

EN BANC

[G.R. No. 144656, May 09, 2002]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERRICO VALLEJO Y SAMARTINO @ PUKE, ACCUSED-
APPELLANT.**

D E C I S I O N

PER CURIAM:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 88, Cavite City, sentencing Gerrico Vallejo y Samartino to death and ordering him to indemnify the heirs of the victim in the amount of P100,000.00 as civil indemnity and P50,000.00 as moral damages for the rape-slaying of a 9-year old child, Daisy Diolola, in Rosario, Cavite on July 10, 1999.

The Information charging accused-appellant Gerrico Vallejo with the crime of Rape with Homicide alleged:

"That on or about the 10th day of July 1999, in Barangay Ligdong I, Municipality of Rosario, Province of Cavite, Philippines and within the jurisdiction of this Honorable Trial Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with DAISY DIOLOLA Y DITALO, a nine-year old child against the latter's will and while raping the said victim, said accused strangled her to death."

"CONTRARY TO LAW."^[2]

Accused-appellant was arraigned on July 26, 1999 and, with the assistance of counsel, pleaded not guilty to the crime charged, whereupon trial ensued.

Ten (10) witnesses testified for the prosecution, namely, Ma. Nida Diolola, the victim's mother; Dr. Antonio S. Vertido, medico-legal officer of the NBI; Atty. Lupo Leyva; Mayor Renato Abutan of Rosario, Cavite; Atty. Sikat Agbunag of the Public Attorney's Office; Pet Byron Buan, NBI Forensic Biologist; Aida Viloria-Magsipoc, NBI Forensic Chemist; SPO1 Arnel Cuevas of the Rosario, Cavite police station; and Jessiemin Mataverde and Charito Paras-Yepes, both neighbors of the victim.

The victim's mother, Ma. Nida Diolola, testified that at around 1:00 o'clock in the afternoon of July 10, 1999, she sent her 9-year old daughter Daisy Diolola to their neighbor's house in Pilapil, Ligdong I, Rosario, Cavite, so that Aimee Vallejo, the sister of accused-appellant, could help Daisy with her lessons. Aimee's house, where accused-appellant was also staying, is about four to five meters away from Daisy's house. Ma. Nida saw her daughter go to the house of her tutor. She was wearing pink short pants and a white sleeveless shirt. An hour later, Daisy came

back with accused-appellant. They were looking for a book which accused-appellant could copy to make a drawing or a poster that Daisy would submit to her teacher. After finding the book, Daisy and accused-appellant went back to the latter's house. When Ma. Nida woke up at about 5:30 o'clock after an afternoon nap, she noticed that Daisy was not yet home. She started looking for her daughter and proceeded to the house of Aimee, Daisy's tutor. Aimee's mother told Ma. Nida that Daisy was not there and that Aimee was not able to help Daisy with her lessons because Aimee was not feeling well as she had her menstrual period. Ma. Nida looked for Daisy in her brother's and sister's houses, but she was not there, either. At about 7:00 o'clock that evening, Ma. Nida went back to her neighbor's house, and there saw accused-appellant, who told her that Daisy had gone to her classmate's house to borrow a book. But, when Ma. Nida went there, she was told that Daisy had not been there. Ma. Nida went to the dike and was told that they saw Daisy playing at about 3:30 o'clock in the afternoon. Jessiemin Mataverde also told Ma. Nida that Daisy was playing in front of her house that afternoon and even watched television in her house, but that Daisy later left with accused-appellant.

Ma. Nida and her brother and sister searched for Daisy the whole evening of June 10, 1999, a Saturday, until the early morning of the following day, June 11, 1999, a Sunday, but their search proved fruitless. Then, at about 10:00 o'clock in the morning of June 11, 1999, she was informed that the dead body of her daughter was found tied to the root of an aroma tree by the river after the "compuerta" by a certain Freddie Quinto. The body was already in the barangay hall when Ma. Nida saw her daughter. Daisy was wearing her pink short pants with her sleeveless shirt tied around her neck. Barangay Councilmen Raul Ricasa and Calring Purihin reported the incident to the Rosario police. The other barangay officers fetched accused-appellant from his house and took him to the barangay hall. At the barangay hall, Ma. Nida pointed to accused-appellant Gerrico Vallejo as the probable suspect since he was with the victim when she was last seen alive.^[3]

Another witness, Jessiemin Mataverde, testified that at around 3:00 o'clock in the afternoon of that day, she saw Daisy playing with other children outside her house. She asked Daisy and her playmates to stop playing as their noise was keeping Jessiemin's one-year old baby awake. Daisy relented and watched television instead from the door of Jessiemin's house. About five minutes later, accused-appellant came to the house and told Daisy something, as a result of which she went with him and the two proceeded towards the "compuerta."

Jessiemin testified that at around 5:00 o'clock that afternoon, while she and her daughter were in front of a store across the street from her house, accused-appellant arrived to buy a stick of Marlboro cigarette. Accused-appellant had only his basketball shorts on and was just holding his shirt. They noticed both his shorts and his shirt were wet. After lighting his cigarette, accused-appellant left.^[4]

Charito Yepes, another neighbor of Ma. Nida, also testified. She said that at about 4:30 o'clock in the afternoon of July 10, 1999, while she and her husband and children were walking towards the "compuerta" near the seashore of Ligtong, Rosario, Cavite, they met a fisherman named Herminio who said that it was a good day for catching milkfish (*bangus*). For this reason, according to this witness, they decided to get some fishing implements. She said they met accused-appellant Gerrico Vallejo near the seashore and noticed that he was uneasy and looked

troubled. Charito said that accused-appellant did not even greet them, which was unusual. She also testified that accused-appellant's shorts and shirt (*sando*) were wet, but his face and hair were not.^[5]

SPO1 Arnel Cuevas testified that upon receipt of the report, Rosario Police Chief Ricardo B. de la Cruz, Jr. responded to the call together with his men, PO2 Garcia, SPO1 Araracap and PO2 Lariza. When they arrived, Daisy's body was already in the barangay hall. SPO1 Cuevas took photographs of the body. At that time, Daisy was wearing pink short pants and a dirty white panty with a dirty white sleeveless shirt wrapped around her neck. The body was afterwards taken to the Samson Funeral Parlor in Rosario, Cavite. The inquiries conducted by the police showed that one Freddie Quinto was fishing near the compuerta when he accidentally hit the body of Daisy, which was in the mud and tied to the root of an aroma tree.

Accused-appellant was invited by the policemen for questioning. Two others, a certain Raymond and Esting, were also taken into custody because they were seen with accused-appellant in front of the store in the late afternoon of July 10 1999. Later, however, the two were released. Based on the statements of Jessiemin Mataverde and Charito Paras-Yepes, the policemen went to the house of accused-appellant at about 4:00 o'clock in the afternoon of July 11, 1999 and recovered the white basketball shirt, with the name Samartino and No. 13 printed at the back, and the violet basketball shorts, with the number 9 printed on it, worn by accused-appellant the day before. The shirt and shorts, which were bloodstained, were turned over to the NBI for laboratory examination.^[6]

Dr. Antonio S. Vertido, NBI Medico-Legal Officer, testified that at about 9:00 o'clock in the evening of July 11, 1999, he conducted a physical examination of accused-appellant. His findings^[7] showed the following:

"PHYSICAL FINDINGS:

"Abrasions: thigh, right, antero-lateral aspect, lower 3rd 5.0 x 0.1 cm., knee, left, 7.0 x 6.0 cm. legs, right anterior aspect, 28.0 x 8.0 cms., left anterior aspect, 24.0 x 10.0 cms., feet, plantar aspects; right, 9.0 x 3.0 cms. and left, 13.0 x 5.0 cms.

"Hematoma, left ring finger, posterior aspect, 1.0 x 0.5 cm.

"Lacerations, left ring finger, posterior aspect, 0.3 cm.

"(Living Case No. BMP-9902, p. 101, records)"

At about 10:00 o'clock in the evening, Dr. Vertido went to the Samson Funeral Parlor in Rosario, Cavite for an autopsy on the cadaver of the victim Daisy Diolola. The autopsy revealed the following postmortem findings:^[8]

"Body in early stage of postmortem decomposition characterized by foul odor, eyes and tongue protruding, bloating of the face and blister formation.

"Washerwoman's hands and feet.

"Contusion, (pinkish) face, right, 14.0 x 10.0 cms. and left, 13.0 x 6.0 cms. Contused abrasions, forehead, 13.0 x 5.0 cms. upper lip, 5.0 x 22.0 cms., lower lip, 3.0 x 2.0 cms., neck (nailmarks) anterior aspect, 8.0 x 5.0 cms., arms, right antero-medial aspect, middle 3rd 3.0 x 15.0 cms. posterior aspect, upper 3rd, 1.5 x 1.0 cms., left posterior aspect, 20.0 x

9.0 cms., forearm, left, posterior aspect, 21.0 x 8.0 cms. left thumb, anterior aspect, 1.5 x 1.0 cms., left middle, ring and little fingers, dorsal aspect, .50 x 4.0 cms. knees, right, 3.0 x 2.0 cms. and left, 8.0- x 5.0 cms., legs, right anterior aspect, upper and middle 3rd 3.0 x 2.5 cms. foot right, dorsal aspect.

"Hematoma, periorbital right, 5.0 x 3.0 cms. and left, 4.5 x 3.0 cms.

"Fracture, tracheal rings.

"Hemorrhages, interstitial, neck, underneath, nailmarks. "Petechial hemorrhages, subendocardial, subpleural.

"Brain and other visceral organs are congested.

"Stomach, contains ½ rice and other food particles.

"CAUSE OF DEATH: -Asphyxia by Manual Strangulation.

"GENITAL EXAMINATION: - Pubic hair, no growth. Labia majora and minora, gaping and congested. Hymen, moderately tall, thick with fresh lacerations, complete at 3:00, 6:00 and 9:00 o'clock positions, edges with blood clots." [Autopsy Report No. BTNO-99-152]

Renato Abutan, Municipal Mayor of Rosario, Cavite, testified that he was informed of the rape and murder at past 10:00 o'clock in the evening of June 11, 1999. The mayor said he immediately proceeded to the municipal jail, where accused-appellant was detained, and talked to the latter. Accused-appellant at first denied having anything to do with the killing and rape of the child. The mayor said he told accused-appellant that he could not help him if he did not tell the truth. At that point, accused-appellant started crying and told the mayor that he killed the victim by strangling her. Accused-appellant claimed that he was under the influence of drugs. The mayor asked accused-appellant if he wanted to have the services of Atty. Lupo Leyva, a resident of Rosario, as his lawyer. When accused-appellant said he did, Mayor Abutan fetched Atty. Leyva from his house and took him to the police station about 11:00 o'clock that evening.^[9]

Atty. Lupo Leyva corroborated Mayor Abutan's testimony. He said that upon arriving at the police station, he asked accused-appellant if he wanted his services as counsel in the investigation. After accused-appellant assented, Atty. Leyva testified that he "sort of discouraged" the former from making statements as anything he said could be used against him. But, as accused-appellant was willing to be investigated, Atty. Leyva said he advised him to tell the truth. PO2 Garcia, the investigator, informed accused-appellant of his constitutional rights to remain silent and to be assisted by counsel and warned him that any answer he gave could and might be used against him in a court of law. PO2 Garcia asked questions from accused-appellant, who gave his answers in the presence of Atty. Leyva. After the statement was taken, Atty. Leyva and accused-appellant read it and afterwards signed it. Atty. Leyva testified that he did not see or notice any indication that accused-appellant had been maltreated by the police. In his sworn statement (Exh. M), accused-appellant confessed to killing the victim by strangling her to death, but denied having molested her.^[10]

Pet Byron Buan, Forensic Biologist of the NBI, testified that on July 12, 1999, he took blood samples from accused-appellant in his office for laboratory examination to determine his blood type. Likewise, the basketball shorts and shirt worn by accused-appellant on the day the victim was missing and the victim's clothing were

turned over to the Forensic Chemistry Division of the NBI by PO1 Amoranto of the Rosario, Cavite police for the purpose of determining the presence of human blood and its groups.^[11]

The results of the examinations conducted by Pet Byron T. Buan showed accused-appellant to belong to Group "O". The following specimens: (1) one (1) white no. 13 athletic basketball shirt, with patches "Grizzlies" in front and "SAMARTINO" at the back; (2) one (1) violet no. 9 athletic basketball short pants; (3) one (1) white small "Hello Kitty" T-shirt with reddish brown stains; (4) one (1) "cut" pink short pants with reddish brown stains; (5) one (1) "cut" dirty white small panty with reddish brown stains, were all positive for the presence of human blood showing the reactions of Group "A".^[12]

Pet Byron Buan also testified that before he took the blood samples, he had a conversation with accused-appellant during which the latter admitted that he had raped and later killed the victim by strangulation and stated that he was willing to accept the punishment that would be meted out on him because of the grievous offense he had committed. Mr. Buan observed that accused-appellant was remorseful and was crying when he made the confession in the presence of SPO1 Amoranto at the NBI laboratory.^[13]

When accused-appellant was brought before Inquest Prosecutor Elpidia J. Itoc at around noon of July 13, 1999 in Cavite City, accused-appellant had with him a handwritten confession which he had executed inside his cell at the Municipal Jail of Rosario. In his confession, accused-appellant admitted not only that he killed the victim but that he had before that raped her. Accused-appellant said he laid down the victim on a grassy area near the dike. He claimed that she did not resist when he removed her undergarments but that when he tried to insert his penis into the victim's vagina, she struggled and resisted. Accused-appellant said he panicked and killed the child. He then dumped her body in the shallow river near the "compuerta" and went home.^[14]

Atty. Sikat Agbunag, a lawyer from the Public Attorney's Office, testified that at noon of July 13, 1999, while she was in their office in Cavite City, Prosecutor Itoc came together with accused-appellant and some policemen. Prosecutor Itoc asked Atty. Agbunag to assist accused-appellant about his confession. Atty. Agbunag read the document, informed accused-appellant of his constitutional rights, and warned him that the document could be used against him and that he could be convicted of the case against him, but, according to her, accused-appellant said that he had freely and voluntarily executed the document because he was bothered by his conscience. Accused-appellant, assisted by Atty. Agbunag, then affixed his signature to the document and swore to it before Prosecutor Itoc.^[15]

At the instance of City Prosecutor Agapito S. Lu of Cavite City, NBI Forensic Biologist Pet Byron Buan took buccal swabs and hair samples from accused-appellant, as well as buccal swabs and hair samples from the parents of the victim, namely, Ma. Nida Diolola and Arnulfo Diolola. The samples were submitted to the DNA Laboratory of the NBI for examination.

Aida Vilorio-Magsipoc, Forensic Chemist of the NBI, conducted DNA tests on the specimens collected by Dr. Vertido. She testified that the vaginal swabs of the