

EN BANC

[G.R. No. 139333, July 18, 2002]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CRISPIN VELARDE
Y BANDOJO, APPELLANT.**

DECISION

PANGANIBAN, J.:

A municipal mayor cannot be considered a competent and *independent* counsel qualified to assist a person under custodial investigation. Hence, the extrajudicial confession taken from the accused with His Honor as counsel is inadmissible in evidence. Without this confession, the remaining evidence, which is circumstantial, fails the test of moral certainty. Hence, acquittal is inevitable.

The Case

For automatic review by this Court is the Decision^[1] dated February 12, 1999, issued by the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 11), finding Crispin Velarde y Bandojo guilty beyond reasonable doubt of rape with homicide in Criminal Case No. 773-M-97. The decretal portion of the Decision reads as follows:

“WHEREFORE, this Court finds the accused CRISPIN B. VELARDE GUILTY beyond reasonable doubt of Rape with Homicide and hereby sentences him to suffer the supreme penalty of Death and to indemnify the heirs of the victim the amount of P100,000.00 as actual damages.”^[2]

The Information^[3] against appellant dated June 13, 1997, reads as follows:

“That on or about the 12th day of May, 1997, in the [M]unicipality of Guiguinto, [P]rovince of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Brenda Candelaria, a minor who is eight (8) years of age, against her will and consent.

“That on the occasion and by reason of said rape, the above-named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and strangle said Brenda Candelaria in the neck which directly caused her death.”^[4]

When arraigned on July 1, 1997, appellant, assisted by his counsel *de oficio*,^[5] pleaded not guilty.^[6] In due course, he was tried and found guilty.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarized the evidence for the prosecution as follows:^[7]

"On May 11, 1997 at around 10:00 o'clock in the morning, Brenda Candelaria, an eight year old child, together with her friend Melanie Sangalang, seven years of age, was on board a pedicab driven by appellant. Upon reaching the house of Melanie, said appellant told Melanie to alight on the pretext that her mother might look for her. Melanie obeyed leaving Brenda inside the pedicab with appellant continuing his driving.

"In the afternoon of the same day, appellant and Brenda were seen together by Flora Bonganay in front of the latter's store located near the church in Tikay riding the same pedicab.

"Later on, Angelita Robles while waiting for a ride saw appellant already alone emerging from a place near Doña Pilar Homes Subdivision. Angelita noticed something strange in appellant's actuation as he was uneasy, haggard looking with his hair disheveled.

"The following day, May 12, 1997, the naked lifeless body of Brenda Candelaria was found in a grassy vacant lot along the Cagayan Valley Highway in Sta. Rita, Guiguinto, Bulacan near the Doña Pilar Homes Subdivision. Recovered beside her body were a rubber slipper, blood stained white sando, a blue and white striped t-shirt and a shoe string.

"Dr. Dominic Aguda, a medico-legal officer of the NBI assigned at Region III, conducted a post mortem examination on the body of the victim. His findings revealed that Brenda Candelaria was raped and strangled to death. According to the doctor, the victim died of asphyxia by manual strangulation.

"On the other hand, based on the leads furnished by witnesses, appellant was tagged as suspect and was brought to the Malolos Bulacan Police Station for investigation.

"During his investigation, appellant, after being informed of his constitutional rights in the presence of Atty. Danilo Domingo whom he agreed to act as his counsel, voluntarily admitted having raped and killed the victim Brenda Candelaria. Accordingly, his extrajudicial confession was reduced to writing which was signed by him.

"It was on the bases of the foregoing occurrences that the corresponding Information for rape with homicide was filed against appellant with the Regional Trial Court." (Citations omitted)

Version of the Defense

On the other hand, appellant presents his version of the incident as follows:^[8]

"Accused Crispin Velarde DENIED having raped and killed Brenda Candelaria. Thus,

CONT. OF DIRECT-EXAM.
OF CRISPIN VELARDE BY:

Atty. de Leon:

Q Mr. Velarde, do we understand from you that you did not rape Brenda?

A No, sir.

Q You did not kill Brenda?

A No, sir.

Q Brenda is your first cousin?

A Yes, sir.

Q Your mother and the mother of Brenda are sisters, is it not?

A Yes, sir.

Q If you did not rape Brenda, if you did not kill Brenda and Brenda is your first cousin, your mother and the mother of Brenda are sisters, why were you accused of rape and killing Brenda?

Atty. Villacorta:

Objection, Your Honor, the question calls for an opinion.

Court:

Never mind, it is a matter of defense.

Witness:

A I was only suspected (n[a]pagbintangan), sir.

Atty. De Leon:

Q According to some witnesses who testified for the prosecution, they have seen you and Brenda riding in a tricycle?

Atty. Villacorta:

No, no, not tricycle, Your Honor, pedicab:

Court:

After the incident?

Atty. De Leon:

No, no, several days before the incident. Not exactly the day of the incident. I modify the question by adding several days before the alleged incident.

Witness:

A No, sir, that is not true.

Atty. De Leon:

Q And, there was a witness who testified here that she has seen you riding on a jeep perspiring

Court:

Give the specific place.

Atty. De Leon:

Q The witness has seen the accused about to ride the jeep perspiring as if you have committed a crime is it true?

A I do not know anything about it, sir.

Q But according to that witness, you were carrying a basket, is it true?

A No, sir.

Atty. De Leon:

That's all, Your Honor please.

Atty. Villacorta:

May we be allowed to conduct the cross considering . . .

Court:

(to witness)

Q Have there been an occasion when Brenda took a ride in your tricycle you were driving?

A None, Your Honor.

Q Never?

A No, Your Honor.

Court:

Cross next time?

Atty. Villacorta:

Yes, Your Honor.

"Accused declared on June 19, 1998 that he has been detained since May 12, 1997 or more than one (1) year already because he was told that he was the one who committed a crime against his cousin Brenda Candelaria. According to him, on the night of May 11, 1997 he was arrested while selling balot in Tikay, Malolos, Bulacan, by four (4) Barangay Officials. When said Barangay Officials asked him where he brought the child Brenda Candelaria, he told them he 'don't know' [sic]. He did not insist answering them 'because I don't know what they were asking about the child'. He just went with them because if he will not go with them 'di nila lulubayan and pamilya ko'. He was brought to the Barangay Hall of Barangay Tikay, Malolos, Bulacan. He was kicked and mauled by the father and brothers of Brenda. The father of Brenda is his uncle and was the one who hurted [sic] him. He was boxed several times, hitting him in all parts of his body. While he was being boxed, he

told them to stop because he did not know about the incident. Inside the Barangay Hall he was 'nilusob'), was stabbed by the eldest son (Ruel Candelaria) hitting him in his right leg. The person who stabbed him even said: 'Tabla tabla na lang kami' meaning 'manos na lang kami sa nangyari'. He did not answer because he did not know anything about the incident. Besides, he was already 'bugbog sarado', meaning his body was aching and it was painful. His hands were even tied at his back with a handkerchief by a former neighbor. After hurting him inside the Barangay Hall he was made to sign by one of the Barangay Officials. He signed without reading what he signed because he cannot read very well. After signing, the members of the Barangay including the Barangay Captain, brought him to the Municipal Building on the midnight of May 12, 1997. Upon reaching the Municipal Building he was brought to the Provincial Hospital where his wounds were treated and [s]urtured [sic]. He was not however given medicine. After one (1) hour he was returned to the Municipal Building by the Barangay Officials. He was placed inside the jail where he was mauled by around eight (8) inmates. They were asking him where the child was, but he told them he did not know. They were insisting that he admit or to confess but he answered he did not know anything. According to him 'marami pong pahirap na ginawa sa akin. Mayruon pong koriente, mayruon pong saksak sa puwit'. He could not talk because he was already 'hirap na hirap na'. Such hurting acts were done several days, six (6) times a day. His body was even pounded by a piece of wood hitting him in his back because he was on a sitting position. He could not speak because of the 'sobrang kirot ng katawan ko.'

"He further declared that in the morning of May 11, 1997, he was in the basket ball court watching the game. He came from their house because it was the birthday of his mother. They heard mass in Tikay. He is a Catholic, a Corsilista.

"The accused was candid enough to admit that the signature appearing in Exh. M is his signature; that Atty. Domingo is known to him because he was then the Mayor of Malolos; that he hired or engaged the services of Atty. Domingo; that he was also candid enough to testify that 'wala akong alam diyan.' His educational attainment was up to Grade four (4) only. He claims that he does not know the police investigator who typed the 'Sinumpaang Salaysay' marked Exh. M." (Citations omitted)

Ruling of the Trial Court

The RTC found the existence of enough circumstantial evidence pointing to appellant as the culprit in the crime. It also found his written extrajudicial confession admissible in evidence. As a consequence, it convicted him of rape with homicide and imposed upon him the supreme penalty of death.

Hence, this automatic review.^[9]

Assignment of Errors

In his Brief, appellant faults the court a quo for the following alleged errors:^[10]

"FIRST ASSIGNMENT OF ERROR