

## EN BANC

[ G.R. No. 152954, March 10, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PAULINO SEVILLEN Y VILLANUEVA, A.K.A. "TAMAYO SEVILLEN", APPELLANT.**

### ***DECISION***

**PER CURIAM:**

On July 25, 1995, appellant Paulino Sevilleno y Villanueva alias Tamayo was charged with rape with homicide in an Information<sup>[1]</sup> which reads:

That on or about 10:00 o'clock a.m., July 22, 1995 at Hacienda San Antonio, Barangay Guadalupe, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of one VIRGINIA BAKIA, a minor, 9 years of age, against the latter's will and consent; and after attaining his purpose of ravishing said Virginia Bakia, accused, did, then and there, with intent to hide his identity and to prevent discovery thereof, with intent to kill, strangled said Virginia Bakia which directly resulted to her death.

CONTRARY TO LAW.

On arraignment, appellant entered a guilty plea. Trial proceeded to determine the voluntariness and full comprehension of the plea. However, during the pendency of the proceedings, appellant escaped from prison but he was recaptured several months later.

On March 6, 1997, the appellant was found guilty as charged by the Regional Trial Court of San Carlos City, Negros Occidental, Branch 57, and sentenced to death and to pay the heirs of his victim P50,000.00 plus costs.

On automatic review before this Court, it was found that the trial court failed to conduct a searching inquiry into the voluntariness and full comprehension by the appellant of the consequences of his plea of guilty. It likewise appeared that the defense lawyers were remiss in their duties to explain to appellant the nature of the crime and the gravity of the consequences of his plea. Finding that appellant was not properly apprised of his fundamental right to be informed of the nature of the accusation leveled against him, this Court set aside and annulled the trial court's decision of March 6, 1997 and remanded the case to the court of origin for the proper arraignment and trial of the appellant until terminated.

Appellant was thus re-arraigned on February 23, 2000, where he entered a plea of "not guilty". Trial on the merits ensued and the following facts were established:

At around 10:00 in the morning of July 22, 1995, 9-year old Virginia and 8-year old Norma, both surnamed Bakia, met appellant on their way to a store in Brgy. Guadalupe, San Carlos City, Negros Occidental. Appellant offered them bread and ice candy then invited Virginia to watch a "beta show."<sup>[2]</sup> Appellant and Virginia thereafter headed to the direction of the sugarcane fields while Norma followed. However, she changed her mind and went home instead.

Rogelio Bakia, Virginia's and Norma's father, came home at around 11:00 that same morning and looked for Virginia. They were informed by Norma that Virginia went with appellant to Sitio Guindali-an. Rogelio immediately set out after her. He met appellant in Sitio Guindali-an but he denied any knowledge of Virginia's whereabouts. Rogelio noticed fingernail scratches on appellant's neck and a wound on his left cheek.

The following day, Rogelio and Eugenio Tiongson again met appellant at the house of former barangay captain Paeng Lopez. When asked where Virginia was, appellant answered that she was in a sugarcane field known as Camp 9, also located in Brgy. Guadalupe. Immediately, they proceeded to the designated place where they found Virginia's corpse covered with dried sugarcane leaves. She was naked except for her dress which was raised to her armpits. Her legs were spread apart and her body bore multiple wounds.

Another prosecution witness, Maria Lariosa, testified that on July 22, 1995 at around noontime, she saw appellant and Virginia pass by her house near Camp 9. The following day, July 23, 1995, she saw appellant emerge alone from the sugarcane fields in Camp 9 with scratches on his face and neck.

Dr. Arnel Laurence Q. Portuguez, Health Officer of San Carlos City, autopsied Virginia's body and found the following: linear abrasion over hematoma, 3.0 x 2.0 cm., right superior anterior neck; linear abrasion over hematoma, 2.5 x 3.0 cm., left superior anterior neck; hematoma 9.0 x 4.0 cm., right inguinal area; hematoma 9.0 x 5.0 cm., left inguinal area; superficial hymenal laceration 0.5 cm., at 12 o'clock position, with clot formation at intuitus; abrasion 5.5 x 4.0 cm., left superior gluteal area; abrasion 5.0 x 3.0 cm., right superior gluteal area; abrasion 6.0 x 2.0 cm., right inferior lateral gluteal area; vaginal smear showing absence of sperm cells except pus cells and epithelial cells. Cause of death: asphyxia secondary to strangulation.<sup>[3]</sup> The examining physician concluded that Virginia must have been raped and strangled to death.

Appellant interposed the defense of denial and alibi. He claimed that on July 22, 1995, he left his house at 6:30 in the morning and went to his work place at Uy King Poe warehouse in San Carlos City, arriving there at about 7:00 in the morning. At 5:00 in the afternoon, he left the warehouse and passed by the market to buy fish. He reached his house at 8:00 in the evening.

No other witness for the defense was presented. On October 16, 2001, the Regional Trial Court, San Carlos City, Branch 59, rendered a decision,<sup>[4]</sup> the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court finds and so holds the accused PAULINO SEVILLEN0 y VILLANUEVA (detained) GUILTY beyond reasonable doubt of the crime of Rape with Homicide as charged in the Information and hereby sentences him to suffer the penalty of DEATH.

The accused is likewise ordered to pay the heirs of the victim the sum of P75,000.00 as an indemnity for the death of the victim; P50,000.00 as moral damages and P25,000.00 as exemplary damages.

The accused is further ordered to be immediately committed to the National Penitentiary for service of sentence.

The Clerk of Court of this Court is hereby ordered to immediately forward the records of this case to the Supreme Court for automatic review.

Costs against the accused.

SO ORDERED.

The case was elevated to this Court for automatic review, pursuant to Article 47 of the Revised Penal Code, as amended. In his Brief, appellant submits that:

I

THE TRIAL COURT ERRED IN FINDING THAT THE EXTRA-JUDICIAL CONFESSION EXECUTED BY HEREIN APPELLANT IS VALID AND BINDING.

II

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE WITH HOMICIDE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Appellant argues that the voluntariness and due execution of his extra-judicial confession was not sufficiently established, considering that only his thumbprint was affixed on said document. He alleges that he customarily affixes his signature on all his documents. Appellant likewise argues that at the time his extra-judicial confession was taken, he was assisted by Atty. Vicente J. Agravante who was admonished by this Court for being remiss in his duties.<sup>[5]</sup>

Appellant's contention is misleading. The March 29, 1999 Resolution referred to Atty. Agravante's participation during appellant's arraignment and not during his custodial investigation. In fact, it was stated therein that "Atty. Vic Agravante assisted the accused during the arraignment only."<sup>[6]</sup>

Besides, the rule is that once the prosecution has shown compliance with the constitutional requirements on custodial investigations, a confession is presumed voluntary and the declarant bears the burden of destroying this presumption. The confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat, or promise of reward or leniency.<sup>[7]</sup>

Appellant failed to show that his confession in this case was given under any of the above circumstances. As correctly found by the trial court:

Atty. Agravante knows the accused Paulino Sevillano because the latter was his previous client in a case for qualified theft and was also the previous counsel of the accused in the present case, The accused happened to be his client way back in July 24, 1995 when he was called up by Patrolman Ramon Bartulin through a telephone that the accused wanted his services, so he responded to the police station, and on his arrival at the police station, he talked and inquired with the accused as to the incident and the latter answered that he (accused) was charged with the crime of rape then the accused voluntarily confessed his guilt to him (Atty. Agravante) then when asked the accused what was the latter's opinion, the accused replied that he (accused) will accept his guilt on the case charged against him and so the extra-judicial confession was executed by the accused while he (Atty. Agravante) was present all the time until the end of the investigation. In fact, he was with the accused and the investigator who went with them to the Prosecutor's Office and he (Atty. Agravante) also affixed his signature in the extra-judicial confession.

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During cross-examination, witness Atty. Agravante further testified that before the accused was investigated, the accused was informed of his constitutional rights and the accused requested him to translate the question in visayan or the local vernacular, and he was certain that the accused understood his plea for which in fact the accused had already confessed to him twice. That when the accused pleaded guilty during the arraignment he was also the one who assisted the accused, however, the case was remanded by the Supreme Court. . . .<sup>[8]</sup>

Also, we agree with the Solicitor General's observation that appellant trusted Atty. Agravante considering that he had previously hired the said lawyer's legal services in a theft case and engaged him again in this rape charge.<sup>[9]</sup>

Moreover, appellant failed to present evidence that his constitutional rights was violated when he executed his extra-judicial confession. His claim that his extra-judicial confession bears only his thumbmark is not an indication that his confession was irregular considering that it was executed in the presence of his lawyer. Also, he never denied that Atty. Agravante was not his personally chosen counsel. Neither was there evidence to prove that his extra-judicial confession was given as a result of violence, intimidation, threat, or made upon a promise of reward or leniency.

Significantly, appellant's conviction was not based solely on his extra-judicial confession but on other pieces of evidence established by the prosecution to the satisfaction of the court.

In the second assigned error, appellant submits that the circumstances relied upon by the trial court as bases for his conviction did not prove beyond reasonable doubt that he committed the crime.

The trial court convicted appellant based on the following circumstances: