

## EN BANC

[ G.R. No. 133823, February 07, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL VELEZ RAYOS, ACCUSED-APPELLANT.**

### DECISION

#### PER CURIAM:

Ramil Velez Rayos was prosecuted for the complex crime of rape with homicide in Criminal Case No. 97-1032 of the Regional Trial Court, Branch 19, of Cagayan de Oro City under an indictment that averred:

"That on or about the 9th day of April, 1997 at about 6 o'clock in the evening, more or less, at Barangay Binitinan, Balingasag, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with a nine-year old retardate Mebelyn B. Ganzan against her will and consent and with intent to kill, did then and there willfully, unlawfully, and feloniously attack, assault and stab the victim with the use of a knife which accused previously provided himself thus hitting her on the different parts of her body, causing her instantaneous death."<sup>[1]</sup>

The accused, when arraigned, entered a plea of "not guilty," whereupon, the trial ensued.

On 31 April 1998, the court *a quo*, following its reception of the evidence, rendered a decision finding the accused guilty of the offense charged. It imposed the penalty of death. The judgment-

"WHEREFORE, the Court finds accused Ramil Velez Rayos guilty of raping and killing Mebelyn Ganzan and so hereby sentences him to the supreme penalty of death, and to indemnify the heirs of the deceased in the sum of P50,000.00, and pay them moral damages of P30,000.00 and exemplary damages in the sum of P20,000.00, and to pay the costs of this case.

"The bolo, exhibit B, is hereby forfeited in favor of the State.

"The custodian of the accused is hereby ordered to ship the accused to the National Penitentiary the soonest after the promulgation of this judgment."<sup>[2]</sup>

The facts could be culled from the individual testimony of the witnesses presented, respectively, by the prosecution and the defense in the course of the trial.

### Levisito Gansan

Levisito Gansan, the father of the victim, testified that on 09 April 1997, about 4:30 in the afternoon, while attending a barangay seminar on "aids," his daughter, Mebelyn, came by his side and told him to hold for her a bag of peanuts given by her "uncle Ramil." Mebelyn then hurriedly left. It was to be the last time that he would see his little girl, his only child, so vibrant with life. Shortly after the seminar, he started to look for his daughter who strangely had not as yet come back. She was nowhere in sight. Worried, he chanced upon Dolfo Sabit, who suggested that perhaps he should see "Tilo" Malapad. Levisito did. Malapad said that he saw his daughter traversing the barangay road with accused-appellant trailing after her. Malapad volunteered to accompany Levisito to the place.

Night fell and still Mebelyn could not be found. Now extremely apprehensive, he went to the authorities for help. At the police station, he saw accused-appellant being confined, he later learned, for unruly behavior earlier on. It did not take long before somebody called up the station by hand radio to report the discovery of a dead child. He and a neighbor, Cleceria Bedro, rushed to the place and there, with unbelieving eyes, he saw his daughter Mebelyn, lifeless, her dress raised up, and with blood teeming from wounds all over her body.

### Wenitilo Malapad

A 35-year old resident of Binitinan, Balingasag, Misamis Oriental, Wenitilo Malapad testified that on 09 April 1997, between 5:30 and 6:00 in the afternoon, he was in the house of his brother-in-law, Cris Bustamante, enjoying some tuba in the company of Bonifacio Sabit, Richard Ki-i, and the Bustamante spouses, when he happened to see accused-appellant walking along the barangay road. Treading close by was a little girl, about nine years old, in short pants and blouse. Back home, Malapad was informed by his father-in-law that Levisito Gansan showed up earlier asking for him. He immediately left to see Gansan.

### Eduardo Cailing

A farmer, Eduardo Cailing said that in the morning of 09 April 1997, about eleven o'clock, accused-appellant, who had developed the habit of dropping by right after work in Claveria, arrived and partook of lunch. A little later, accused-appellant proceeded to a store, owned by a certain Leonardo Palaspara, and took a "hard drink." By mid-afternoon, he was back to the house and asked for something to eat. Again, he returned to the store and resumed drinking. At around 6:30 in the evening, accused-appellant was back and, appearing to be restless and claiming that he would have to promptly leave for Davao, begged for some money. He noticed that accused-appellant had bloodstains on his hands. Even as Cailing was unable to spare accused-appellant any cash, the latter got his bag and hastily took off.

### Mirabeaus Undalok

Attorney Mirabeaus Undalok, practicing lawyer, while handling a court hearing on 11 April 1997 was informed by SPO4 Eusebia Delote that a suspect wanted to execute an affidavit of confession and that he needed the assistance of counsel. Atty. Undalok obliged and paid accused-appellant a visit. He cautioned accused-appellant

that a confession, once executed, could be taken against him in a court of law. Counsel warned that the crime involved, being heinous, was even punishable by death. This advice notwithstanding, accused-appellant manifested his desire to get the matter over with saying that his conscience was greatly bothering him and that he yearned for some peace of mind. Catching a glimpse of some bruises found on the body of accused-appellant, Atty. Undalok asked if the police had manhandled him in any way. Accused-appellant replied in the negative. Accused-appellant then narrated what had happened. He said that he had lured the victim to a hilltop where he intended to consummate his evil design. He was infuriated when his organ failed to penetrate the child's genitalia. Enraged, he stabbed her several times while she was lying on the ground. The sworn statement of Ramil Rayos, taken by SPO4 Eusebia Delote at the office of the police investigator on 11 April 1997, was executed in the presence also of the barangay captain of Balingasag and some police officers.

### Angelita Enopia

Dr. Angelita Enopia was the Municipal Health Officer of Balingasag. She conducted an autopsy on the body of Mebelyn Ganzan on 09 April 1997. Her post-mortem report disclosed that the victim had sustained 12 fatal wounds penetrating such sensitive areas as the heart, lungs, kidneys, and blood vessels. Her pelvic examination revealed hymenal lacerations at 3 o'clock and 6 o'clock positions with bloody discharges, leading Dr. Enopia to conclude that the child was raped before being killed approximately three to six hours before the post-mortem examination.

### Norma Babiera

Norma Babiera, an aunt of accused-appellant, testifying for the defense, said that on 09 April 1997, about seven o'clock in the evening, accused-appellant arrived in their house in Balingasag. He was so drunk that he displayed an almost uncontrollable violent behavior. He continued to knock over the benches inside the house. Having earlier partaken of drinks themselves, her four children were enraged at the wild actuations of accused-appellant. Babiera quickly sought refuge to a neighbor's house where she chanced upon her cousin, a policeman, and another nephew. She requested her cousin to detain accused-appellant in the municipal jail until he would have regained his "mental balance." Heeding the plea, her cousin accosted and escorted accused-appellant to the police station. Later that night, Babiera came to visit accused-appellant at the station only to discover that a complaint had just then been filed against him. She did not have the slightest idea where the accused-appellant had been before coming to her house that fateful evening.

### Ramil Velez Rayos

Ramil Velez Rayos testified that in the early morning of 09 April 1997, he had dropped by his sister's residence in Baliwagan around lunchtime. At roughly two o'clock in the afternoon, he was at the Balingasag public market, partaking of *tuba* with cousins Bobong, Titing, and Gogong Babiera. The drinking spree lasted for hours, up to six o'clock in the evening. From the market place, they all went straight to his cousins' house in Barangay 6, Balingasag, Misamis Oriental. While they were getting ready for dinner, he went to the dirty kitchen and accidentally spilled the gas lamp causing a small fire. The incident triggered a fight between him and Bobong. At his aunt's instance, he was brought to the municipal hall and placed behind bars

until he would have recovered from drunkenness. Eventually, he was released from jail but he was soon brought back to the police station and held for the rape-slay of the child victim.

Accused-appellant, in the instant appeal, maintains his innocence and seeks a reversal of the decision rendered by the trial court holding him responsible for the rape-slay of the victim. He submits a lone error, i.e., that the trial court has erred in finding him guilty beyond reasonable doubt of the crime of "rape with homicide." Claiming to have been coerced into executing his extrajudicial confession, accused-appellant insists that he only has been forced to affix his signature on the document by a policeman.

A confession is often said to constitute evidence of high order but before it can be taken in evidence, several requirements have to be satisfied. Chiseled in our jurisprudence are the four fundamental conditions needed for admissibility of a confession, to wit: (1) The confession must be voluntary; (2) the confession must be made with the assistance of a competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing.<sup>[3]</sup> Confessing to a crime has the semblance, at least insofar as its legal repercussions are concerned, of a plea of guilt. Extreme care must be taken by lawyers, prosecutors, and the police in seeing to it that the person under investigation for the commission of an offense has been properly secured in his constitutional rights. Article III, Section 2, of the 1987 Constitution requires that-

"(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 preferably 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.

"xxx xxx xxx

"(3) Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him."

The right to counsel, particularly, is designed to avoid the pernicious practice of extorting false confessions or coerced admissions<sup>[4]</sup> and to preclude the slightest suspicion that an accused would be led to an imprudent act. It ought to follow that a lawyer should see to the protection of an accused in ensuring his basic rights. The accused is entitled to no less than an effective and vigilant counsel who must be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Counsel should ascertain that the confession is voluntarily made and that the person making the same fully understands the nature and consequences of his extrajudicial confession. A contrary rule would be antagonistic to the rights of the individual to remain silent, to counsel, and to be presumed innocent.<sup>[5]</sup>

But while the Court in this case is not comfortable in giving weight to the confession made by the accused and holding it to bear out a faithful observance of the Constitution, the guilt of accused-appellant, nevertheless, has here been

independently established. When there are no eyewitnesses to a crime, resort to circumstantial evidence becomes almost certainly unavoidable.<sup>[6]</sup> Circumstantial evidence would be sufficient for conviction, if (a) there is more than one circumstance; (b) the facts from which the inferences have been derived are proven; (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>[7]</sup> The circumstances must be consistent with each other, from which the only rational hypothesis that can be drawn therefrom would be that the accused is guilty.<sup>[8]</sup> The circumstances must create a solid chain of events, coherent and intrinsically believable, that pinpoints the accused, to the exclusion of others, as being the perpetrator of the crime and thereby sufficiently overcome the presumption of innocence in his favor.

Here, the pieces of evidence, taken in their entirety, unmistakably point to the guilt, not innocence, of accused-appellant.

First.- While Levisito Gansan was attending a barangay seminar, his daughter Mebelyn came by his side and requested him to hold for her the sachet of "Jack En Poy" peanuts given by her "Uncle Ramil." It was the last time that Gansan saw his daughter alive.

Second.- Wenitilo Malapad saw accused-appellant walking with a child, about nine years old, precisely Mebelyn's age, wearing a pair of short pants and a blouse, exactly what Mebelyn had worn that day, along the barangay road towards the direction of the interior portion of Binitinan, Barangay Balingasag. He testified:

"Q On April 9, 1997 at about 5:30 to 6:00 in the afternoon do you remember where were you then?

"A I was in the house of my brother-in-law.

"Q What is the name of your brother-in-law?

"A Cris Bustamante.

"Q What did you do there in the house of Cris Bustamante?

"A We drank tuba.

"Q Were you alone?

"A We were 4 and 1 lady, the wife of Cris.

"Q Where is this house of your brother -in-law located?

"A In Upper Binitinan in the interior portion.

"Q Is this in front of the road?

"A Yes, Sir the former barangay road.

"Q And if somebody would pass that barangay road you could see those people passing?