. Q- Will you please narrate in detail, your knowledge of the said incident?

A-

At on or about 6:00 P.M. August 6, 1997 I together with Faustino Bufi[9] and Carlito Begil drink a bottle of gin at the store of Yolanda Buban at Buhian, Tabaco, Albay and while we were drinking said Carlito Begil told us that he will have sex with a woman on that night, however he did not elaborate who the woman is and at about 8:00 P.M. of same date we already consumed the bottle of gin and we decided to go home.

06. Q- Please continue

A-

So I proceeded to the house of my brother-in-law Roberto Angeles to spend the night at the said house however at on or about 12:30 A.M. August 7, 1997 I go out of the house and proceeded to my grandparents house which is about five arms length from the house of Roberto Angeles leaving the bolo on the ground and entered my grandparents Aurea Bronia's house and go directly on the room where Rosalie Rayala is sleeping and once inside

the room I embraced the sleeping Rosalie Rayala and started on kissing her however Rosalie Rayala spank and boxed me but still I continued on kissing her but still he spank me, so I go out of the room and sits on the door but Rosalie Rayala followed me so I kissed her again but she spank me again so I got hold of the bolo and hack Rosalie Rayala hitting her on her neck which caused her to fall on the ground and I pulled Rosalie Rayala and have carnal knowledge of her while she is still alive, while Carlito Begil and Roberto Angeles were standing and viewing what I am doing and after satisfying my lust said Carlito Begil goes on to of Rosalie Rayala and started on pumping her and after satisfying his lust, my grandparent Aurea Bronia shouted although she was blind and thinks that my grandparent Aurea Bronia heard what I am doing I hacked her on her neck and when she fall I pulled her away from the house towards the grassy portion of the yard wherein Carlito Begil and Roberto Angeles followed me wherein I was unable to determine who from the two had carnal knowledge of my grandparent because I already left them and I proceeded to the main road to Tabaco, Albay.

07. Q- Please continue further.

A-

Before I finally proceeded to the main road I passed by the house of Jose which I had forgotten his family name and Armando Bosque both Barangay Tanods of our place and told the two that is being wanted by my godfather Julian Baloloy that there was something that happened in the house of my grandparents house, and the two goes with me and because I was already then frightened I just go with them and hurriedly left the place and proceeded to Roberto Angeles house and called my sister and I was allowed to enter and I prepared a cup of coffee and after drinking same I hurriedly left the house and finally proceeded to the highway and boarded a jeep bound for the town proper and spend the rest of the night at the town plaza and at about 6:00 A.M. August 7, 1997 I proceeded to the church to hear mass and after that I went to my sister's house at Tayhi, Tabaco, Albay and I eat my breakfast and after eating I left my sister's house named Avelina Calla and it came to my mind that I will evade arrest and decided to proceed to Metro Manila then to my place of work in Pulilan, Bulacan.

08. Q-

How were you able to reach the Tabaco Police Station?

A-

I was apprehended by residents of Bankilingan, Tabaco, Albay for accordingly an alarm to apprehend me was set by elements of the Tabaco Police wherein one of them was able to trace me but luckily I was able to evade them but finally I was apprehended at Bankilingan, Tabaco, Albay and later on was brought to the Tabaco Police.

09. Q-

How are you related with the victims namely Rosalie Rayala and Aurea Bronia?

A-

This Rosalie Rayala she is my nephew and Aurea Bronia she is my grandparent.

10. Q-

This investigator, had no more question to ask from you, do you have anything more to add in this statement of yours?

A-

Now no more sir, but I will just relate other details if the need arises.

11. Q-

Are you willing to sign this statement of yours?

A- Yes sir.[10]

After appellant's confession was typed and signed, Atty. Brotamonte left the police station and went back to his office. As far as he could recall, the entire process took more than an hour.[11]

The next day, August 8, 1997, appellant was brought before Judge Arsenio Base, Jr. of the Municipal Trial Court of Tabaco, Albay. Judge Base requested the presence of Atty. Brotamonte and subsequently examined the voluntariness and veracity of the confession as well as the authenticity of the signatures of appellant and Atty. Brotamonte. He also explained to appellant the consequences of his confession to the crimes charged and asked him if he was coerced into admitting them. Judge Base inspected appellant's body and asked him if he was forced or coerced. Judge Base then asked appellant if he was still willing to sign it again and appellant answered in the affirmative saying that his conscience bothered him. Judge Base asked him to sign the confession again in the presence of Atty. Brotamonte, after which appellant affixed his signature.[12]

There were no eyewitnesses to the incident; only the extra-judicial confession of appellant showed how the crimes were committed by him.

Appellant repudiated his extra-judicial confession before the trial court and assailed its admissibility alleging that it was executed in violation of his constitutional rights, particularly his right to a competent and independent counsel of his own choice; and that he was not fully apprised of the consequences of his confession. He testified that the real perpetrators of the crime were his brother-in-law, Roberto Angeles, and a certain Carlito Begil, and that he was only forced into owning up to the crimes because Angeles threatened to harm him or his sister, Angeles's wife, if he did not do so.

Appellant recounted on the witness stand that in the afternoon of August 6, 1997, he was having a drink with Carlito Begil and Faustino Bufe at the store of Yolanda Bulan in Buhian, Tabaco, Albay. While they were drinking, Begil mentioned that he is planning to have sex with someone he did not identify. They finished drinking at around 8:00 in the evening and started walking home. While he and Begil were walking, Begil asked him to accompany him to Rosalie Rayala's house but he declined because he was already hungry and he wanted to eat first. He then went to the house of Roberto Angeles who is married to his sister Maria Nellie Bagnate. While he was on the porch having a smoke, Angeles arrived very drunk. Begil arrived later. Begil and Angeles drank "kalampunay". He took only one glass of the drink and went inside the house to get a cigarette. When he went back to the porch, Angeles and Begil were already gone. At around 12:30 in the morning, he went inside and slept. The shout of his ninong, Julian Baloloy, telling him to fetch a barangay tanod, awakened him. He fetched Jose Rodriguez and Armando Bosque and they went to the house of Rosalie, located thirty meters away. He was told to build a fire while the rest searched for "something." After idling in the yard for some time, he went back to Angeles's house to have coffee. Angeles and Begil then arrived and Angeles told him to flee or he (Angeles) will kill his (appellant's) sister. Angeles gave him P10.00. He took a jeep to Tabaco and reached the Tabaco plaza at 2:00 in the morning. He proceeded to his sister's house, Avelina Bagnate, in Tayhi, Tabaco, Albay, and passed the time there. Then he went to the Tabaco town proper. He was finally arrested in Bangkilingan, Tabaco and brought to the police headquarters at 5:00 in the morning of August 7, 1997.[13]

The trial court found appellant's extra-judicial confession admissible in evidence on which basis, it convicted appellant of the crimes charged against him. The dispositive portion of its decision reads:

WHEREFORE, judgment is hereby rendered, as follows:

1. Finding accused Amado Bagnate guilty beyond reasonable doubt of the crime of Murder as charged in Criminal Case No. T-2874 and sentences him to suffer the penalty of DEATH and to indemnify the heirs of Auria Broña the amount of P50,000.00 as damages; and,
2. Finding accused Amado Bagnate guilty beyond reasonable doubt of the crime of Rape with Homicide as charged in Criminal Case No. T-2875 and hereby sentences him to suffer the penalty of DEATH and to indemnify the heirs of Rosalie Rayala in the amount of P50,000.00 as damages.

SO ORDERED.[14]

In his Brief, appellant raises the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE EXTRAJUDICIAL CONFESSION OF THE ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF MURDER AND RAPE WITH HOMICIDE.[15]

The main issue in this case is the admissibility of appellant's confession. Appellant claims that Atty. Brotamonte was not a competent and independent counsel as he failed to advise him of the penalty to be imposed on the crimes he was accused of committing; hence, he was not aware of the consequences of his admissions.

To be admissible in evidence, an extra-judicial confession must be express and voluntarily executed in writing with the assistance of an independent and competent counsel, and a person under custodial investigation must be continuously assisted by counsel from the very start thereof. The presence of counsel is intended to secure the voluntariness of the extra-judicial confession, and the assistance given must be independent and competent, that is, providing full protection to the constitutional rights of the accused.[16]

The rule is premised on the presumption that the accused is thrust into an unfamiliar atmosphere running through menacing police interrogation procedures where the potentiality for compulsion, physical or psychological is forcefully apparent.[17] It is not intended as a deterrent to the accused from confessing guilt if he voluntarily and intelligently so desires but to protect the accused from being coerced to admit any that is untrue.[18] To be an effective counsel, a lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false. The counsel, however, should never prevent an accused from freely and voluntarily telling the truth.[19]

In the present case, the assistance rendered by Atty. Brotamonte is more than perfunctory. Before the onset of the investigation, Atty. Brotamonte privately conferred with appellant to ascertain the voluntariness of his confession and to make sure that no force or duress was employed by the police authorities on the latter to make him admit the crimes charged. He informed appellant of his constitutional rights and was clear in explaining to him the questions propounded by SPO2 Ambion. The testimony of Atty. Brotamonte during cross-examination leaves no

room for doubt that he adequately assisted appellant during the investigation, viz:

ATTY. MAROLLANO:

Q: Now, upon your arrival, were you offered a seat?

A:

No, because immediately when I arrived I asked the accused to stand and examined the body of the accused, if there were injury or what and I asked the accused, if these policemen inflicted injury to him, if he was harmed and according to accused, none.

Q:

And in doing that particularly, what did you do to examine the body of the accused of it bare some signs of injury?

A:

Because as a lawyer I have to protect the right of the accused. If the accused has body injury definitely I will be requiring the policemen to submit the accused for medical examination before the investigation will be conducted.

Q: In doing that, how did you do it to the accused?

A: I let the accused to stand and I asked him if any of the policemen harmed inflicted bodily injury to him and he told me no one of the policemen.

Q: Any of the policemen present?

A:

No, when I arrived, I request two (2) policemen to step-out because I have to talk to the accused when I propound question and examine the body of the accused and the accused was inside the room.

...

Q: And you were satisfied by the answer of the accused and you did not even bother to search the body of the accused?

A:

In my observation, the accused was telling the truth. Otherwise, he will inform this representation because I already informed him that I am a lawyer and I will protect him if somebody harmed him.

...

ATTY. BROTAMONTE:

As narrated in that affidavit, I explained to the accused that before I introduced myself, I told him that the policemen informs this representation that you are going to give your sworn statement before the police and I told him that I am a lawyer and I will assist him until the policemen finished the investigation and I told him to tell the truth to the policemen and told him that if you want to give your sworn statement to the police, you can do it because that is your right under the constitution, to remain silent.

Q:

That is why for example, right to be informed; you have the right to remain silent, and whatever you said will be used against in you, did you not explain these one by one?

ATTY. BROTAMONTE:

I explained that one by one. In fact I told the accused that the sworn statement you are going to make now might be used against you by the police but the accused is willing to give his sworn statement.

ATTY. MAROLLANO:

Q:

I see. Now, you said that you helped in the translation of the sworn statement in the Bicol dialect. Meaning that the questions were propounded in English and you helped the police investigator to translate it in Bicol dialect?

A:

No, when I state that I helped the police in the translation of the answer, what the policemen were asking the witness in Bicol and they translated in English and I even helped the policemen in the translation of the question and the answer of the witness in Bicol dialect.[20]

Clearly, appellant signed the confession with the assistance of a competent and independent counsel, Atty. Brotamonte, and it was also sworn to by him before Judge Arsenio Base, Jr. of the Municipal Trial Court of Tabaco, Albay, who, before administering the oath to appellant, conferred with him and informed him of his rights and the consequences of his confession. Judge Base testified, thus:

Q:

Judge, please explain to the Honorable Court the circumstances how this sworn statement, how the affiant was able to come into your house and the sworn statement was sworn to?

ATTY. MAROLLANO:

The witness is not sure whether he was in his house or office.

A:

The police investigator came to my office and informed me that they were investigating a rape and murder case that happened somewhere in the mountain of Tabaco, Albay and informed me that the suspect has been apprehended and that the suspect is willing to sign an affidavit of confession so I advised the police investigator to comply strictly with respect to investigation custodial legis and I informed him that that case should be assisted by a lawyer and the investigator told me that he contacted Atty. Brotamonte to assist the suspect in the investigation and I said It's better. So, after that the suspect was brought to me together with Atty. Brotamonte because I requested Atty. Brotamonte to be present also and the suspect. I investigated the suspect and he admitted to me that what he stated in this affidavit which is actually a confession that he killed the two women and actually raped one of them is correct and true. So, after explaining to him the consequence of his having confession to the crime being charged against him and he was still willing to sign the confession I let him sign the confession in my presence and in the presence of Atty. Brotamonte and after which I subscribed the affidavit.

PROSECUTOR BERANGO: (To witness)

Q:

Now, Judge could you tell the Honorable Court while the accused was in your presence if there was any pressure or compulsion upon the accused to sign this document?

A:

When the police investigator came to me I instructed him not to use any force and when the suspect was presented to me, actually I inspected his body if there was any sign of abrasion and I actually asked the suspect if he was forced or coerced into signing the crime charged and he said, no. And I asked him if this confession is voluntary and he said, yes. And he said he is being bothered by his conscience.[21]

The failure of Atty. Brotamonte to apprise appellant of the imposable penalty of the crimes he was to admit is not a sufficient ground to strike down appellant's extrajudicial confession. Section 12 (1) to (3), Article III of the Constitution provides:

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 [22] hereof shall be inadmissible in evidence against him.

Thus, what the Constitution regards as inadmissible in evidence is confession given by an accused without having been informed of his right to remain silent, or, without having been given competent and independent counsel, preferably his own choice, or if he cannot afford the services of counsel, he was not provided with one; or the waiver of his rights was not in writing and not in the presence of counsel; or, that he was tortured, forced, threatened, intimidated, by violence or any other means that vitiated his free will. There is nothing in the Constitution that mandates a counsel to inform an accused of the possible penalty for the crime he committed. Neither would a presumption arise that the counsel is incompetent or not independent just because he failed to apprise the accused that the imposable penalty for the crime he was about to admit is death. After all, the imposable penalty is totally immaterial to the resolve of an accused to admit his guilt in the commission of a crime.

To be considered competent and independent for the purpose of assisting an accused during a custodial investigation, it is only required for a lawyer to be:

"....willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's constitutional rights. In *People v. Basay* (219 SCRA 404, 418) this Court stressed that an accused's right to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle." [23]

As previously stated, Atty. Brotamonte ably assisted appellant during the entire procedure – from the time appellant signified his intention to give his extrajudicial confession up to the time he signed the same. Besides, it cannot be gainsaid that appellant was not aware of the consequences of his admissions as Judge Base explained it to appellant when he appeared before the latter to swear to the veracity of his confession.

The Court notes that while Judge Base testified that he asked appellant to sign anew the extrajudicial confession in his presence, the copy thereof marked as Exhibits “A”, “B”, and “C” attached to the records of the case do not show any subsequent signature made by appellant. Nevertheless, appellant did not refute Judge Base’s testimony, and it does not detract the fact that appellant executed the extrajudicial confession voluntarily with the assistance of an independent and competent counsel, and that he subsequently acknowledged having executed the same voluntarily and swore to its veracity before Judge Base.

Appellant failed to substantiate his bare claim that when he was brought to the Tabaco police station, the police officers boxed and kicked him, telling him to confess to the crimes.[24] As the records show, like Atty. Brotamonte, Judge Base also asked him if he was forced to confess but Bagnate said that he was not. If it were true that he was forced to confess to the crime, then appellant should have complained of such abuse to Atty. Brotamonte or Judge Base as he had the opportunity to do so when the two conferred with him on separate occasions.

Where the appellants did not present evidence of compulsion or duress or violence on their persons; where they failed to complain to the officers who administered the oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies and where they did not have themselves examined by a reputable physician to buttress their claim, all these should be considered as factors indicating voluntariness of confessions.[25]

To consider appellant’s allegation of maltreatment as true is to facilitate the retraction of solemnly made statements at the mere allegation of torture, without any proof whatsoever.[26]

The taking of appellant’s confession has conformed to the safeguards of the Constitution. It constitutes evidence of a high order, because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience.[27]

Under Section 3, Rule 133 of the Rules of Court, an extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti. The Rule specifically requires that there should be some other evidence “tending to show the commission of the crime apart from the confession.”[28] Appellant’s confession is corroborated by evidence of corpus delicti, that is, the body of the crime and, in its primary sense, that a crime has actually been committed.[29]

The evidence of corpus delicti in both cases consists of the victims’ deaths, as evidenced by the death certificates of Aurea Broña[30] and Rosalie Rayala,[31] and the findings of the autopsies conducted on the victims’ cadavers by Tabaco Rural Health Officer Dr. Amelia Guiriba showing that both were hacked to death and Rosalie was raped.

The autopsy on victim Aurea disclosed the following:

Hacked wound back of the neck about four (4) inches in length affecting skin, subcutaneous tissue, muscle and the cervical bone.

Hacked wound, neck anteriorly affecting larynx about 2 inches in length.

CAUSE OF DEATH: Hemorrhage severe secondary to hacked wound, neck.[32]

While the autopsy conducted on Rosalie revealed the following:

Stabbed wound neck, posteriorly about 1 ½ inches in length, 2 inches depth reaching the cervical bone.

Hacked wound left shoulder about 1 ½ inches length superficial slanting direction.

Hacked wound - right neck about 4 ½ inches length affecting skin subcutaneous muscle & Blood vessels, right earlobe cut.

Hacked wound below the chin about 3 ½ inches length affecting skin and subcutaneous tissue.

Hacked wound, left neck about 5 inches in length affecting skin subcutaneous tissue, muscle, Blood vessels and the cervical bone.

Hacked wound, left middle ear auricle about 1 inch in length, left occipital region about 1 inch in length.

Multiple linear abrasion both scapular region.

Contusion floor of the vaginal wall.

CAUSE OF DEATH: Hemorrhage severe secondary to multiple hacked wound, neck.[33]

The foregoing findings coincide with appellant's extrajudicial confession. As he stated therein, he hacked both victims on the neck with a bolo and he dragged Aurea towards the grassy portion of the yard. Appellant also admitted that he raped Rosalie. The autopsy report shows that Rayala had contusions on the floor of her vaginal wall, thus confirming that Rosalie had been raped. The autopsy report likewise confirmed that the victims suffered hack wounds on their necks. The recovery of the bolo after appellant had left the place likewise jibes with appellant's declaration in his confession that he hacked both victims with a bolo.[34] These are details that appellant could not have known if he did not commit the crimes.

It must also be noted that appellant was arrested only five hours from the occurrence of the crimes. It is not possible that within such short span of time, appellant would be able to know the details of the crimes as he described them when he gave his confession if it were true that he really did not commit them. The voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no suspicious circumstances tending to cast doubt upon its integrity, it being replete with details – which could only be supplied by the accused – reflecting spontaneity and coherence, it may be considered voluntary.[35]

Lending additional credence to the truthfulness of appellant's extrajudicial confession is the defense evidence itself, establishing that: Around 12:00 midnight of August 7, 1997, defense witness Julian Baloloy heard cries for help coming from the house of Aurea. Together with his son, Rodel, who brought a flashlight, they went to the house and called out to Aurea and Rosalie but there was no response. When they went inside the house, they saw blood and strands of hair on the floor but there was no sign of the two. They shouted for help and Roberto Angeles, whose house is located in front of the victims' house about thirty meters away, arrived. Appellant arrived next, saying that he just came from work and was not able to clean his hands. When Rodel Baloloy shone his flashlight on appellant, they saw that his hands were sticky and covered in red. Julian Baloloy then ordered appellant to fetch a barangay tanod. When Armando Bosque and Jose Rodriguez arrived, they started to look for Aurea and Rosalie while appellant was told to build a fire. At the back of the house, they saw impressions on the yard indicating that an object had been dragged, after which, they found the dead bodies of Aurea and Rosalie fifty meters away.[36]

Defense witnesses also testified that appellant did not join the search and therefore, the latter could not have known or seen the injuries suffered by the victims when they were found. It has been noted that appellant, in his confession, had accurately specified the injuries he inflicted on both victims. Julian Baloloy's testimony that they saw marks on the yard indicating that something has been dragged corroborated appellant's statement that he dragged Aurea. Moreover, that Julian Baloloy saw appellant's hand sticky and covered in red, which Baloloy described "as if you have just slaughtered a pig and you (sic) hands smudge with blood and when you washed your hands, it could still (sic) red," bolsters the conclusion that appellant indeed had participated in the gruesome

crimes.[37]

Thus, the confession of appellant being admissible in evidence and corroborated by evidence of corpus delicti, the trial court correctly found appellant guilty beyond reasonable doubt of the crimes of Murder and Rape with Homicide.

In imposing the supreme penalty of death in Criminal Case No. T-2874, the trial court considered the aggravating circumstances of nocturnity, treachery, superior strength, and disregard of the respect due to the victim on account of age and sex, as alleged in the Information, thus qualifying the killing of Aurea to murder.

However, the Court finds that the trial court erred in appreciating the aggravating circumstance of treachery. The evidence on record does not sufficiently prove that it attended the commission of the crime as no one actually saw the incident. The fact that Aurea was blind does not necessarily qualify her killing as treacherous. Treachery exists when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[38] Appellant's confession merely stated: "after satisfying his lust, my grandparent Aurea Bronia shouted although she was blind and thinks (sic) that my grandparent Aurea Bronia heard what I am doing I hacked her on her neck and when she fall (sic) I pulled her away from the house towards the grassy portion of the yard . . .". There is nothing in appellant's confession that demonstrates that he deliberately employed a particular means, method or form of attack in the execution of the crime.

Neither could nocturnity be considered as an aggravating circumstance considering that it was not shown that the darkness of the night was purposely sought by appellant to facilitate the commission of the crime nor to ensure its execution.[39]

It is not disputed that the crime was committed in Aurea's house. However, dwelling may not be appreciated as an aggravating circumstance in the consideration of his criminal liability as it is not alleged in the Information.[40]

Nonetheless, it is alleged in the Information and established by the prosecution that the crime was committed with abuse of superior strength. Under Article 248 of the Revised Penal Code, as amended by Section 6 of Rep. Act No. 7659,[41] any person who shall kill another shall be guilty of murder and shall be punished by death if committed with abuse of superior strength. Hence, the trial court correctly imposed the death penalty in Criminal Case No. T-2874.[42]

As regards the damages awarded to the heirs of Aurea Broña in the amount of P50,000.00, the Court considers the same as representing civil indemnity. In murder cases, civil indemnity requires no further proof other than death.[43]

The award of civil indemnity is separate and distinct from the award of moral damages, which is based on a different jural foundation and assessed by the court in the exercise of sound discretion.[44] Considering that the prosecution failed to show any proof that the heirs of Aurea Broña are entitled to moral damages, the same may not be awarded.[45]

In accordance with Article 2230 of the Civil Code, exemplary damages may be awarded in criminal cases as part of the civil liability if the crime was committed with one or more aggravating circumstances.[46] Considering the generic aggravating circumstances of disregard of age of the victim and dwelling, the award of P25,000.00 as exemplary damages is in order.[47]

In Criminal Case No. T-2875, the trial court likewise correctly imposed the death penalty. Article 334 of the

Revised Penal Code, as amended by Section 11 of Rep. Act No. 7659 imposes the penalty of death when by reason or on the occasion of the rape, a homicide is committed.

The Court, however, has to modify the award of civil indemnity in favor of the heirs of Rosalie Rayala. Recent rulings increased the amount of civil indemnity in cases of rape with homicide to P100,000.00.[48] The heirs of Rosalie must be awarded the amount of P75,000.00 as moral damages without need of proof,[49] in view of the rape suffered by victim Rosalie. The fact that the heirs suffered the trauma of mental or physical and psychological sufferings which constitute the basis for moral damages under the Civil Code are too obvious to still require recital thereof at trial.[50]

Considering that the crime of rape was committed inside the dwelling of the victim, exemplary damages in the amount of P25,000.00 should likewise be awarded to the heirs of Rosalie.

The Court finds that the heirs of both Aurea and Rosalie should be awarded the amount of P54,259.00 as actual damages in view of the admission made by the defense that the family of Aurea and Rosalie incurred expenses in said amount.[51]

Before concluding, the Court observed, as borne by the records of this case, that appellant could not have been the only perpetrator of the crimes. As appellant revealed in his confession, he hacked each of the victims on the neck with his bolo only once. The autopsy report, however, shows that Aurea Broña suffered two neck wounds while Rosalie Rayala suffered five hack wounds and one stab wound, all on the neck. Appellant confessed that he dragged Aurea towards the grassy portion of the yard and immediately left the scene. Yet, Rosalie was also found on the grassy portion of the yard. The autopsy report further showed that Rosalie likewise suffered multiple linear abrasions on both scapular regions, thus giving the impression that she was also dragged towards the yard. Somebody else must have brought Rosalie to the place where she was found. Indeed, there are clear indications that there are other perpetrators of the crimes of murder and rape with homicide. Appellant alone could not have inflicted all the injuries sustained by the victims.

In view of all these circumstances, the police authorities as well as the prosecutor's office of Tabaco, Albay, should be required to apprise the Court whether or not further investigation of this case was conducted for the identification and arrest of the other perpetrators of the crimes to completely bring justice to their victims.

WHEREFORE, the decision of the Regional Trial Court (Branch 15) of Tabaco, Albay, in Criminal Case No. T-2874 finding appellant Amado Bagnate guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the supreme penalty of DEATH is hereby AFFIRMED with MODIFICATIONS as to damages. Appellant is ordered to pay the heirs of Aurea Broña the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

The decision of the trial court in Criminal Case No. T-2875, finding Amado Bagnate guilty beyond reasonable doubt of the crime of Rape with Homicide and imposing on him the penalty of death is AFFIRMED with MODIFICATIONS. The appellant is ordered to pay the heirs of the deceased victim Rosalie Rayala civil indemnity in the amount of One Hundred Thousand Pesos (P100,000.00); moral damages in the amount of Seventy-Five Thousand Pesos (P75,000.00); and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

Appellant is ordered to pay the heirs of both Aurea Broña and Rosalie Rayala the amount of Fifty-Four Thousand Two Hundred Fifty-Nine Pesos (P54,259.00) as actual damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon

finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

The Chief of the Tabaco Police Station and the Tabaco Prosecutor's Office are hereby ORDERED, with ten (10) days from receipt of copy of herein resolution, to apprise the Court whether or not subsequent investigations were conducted to determine the other perpetrator(s) of the crimes involved herein.

SO ORDERED.

Vitug, (Acting Chief Justice) Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.
Davide, Jr., C.J., and Puno, J., on official leave.

[1] Auria/Aurea Broña in some other parts of the Records.

[2] Records 2, p. 25.

[3] Records 1, p. 25.

[4] Records 1, p. 28; Records 2, p. 31.

[5] TSN, SPO1 Rogelio Gonzales, Dec. 10, 1997, pp. 21-34; Exhibits "D", "E", "F", Records 2, pp. 63-65; SPO2 Junwel Ambion, Dec. 15, 1997, pp. 15-25; Atty. Paterno Brotamonte, Jan. 26, 1998, pp. 5-13, 20-22.

[6] Records 1, Exhibit "A", p. 2.

[7] TSN, SPO2 Junwel Ambion, Dec. 15, 1997, pp. 25-33.

[8] TSN, Atty. Paterno Brotamonte, January 26, 1998, pp. 33-34.

[9] Bufo in some other parts of the Records.

[10] Records 1, Exhibits "B" and "C", pp. 3-4.

[11] TSN, Atty. Paterno Brotamonte, Jan. 26, 1998, pp. 11-18, 30-36.

[12] TSN, Hon. Arsenio Base, Jr., December 10, 1997, pp. 7, 16-17.

[13] TSN, Amado Bagnate, March 16, 1998, pp. 6-26.

[14] Records 1, pp. 69-70.

[15] Rollo, pp. 163-164.

[16] People vs. Patungan, G.R. No. 138045, March 14, 2001, 354 SCRA 413, 424.

[17] People vs. Ordoño, G.R. No. 132154, June 29, 2000, 334 SCRA 673, 686.

[18] People vs. Base, G.R. No. 109773, March 30, 2000, 329 SCRA 158, 170.

[19] Ibid.

[20] TSN, Atty. Paterno Brotamonte, January 26, 1998, pp. 20-21, 28-29.

[21] TSN, Hon. Arsenio Base, Jr., December 10, 1997, pp. 6-9.

[22] Sec. 17 reads: No person shall be compelled to be a witness against himself.

- [23] *People vs. Porio*, G.R. No. 117202, February 13, 2002; 376 SCRA 596, 610.
- [24] TSN, Amado Bagnate, March 16, 1998, pp. 27-28.
- [25] *People vs. Continente*, G.R. Nos. 100801-02, August 25, 2000, 339 SCRA 1, 24.
- [26] *Ibid.*
- [27] *People vs. Tablon*, G.R. No. 137280, March 13, 2002, 379 SCRA 280, 292.
- [28] *People vs. De Vera*, G.R. No. 128966, August 18, 1999, 312 SCRA 640, 668.
- [29] *People vs. Robles*, G.R. No. 101335, June 8, 2000, 333 SCRA 107, 119.
- [30] Records 2, p. 8.
- [31] Records 1, p. 9.
- [32] Records 2, Exhibit “I”, p. 7.
- [33] Records 1, Exhibit “K”, p. 8.
- [34] TSN, PO2 Jose Bongalonta, December 15, 1997, pp. 8-12; SPO2 Junwel Ambion, December 15, 1997, pp. 33-35.
- [35] *People vs. Licayan*, G.R. No. 144422, February 28, 2002, 378 SCRA 281, 294.
- [36] TSN, Julian Baloloy, March 2, 1998, pp. 10-24.
- [37] TSN, Julian Baloloy, March 2, 1998, p. 37.
- [38] Article 14, par. 16, Revised Penal Code.
- [39] *People vs. Manlansing*, G.R. Nos. 131736-37, March 11, 2002, 378 SCRA 685, 700.
- [40] *People vs. Gallego*, G.R. No. 130603, August 15, 2000, 338 SCRA 21, 41.
- [41] Entitled “An Act to Impose the Death Penalty on Certain Heinous Crimes ...,” which took effect on December 31, 1993 (*People vs. Simon*, 234 SCRA 555 [1994]).
- [42] Three Justices of the Court maintain their position that Rep. Act No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.
- [43] *People vs. Dumalahay*, G.R. Nos. 131837-38, April 2, 2002, 380 SCRA 37, 47.
- [44] *People vs. Malinao*, G.R. No. 128148, February 16, 2004.
- [45] Art. 2219, NCC, par. 1.; *People vs. Brecinio*, G.R. No. 138534, March 17, 2004.
- [46] *People vs. Badon*, G.R. No. 126143, June 10, 1999, 308 SCRA 175, 190.
- [47] *People vs. Astudillo*, G.R. No. 14518, April 29, 2003.
- [48] *People vs. Plana*, G.R. No. 128285, November 27, 2001, 370 SCRA 542, 570; *People vs. Porio*, G.R. No. 117202, February 13, 2002, 376 SCRA 596, 613; *People vs. Licayan*, G.R. No. 144422, February 28, 2002, 378 SCRA 281, 296; *People vs. Tablon*, G.R. No. 137280, March 13, 2002, 379 SCRA 280, 293; *People vs. Magallanes*, G.R. No. 136299, August 29, 2003.

[49] People vs. Magallanes, G.R. No. 136299, August 29, 2003.

[50] People vs. Plana, G.R. No. 128285, November 27, 2001, 370 SCRA 542, 570.

[51] TSN, Eligio Berdin, February 16, 1998, pp. 7-9.

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