

EN BANC

[G.R. No. 140740, April 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JUANITO BALOLOY, ACCUSED-APPELLANT.**

DECISION

PER CURIAM:

At the waterfalls of Barangay Inasagan, Aurora, Zamboanga del Sur, on the evening of 3 August 1996, the dead body of an 11-year-old girl Genelyn Camacho (hereafter GENELYN) was found. The one who caused its discovery was accused-appellant Juanito Baloloy (hereafter JUANITO) himself, who claimed that he had caught sight of it while he was catching frogs in a nearby creek. However, based on his alleged extrajudicial confession, coupled with circumstantial evidence, the girl's unfortunate fate was pinned on him. Hence, in this automatic review, he seeks that his alleged confession be disregarded for having been obtained in violation of his constitutional rights, and that his conviction on mere circumstantial evidence be set aside.

The information^[1] charging JUANITO with the crime of rape with homicide reads as follows:

That on August 3, 1996 at about 6:30 o'clock in the evening, at Barangay Inasagan, Municipality of Aurora, province of Zamboanga del Sur, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with one Genelyn Camacho, a minor against the latter's will and on said occasion and by reason of the rape, the said Genelyn Camacho died as a result of personal violence, inflicted upon her by the accused.

Act contrary to Article 335 of the Revised Penal Code as amended by R.A. No. 7659.

The case was docketed as Criminal Case No. AZ-CC-96-156.

Upon arraignment^[2] on 10 December 1996, JUANITO entered a plea of not guilty. Trial on the merits ensued thereafter.

Jose Camacho, father of GENELYN and resident of Inasagan, Purok Mabilia, Aurora, Zamboanga del Sur, testified that at about 5:00 p.m. of 3 August 1996, he asked GENELYN to borrow some rice from their neighbor Wilfredo Balogbog whose house was about 200 meters away. GENELYN forthwith left, but never returned. Thus, Jose went to the house of Wilfredo, who informed him that GENELYN had already left with one *ganta* of rice. Jose then started to look for GENELYN. Speculating that

GENELYN might have taken shelter at the house of their neighbor Olipio Juregue while it was raining, Jose proceeded to Olipio's house. Unfortunately, Jose did not find GENELYN there. Not losing hope, Jose proceeded to the house of Ernesto Derio. On his way, he met Wilfredo, who accompanied him to the house of Ernesto. GENELYN was not there either. They continued their search for GENELYN, but when it proved to be in vain, the two decided to go home.^[3]

A few minutes after Jose reached his house, Ernesto and JUANITO arrived. JUANITO informed Jose that he saw a dead body at the waterfalls, whose "foot was showing." When asked whose body it was, JUANITO answered that it was GENELYN's. Immediately, the three went to the waterfalls where JUANITO pointed the spot where he saw GENELYN's body. With the aid of his flashlight, Jose went to the spot, and there he saw the dead body floating face down in the knee-high water. True enough, it was GENELYN's. Jose reported the incident to Barangay Captain Luzviminda Ceniza. Upon Ceniza's order, the *Bantay Bayan* members and some policemen retrieved and brought GENELYN's dead body to Jose's house.^[4]

Wilfredo Balogbog corroborated the testimony of Jose that GENELYN came to his house in the afternoon of 3 August 1996 to borrow some rice. GENELYN had with her an umbrella that afternoon, as it was raining. He learned that GENELYN failed to reach her home when Jose came to look for her.^[5]

Ernesto Derio, JUANITO's uncle-in-law, testified that at about 6:30 p.m. of 3 August 1996, Jose, together with Wilfredo Balogbog, arrived at his house to look for GENELYN, but they immediately left when they did not find her. At about 7:30 p.m., JUANITO arrived at Ernesto's house, trembling and apparently weak. JUANITO was then bringing a sack and a kerosene lamp. When Ernesto asked JUANITO where he was going, the latter said that he would catch frogs; and then he left. After thirty minutes, JUANITO returned and told Ernesto that he saw a foot of a dead child at the waterfalls. With the disappearance of GENELYN in mind, Ernesto lost no time to go the house of Jose. JUANITO followed him. There, JUANITO told Jose that he saw a foot of a dead child at the waterfalls. When Jose asked whether it was GENELYN's, JUANITO answered in the affirmative. The three then proceeded to the waterfalls, where JUANITO pointed the place where he saw the body of GENELYN. Jose immediately approached the body, and having confirmed that it was GENELYN's, he brought it to a dry area.^[6]

Ernesto also testified that on 4 August 1996, he saw Antonio Camacho hand over a black rope to Barangay Captain Ceniza. The latter asked those present as to who owned the rope. When JUANITO admitted ownership of the rope, Ceniza brought him away from the crowd to a secluded place and talked to him.^[7]

Finally, Ernesto testified that JUANITO previously attempted to molest his (Ernesto's) child, an incident that caused a fight between him (JUANITO) and his (Ernesto's) wife.^[8]

Antonio Camacho, a cousin of Jose, testified that on 3 August 1996, he was informed by Jose's brother that GENELYN was "drowned." He and the *Bantay Bayan* members proceeded to the place of the incident and retrieved the body of GENELYN. At 8:00 a.m. of the following day he, together with Edgar Sumalpong and Andres Dolero, went to the waterfalls to trace the path up to where GENELYN

was found. There, they found a black rope and an umbrella. They gave the umbrella to Jose's wife, and the black rope to Barangay Captain Ceniza, who was then attending the wake of GENELYN. Ceniza asked those who were at the wake whether anyone of them owned the rope. JUANITO answered that he owned it. Thereafter Ceniza talked to JUANITO.^[9]

Andres Dolero corroborated the testimony of Antonio on the recovery of the black rope and umbrella at the waterfalls where GENELYN's body was found.^[10]

Barangay Captain Ceniza of Inasagan, Aurora, Zamboanga del Sur, testified that at about 8:30 p.m. of 3 August 1996, Jose Camacho, Ernesto Derio, Porferio Camacho, and JUANITO arrived at her house to inform her that JUANITO found GENELYN's dead body at the waterfalls. Ceniza forthwith ordered the members of the *Bantay Bayan* to retrieve the body of GENELYN, and reported the incident to the police headquarters of Aurora, Zamboanga del Sur. She specifically named JUANITO as her suspect. She then went home and proceeded to Jose's house for GENELYN's wake. She saw JUANITO at the wake and noticed that he was very uneasy.^[11]

Ceniza further revealed that on 4 August 1996, while she was on her way to Jose's house, Antonio gave her a black rope, which he reportedly found at the spot where the dead body of GENELYN was retrieved. Ceniza then asked the people at the wake about the rope. JUANITO, who was among those present, claimed the rope as his. She brought JUANITO away from the others and asked him why his rope was found at the place where GENELYN's body was discovered. JUANITO answered: "I have to claim this as my rope because I can commit sin to God if I will not claim this as mine because this is mine." Ceniza further asked JUANITO to tell her everything. JUANITO told Ceniza that his intention was only to frighten GENELYN, not to molest and kill her. When GENELYN ran away, he chased her. As to how he raped her, JUANITO told Ceniza that he first inserted his fingers into GENELYN's vagina and then raped her. Thereafter, he threw her body into the ravine.^[12]

After such confession, Ceniza examined his body and found a wound on his right shoulder, as well as abrasions and scratches on other parts of his body. Upon further inquiry, JUANITO told her that the wound on his shoulder was caused by the bite of GENELYN. Ceniza then turned over JUANITO to a policeman for his own protection, as the crowd became unruly when she announced to them that JUANITO was the culprit. JUANITO was forthwith brought to the police headquarters.^[13]

Victor Mosqueda, a member of the Philippine National Police (PNP) stationed at the Aurora Police Station, testified that at about 10:00 p.m. of 4 August 1996 he was at Jose's house. Ceniza informed him that JUANITO was the suspect in the killing of GENELYN, and she turned over to him a black rope which belonged to JUANITO. He wanted to interrogate JUANITO, but Ceniza cautioned him not to proceed with his inquiry because the people around were getting unruly and might hurt JUANITO. Mosqueda immediately brought JUANITO to the police station, and on that same day, he took the affidavits of the witnesses. The following day, a complaint was filed against JUANITO.^[14]

Dr. Arturo Lumacad, Municipal Health Officer of the Aurora Rural Health Clinic, testified that he examined JUANITO so as to verify the information that JUANITO

sustained wounds in his body.^[15] His examination of JUANITO revealed the following injuries:

1. fresh abrasions on the right portion of the cheek;
2. multiple abrasions on the right shoulder;
3. abrasion on the left shoulder; and
4. abrasions on the left forearm.^[16]

Dr. Lumacad also testified that he examined the dead body of GENELYN on 4 August 1996 and found the following injuries:

1. 2.5-inch lacerated wound at her left neck, front of the head;
2. 1-inch wound at the right cheek just below the first wound;
3. multiple contusions on her chest;
4. contusion at the right hip; and
5. fresh lacerations on her vagina at 9 o'clock and 3 o'clock positions.^[17]

He opined that the fresh lacerations could have been caused by a large object inserted into GENELYN's vagina, such as a male sex organ, a rod, or a piece of wood or metal.^[18]

Presiding Judge Celestino V. Dicon of the Municipal Trial Court of Aurora, Zamboanga del Sur, testified that when he arrived in his office at around 8:30 a.m. of 4 August 1996 several people, including Barangay Captain Ceniza, were already in his courtroom. He learned that they came to swear to their affidavits before him. After reading the affidavit of Ceniza, he asked Ceniza whether her statements were true. Ceniza answered in the affirmative and pointed to JUANITO as the culprit. Judge Dicon turned to JUANITO and asked him whether the charge against him was true. JUANITO replied in the dialect: "*[N]apanuwayan ko, sir*" ("I was demonized"). While Judge Dicon realized that he should not have asked JUANITO as to the truthfulness of the allegations against him, he felt justified in doing so because the latter was not under custodial investigation. Judge Dicon thus proceeded to ask JUANITO whether he had a daughter as old as the victim and whether he was aware of what he had done to GENELYN. Again, JUANITO responded that he was demonized, and he spontaneously narrated that after he struck GENELYN's head with a stone he dropped her body into the precipice.^[19]

Lopicino Albano, process server in the court of Judge Dicon, corroborated the testimony of the latter as to JUANITO's admission that he was demonized when he raped and killed GENELYN.^[20]

The sole witness for the defense was JUANITO, who invoked denial and alibi. He testified that he was at his mother's house at around 6:30 p.m. of 3 August 1996. An hour later, he left for the creek to catch frogs; and while catching frogs, he saw a foot. He forthwith headed for Ernesto Derio's house to ask for help. There, he told Ernesto and his wife of what he had seen. Ernesto's wife asked JUANITO whether the person was still alive, and JUANITO answered that he was not sure. At this point, Ernesto informed him that Jose Camacho was looking for GENELYN. JUANITO and Ernesto then proceeded to the house of Jose to inform the latter of what he, JUANITO, had seen. The three forthwith went to the creek. There, they found out that the foot was GENELYN's and that she was already dead. Upon Jose's request, JUANITO and Ernesto informed Jose's brother about the incident, and they

proceeded to the house of Ceniza. Thereafter, they, along with the members of the *Bantay Bayan*, went back to the creek to retrieve the body of GENELYN.^[21]

JUANITO further recalled that after the body of GENELYN was brought to her parent's house, he helped saw the lumber for her coffin. Thereafter, he went to Ernesto's house to get the sack containing the seventeen frogs he had caught that night, which he earlier left at Ernesto's house. He was shocked to find out that the rope which he used to tie the sack, as well as all the frogs he caught, was missing. As it was already dawn, JUANITO left his sack at his mother's house; then he proceeded to the house of Jose to help make the coffin of GENELYN. But, at around 8:00 a.m., policeman Banaag came looking for him. He stopped working on GENELYN's coffin and identified himself. Banaag took him away from the house of Jose and asked him whether he owned the rope. JUANITO answered in the affirmative. At this point, policeman Mosqueda came near them and escorted him and Banaag back to Jose's house. At Jose's house, Mosqueda announced to the crowd that JUANITO was the suspect in GENELYN's untimely demise. JUANITO was then detained and investigated at the police station.^[22] During his investigation by the police officers and by Judge Dicon, he was never assisted by a lawyer.^[23]

In its challenged decision,^[24] the trial court found JUANITO guilty beyond reasonable doubt of the crime of rape with homicide. On the challenge on the admissibility of the admissions he made to Barangay Captain Ceniza and Judge Dicon, it ruled that they are not the law enforcement authorities referred to in the constitutional provisions on the conduct of custodial investigation. Hence, JUANITO's confessions made to them are admissible in evidence. Moreover, no ill-motive could be attributed to both Ceniza and Judge Dicon. It also found unsubstantiated JUANITO's claim that he was threatened by his fellow inmates to make the confession before Judge Dicon; and that, even assuming that he was indeed threatened by them, the threat was not of the kind contemplated in the Bill of Rights. The threat, violence or intimidation that invalidates confession must come from the police authorities and not from a civilian. Finally, it ruled that JUANITO's self-serving negative evidence cannot stand against the prosecution's positive evidence.

The trial court, thus, convicted JUANITO of rape with homicide and imposed on him the penalty of death. It also ordered him to pay the heirs of the victim the amount of P50,000 by way of civil indemnity. Hence, this automatic review.

In his Appellant's Brief, JUANITO imputes to the trial court the following errors:

I

THE COURT A *QUO* GRAVELY ERRED IN ADMITTING THE ALLEGED CONFESSION OF THE ACCUSED-APPELLANT TO WITNESSES LUZVIMINDA CE[N]IZA AND JUDGE CELESTINO DICON AS EVIDENCE AGAINST THE ACCUSED.

II

ON ACCOUNT OF THE INADMISSIBILITY OF THE ACCUSED'S ALLEGED