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SECOND DIVISION

[G.R. No. 125938. April 4, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOEL JANSON and RICKY PINANTAO *alias* "OGCO,"** *appellants.*

SYNOPSIS

On 24 March 1986 at about 10:00 o'clock in the evening, six masked men entered the house of spouses Cesario and Teresa Alcantara, robbed their valuables, and raped their thirteen-year old daughter Maritess Alcantara. The victims identified accused Joel Janson and Ricky Pinantao as two of the six men who perpetrated the crime. Accused Joel Janson was arrested and confessed to the crime, implicating accused Ricky Pinantao as one of the perpetrators. Both accused were charged, tried and subsequently found guilty of the crime of robbery with rape and were each sentenced to *reclusion perpetua*. Both accused questioned the judgment of conviction before the Supreme Court.

Finding that the prosecution failed to meet the quantum of evidence constitutionally required, the Court set aside the decision of the trial court. It ruled that while courts generally brush aside inconsequential contradictions between declarations of the affiant in her sworn statements and those in court, the rule is otherwise where the discrepancies touch on substantial and irreconcilable facts, such as those omissions in the affidavit concerning important details which the affiant would not have failed to mention and which omission could well affect the credibility of the affiant. Here, the Court found that the appellants were not adequately identified as the perpetrators of the heinous offense. If indeed Maritess recognized one of her assailants as appellant Pinantao because of his amputated hand, she should have mentioned such glaring trait the first time she gave her statements to the investigating officers. But she never mentioned anything. On the contrary, she admitted that she did not recognize any of her assailants. She also admitted that it was only after appellant Janson was apprehended and confessed to the crime and implicated Pinantao, that she was able to confirm her suspicion. What stands out in the testimonies of the victims

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was that they were uncertain of the identities of the masked man who committed the crime and anchored their suspicion on the alleged confession of Janson. The Court, however, found the extrajudicial confession of Jason inadmissible for failing to meet the constitutional requirements of admissibility.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO ACCORDED GREAT WEIGHT AND RESPECT; EXCEPTION.**— Generally, the findings of the trial court concerning credibility of witnesses are accorded great weight and respect because it had the opportunity to observe closely in the first instance the demeanor of the witnesses presented before it. However, when the trial court overlooked or misunderstood significant contrarieties in the testimony of witnesses which if considered would materially affect the result of the conviction, such findings will not bind this Court. Such is the case at hand.

2. **ID.; ID.; ID.; COURTS GENERALLY BRUSH ASIDE INCONSEQUENTIAL CONTRADICTIONS BETWEEN DECLARATIONS OF AFFIANT IN HER SWORN STATEMENTS AND THOSE IN COURT; EXCEPTION.**— While courts generally brush aside inconsequential contradictions between declarations of the affiant in her sworn statements and those in court, the rule is otherwise where the discrepancies touch on substantial and irreconcilable facts such as those omissions in the affidavit concerning important details which the affiant would not have failed to mention and which omission could well affect the credibility of the affiant. If indeed, the victim recognized one of her assailants as Ricky Pinantao because of his amputated hand, she should have mentioned such glaring trait the first time she gave her statement to the investigating officers. But she never mentioned anything. On the contrary, she admitted that she did not recognize any of her assailants. She also admitted that it was only *after* Joel Janson was apprehended and 'confessed' to the crime, implicating Ricky Pinantao, that she confirmed her *suspicion.*

3. **ID.; ID.; ADMISSIBILITY; CONFESSIONS; EXTRAJUDICIAL CONFESSION BY AN ACCUSED IMPLICATING**

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ANOTHER MAY NOT BE UTILIZED UNLESS REPEATED IN OPEN COURT OR WHEN THERE IS AN OPPORTUNITY FOR THE CO-ACCUSED TO CROSS-EXAMINE THE CONFESSANT.— The invalid extrajudicial confession of Joel Janson cannot be used against Ricky Pinantao. An extrajudicial confession by an accused implicating another may not be utilized unless repeated in open court or when there is an opportunity for the co-accused to cross-examine the confessant on his extrajudicial statements. It is considered hearsay as against said co-accused under the *res inter alios acta* rule, which ordains that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.

4. **ID.; ID.; BURDEN OF PROOF; EVIDENCE FOR THE PROSECUTION MUST STAND OR FALL ON ITS OWN MERIT AND CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.**— The judgment of the Regional Trial Court finding Janson and Pinantao guilty of the crime of robbery with rape fails to persuade us that appellants have been adequately identified as the perpetrators of the heinous offense. In our view, to affirm that judgment of conviction on the basis of contradictory testimony of prosecution witnesses and the flawed extrajudicial confession of appellant Joel Janson is to sanction a possible miscarriage of justice. . . . What befell the Alcantara family, particularly to Marites, is abhorrent and should be condemned. But after due reflection and deliberation, we still find difficulty in sustaining the trial court's conclusion regarding appellants' guilt because of inconclusive identification. Doubts persist in our mind as to who are the real malefactors. Yes, a complex offense has been perpetrated, but who are the perpetrators? How we wish we had DNA or other scientific evidence to still our doubts! But we have only uncertain testimonies to rely on. It is only when the conscience is satisfied that the persons on trial are the ones who committed the offense that the judgment should be for conviction. Only when there is proof beyond reasonable doubt can we be certain that, after trial, only those responsible should be made answerable. The evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense. In this exacting standard, the prosecution failed. It follows that the judgment of the lower

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court convicting appellants ought to be set aside for failure to meet the quantum of evidence constitutionally required.

5. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED; CUSTODIAL RIGHTS; RIGHT TO COUNSEL; EXTRAJUDICIAL CONFESSION IS INADMISSIBLE IN EVIDENCE IF OBTAINED IN VIOLATION THEREOF.**— What stands out in the testimonies of the victims is that they were uncertain of the identities of the masked men who committed the robbery and rape that night and anchored their suspicion on the alleged confession of Joel Janson. This confession, however, is itself inadmissible for failing to meet the constitutional requirements for admissibility.The lawyer who allegedly assisted Joel Janson in the waiver of his right to counsel, Atty. Zerrudo, testified: x x x. The investigating police officer, P/Sgt. Pedro Idpan, also admitted in open court that the sworn statement of appellant Joel Janson was taken without the presence of counsel and that this statement together with the waiver of his right to counsel, was already prepared when it was presented to Atty. Zerrudo for signing. Clearly, the alleged extrajudicial confession of appellant Joel Janson cannot be admitted in evidence. The manner by which it was obtained violated accused's constitutional right to counsel.

6. **ID.; ID.; ID.; ID.; ID.; INFORMATION DERIVED FROM UNCOUNSELLED CONFESSION OR ADMISSION IS INADMISSIBLE IN EVIDENCE AGAINST THE CONFESSANT; CASE AT BAR.**— It is well-settled that the Constitution abhors an uncounselled confession or admission and whatever information is derived therefrom shall be regarded as inadmissible in evidence against the confessant. . . . In *People v. Javar,* this Court was clear in pronouncing that any statement obtained in violation of the Constitution, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain of truth, if it was made without the assistance of counsel, it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given. In *People v. Gomez*, citing *People v. Rodrigueza*, this Court held that Section 12(1), Article III of the Constitution requires the assistance of counsel to a person under custody *even* when he waives the right to counsel.

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7. **ID.; ID.; ID.; ID.; ID.; CONFESSION; REQUISITES TO BE ADMISSIBLE.**— Under the Constitution and existing law as well as jurisprudence, a confession to be admissible must satisfy the following requirements: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing. The purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting confession by coercion no matter how slight, as would lead the accused to admit something false. What is sought to be avoided is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. These constitutional guarantees have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation.

8. **ID.; ID.; ID.; ID.; ID.; WAIVER THEREOF WITHOUT THE ASSISTANCE OF COUNSEL HAS NO EVIDENTIARY VALUE; CASE AT BAR.**— While the Constitution sanctions the waiver of the right to counsel, it must, however, be voluntary, knowing, and intelligent, made in the presence and with the assistance of counsel, and it must be in writing. Indeed, any waiver of the right to counsel without the assistance of counsel has no evidentiary value. In this case, it cannot be said that the waiver of the right to counsel was made knowingly and intelligently. Appellant Joel Janson was illiterate, and a minor of sixteen (16) years at the time of the offense. As held in the case of *People v. Bonola*, where the accused was unschooled and only nineteen (19) years old when arrested, it is difficult to believe that considering the circumstances, the accused made an intelligent waiver of his right to counsel. In such instances, the need for counsel is more pronounced.

9. **ID.; ID.; ID.; ID.; ID.; ADMISSIONS OBTAINED WITHOUT THE BENEFIT OF COUNSEL, ALTHOUGH LATER REDUCED TO WRITING AND SIGNED IN THE PRESENCE OF COUNSEL, ARE CONSTITUTIONALLY FLAWED.**— It is also important to mention that the investigating officers already had a prepared statement when they went to the lawyer who is supposed to assist appellant Janson in waiving his right to counsel. This is not what is contemplated by law. In *People v. Quidato, Jr.*, where the police officers already

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prepared the affidavits of the accused when they were brought to the CLAO (now PAO) lawyer, and the latter explained the contents of the affidavits in *Visayan* to the accused who affirmed the veracity and voluntary execution of the same, the court held that the affidavits are inadmissible in evidence even if they were voluntarily given. As also ruled in *People v. Compil,* the belated arrival of the CLAO lawyer the following day, even if prior to the actual signing of the uncounseled confession, does not cure the defect of lack of counsel for the investigators were already able to extract incriminatory statements from the accused therein. Thus, in *People v. De Jesus,* we said that admissions obtained during custodial interrogations without the benefit of counsel, although later reduced to writing and signed in the presence of counsel, are still flawed under the Constitution. As pointed out in *People v. Deniega*, if the lawyer's role is reduced to being that of a mere witness to the signing of a priorly prepared document albeit indicating therein compliance with the accused's constitutional rights, the constitutional standard is not met.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Juan Sibug for accused-appellant R. Pinantao.
Public Attorney's Office for accused-appellants.

DECISION

QUISUMBING, *J.*:

On appeal is the decision[1] of the Regional Trial Court, Branch XVII, Kidapawan, Cotabato promulgated on September 15, 1995, declaring appellants guilty of the crime of robbery with rape, and sentencing each of them to the penalty of *Reclusion Perpetua*, and ordering them to pay ₱30,000.00 and ₱10,000.00 in favor of Marites Alcantara and Cesario Alcantara, respectively.

The information filed on August 31, 1987 alleged:

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[1] *Rollo*, pp. 17-24.

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That on or about the 24th day of March 1986, at about 10:00 o'clock in the evening at Barangay Mateo, Municipality of Kidapawan, Province of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JOEL JANSON, RICKY PINANTAO *alias* OGCO in company with *alias* ABDUL, *alias* PUTO, JOHN DOE and PETER DOE, who are still at large and whose names are still unknown, constituting a band and armed with long and short firearms, conspiring, confederating and mutually helping one another, with intent to gain, with force and intimidation, did then and there willfully, unlawfully and feloniously take and carry away, at gun point, cash money in the amount of ₱1,400.00, three (3) pieces of wrist watches, one (1) can coffee beans and one (1) chicken and if converted into cash it amounted to ₱1,845.00 or a total amount of Three Thousand Two Hundred Fourty (sic) Five Pesos (₱3,245.00), Philippine Currency, owned by Mr. & Mrs. CESARIO ALCANTARA; and on the same occasion, the above-named accused, with the use of force, violence and intimidation and armed with firearms, did then and there willfully, unlawfully and feloniously take turns in having carnal knowledge with one MARITESS ALCANTARA, a girl about 13 years old, daughter of Mr. & Mrs. CESARIO ALCANTARA, against her will and consent, to the damage and prejudice of the aforesaid persons in the aforesaid amount.

All contrary to law with the aggravating circumstances of dwelling, nighttime and the use of unlicensed firearms.

Kidapawan, Cotabato, August 31, 1987.[2]

On December 9, 1987, both accused pleaded not guilty.[3] Trial then ensued.

For the prosecution, the following witnesses were presented: Teresa Alcantara, Marites Alcantara, Dante Alcantara, Cesario Alcantara, Dr. Cesar Manuel, Atty. Jorge Zerrudo, and police officers Pedro Idpan, Jr. and Ortello Achas.

TERESA ALCANTARA testified that on March 24, 1986 at about 10:00 in the evening, the accused with six (6) other companions asked for food. She asked them to come back the

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[2] Records, pp. 21-22.

[3] *Id.* at 28.

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following day but they threatened to strafe and burn the house if they are not let in. The accused then entered the house and once inside, made all occupants lie down before covering them with a blanket. The accused demanded money from Teresa and she gave them ₱1,000. She was brought to the kitchen and someone guarded her. For a while, there was complete silence. Then she went inside the room of her daughter Marites, and saw her totally naked. Her daughter told her that she was raped. She gave an additional ₱1,000 to the accused who also got two (2) wristwatches worth ₱690.00, two (2) Seiko watches worth ₱443.00, a chicken worth approximately ₱20.00, and one can of coffee beans. The appellants were speaking among themselves in the Manobo dialect.

Teresa identified appellants Janson and Pinantao as two of the men who robbed their house and raped her daughter that night. She testified that she knew appellants since they were their neighbors at Mateo. She also claimed that while Janson and Pinantao were masked during the incident, she recognized them through their body built, physical appearance, and their voices while speaking in Manobo.[4]

MARITES[5] ALCANTARA testified that she was thirteen (13) years old at the time of the incident. She corroborated the testimony of her mother and added that after the group entered their house and hogtied her father, the appellants entered her room and turned off the lights inside. Someone poked a gun at her. Then Ricky Pinantao, who had an amputated right hand; Joel Janson, and Abdul Jona raped her. In open court she identified appellants Pinantao and Janson as two of her abusers, claiming that they were previously known to her. She claimed that she knew Ricky because he was their neighbor and that he often went to their house to buy bananas, while she knew Joel because he often went to their *barangay* to visit his relatives. She likewise claimed that while the appellants turned off the lights in their house, there was a full moon that night which

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[4] *Id.* at 18-19.

[5] Spelled as "Maritess" in some parts of the Records.

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gave her enough light to see her abusers. She immediately told her parents that she was raped, and she underwent medical examination the following day.[6]

DANTE ALCANTARA testified that on the day of the robbery he was only nine (9) years old. He said he recognized appellants Janson and Pinantao because they were their neighbors. On cross-examination, he admitted that the four robbers were masked, but the witness insisted that he was able to recognize Pinantao with his cut wrist and mustache, and also Janson because of his built.[7]

CESARIO ALCANTARA testified that on March 24, 1986, their house was robbed and his daughter was raped. He admitted that during the incident, he was not able to identify the perpetrators since he was hogtied face downwards, and he was covered with a blanket.[8]

The prosecution also presented DR. CESAR MANUEL. He testified that the physical examination he conducted on Marites Alcantara a day after the incident revealed that there were lacerations between the *labia majora, labia minora*, and the prepuce caused by a sharp instrument. There was also the presence of seminal fluid in the vagina of the victim indicating that there was actual sexual contact.[9]

ATTY. JORGE ZERRUDO testified that he only assisted appellant Janson in waiving his right to counsel, and that the sworn statement was already prepared when he signed it. Nevertheless, he asked appellant Janson if the contents of the statement were true, and whether he wished to be assisted by counsel.[10]

P/SGT. PEDRO IDPAN, JR. testified that he was a member of the Integrated National Police (INP), Kidapawan, Cotabato,

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[6] *Supra*, note 1 at 20.

[7] *Id.* at 21.

[8] *Ibid.*

[9] *Id.* at 18.

[10] *Id.* at 19.

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assigned in the investigation of the crime of robbery with rape involving appellant Joel Janson. He identified Janson's sworn statement saying it was signed by him without being forced. He admitted that during the investigation, there was no lawyer present and that Atty. Zerrudo signed the affidavit only after the investigation was conducted. He claimed, however, that prior to the custodial investigation, he informed Janson of his constitutional rights and that despite being a Manobo, Janson fully understood Cebuano,[11] which was the language used during the custodial investigation.

Finally, P/SGT. ORTELLO ACHAS testified that he was at the police station when Teresa Alcantara appeared on June 24, 1986, and requested that she be accompanied to the jail to identify the person who was earlier apprehended and detained. She identified the person as appellant Joel Janson. On cross-examination, P/Sgt. Achas admitted that he was not the one who conducted the investigation on the person of Joel Janson and that he could not remember whether appellant Janson who was then sixteen (16) years old and a Manobo was assisted by a lawyer. Neither could he remember whether a mental or physical examination was made upon Janson.[12]

For the defense, the following witnesses were presented: Datu Amado Pinantao, Atty. Francis Palmones, Jr., and the two appellants: Joel Janson and Ricky Pinantao.

DATU AMADO PINANTAO testified that he is an uncle of Ricky Pinantao, and that they belong to a cultural minority group, the Manobos. He admitted that they lived near the house of Cesario Alcantara. He said that on March 24, 1986, appellant Pinantao was in their house and that it was impossible for him to be elsewhere because earlier, in 1985, Pinantao was hacked by one Bernardo Agio resulting in the amputation of Pinantao's hand. He averred that Pinantao could not go out of their house

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[11] *Ibid.*

[12] *Ibid.*

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because at the time of the incident, the wound he sustained was not yet completely healed.[13]

ATTY. FRANCIS PALMONES, JR., testified that he notarized the sworn statement[14] of the appellant Janson on April 3, 1987, marked as Exh. 4 and that Janson affirmed and understood the contents of said affidavit because it was translated to him in the Visayan vernacular.[15]

Appellant JOEL JANSON, for his own defense, declared that he was assisted by a lawyer when he was investigated and made to sign a sworn statement before the police on June 26, 1986. But he denied the accusation against him and claimed that he was not assisted by counsel during the custodial investigation. He claimed that he did not know how to read or write, and that he was made to execute a sworn statement before a certain policeman named Ulep. Only after the investigation did Atty. Zerrudo sign the document. On cross-examination, he said that he was put in jail for another crime, robbery.[16]

Appellant RICKY PINANTAO also denied the accusation against him, saying that he did not know Marites and Cesario Alcantara. He claimed that he was arrested in March 1987 because he was implicated by appellant Janson as one of the perpetrators of the crime, per instruction of one Cristina Agio.[17]

On September 15, 1995, the Regional Trial Court rendered judgment thus:

WHEREFORE, prescinding from all of the foregoing considerations, the Court hereby pronounces the accused Ricky Pinantao *alias* Ogco and Joel Janson guilty of the crime of Robbery with Rape beyond reasonable doubt and accordingly, sentences Ricky Pinantao and Joel Janson each to undergo a prison term of *Reclusion Perpetua* and to

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[13] *Id.* at 21.

[14] *Supra*, note 2 at 171.

[15] *Supra*, note 1 at 22.

[16] *Ibid.*

[17] *Ibid.*

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indemnify Marites Alcantara the sum of ₱30,000.00; to indemnify Cesario Alcantara the sum of ₱10,000,00. No award of other damages in the absence of proof thereof.

SO ORDERED.[18]

Both appellants filed their notices of appeal and submitted separate appellant's briefs. Appellant Ricky Pinantao averred that:

I

THE TRIAL COURT ERRED IN ADMITTING THE ALLEGED EXTRA-JUDICIAL 'CONFESSION' OF APPELLANT JOEL JANSON, SAID EVIDENCE BEING INADMISSIBLE BECAUSE IT WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AND SHOULD NOT HAVE TAKEN AGAINST HIS CO-ACCUSED RICKY PINANTAO, UNDER THE *INTER ALIOS ACTA* RULE AS AGAINST HIS CO-ACCUSED RICKY PINANTAO EITHER FOR PROBABLE CAUSE AND THE RESULTANT CONVICTION OF RICKY PINANTAO;

II

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES OF THE ALCANTARA FAMILY WHICH WERE SHOT THROUGH WITH MATERIAL CONTRADICTIONS, INCONSISTENCIES AND UNNATURAL TESTIMONIES; and

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE PROSECUTION MISERABLY FAILED TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, AND THAT IN FACT THERE WAS A REASONABLE DOUBT IN THE IDENTITIES AND GUILT OF BOTH ACCUSED.[19]

Appellant Joel Janson, for his part, averred that:

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[18] *Id.* at 24.

[19] *Id.* at 57.

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I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT JOEL JANSON WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES; and

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT JOEL JANSON GUILTY OF THE CRIME OF ROBBERY WITH RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[20]

Simply put, the issues in this case are as follows: (1) Was the guilt of appellants Janson and Pinantao proved beyond reasonable doubt? (2) Is the extrajudicial confession of Janson admissible as evidence for the prosecution? and (3) May said confession be used against co-accused Pinantao?

We find the appeal impressed with merit. Appellants should be acquitted.

Generally, the findings of the trial court concerning credibility of witnesses are accorded great weight and respect because it had the opportunity to observe closely in the first instance the demeanor of the witnesses presented before it.[21] However, when the trial court overlooked or misunderstood significant contrarieties in the testimony of witnesses which if considered would materially affect the result of the conviction, such findings will not bind this Court.[22] Such is the case at hand.

Consistent with the testimonies of Teresa, Marites, Cesario, and Dante Alcantara, we can gather that what transpired that fateful night is as follows:

In the evening of March 24, 1986, six (6) men came to the house of Cesario Alcantara threatening to strafe and burn it should they not be let in. Once inside, the masked group of

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[20] *Id.* at 87.

[21] *People v. Vidal*, G.R. No. 90419, 1 June 1999, 308 SCRA 1, 10.

[22] *Ibid.*

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men turned off the lights, hogtied Cesario, pushed him facedown and covered him with blankets. They asked for money and Teresa gave them ₱400.[23] Teresa was then led to the kitchen. During this time, her daughter Marites was raped[24] by four men. Then Marites was led to the kitchen where the culprits threatened to abduct her if her mother would not give them money. Teresa then gave them an additional ₱1,000 while the group took three wristwatches, one can of coffee, and one chicken. Then they left the house, all the while speaking in the Manobo dialect.[25]

While the testimonies of the witnesses up to this point are credible and undisputed, it is unfortunate that the certainty ends here.

Marites testified in open court that she was raped by Ricky *alias* Ogco Pinantao, Joel Janson, and Abdul Jona.[26] She said that she came to know Ricky Pinantao because he is a neighbor and that he often goes to their house to buy bananas. She also said that she came to know Joel Janson because he is always going to Mateo since he has a relative there.[27]

Upon cross-examination, however, Marites admitted that she was not certain of the identity of her perpetrators at the time of the incident or immediately thereafter. According to her, it was only after Joel Janson was apprehended for another crime, and after he 'confessed' to the police, that she was able to confirm her suspicion. When asked in open court, she was not able to satisfactorily explain the discrepancy in her initial sworn statement before the police and her testimony later.

Pertinent portions of her testimony in court are instructive:

Q: Was this Ricky Pinantao armed when he entered your room?

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[23] Although Teresa testified that she initially gave ₱1,000, the trial court found that it was really just ₱400.

[24] Exhibit "A", Records, p. 4 (Medical Certificate of Dr. Cesar Manuel).

[25] *Id.* at 281-287.

[26] TSN, July 16, 1992, p. 8.

[27] *Id.* at 9.

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A: No sir, he wasn't.

Q: Where (sic) you afraid of him?
A: No, sir.

Q: Knowing that, according to you, you know him, did you not question him, Ricky, why are you doing this to me?
A: I did not because *I was only suspecting*.[28]

x x x x x x x x x

Q: Is it not Marites, to refresh your memory, is it not that when a sworn statement was taken from your (sic), you stated in your affidavit that you did not recognize anybody?
A: That was what I stated in my statement.[29]

x x x x x x x x x

Q: Miss Marites, in this sworn statement of yours, which was already marked as Exhibit "E" for the prosecution and Exhibit "I" for the defense, there is a question here: "Can you recognized (sic) any of the four men or any of the six men that robbed and raped you?" [you answered, "I do not know anyone sir. Now] in your testimony here, you said that you know the two accused, how will you reconcile this one?
A: It is like this, what I am telling now in Court is the one true, during that time, when the statement was taken on me (sic), I have already suspect in my mind and I could not tell their names but there were some evidence that dovetailed in my mind, like, the cut wrist of the one perpetrator, Ricky Pinantao and the mustache. And these are the things that I recall.

Q: Now, how come that you did not tell the police of the perpetrators during that time of investigation?
A: Sir, it is very hard to name names during that time when a statement was taken on me. *But when this Joel Janson was first apprehended, it was confirmed by his statement to the policeman.* (sic)[30]

x x x x x x x x x

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[28] *Id.* at 14.

[29] *Id.* at 15.

[30] *Id.* at 17-18.

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Q: *So, when Joel Janson was apprehended, that was the time you confirmed that he was the perpetrator?*
A: x x x *Yes, sir.*

x x x x x x x x x

Q: Therefore, you failed to recognize Joel Janson during said time of the incident?
A: I knew him through his body built.

x x x x x x x x x

Q: *So, you merely assumed that Joel Janson is one of those persons who robbed you, because of the aforesaid statement, that his alleged statement in the police?*
A: *Yes, sir.*

x x x x x x x x x

Q: *According to you, you have confirmed your suspicion of this Joel Janson after he was apprehended?*
A: *Yes, sir.*

Q: In the same manner you confirmed your suspicion of Ricky Pinantao after he was apprehended?
A: He himself revealed. Aside from that I already suspected because of his cut wrist and his mustache.[31] (italics ours)

While courts generally brush aside inconsequential contradictions between declarations of the affiant in her sworn statements and those in court, the rule is otherwise where the discrepancies touch on substantial and irreconcilable facts such as those omissions in the affidavit concerning important details which the affiant would not have failed to mention and which omission could well affect the credibility of the affiant.[32] If indeed, the victim recognized one of her assailants as Ricky Pinantao because of his amputated hand, she should have mentioned such glaring trait the first time she gave her statement to the investigating officers. But she never mentioned anything. On the contrary, she admitted that she did not recognize any

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[31] *Id.* at 18-21.

[32] *Supra*, note 21.

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of her assailants. She also admitted that it was only *after* Joel Janson was apprehended and 'confessed' to the crime, implicating Ricky Pinantao, that she confirmed her *suspicion*.

The testimony of Teresa Alcantara is also riddled with uncertainties:

Q: How many day had lapsed (sic) before you reported the incident to the police?
A: Three months after the incident.

x x x x x x x x x

Q: Will you please explain why you reported the incident after three months?
A: *It was only upon hearing through radio DXND the name of this person Joel Janson who was reported to have robbed the corn of a certain Atty. Jalipa, that I reported to the police.*

Q: That was the only reason why you reported to the police after three months already?
A. It is like this: After hearing that, I went to the police right then and there. I saw this Joel Janson who was the person among those who raped my daughter and entered our house.

Q: If you knew already that Joel Janson was among those persons who robbed you, why did you not report to the police immediately?
A: The following morning, I immediately reported, sir.

Q: And you gave sworn statement before the police on the following morning?
A: Not yet, sir.

Q: *Of course, this Joel Janson was unmasked when those six men came to your house?*
A: *This Joel Janson and Ricky Pinantao were the one (sic) wearing mask.*

Q: In other words, during the incident you failed to recognize outright who were those persons masked?
A: *I identified them through their body built and voice because they were speaking Manobo.*

Q: But you identified them because of their voice?
A: Voice and bodybuilt.

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Q: But of course, you did not actually see the face of Joel Janson?
A: *How can I see when he is masked.*

x x x x x x x x x

Q: *You only mentioned his (Joel Janson's) name (to the police) after you heard his name over the DXND?*
A: *Yes. . .*[33] (italics ours)

What stands out in the testimonies of the victims is that they were uncertain of the identities of the masked men who committed the robbery and rape that night and anchored their suspicion on the alleged confession of Joel Janson. This confession, however, is itself inadmissible for failing to meet the constitutional requirements for admissibility.

The lawyer who allegedly assisted Joel Janson in the waiver of his right to counsel, Atty. Zerrudo, testified:

Q: In other words, this sworn statement marked Exhibit "B" was already typewritten and prepared when it was brought to you by the police?
A: Yes, sir, that is correct.[34]

x x x x x x x x x

Q: But before he was brought to your office allegedly to assist him in his waiving of his right, he was already subjected to investigation as this sworn statement was already prepared?
A: That is true, but not signed.

Q: Of course he was not assisted because he was already subjected to police investigation in his waiving of his constitutional rights?
A: May be, I am not sure about that. That was may be, that was already prepared when they came to my office but only unsigned.

Q: What was prepared, the whole investigation or this entire part or that part of waiving his rights?

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[33] TSN, October 1, 1991, pp. 11-14.

[34] TSN, October 16, 1989, p. 18.

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A: *As far as I can remember, it was already prepared, Your Honor.*[35]

x x x x x x x x x

Q: *Atty. Zerrudo, we are clear to the fact that this document was already prepared before when it was brought to your office?*

A: *Yes, sir.*[36] (italics ours)

The investigating police officer, P/Sgt. Pedro Idpan, also admitted in open court that the sworn statement of appellant Joel Janson was taken without the presence of counsel and that this statement together with the waiver of his right to counsel, was already prepared when it was presented to Atty. Zerrudo for signing.

As shown by the transcript:

Q: But the accused during the investigation was not assisted by counsel, is that right?

A: At the time when I conducted the investigation, the counsel is not yet present.

Q: In other words, during the conduct of the investigation there was no counsel being present assisting the accused Joel Janson?

A: None, sir.

Q: So in all the sworn statement of the accused Joel Janson made earlier was made without the assistance of counsel? (sic)

A: When I prepared the investigation I advised him to get a counsel of his own choice but the counsel was not yet present.

Q: He was not assisted by counsel during the conduct of the investigation?

A: Yes, sir.

Court: What do you mean, Sergeant, Atty. Zerrudo was not yet present?

A: *When I conducted the investigation, Atty. Zerrudo was not present.*

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[35] *Id.* at 19-20.

[36] *Id.* at 22.

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x x x x x x x x x

Court: *He signed it after the investigation?*

A: *The prepared testimony.*

Court: *After the investigation?*

A: *After the investigation.*[37] (italics ours)

Clearly, the alleged extrajudicial confession of appellant Joel Janson cannot be admitted in evidence. The manner by which it was obtained violated accused's constitutional right to counsel.

It is well-settled that the Constitution abhors an uncounselled confession or admission and whatever information is derived therefrom shall be regarded as inadmissible in evidence against the confessant.[38]

As provided for in Article III, Section 12 of the 1987 Constitution,

> (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.
>
> x x x x x x x x x
>
> (3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible against him.

In *People v. Javar*,[39] this Court was clear in pronouncing that any statement obtained in violation of the Constitution, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence. Even if the confession contains a grain of truth, if it was made without the assistance of counsel,

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[37] TSN, October 3, 1990, pp. 7-9.

[38] *People v. Tan*, G.R. No. 117321, 11 February 1998, 286 SCRA 207, 213.

[39] G.R. No. 82769, 6 September 1993, 226 SCRA 103.

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it becomes inadmissible in evidence, regardless of the absence of coercion or even if it had been voluntarily given.[40] In *People v. Gomez*,[41] citing *People v. Rodrigueza*,[42] this Court held that Section 12(1), Article III of the Constitution requires the assistance of counsel to a person under custody *even* when he waives the right to counsel.

Under the Constitution and existing law as well as jurisprudence, a confession to be admissible must satisfy the following requirements: (1) it must be voluntary; (2) it must be made with the assistance of competent and independent counsel; (3) it must be express; and (4) it must be in writing.[43]

The purpose of providing counsel to a person under custodial investigation is to curb the uncivilized practice of extracting confession by coercion no matter how slight, as would lead the accused to admit something false. What is sought to be avoided is the evil of extorting from the very mouth of the person undergoing interrogation for the commission of an offense, the very evidence with which to prosecute and thereafter convict him. These constitutional guarantees have been made available to protect him from the inherently coercive psychological, if not physical, atmosphere of such investigation.[44]

While the Constitution sanctions the waiver of the right to counsel, it must, however, be voluntary, knowing, and intelligent, made in the presence and with the assistance of counsel,[45] and it must be in writing. Indeed, any waiver of the right to counsel without the assistance of counsel has no evidentiary value.[46]

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[40] *Supra*, note 38 at 214-215.

[41] G.R. No 101817, 26 March 1997, 270 SCRA 432, 444.

[42] G.R. No. 95902, 4 February 1992, 205 SCRA 791.

[43] *Supra*, note 38 at 214.

[44] *People v. Olivarez*, Jr., G.R. No. 77865, 4 December 1998, 299 SCRA 635, 650.

[45] *Supra*, note 38 at 214.

[46] *People v. Vidal, supra* at 21.

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In this case, it cannot be said that the waiver of the right to counsel was made knowingly and intelligently. Appellant Joel Janson was illiterate, and a minor of sixteen (16) years at the time of the offense. As held in the case of *People v. Bonola*,[47] where the accused was unschooled and only nineteen (19) years old when arrested, it is difficult to believe that considering the circumstances, the accused made an intelligent waiver of his right to counsel. In such instances, the need for counsel is more pronounced.

It is also important to mention that the investigating officers already had a prepared statement when they went to the lawyer who is supposed to assist appellant Janson in waiving his right to counsel.

This is not what is contemplated by law. In *People v. Quidato, Jr.*,[48] where the police officers already prepared the affidavits of the accused when they were brought to the CLAO (now PAO) lawyer, and the latter explained the contents of the affidavits in *Visayan* to the accused who affirmed the veracity and voluntary execution of the same, the court held that the affidavits are inadmissible in evidence even if they were voluntarily given. As also ruled in *People v. Compil*,[49] the belated arrival of the CLAO lawyer the following day, even if prior to the actual signing of the uncounseled confession, does not cure the defect of lack of counsel for the investigators were already able to extract incriminatory statements from the accused therein. Thus, in *People v. De Jesus*,[50] we said that admissions obtained during custodial interrogations without the benefit of counsel, although later reduced to writing and signed in the presence of counsel, are still flawed under the Constitution.

As pointed out in *People v. Binamira*,[51] if the lawyer's role is reduced to being that of a mere witness to the signing of a

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[47] G.R. No. 116394, 19 June 1997, 274 SCRA 238, 254.

[48] G.R. No. 117401, 1 October 1998, 297 SCRA 1.

[49] G.R. No. 95028, 15 March 1995, 244 SCRA 135, 142.

[50] G.R. No. 91535, 2 September 1992, 213 SCRA 345.

[51] *People v. Binamira*, G.R. No. 110397, 14 August 1997, 277 SCRA 232, 248.

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priorly prepared document albeit indicating therein compliance with the accused's constitutional rights, the constitutional standard is not met.

Finally, the invalid extrajudicial confession of Joel Janson cannot be used against Ricky Pinantao. An extrajudicial confession by an accused implicating another may not be utilized unless repeated in open court or when there is an opportunity for the co-accused to cross-examine the confessant on his extrajudicial statements. It is considered hearsay as against said co-accused under the *res inter alios acta* rule, which ordains that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.[52]

For all the foregoing considerations, the judgment of the Regional Trial Court finding Janson and Pinantao guilty of the crime of robbery with rape fails to persuade us that appellants have been adequately identified as the perpetrators of the heinous offense. In our view, to affirm that judgment of conviction on the basis of contradictory testimony of prosecution witnesses and the flawed extrajudicial confession of appellant Joel Janson is to sanction a possible miscarriage of justice.

What befell the Alcantara family, particularly to Marites, is abhorrent and should be condemned. But after due reflection and deliberation, we still find difficulty in sustaining the trial court's conclusion regarding appellants' guilt because of inconclusive identification. Doubts persist in our mind as to who are the real malefactors. Yes, a complex offense has been perpetrated, but who are the perpetrators? How we wish we had DNA or other scientific evidence to still our doubts! But we have only uncertain testimonies to rely on. It is only when the conscience is satisfied that the persons on trial are the ones who committed the offense that the judgment should be for conviction. Only when there is proof beyond reasonable doubt can we be certain that, after trial, only those responsible should be made answerable.[53] The evidence for the prosecution must

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[52] *People v. Olivarez, Jr., supra* at 650-651.

[53] *People v. Vidal, supra* at 24.

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stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense.[54] In this exacting standard, the prosecution failed. It follows that the judgment of the lower court convicting appellants ought to be set aside for failure to meet the quantum of evidence constitutionally required.

WHEREFORE, the decision of the Regional Trial Court of Kidapawan, Cotabato, Branch XVII, in Criminal Case No. 2016 is hereby *REVERSED* and *SET ASIDE*. Appellants Joel Janson and Ricky Pinantao are *ACQUITTED*, on grounds of reasonable doubt, and ordered released from prison unless they are being held for some other lawful cause. The Director of Prisons is *DIRECTED* to implement this Decision and to report to this Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

EN BANC

[G.R. No. 140756. April 4, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN GONZALES ESCOTE, JR. @ Jun Mantika of Sta. Lucia, Angat, Bulacan and VICTOR ACUYAN *y* OCHOVILLOS @ Vic Arroyo of Sto. Niño, Poblacion, Bustos, Bulacan,** *accused-appellants.*

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[54] *Id.* at 20.