

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS DE LA CRUZ, ACCUSED-APPELLANT.*G.R. Nos. 91865-66 & 92439-40. July 06, 1993*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-91865-66/>**DAVIDE, JR., J.:**

Accused appeals from the joint decision[1] of Branch 48 of the Regional Trial Court (RTC) of Masbate, Fifth Judicial Region, in Criminal Case No. 5519 and Criminal Case No. 5521 promulgated on 27 December 1989. The said decision found the accused guilty beyond reasonable doubt of the crime of homicide in the first case and sentenced him “to suffer the penalty of Eight (8) Years and One (1) Day of Prison Mayor as Minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum and to pay the heirs of the late Virgie Trangia the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs”; in the second case, the accused was convicted of rape and was sentenced “to suffer the penalty of reclusion perpetua or life imprisonment and to pay Blessie Marie Veri the amount of P30,000.00 as damages without subsidiary imprisonment in case of insolvency and to pay the costs.”

These cases originated from the 2nd Municipal Circuit Trial Court (MCTC) of Mandaon-Balud, Masbate with the filing thereat on 29 June 1988 of a complaint for murder by the Deputy Station Commander of the Integrated National Police (INP) at Mandaon, Masbate, which was docketed as Criminal Case No. 4314-M,[2] and of a complaint for rape by the offended party, Blessie Marie Veri, which was docketed as Criminal Case No. 4315-M.[3] Accused was subsequently arrested on the strength of a warrant of arrest issued by the Judge of the said court after a preliminary examination was conducted.[4] Accused failed to file his counter-affidavit as required by the court. Finding that a prima facie case existed against him on the basis of the prosecution’s evidence, the said court forwarded the records of both cases to the Office of the Provincial Fiscal of Masbate.[5] The latter in turn filed with the RTC of Masbate two separate informations for murder and rape against the accused. The first, filed on 1 September 1988, was docketed as Criminal Case No. 5519 and raffled off to Branch 48 of the said court. Its accusatory portion reads:

“That on or about April 30, 1987, in the morning thereof, at sitio Tonog, barangay Nailahan (sic), Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, evident premeditation and treachery did then and there, willfully, unlawfully and feloniously, attack, assault and stab with a deadly weapon one Virgie Trangia, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused her instantaneous death.

CONTRARY TO LAW.”[6]

On the other hand, the second information, filed on 5 September 1988, was docketed as Criminal Case No. 5521 and raffled off to Branch 44 of the said court. Its accusatory portion reads:

“That on or about April 29, 1987, in the afternoon thereof, at sitio Tonog, barangay Nailahan (sic), Municipality

of Mandaon, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused by means of violence and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of one Blessie Marie T. Veri, against the latter's consent.

CONTRARY TO LAW.”[7]

Arraigned on 25 October 1988 in Criminal Case No. 5519, the accused entered a plea of not guilty.[8]

Subsequently, or on 14 December 1988, Branch 44 of the court a quo granted the prosecution's motion to consolidate Criminal Case No. 5521 with Criminal Case No. 5519 in Branch 48 of the said court.[9] Thereupon, the accused entered a plea of not guilty[10] on 4 January 1989 in Criminal Case No. 5521.

At the joint trial of both cases, the prosecution presented as its witnesses Blessie Marie Veri, the offended party; Dr. Napoleon Villasis, the physician who examined her and issued a medical certificate; P/Lt. Jesustines Villamor, Station Commander of the Mandaon Police Station; P/Cpl. Renato Sabaldica; and Jose Radan, a photographer. For his part, the accused testified in his behalf and presented as his sole witness Ledesma Parabas, a neighbor and caretaker of his (accused's) employer's farm.

The evidence for the prosecution, upon which the trial court based its judgment, is summarized in the Appellee's Brief as follows:

“The evidence for the Prosecution showed that appellant and Virgie Trangia were live-in partners residing at Sitio Tonog, Barangay Nailaban, Mandaon, Masbate. Living with them was Blessie Marie Veri, a nine (9) year old schoolgirl, who was Virgie Trangia's daughter by another man.

On April 29, 1987, at around 1:00 in the afternoon, Virgie Trangia went to the poblacion of Mandaon, Masbate. Appellant and Blessie Marie were left alone in their house. At around 3:00 in the afternoon of that day, i.e., April 29, 1987, appellant approached Blessie Marie while inside their house. He held Blessie Marie's hands and dragged her to a room. Inside the room, appellant tied Blessie Marie's mouth with a handkerchief to prevent her from shouting. Thereafter, appellant tied Blessie Marie's hands behind her back with a rope while she was on the floor facing it. Blessie Marie was then made to lie with her back on the floor. Appellant sat on Blessie Marie's abdomen and tied Blessie Marie's feet together.

On second thought, appellant untied Blessie Marie's feet, spread them apart, and tied them again with a rope to two (2) separate posts.

After Blessie Marie's hands and feet were tied by appellant, the latter tore Blessie Marie's panty. Appellant then took off his shorts and brief and placed himself on top of Blessie Marie. He inserted his sexual organ to that of Blessie Marie, and he succeeded in his sexual assault. Thereafter, appellant dressed himself and left the house. Before leaving, he untied Blessie Marie's hands.

After appellant had left the house, Virgie Trangia (Blessie Marie's mother) arrived from the poblacion of Mandaon, Masbate. At that time, Blessie Marie was still lying on the floor. Virgie Trangia inquired from her daughter as to what had happened while she was away. Blessie Marie informed her that she was raped by appellant. At around 4:00 in the afternoon, Blessie Marie and Virgie Trangia went to the Mandaon Police Station to report the incident. At the police station, they were investigated by P/Cpl. Renato Sabaldica who prepared a police report thereafter (Exh. B in Criminal Case 5521, Rec., G.R. No. 91865-66, p. 476).

After investigating Blessie Marie, P/Cpl. Sabaldica took a tricycle to apprehend appellant. The latter was apprehended on that same day (the place and time of apprehension undisclosed) and brought to the Mandaon Police Station where he was detained.

At the police station, appellant asked forgiveness from Virgie Trangia. Having been forgiven by the latter, appellant was released from prison in the morning of the following day, i.e., April 30, 1987. From the police station, appellant and Virgie Trangia went home together.

In the meantime, at around 9:00 in the morning of April 30, 1987, Blessie Marie went to Landina de la Cruz's house which is a walking distance away from appellant's house. After several minutes, Blessie Marie and Landina de la Cruz proceeded to appellant's house (where Virgie Trangia and Blessie Marie also live). Upon reaching said house, Blessie Marie noticed a lot of blood on the floor and wall of her room. She asked Landina de la Cruz where her mother (Virgie Trangia) was, but Landina de la Cruz could not answer her question.

After one (1) week, Blessie Marie saw appellant in his parent's house which is located fifty (50) meters away from Landina dela Cruz's residence. At that time, appellant was carrying with him Virgie Trangia's clothings. Blessie Marie then inquired from appellant where her mother was. Appellant answered that Virgie Trangia was in Estancia, Iloilo. Not believing appellant (sic), Blessie Marie then left.

Sometime in June 1988, Connie Trangia (Virgie Trangia's mother) went to the Mandaon Police Station to report that her daughter was missing. On the basis thereof, Sergio dela Cruz, appellant's father, was invited by the police authorities. At the police station, Sergio de la Cruz told the police authorities that his son, herein appellant, confessed to him that he killed Virgie Trangia and buried her body at the base of a coconut tree along the seashore in Nailaban, Mandaon, Masbate.

Based on the information given by Sergio de la Cruz, appellant was apprehended on June 13, 1988 by the Mandaon police authorities at Barangay Cagmasuso, Mandaon, Masbate and brought to the police station.

At the police station, appellant volunteered the information that he buried his wife along the seashore at Nailaban, Mandaon, Masbate. Thereafter, he led the police authorities to the said place and dug the ground in the presence of residents thereat. They (appellant and police authorities) were able to recover eight (8) bones of Virgie Trangia. Photographs were taken by Jose Radan of the place excavated by appellant and the bones recovered therefrom.

On June 30, 1988, Blessie Marie submitted herself to a medical examination at the Mandaon Medicare Community Hospital to prove that she was indeed raped by appellant one (1) year ago. Dr. Napoleon Villasis, who conducted the aforesaid medical examination, issued a certification (Exh. A in Crim. Case No. 5521, G.R. No. 91865-66, p. 46) to the effect that he found an old hymenal tear at '8:00 o'clock position' in Blessie Marie's sexual organ.

On the basis of the available evidence, appellant was thus prosecuted for RAPE and MURDER, the herein cases.”[11]

Finding the foregoing to be a faithful summary of the prosecution's evidence, we hereby adopt the same as our own.

On the other hand, the accused, who admitted to be Virgie Trangia's live-in partner from 1985 to 1987, raised the defense of alibi. He declared that on 29 April 1987, he reported for work at Marcial Mesa's ricefield. He stopped working at 4:00 p.m. and forthwith proceeded home. Not finding Virgie Trangia and her daughter Blessie Marie Veri to be home, he looked for them and asked his neighbors about their whereabouts. When Virgie and Blessie Marie finally arrived, he got angry at them and even slapped Blessie Marie. Virgie thus called a policeman to arrest him. He was arrested and brought to the Mandaon municipal jail. Upon being investigated, he denied having raped Blessie Marie. Thereupon, he was released from jail at around 4:00 p.m. the following day. He reached home at about 6:00 p.m. and discovered that Virgie and Blessie Marie were no longer in their house. Searching for them in their neighborhood, he was informed that both had packed their things and left. He

continued looking for them for one year and assumed, after that period, that they had just gone home to their parents. On 29 June 1988, he came to know that cases for murder and rape had been filed against him. He was thus apprehended by the police, maltreated while being detained and made to confess that he had killed Virgie Trangia. He insisted, however, that he did not kill the latter. He was then brought to Nailaban to look for the place where he had supposedly buried Virgie Trangia's remains. He was made to dig for the said remains but they could find nothing. He claims that he did not see the bones which were presented by the prosecution in the place where he was made to dig. Nor does he know where the bones came from as they were just brought by Virgie's mother, Connie Trangia, to the site of the digging and placed there before the pictures were taken.[12]

The accused's alibi was corroborated by Ledesma Parabas, caretaker of Marcial Mesa's land, who testified that on 29 April 1987, the accused reported for work at Marcial Mesa's land at 7:00 a.m., returned to work at 1:00 p.m., stopped at 4:00 p.m. and then headed home. She declared that her house is only about seventeen arms' length away from the accused's house and that she did not hear any shouting from his house in the morning or afternoon of the said date.[13]

On 27 December 1989, the trial court promulgated its decision, the adjudicatory portion of which reads as follows:

"WHEREFORE, the Court finds the accused, Carlos dela Cruz, guilty beyond reasonable doubt of the crime of rape and hereby sentences said accused to suffer the penalty of reclusion perpetua or life imprisonment and to pay Blessie Marie Veri the amount of P30,000.00 as damages without subsidiary imprisonment in case of insolvency and to pay the costs.

WHEREFORE, in Criminal Case No. 5519, the Court finds the accused, Carlos dela Cruz, guilty beyond reasonable doubt of the crime of homicide and hereby sentences said accused to suffer the penalty of Eight (8) Years and One (1) day of Prision Mayor as Minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of Reclusion Temporal as maximum and to pay the heirs of the late Virgie Trangia the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED."[14]

Accused filed on 11 January 1990 separate notices of appeal signifying his intention to appeal his conviction for homicide in Criminal Case No. 5519 to the Court of Appeals[15] and his conviction for rape in Criminal Case No. 5521 to this Court.[16] Thus, on 12 January 1990, the trial court transmitted the records of Criminal Case No. 5521 (Rape) to this Court which docketed the same as G.R. Nos. 91865-66. Since only one case was appealed to this Court, a single docket number should have been assigned to it.

On 19 January 1990, the trial court forwarded the records of Criminal Case No. 5519 (Murder) to the Court of Appeals. However, on 13 February 1990, the Chief of the Judicial Records Division of the appellate court forwarded the said records to this Court on the ground that the same were "erroneously forwarded" to the Court of Appeals "considering that the penalty imposed upon the accused-appellant is RECLUSION PERPETUA." [17] This is, of course, incorrect as the penalty imposed by the trial court in Criminal Case No. 5519 is not reclusion perpetua. Said official must have been unaware of the appeal to this Court in Criminal Case No. 5521 and merely took into account Section 3(c), Rule 122 of the Revised Rules of Court.[18] The case was docketed as G.R. Nos. 92439-40. Again, only one docket number should have been assigned to the case.

Acting on the motion of the accused's counsel, this Court, in its Resolution of 16 January 1991,[19] ordered the consolidation of G.R. Nos. 91865-66 and G.R. Nos. 92439-40.

In his Consolidated Brief,[20] the accused urges this Court to reverse his conviction for rape and homicide and

acquit him thereof because the trial court erred:

“I

X X X IN RELYING SOLELY IN (sic) THE TESTIMONY OF THE COMPLAINANT BLESSIE MARIE VERI IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE MANIFEST UNCERTAINTIES AND INCONSISTENCIES.

II

X X X IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH THE CRIME BY CLEAR AND CONVINCING EVIDENCE.

III

X X X IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF HOMICIDE BASED PURELY ON CIRCUMSTANTIAL EVIDENCE WHICH WERE (sic) INFERRED ON (sic) FACTS NEVER PROVEN.”

G.R. Nos. 91865-66 (Rape):

In support of his first and second assigned errors, the accused contends that the complainant’s testimony that he raped her is not reliable and credible as the same contains “manifest uncertainties and inconsistencies which render the charge of rape doubtful and suspicious.” He then cites some discrepancies between the complainant’s testimony during the trial and the sworn statement she had prepared during the preliminary examination, as well as contradictions in her declarations during direct and cross-examinations. He further claims that her story is not supported or corroborated by other evidence and that the withdrawal by her mother of the complaint for rape, which led to his release from jail on 30 April 1987, the complainant’s failure to undergo a medical examination immediately after the rape and the filing of the case only after more than a year, reflect the dubiousness of the complaint for rape. The following are the more important alleged inconsistencies pointed out by the accused: (a) in her sworn statement during the preliminary examination, Blessie Marie stated that the accused, who was armed with a knife, “hogtied” her, dragged her to a room and raped her there; however, in her testimony given in court, she claimed that the accused first dragged her to a room, tied her hands and feet and raped her without disclosing that he (accused) was armed with a knife; and (b) while the complainant testified in court that (1) she was raped by the accused at 3:00 o’clock in the afternoon of 29 April 1987; (2) she reported the incident to the Mandaon Police Station an hour later, i.e., 4:00 p.m. of that same day; (3) the rope used by the accused for tying her was found in her room; (4) the accused removed his shorts and brief after he had tied her hands and feet; and (5) the accused tied her while she was lying, face down, on the floor, the police report prepared by P/Cpl. Sabaldica states that the rape was committed at 12:00 noon of 29 April 1987 and was reported to the police authorities at 3:00 o’clock in the afternoon of the same day. Moreover, it is averred that during cross-examination, Blessie Marie declared that the accused, who was then naked, was already holding a rope as he dragged her to a room, and that she was lying with her back on the floor when her hands were tied by him.

We are not impressed. As to the alleged inconsistencies between her testimony given in court and her sworn statement, we agree with the Solicitor General’s contention that the said sworn statement was not presented or formally offered in evidence by the defense. Hence, the same cannot be given any evidentiary value. Section 34, Rule 132 of the Revised Rules of Court provides that “[T]he court shall consider no evidence which has not been formally offered.” It must likewise be stressed that under Section 8, Rule 112 of the same Revised Rules of Court, “[T]he record of the preliminary investigation whether conducted by a judge or a fiscal, shall not form part of the record of the case in the Regional Trial Court” unless ordered produced by the trial court on its own initiative or

on motion of any party “whenever the same shall be necessary in the resolution of the case or any incident therein, or shall be introduced as evidence by the party requesting for its production.” Besides, the offended party was never confronted with the alleged inconsistent statement or accorded the opportunity to explain it. Section 13 of the aforesaid Rule 132 provides that:

“Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.”

Furthermore, it was not necessary to show that the accused had a knife for the purpose of proving the existence of force or intimidation. All that had to be established by the prosecution in the instant case was the fact that the accused had carnal knowledge of the offended party who was only nine (9) years old at that time. Force or intimidation is not necessary to commit the crime of rape in this case for, as provided by Article 335 of the Revised Penal Code, rape may also be committed by having carnal knowledge of a woman who is under twelve years of age, “even though neither of the circumstances mentioned in the next two preceding paragraphs (one of which is the fact that force or intimidation was used) shall be present.”

The variance between the entries in the police report and the testimony of Blessie Marie as to the approximate time of the commission of the rape and its being reported to the police authorities is quite inconsequential. Besides, the said entry was prepared by the police investigator without Blessie Marie’s participation. In fact, no evidence was offered to show that she had actually seen the report. In view thereof, she cannot be accused of taking an inconsistent stand. In *People vs. Santito, Jr.*,^[21] we ruled that the “entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestion or inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject.”

The other alleged inconsistencies between the complainant’s testimony during direct examination and cross-examination are on minor, if not trivial, matters which only serve to strengthen her credibility. Thus, in *People vs. Santito, Jr.*,^[22] we declared that:

“x x x the imputed inconsistency in the testimonies of the prosecution witnesses on minor details reinforces rather than weakens their credibility for the reaction of persons when confronted with a shocking incident varies x x x. Testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. It would have been more suspicious if complainant had been able to pinpoint with clarity or describe with precision the exact sequence of events. The most candid witness oftentimes makes mistakes but such honest lapses do not necessarily impair his intrinsic credibility.”

The above pronouncement is especially true in this case where the offended party was only nine (9) years old at the time she was sexually assaulted and subjected to inhuman treatment. Blessie Marie immediately revealed the rape to her mother upon the latter’s arrival; both then wasted no time in reporting the incident to the police authorities who recorded the complaint and arrested the accused on the same day. The spontaneity of such acts, as well as the complainant’s subsequent submission to a medical examination -- albeit belated -- and the ordeal of a public trial, manifested her honest desire to seek justice. It is difficult to believe that Blessie Marie, at so tender an age, would publicly admit that she had been criminally abused and ravished unless that was the truth.^[23]

Appellant, however, contends that the complainant’s testimony of the rape is not supported or corroborated by

other evidence. It must, therefore, be emphasized that except where expressly required by law, the testimony of a single witness need not be corroborated; witnesses are to be weighed, not numbered.[24] In prosecutions for rape, the accused may be convicted solely on the basis of the complainant's testimony provided, of course, that the same is credible and convincing.[25] In the instant case, we find Blessie Marie's testimony to be both truthful and credible.

Furthermore, the charge of rape is duly supported by other evidence on record. Contrary to the accused's submission, the medical certificate issued by Dr. Villasis shows that the complainant suffered an "old hymenal tear at 8:00 o'clock position." Such a finding strongly supports the complainant's claim that she had been raped by the accused more than a year earlier. While Dr. Villasis did not rule out the possibility of sexual intercourse as the cause of the hymenal tear, he affirmed that he "would rather say that there was a possible sexual penetration" but "could not qualify if it was forcible or not or it was rather inflicted through force or intimidation." [26]

Nor can we appreciate in the accused's favor his release from jail on 30 April 1987 and Blessie Marie's failure to submit to a medical examination immediately after the rape. The accused was released from jail not because of his innocence but because he had begged Blessie Marie's mother for forgiveness. Also, the rule is settled that a medical examination is not indispensable in the prosecution for rape.[27]

Of course, the pardon extended by Virgie Trangia to the accused would not be sufficient to exonerate him. As early as 1902, this Court, in *United States vs. Luna*, [28] had ruled that the grant of pardon by the parents or guardian of a minor complainant "alone, in the name or on behalf of the minor, is not sufficient, because, as the offense essentially and directly affects the injured party, she alone is entitled to remit the offense and to authorize the extinction of the penal action." Elsewise stated, where the offended party in cases of rape, seduction, abduction or acts of lasciviousness is a minor, the pardon must be given by both the parents and the offended party.[29]

The trial court correctly rejected the defense of alibi on the basis of the accused's positive identification by Blessie Marie as the rapist. We have held that alibi cannot prevail over the positive identification of the accused.[30] Moreover, for such a defense to succeed, it is not enough that the accused prove that he was somewhere else when the crime was committed; he must also show that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[31] The accused failed to show such impossibility in this case.

Thus, this Court is convinced beyond reasonable doubt that the accused raped Blessie Marie Veri.

Since there were no extenuating circumstances which attended the commission of the crime, the trial court correctly imposed the penalty of reclusion perpetua.[32] It erred, however, in equating the said penalty with "life imprisonment." We have time and again said that reclusion perpetua is not synonymous or interchangeable with life imprisonment because they do not have the same duration and the latter does not carry with it the accessory penalties provided in the Revised Penal Code.[33]

G.R. Nos. 92439-40 (Murder):

In convicting the accused of the lesser offense of homicide, the trial court took into account the following circumstances: (a) the accused and the victim went home together in the morning of 30 April 1987 after the former was released from jail; (b) at 9:00 o'clock in the morning of the same day, Blessie Marie and Landina de la Cruz "saw plenty of blood in her (Blessie Marie's) room, on the floor, on the wall and on the ground of their house"; (c) Virgie was never seen again thereafter; (d) the accused had taken flight because he was no longer in his house at the time Blessie Marie and Landina arrived therein; (e) the accused went to Estancia, Iloilo for when

Blessie Marie asked him a week later where her mother was, he replied that she “is in Estancia, Iloilo”; (f) he had in his possession Virgie’s clothes, a fact which reinforced the theory that he was the last person with her; (g) he admitted to his father, Sergio de la Cruz, that he killed Virgie and buried her near the seashore; (h) he was thereafter apprehended in the island of Cagmasoso, Masbate, “preparatory to take (sic) flight again”; (i) after his arrest, he admitted, when confronted by P/Lt. Jesustines Villamor, that “he really killed his wife and the remain (sic) of her body was (sic) buried at the base of the coconut trees along the seashore of sitio Nailaban, Mandaon, Masbate”; and (j) he was able to dig up, in the place where he had buried Virgie’s remains, “eight (8) pieces of human bones which are the bones of his wife.”[34] The trial court ruled that although the declaration of Sergio de la Cruz -- that his son (the accused) admitted having killed Virgie -- is hearsay since he was not presented as a witness, he nevertheless “provided the clue to the killing of the victim by the accused.”[35] Anent the accused’s supposed admission before P/Lt. Villamor, the court a quo opined that although it resulted from a “custodial investigation without [the] assistance of counsel,” and is therefore “inadmissible for violating the provision of the Constitution,” it nevertheless “reinforces the circumstantial evidence.”[36]

The accused vainly attempts to rip apart the foregoing circumstances by contending that they were inferred from unproven facts or mere conjectures. Hence, he claims that there is no evidence to show that he and Virgie returned home together on 30 April 1987; on the contrary, it is asserted that Blessie Marie herself testified during both direct and re-direct examinations that he went home only after five days from 29 April 1987, the date of his arrest.[37] And even then, per his own testimony, he was released from detention only at 4:00 o’clock in the afternoon of 30 April 1987 and arrived home two hours later.[38]

Accused also avers that Blessie Marie’s testimony concerning the blood found in her house was not corroborated by her companion Landina de la Cruz; thus, the latter’s non-presentation constitutes suppression of evidence which could have been adverse if produced. He further claims that there is no factual basis for the trial court’s conclusion that he proceeded to Estancia, Iloilo and that he fled from his house for at the time he was supposed to be out of the said house, he was very much still in detention. It could not likewise be logically presumed, as the trial court did, that his possession of Virgie’s clothes, even if it be true, proves that he was the last person with her.

Finally, the accused maintains that while the trial court was correct in ruling that his declarations were inadmissible for having been taken without the assistance of counsel, it nevertheless erred in admitting in evidence the “re-enactment pictures” (Exhibits “C,” “C-1” to “C-12,” inclusive) and the bones that were recovered.

Save for the last, the accused’s grievances do not touch on the more significant aspects of this murder case. And even if we assume that they do, the accused would still not be entirely correct for P/Cpl. Sabaldica testified that he released the latter in the morning of 30 April 1989 after an “amicable settlement” was reached with Virgie; both then allegedly proceeded home.[39]

Anent the non-presentation of Landina de la Cruz, it appears that she was, at most, a corroborative witness. Hence, her testimony can be dispensed with and no unfavorable presumption may be deduced from the prosecution’s failure to present her.[40]

After an extensive review of the records and the trial court’s decision, we find the prosecution’s case for murder fatally flawed because of the absence of proof to show that (a) Virgie Trangia had in fact died, (b) the bones which were unearthed were that of a human being, (c) assuming they were, that they belong to a female human being and (d) assuming further the latter to be so, that they were the bones of Virgie Trangia.

There is no evidence on record to prove the fact of Virgie Trangia’s death except for (a) the testimony of P/Cpl.

Renato Sabaldica to the effect that Sergio de la Cruz had admitted that the accused (Sergio's son) confessed to the said killing;^[41] Sergio then executed on 24 June 1988 an affidavit affirming the "confession" of his son;^[42] this was followed by the latter's 1 July 1988 sworn declaration before the Judge of the MCTC of Mandaon-Balud, Masbate;^[43] and (b) the declaration of P/Lt. Jesustines Villamor that after the accused's arrest for the crime of murder, the former interviewed the latter who then admitted that "he really killed his wife" and buried her remains "in the base of the coconut trees along the seashore of sitio Nailaban, Mandaon, Masbate."^[44]

The declaration of Sergio de la Cruz, as correctly ruled by the trial court, is hearsay since he was not presented by the prosecution as a witness.^[45] In any event, even if such declaration may be admitted, the prosecution still failed to establish the approximate date of Virgie's "death." All that may be gleaned from the affidavit prepared by Sergio de la Cruz is that his son (accused) revealed to him a week after 25 July 1987 that he had killed his wife Virgie Trangia. On the other hand, it is to be observed that the trial court opined that Virgie must have been killed in the morning of 30 April 1987 because of Blessie Marie's discovery of blood in the room, on the floor and on the walls of their house. We find such a conclusion unacceptable as no evidence was offered to prove that the said blood was human blood. Moreover, the police authorities did not conduct an ocular inspection to determine if indeed there were tell-tale signs of blood.

Furthermore, the evidence discloses that Virgie's mother, Connie Trangia, did not in fact report to the police authorities that Virgie had been killed. She merely complained that Virgie was missing. On direct examination, P/Lt. Villamor declared:

"Q How did you happen to investigate Sergio de la Cruz?

WITNESS testifying

A I investigated Sergio de la Cruz when Connie Trangia the mother of Virgie Trangia reported in our office that her daughter Virgie Trangia the wife of the accused Carlos de la Cruz is (sic) missing."^[46]

The accused's so-called admission, given after his arrest and during his custodial investigation, was obtained in total disregard of his rights as guaranteed by paragraph (1), Section 12, Article III of the 1987 Constitution. Said paragraph reads:

"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."

The precursor of this provision is Section 20, Article IV of the 1973 Constitution which provided in part that: "x x x [A]ny person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right." We have ruled that it is not enough that the subject be merely informed of such rights, asked if he wants to avail of the services of counsel and told that he could ask for counsel if he so desires or that one could be provided him at his request.^[47] If he decides to waive his right to counsel, such waiver, in order to be valid, must still be made with the assistance of counsel.^[48]

In the instant case, the accused was not informed of his right to remain silent and to counsel, and that if he cannot afford to have the counsel of his choice, he would be provided with one. There is no evidence at all to indicate that he decided to waive such right. And even if he did waive it, no written waiver, executed in the presence of counsel, was identified or offered in evidence. Thus, the accused's alleged admission that he killed Virgie Trangia is inadmissible in evidence pursuant to paragraph 3, Section 12, Article III of the 1987 Constitution which provides as follows:

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

Equally inadmissible, for being integral parts of the uncounselled admission -- or fruits of that poisonous tree -- are the photographs of subsequent acts which the accused was made to do in order to obtain proof to support such admission or confession, such as (a) his digging in the place where Virgie Trangia was allegedly buried, (b) his retrieving of the bones discovered therein and (c) his posing before a photographer while executing such acts. However, we do not agree with the accused that the photographs are “re-enactment” photographs. There was no “re-enactment” for he was not made to perform again the killing or burying of Virgie.

In *Aballe vs. People*,^[49] we declared as inadmissible the fatal knife used by the accused in stabbing the murder victim despite the fact that the accused himself voluntarily recovered the said knife after being detained and investigated by the police authorities to whom he, without the aid of counsel, admitted his guilt. Thus:

“Indeed, equally inadmissible is the kitchen knife (fatal weapon) recovered from Aballe after his capture and after the police had started to question him. Together with the extrajudicial confession, the fatal weapon is but a fruit of a constitutionally infirmed interrogation and must consequently be disallowed. x x x” (emphasis supplied).

We find the trial court’s ratiocination -- that although the accused’s admission is inadmissible, it still “reinforces the circumstantial evidence” -- to be self-contradictory, if not strange. We simply fail to see how inadmissible evidence can reinforce circumstantial evidence.

Worse, it was never even established by the prosecution that the bones excavated by the accused belong to a female human being or, more importantly, to Virgie Trangia. On cross-examination, P/Lt. Villamor simply expressed an opinion that the bones belong to a human being. Thus:

“Q And what are those eight (8) pieces of bones?

A We believe to (sic) be the bones of the dead.

Q And you mean that you cannot determine whether it (sic) is really the remains of the human beings (sic)?

A I believed that it is (sic) the bones of a human being and that bones was (sic) recovered after digging the (sic) place where the victim was buried.”^[50]

We thus conclude that the guilt of the accused for the alleged death of Virgie Trangia has not been proven with moral certainty.

WHEREFORE, judgment is hereby rendered:

(1) REVERSING the decision of Branch 48 of the Regional Trial Court of Masbate in Criminal Case No. 5519 and ACQUITTING the accused of the crime of homicide, with costs de oficio; and

(2) AFFIRMING the decision of the said court in Criminal Case No. 5521 convicting the accused of the crime of rape, subject to the modification with respect to the use of the term life imprisonment, which is deleted, with costs against the accused.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original records (OR), Crim. Case No. 5521, 254-261. Per Judge Ricardo B. Butalid. The decision is dated 24 November 1989.

- [2] OR, Crim. Case No. 5519, 4.
- [3] OR, Crim. Case No. 5521, 4.
- [4] OR, Crim. Case No. 5519, op. cit., 8-9, 12; OR, Crim. Case No. 5521, 6-9.
- [5] OR, Crim. Case No. 5521, 2-3.
- [6] OR, Crim. Case No. 5519, 1.
- [7] OR, Crim. Case No. 5521, 1.
- [8] OR, Crim. Case No. 5519, op. cit., 19; 23.
- [9] OR, Crim. Case No. 5521, 14.
- [10] Id., 28.
- [11] Brief for the Appellee, 6-14; Rollo, G.R. No. 92439-40, 33, et seq. All references to the transcripts of the stenographic notes are omitted.
- [12] TSN, 6 July 1989, 2-22; Consolidated Brief for the Accused-Appellant, 7-8.
- [13] TSN, 29 August 1989, 2-6.
- [14] OR, Crim. Case No. 5521, 260-61.
- [15] OR, Crim. Case No. 5519, 279.
- [16] OR, Crim. Case No. 5521, 262.
- [17] Rollo, G.R. Nos. 92439-40, 1.
- [18] "Sec. 3. How appeal taken. -- x x x
- (c) The appeal to the Supreme Court in cases where the penalty imposed is life imprisonment, or where a lesser penalty is imposed but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death or life imprisonment is imposed shall be by filing a notice of appeal in accordance with paragraph (a) of this section."
- [19] Rollo, G.R. Nos. 92439-40, unpaginated.
- [20] Rollo, G.R. Nos. 91865-66, 30, et seq.

[21] 201 SCRA 87, 94-95, [1991].

- [22] Supra, at page 96.
- [23] People vs. Patilan, 197 SCRA 354 [1991].
- [24] People vs. Villalobos, 209 SCRA 304, 315 [1992].
- [25] People vs. Base, 196 SCRA 688 [1991]; People vs. Santiago, 197 SCRA 556 [1991]; People vs. Aquino, 197 SCRA 578 [1991].
- [26] TSN, 20 April 1989, 6.
- [27] People vs. Saldivia, 203 SCRA 461 [1991].

[28] 1 Phil. 360 [1902].

[29] AQUINO, R.C., The Revised Penal Code, vol. III, 1988 ed., 484.

[30] People vs. De Guzman, 194 SCRA 618 [1991]; People vs. Caraig, 202 SCRA 357 [1991].

[31] People vs. Catubig, 195 SCRA 505 [1991]; People vs. Arroyo, 201 SCRA 616 [1991]; People vs. Plaga, 202 SCRA 53 [1991].

[32] Second paragraph, Article 335, Revised Penal Code.

[33] People vs. Baguio, 196 SCRA 459 [1991]; People vs. Ramos, 203 SCRA 237 [1991]; People vs. Penillos, 205 SCRA 546 [1992]; People vs. Carpio, 207 SCRA 569 [1992].

[34] Decision of the trial court, 5-6; OR, Crim. Case No. 5521, 258-259; Rollo, 15-16.

[35] Decision of the trial court, 6; OR, Crim. Case No. 5521, 259; Rollo, 16.

[36] Id., 6; Id., 259; Id., 16.

[37] TSN, 7 February 1989, 28-29; 32-33.

[38] TSN, 6 July 1989, 14.

[39] TSN, 20 June 1989, 15.

[40] People vs. Capulong, 160 SCRA 533 [1988]; People vs. Vocente, 188 SCRA 100 [1990].

[41] TSN, 20 June 1989, 5-6.

[42] Exhibits "B" and "B-3" -- Translation, Crim. Case No. 5519.

[43] Exhibits "A" and "A-1", Id.

[44] TSN, 20 April 1989, 18.

[45] Under Section 25, Rule 130 of the Revised Rules of Court, no person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

[46] TSN, 20 April 1989, 13-14.

[47] People vs. Pecardal, 145 SCRA 647 [1986]; People vs. Lasac, 148 SCRA 624 [1987].

[48] Morales vs. Enrile, 121 SCRA 538 [1983]; People vs. Galit, 135 SCRA 465 [1985]; People vs. Sison, 142 SCRA 219 [1986].

[49] 183 SCRA 196, 202 [1990].

[50] TSN, 20 April 1989, 27.

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