

EN BANC

[G.R. No. 125333, March 20, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO FELIXMINIA Y CAMACHO, ACCUSED-APPELLANT.**

D E C I S I O N

PER CURIAM:

This is an automatic review of the decision of the Regional Trial Court (RTC), Branch 45,^[1] Urdaneta, Pangasinan in Criminal Case No. U-8668 imposing on accused-appellant Rolando Felixminia the penalty of death.

Accused-appellant was charged with the crime of rape with homicide in an Information which reads thusly:

That on or about the 19th day of September, 1995, in the afternoon, at Brgy. San Vicente, Municipality of Urdaneta, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously, by means of force, have carnal knowledge with (sic) Maria Lourdes Galinato, alias "Tisay", a six (6) year old girl, against her will, and to conceal his criminal act, accused kill (sic) and bury (sic) said Maria Lourdes Galinato near the Macalong River in aforesaid barangay, to the damage and prejudice of her heirs.

Contrary to Article 335, No. 3, in relation to Article 249, Revised Penal Code.^[2]

On November 15, 1995, accused-appellant was arraigned and he pleaded "not guilty."^[3] Thereafter, trial ensued.

After trial, the court *a quo* rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime charged. The judgment reads as follows:

WHEREFORE, the Court finds the accused, ROLANDO FELIXMINIA y CAMACHO, GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Republic Act No. 7659, the offense having been committed with the attendant circumstances of "when by reason or on the occasion of the rape, a homicide is committed" and "when the victim is a religious or a child below seven (7) years old," hereby sentences him to the supreme penalty of DEATH, to pay the heirs of the victim Ma. Lourdes Galinato the amount of P50,000.00 as indemnity; P30,699.00 as actual damages and P500,000.00 as moral damages.

And to pay the costs.

Penultimately, it is said: "Dura lex, sed lex" translated as "The law is harsh, but that is the law!"

SO ORDERED.^[4]

Accused-appellant now attributes the following errors to the trial court, viz:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED PURELY ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE THAT DO NOT HOWEVER MEET THE REQUISITES PROVIDED FOR BY LAW FOR CONVICTION BY CIRCUMSTANTIAL EVIDENCE.

II

THE LOWER COURT ERRED IN NOT APPLYING THE DOCTRINE OF THE "*FRUIT OF THE POISONOUS TREE*" AND IN NOT REJECTING EVIDENCES (SIC) AND CIRCUMSTANCES OBTAINED AND DERIVED IN A MANNER THAT SHOULD HAVE MADE THEM CONSTITUTIONALLY INADMISSIBLE.

III

THE LOWER COURT ERRED IN TOTALLY DISREGARDING THE UNREBUTTED EVIDENCE SUBMITTED BY THE ACCUSED TO EXPLAIN HIS ACTIONS AND SUPPORT HIS DEFENSE.

IV

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED AND SENTENCING HIM TO THE EXTREME PENALTY OF DEATH.^[5]

The records disclose that on September 19, 1995, at about seven o'clock in the morning, accused-appellant was drinking gin with his cousin, Ronnie Garcia, in a canteen at Urdaneta, Pangasinan.^[6] Thereafter, they proceeded to Bayaoas, also in Urdaneta, Pangasinan, where they continued drinking.^[7]

Around ten o'clock in the morning of the same day, prosecution witness Rosita Mangunay saw accused-appellant and Ronnie Garcia walking along Ambrosio Street in the *poblacion*. When they passed her, they greeted her and she noticed that they both smelled of liquor.^[8]

In the early afternoon of the same day, the already inebriated accused-appellant went to look for the six-year old Maria Lourdes Galinato, also known as "Tisay" and found her playing inside a jeepney. He took her.^[9]

At around two forty-five in the afternoon of the same day, witness Mangunay again saw the accused-appellant walking along Ambrosio Street, Urdaneta, at the corner or the crossroad of a small sari-sari store owned by a certain Soling. She saw accused-appellant carrying a child who was crying and struggling. She recognized

the child as "Tisay." She declared that she clearly saw the accused-appellant because they were walking towards each other coming from opposite directions. Accused-appellant proceeded to the west.^[10]

Between three to four o'clock in the afternoon, prosecution witness Natividad Bernardo, a resident of San Vicente, Urdaneta, Pangasinan, saw accused-appellant pass by their house. He was parrying a child who looked about five to six years old. They were heading towards the Macalong River.^[11]

At approximately the same time, prosecution witness Leah Magno, also resident of the same barangay, saw accused-appellant carrying a child. They were heading towards the wooded area in the Macalong River.^[12]

At around five o'clock in the afternoon to six-thirty in the evening of the same day, witness Magno saw accused-appellant again, this time he was walking alone to town coming from the direction of the Macalong River.^[13]

Meanwhile, the parents of Maria Lourdes were frantically searching for their child. When their search proved futile, they reported her missing to the barangay captain and to the police.^[14]

Upon receipt of reports that accused-appellant was seen with the missing child during the day, the police together with the barangay captains of Camantiles and Bayaoas of Urdaneta, Pangasinan and some relatives of the Galinatos went to the residence of accused-appellant at Sitio Lico, Yatyat, Manaoag, Pangasinan.^[15] As they approached the said house, they saw the accused-appellant jump out of the window carrying a black bag.^[16] Accused-appellant fled. They gave chase. After searching three barangays for more than twenty exhausting hours, the pursuers finally caught up with him at an open field in Magalong, Laoac, Pangasinan at around three o'clock in the afternoon of September 20, 1995.^[17] He was brought to the Urdaneta police station where he admitted that he raped, killed and buried Maria Lourdes near the Macalong River in San Vicente, Urdaneta, Pangasinan.^[18]

Thereafter, the police brought him to the Macalong River. There, he trembled and hysterically cried as he pointed to the place where he raped, killed and buried Maria Lourdes.^[19] True enough, they found the lifeless body of the little child lying half-buried in the creek with her head hanging on her shoulder.^[20]

An autopsy conducted on the body of Maria Lourdes revealed the following findings:

SIGNIFICANT EXTERNAL FINDINGS:

- Washerwoman's hands and feet.
- Bleeding from nares.
- Laceration of Hymen.
 - 3-5 o'clock
 - 6-8 o'clock
- Introitus admits two (2) fingers.
- Ecchymosis on center of throat and right hyoid area, below left

- eye and frontal region of face and bridge of nose and right eye.
- Obvious non-alignment of neck.

SIGNIFICANT INTERNAL FINDINGS:

- 50 cc to 100 cc blood in cranium mostly from basal area.

CAUSE OF DEATH:

Brain stem injury.

Hymenal laceration.^[21]

In his brief, accused-appellant contends that the lower court erred in not applying the doctrine of the "fruit of the poisonous tree" and in not rejecting as inadmissible the evidence derived therefrom.

Section 12 of Article III of the 1997 Constitution, which embodies the mandatory protection afforded a person under investigation for the commission of a crime and the corresponding duty of the State to enforce such mandate, 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 preferable 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 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

The ruling of the Court in *People v. Bravo*^[22] is instructive. Thus:

The mantle of protection under this constitutional provision covers the period from the time a person is taken into custody for investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of a crime although not yet in custody (*People v. Andan*, 269 SCRA 95; Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 412, citing *People v. Mara*, 236 SCRA 565). The exclusionary rule sprang from a recognition that police interrogatory procedures lay fertile grounds for coercion, physical and psychological, of the suspect to admit responsibility for the crime under investigation. It was not intended as a deterrent to the accused from confessing guilt, if he voluntarily and

intelligently so desires but to protect the accused from admitting what he is coerced to admit although untrue (*People v. Deniega*, 251 SCRA 626). Law enforcement agencies are required to effectively communicate the rights of a person under investigation and to insure that it is fully understood. Any measure short of this requirement is considered a denial of such right (*People v. Santos*, 283 SCRA 443; *People v. Januario*, 267 SCRA 609). Courts are not allowed to distinguish between preliminary questioning and custodial investigation proper when applying the exclusionary rule. Any information or admission given by a person while in custody which may appear harmless or innocuous at the time without the competent assistance of an independent counsel should be struck down as inadmissible. (*Gamboa v. Cruz*, 162 SCRA 642; *People v. Isla*, 278 SCRA 47; *People v. Binamira*, 277 SCRA 232). It has been held, however, that an admission made to news reporters or to a confidant of the accused is not covered by the exclusionary rule (*People v. Andan*, *supra*.)

In the instant case, the admission made by accused-appellant was not in the form of a written extra-judicial confession; the admission was made verbally to the PO3 Roberto Reyes, a member of the Philippine National Police stationed in Urdaneta, Pangasinan. PO3 Reyes testified that after accused-appellant was taken into custody, he "interviewed and interrogated" the latter and in the course of their "conversation," accused-appellant said that he "raped, killed and buried" Maria Lourdes.^[23] There is no doubt, therefore, that accused-appellant was taken into custody for investigation of his possible participation in the commission of the crime. Hence, the constitutional mantle of protection clearly covers the instant situation. While said officer testified that he apprised the accused-appellant of his right to remain silent and to have a counsel of his own choice, accused-appellant's alleged admission was made without the presence of a counsel. It does not appear either that accused-appellant manifested that he could not afford the services of a counsel nor waived his right to one in writing and in the presence of a counsel as no such written and counseled waiver of these rights was presented in evidence. Therefore, the Court finds the extra-judicial confession of accused-appellant invalid since he was deprived of his right to counsel during said custodial investigation. Consequently, the exclusionary rule applies and the extra-judicial confession should be struck down as inadmissible.

Consonant with the constitutional precept that a person under custodial investigation should have a right to counsel "in every phase of the investigation,"^[24] the Court has held in a number of cases that a person under custodial investigation should enjoy the right to counsel from its inception to its termination. Truly, the accused's counsel of choice must be present and must be able to advise and assist his client from the time he answers the first question until the time he signs the extra-judicial confession.^[25] In *People v. Morial*,^[26] the Court elucidated on the need for requiring a counsel's continuing presence throughout the custodial investigation in order to guarantee the accused's rights.

In seeking the reversal of the challenged decision, accused-appellant contends that his extra-judicial confession which was extorted from him by the police officers in violation of his constitutional rights cannot be made the basis for his conviction.