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WHEREFORE, in view of all the foregoing, the complaint against all the respondents is *DISMISSED* for lack of merit.

SO ORDERED.

Davide Jr., C. J., Bellosillo, Puno, Vitug, Panganiban, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Quisumbing and *Sandoval-Gutierrez, JJ.,* on official leave.

EN BANC

[G.R. No. 132218. July 24, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE NAVARRO, JR.,** *appellant.*

SYNOPSIS

It was prosecution's position that Rowena, the 7-year old daughter of private complainant Erlinda, was sexually abused and afterwards killed by appellant by means of strangulation in a forested area located at Poblacion Sur, Sison, Pangasinan. The trial court enumerated in its decision the facts established by the evidence presented during trial and concluded that from all the circumstantial evidence, the appellant was guilty of the crime charged, and thus imposed upon him the supreme penalty of death. Hence, this automatic review of the case, which boiled down to the principal issue of whether or not there was sufficient circumstantial evidence that warranted the conviction of the appellant beyond reasonable doubt.

The Supreme Court found no cogent reason to depart from the findings of the trial court that all the requirements necessary to convict the accused on the basis of circumstantial evidence were present in this case. There were more than one circumstance relied upon, the facts from which the inferences

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were derived were proven, and the combination of all the circumstances was such as to produce a conviction of the appellant beyond reasonable doubt to the exclusion of all others. Consequently, the Court found that the trial court did not err in convicting the appellant of rape with homicide under Art. 335 of the Revised Penal Code, in relation to R.A. 7659, which provides that when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; MAY BE RESORTED TO BY PROSECUTION WHEN DIRECT EVIDENCE IS NOT AVAILABLE; RATIONALE.** — While it is established that nothing less than proof beyond reasonable doubt is required for a conviction, this exacting standard does not preclude resort to circumstantial evidence when direct evidence is not available. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under conditions where concealment is highly probable. If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove.

2. **ID.; ID.; ID.; WHEN SUFFICIENT TO CONVICT THE ACCUSED; REQUISITES.** — Circumstantial evidence has been defined as that which indirectly proves a fact in issue. To be sufficient for conviction, Sec. 4 of Rule 133 of the Rules of Court provides that the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Also, jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.

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3. ID.; ID.; DEFENSE OF ALIBI; ALWAYS LOOKED UPON WITH SUSPICION AND RECEIVED WITH CAUTION BY COURTS; APPLICATION IN CASE AT BAR. — As we have always held, the defense of alibi is always looked upon with suspicion and received with caution because not only is this kind of defense inherently weak and unreliable; it is also easy to fabricate. In this case, we find unlikely the story of the appellant that he followed his live-in partner to Baguio to continue their exchange of words considering that he admitted that he woke up with a hang-over from drinking the night before. Also, we have repeatedly held that the defense of alibi cannot prevail over the positive testimonies of the prosecution witnesses that appellant was seen in Sison, Pangasinan in the afternoon of October 6, 1996.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

The guilt of an accused must be proven beyond reasonable doubt. But what happens when the lips of the victim as the lone eyewitness had been silenced by her gruesome death? This case shows that circumstantial evidence, when sufficient, can be the basis of conviction for a crime punishable by death.

On automatic review is the decision[1] of the Regional Trial Court of Urdaneta, Pangasinan (Branch 46), the decretal portion of which reads:

WHEREFORE, finding JOSE NAVARRO, JR. guilty beyond reasonable doubt of the crime of RAPE WITH HOMICIDE, the Court hereby sentences him to suffer the penalty of DEATH to be implemented in the manner prescribed by law.

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[1] In Crim. Case No. U-9126, penned by Judge Modesto C. Juanson.

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The accused is also ordered to pay the heirs of the victim the sum of ₱50,000.00 as actual damages and ₱150,000.00 for moral damages.

The Branch Clerk of Court is hereby ordered to prepare the *mittimus* immediately and transmit the records to the honorable Supreme Court of the Philippines for automatic review.

SO ORDERED.[2]

On December 4, 1996, an Information was filed charging Jose Navarro, Jr. of Rape with Homicide as follows:

That on or about October 6, 1996 at Poblacion Sur, municipality of Sison, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused by means of force and violence, did, then and there willfully, unlawfully and feloniously have sexual intercourse with ROWENA FABIAN TELLES, a minor of 7 years of age, against her will and on the occasion thereof, accused with intent to kill, did, then and there willfully, unlawfully and feloniously maul and strangle to death said Rowena Fabian Telles, to the damage and prejudice of her heirs.

CONTRARY to Art. 335, Revised Penal Code as amended by R.A. 7659.

Urdaneta, Pangasinan, December 4, 1996.[3]

Upon being arraigned on October 13, 1997, appellant pleaded not guilty to the crime charged against him. Trial then ensued.

It is the prosecution's position that Rowena Telles, the 7-year old daughter of private complainant Erlinda Telles, was sexually abused and afterwards killed by appellant Jose Navarro, Jr. by means of strangulation in a forested area located at Poblacion Sur, Sison, Pangasinan.[4]

The prosecution presented the following witnesses: SPO2 Jovencio Fajarito, SPO1 Alfredo Palado, Ruben Dulay, Dr. Arnold Bandonill, Jeffrey Veniegas, and Erlinda Telles.

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[2] *Rollo*, pp. 37-38.

[3] Records, p. 1.

[4] *Rollo*, p. 25.

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SPO2 JOVENCIO FAJARITO, police investigator of the PNP in Sison, Pangasinan, testified: At around 7:30 in the morning of October 7, 1996, his office received a complaint from Erlinda Telles that her daughter, Rowena Telles, was missing. SPO1 Galaang and SPO1 Palado responded and at around 10:30 the same morning, said officers found Rowena in a forested area at Brgy. Poblacion Sur, Sison, Pangasinan. He immediately proceeded to the place where the body of the victim was found and had the victim photographed. The victim was lying on the ground facing upwards with her two legs spread apart; her face was already swollen and had many ants especially at the eyes; her clothes were in disarray; her dress was raised while her short pants was loose. The nearest house where the victim was found was about 40-45 meters away and belonged to appellant. Erlinda Telles identified the victim as her daughter. Upon questioning people in the surrounding area, he (SPO2 Fajardo) received information from Ruben Dulay that appellant was the last person seen with the victim and that he (Navarro) invited the victim to accompany him to pick some guavas. Afterwards, they tried to locate appellant but failed to find him.[5]

On cross-examination, the witness said that while there were wounds on the neck of the victim and blood stains on her face, he did not see blood in the short pants as well as the shirt of the child. [6] He also admitted that he no longer attempted to look for other suspects since it was related to him by Ruben Dulay and Erlinda Telles that it was appellant who was the last person seen with the child.[7]

SPO1 ALFREDO PALADO, member of the PNP in Sison, Pangasinan, testified: On October 7, 1996, he was ordered to assist Evelyn Telles in finding her missing child. They questioned Evelyn who told them that the child was last seen with appellant in the afternoon of October 6, 1996 and that the accused and

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[5] TSN, October 20, 1997, pp. 2-12.

[6] TSN, October 21, 1997, p. 7.

[7] *Id.*, p. 11.

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the victim went to the forested area at the back of the house of Evelyn. He and SPO1 Moises Galang together with about twenty persons from the *barangay* then proceeded to the forested area near the house of Evelyn. After several hours, Kgd. Ronnie Narcisa informed them through radio that they found the body of Rowena. They proceeded to the place where the child was found and called SPO2 Fajarito. They saw the lifeless body of Rowena lying on her back with her legs spread apart. There were already worms in her mouth and her left cheek was swollen. There were also bruises in the forehead and other parts of the body. Afterwards, they started looking for appellant with the aid of pictures provided them by appellant's live-in partner.[8]

In his cross-examination, SPO1 Palado admitted that they don't have any other suspect and that they focused on the accused based on the statement of Erlinda Telles.[9]

RUBEN DULAY, 48 years old, a construction worker and resident of Poblacion Sur, Sison, Pangasinan, testified: He lives 150 meters from the houses of Erlinda Telles and appellant. Erlinda's late husband is a friend of his while appellant was a classmate of his son. On October 6, 1996, at around 2:00 in the afternoon, he accompanied his cousin Danilo Aurea to the house of appellant because Danilo was courting appellant's sister-in-law. When they reached said house, he saw appellant outside the house drinking with Jaime Juralbal. Appellant invited him and Danilo to join them in their drinking. Later, Juralbal and Danilo asked permission from appellant to see his sister-in-law leaving him (Dulay) and the appellant in their drinking. Afterwards a small girl, Rowena Telles, came near his back and the appellant upon seeing her eating guava asked her to give him some. Appellant asked Rowena where she got the guava to which she answered that it came from the western direction of their house. Appellant asked Rowena if there were still guavas and she replied "No more, *Kuya*." Appellant then said, "I will be the one to see if there are still guavas. Come with me." Appellant held the

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[8] TSN, October 22, 1997, pp. 8-9.

[9] *Id.*, p. 11.

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hands of Rowena and they went to the western direction where there were many guavas. This was around 3:30 to 4:00 in the afternoon. He was left alone and drank a little. At around 4:30 p.m., he together with Danilo and Juralbal left the house of Navarro and went home. Around 9:00 that evening, Erlinda Telles went to his house and asked him if he saw Rowena. The following morning, he joined in the search for Rowena. A few hours later, someone shouted that the cadaver of Rowena was already found about 60 to 70 meters from her house. Rowena's body lay facing upward, the left eye was protruding with earth in her mouth, her legs were spread apart and there was blood stain in her organ.[10]

On cross-examination, he asserted that he has no ill feelings towards appellant but admitted that he has poor eyesight and that he only saw Rowena in the afternoon of October 6 for only about a minute.[11]

DR. ARNOLD BANDONILL, a Medico Legal Officer of the National Bureau of Investigation, stationed in Baguio City, gave his testimony as follows: On October 10, 1996, he examined the body of Rowena Telles per letter request of the Chief of Police of Sison, Pangasinan. He noted cyanosis or the blueness of the skin on the lips and nail beds suggesting loss of oxygen due to asphyxia. He also found contusions on the middle of the forehead, right temple, and the right and front sides of the neck. He explained that such injuries could be caused by hard smooth instruments such as a piece of wood, a stone or a fist of a man. He also found abrasions at the right temple and the right side of the neck as well as the left upper extremity, right deltoid area, back left side of the supra scapular area, thigh, and medial aspect caused by hard rough surface that came in contact with the skin. He also found bleeding in the nose and mouth as a result of pinching in the area. While the genital area was already in an advanced state of decomposition such that the hymen has been turned into a blackish pultaceuos mass which cannot be

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[10] TSN, November 3, 1997, pp. 2-4.

[11] TSN, November 3, 1997, pp. 9, 12.

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easily identified, the surrounding tissue particularly the vestibular mucosa that was inside the genital area was still inflamed and reddish indicating that there was trauma in that area caused by a hard rigid instrument like a piece of wood, finger, or an erect male organ. He finds that rape took place and that the cause of death was asphyxia by manual strangulation and traumatic intracranial hemorrhage.[12]

During the cross-examination, Dr. Bandonill admitted that the vestibular mucosa was part of the external female genitalia and that there is a possibility that the redness in this area was caused by having been boxed in said area.

JEFFREY VENIEGAS, 18 years old, laborer, resident of Poblacion Castro, Sison, Pangasinan, testified: He knows Erlinda Telles since his father and her late husband were good friends and their houses are near each other. At around 4:30 in the afternoon of October 6, 1996, he was on his way to get his cow at the river near their house when he saw a person behind him who looked like a thief. The man was wearing a black maong pants and white t-shirt which had blood stains and the man came from the "*buho*" groves where there were no houses. He identified the appellant as the one he saw whose t-shirt had blood stains.[13]

On cross-examination, he testified that he was frightened when he thought that the man at his back was a thief, thus, he immediately turned his face. Also, he said that while his house was near those of Erlinda's and appellant's, he did not know the appellant.[14]

ERLINDA TELLES, mother of the victim, is a 43-year old *balut* vendor and resident of Poblacion Sur, Sison, Pangasinan. She testified: Her daughter Rowena died on October 6, 1996 at the age of seven.[15] At around 3:30 in the afternoon that day,

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[12] TSN, November 5, 1997, pp. 5-18.

[13] TSN, November 6, 1997, pp. 2-5.

[14] *Id.*, p. 5.

[15] Exhibit "J", Certificate of Live Birth showing that Rowena Telles was born on May 27, 1983.

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she noticed that Rowena was nowhere to be found. She first looked for Rowena in school, then at her friends' house. Later, upon talking to Ruben Dulay, she found that Rowena was brought by appellant who is a nephew of her husband to the "*buho*" or bamboo groves. At 12:00 o'clock midnight, she went to San Fernando, La Union because appellant also lived there. Upon reaching San Fernando, she was told by her mother-in-law that appellant was not there thus she went back to Sison and arrived around 5:00 in the morning of October 7, 1996. She went to Brgy. Captain Padua to report that her child was missing. The *barangay* captain together with other persons started looking for Rowena. Then, she went to the PNP station to report her daughter's absence. Policemen Palado and Galang responded. One of her neighbors, Jeffrey Veniegas, told them that he saw a man with bloodied t-shirt at the vicinity of the "buho" groves at about 4:30-5:00 in the afternoon of October 6. Later, she was informed that the body of her daughter was found and she lost consciousness. She suffered from the death of her daughter, who at the time was an honor student. She incurred expenses in the amount of ₱50,000.00 for her wake and burial.[16]

On cross-examination, Erlinda denied that prior to the incident, her relationship with the appellant and his mother was estranged.[17] Erlinda averred that while there were receipts for the expenses she incurred, these are no longer in her possession, hence her failure to present them in court.[18]

For its part, the defense claims that appellant left Poblacion Sur, Sison, Pangasinan, at around 11:00 o'clock in the morning of October 6, 1996 and went to the house of his live-in partner, Myla Gadang, in Lower Quirino Hills, Baguio City, where he stayed until October 2, 1997. Appellant and his mother testified in support of this claim.

Appellant JOSE NAVARRO, JR., 23 years old, driver and a resident of Baguio City, testified as follows: He knows Erlinda

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[16] TSN, November 10, 1997, pp. 2-14.

[17] *Id.*, p. 15.

[18] *Id.*, p. 17.

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Telles since she is the wife of his uncle Ricardo. On October 6, 1996, between 9:30 to 10:00 in the morning, he was in their house at Poblacion Sur, Sison, Pangasinan which was around 100 meters away from the house of Erlinda. He woke up with a hang-over because of drinking the night before. His brother-in-law arrived from Baguio and invited him to drink again which made his wife angry. He and his wife quarreled which drove his wife to go to the house of their neighbor. There he followed, but when he reached their neighbor's house, his wife had already boarded a tricycle. He then went home and invited his brother-in-law to go to Baguio City with him but his brother-in-law declined. This was at around 11:00 in the morning. He arrived at Lower Quirino Hills, Baguio City at around 12:30 in the afternoon. His mother, Francisca, and wife, Myla, were already there. He and his wife continued their exchange of words. The following day, his wife went back to Sison by herself and returned to Baguio City that same evening, informing him that his cousin, Rowena Telles died and that he is a suspect in the killing. He did not go back to Sison because there was a "shoot to kill" order against him.[19]

Appellant also testified that Ruben Dulay had ill-feelings towards him because he did not help Dulay's son when the latter got jailed and that Erlinda Telles may have ill-feelings towards him since he told her to vacate the place where their house is erected as the land is owned by his mother.[20]

On cross-examination, appellant testified that when he left Sison, Pangasinan for Baguio on October 6, 1996, he did not bring any personal belongings with him and stayed in Baguio until he was apprehended by the Baguio police on October 2, 1997 for a different offense.[21]

FRANCISCA NAVARRO, mother of the appellant, is 51 years old, a laundry woman and a resident of Baguio City.[22] She testified: Around noon of October 6, 1996, she was in Quirino Hills, Baguio City in the house of Myla Gadang, taking a rest

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19 TSN, November 18, 1997, pp. 2-15.

20 *Id.*, pp. 16-18.

21 TSN, November 19, 1997, pp. 4-10.

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after washing clothes. Soon Myla arrived and told her that she had a quarrel with appellant. At around 1:00 in the afternoon, appellant arrived. The two continued their quarrel. Her son did not leave the house until the following morning or on October 7 when appellant accompanied Myla to the bus station going to Sison. Myla went to Sison in the morning of October 7 and returned at around 7:00 p.m. of the same day telling them that the daughter of Erlinda Telles died and that appellant was a suspect. Appellant denied that he killed Rowena because he was in Baguio City. She told her son to surrender but her son answered "Why should I report to the police when I did nothing?" From October 6, 1996 to October 2, 1997, appellant was in Baguio driving. [23] Francisca claims that Ruben Dulay had ill-feelings towards them because her son refused to help Dulay's son when the latter was imprisoned.[24]

The trial court enumerated in its decision dated January 5, 1998, the facts established by the evidence presented, to wit:

(1) Ruben Dulay, Juralbal, Danilo Aurea and Jose Navarro, Jr., were drinking in the house of the latter, located at Poblacion Sur, Sison, Pangasinan at about 2:00 o'clock in the afternoon of October 6, 1996;

(2) That while Navarro and Ruben Dulay were drinking, Rowena Telles approached them. Jose Navarro saw Rowena eating guava. Navarro asked Rowena to give him some guavas. Rowena gave the guava to Navarro. Later, Navarro asked Rowena where she got the guava. Rowena told him, she got the guava from the western direction in relation to the house of Jose Navarro. Navarro asked Rowena if there were still guavas. Rowena replied, "No more *Kuya*." Navarro said, "I will be the one to see if there are still guavas." "Come, go with me." (referring to Rowena). Navarro held the hands of Rowena and went to the western direction. Ruben Dulay was left alone;

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[22] TSN, December 9, 1997, p. 2.

[23] *Id.*, pp. 6-8.

[24] *Id.*, p. 9.

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(3) Jose Navarro, Jr. was the last person seen with Rowena Telles between the hours of 3:30 and 4:00 o'clock P.M. of October 6, 1996, at Poblacion Sur, Sison, Pangasinan;

(4) That Jose Navarro, Jr. and Rowena Telles went to the western direction in relation to the house of Jose Navarro, Jr.;

(5) That at between 4:00 and 4:30 o'clock in the afternoon, Jeffrey Veniegas saw Jose Navarro, Jr. coming from the direction of bamboo groves wearing black Maong pants and white T-shirt with blood stains;

(6) That the dead body of Rowena Telles was found in the northern direction where Jose Navarro, Jr. and Rowena Telles proceeded;

(7) Jose Navarro, Jr. took a flight. He hurriedly left his residence at Poblacion Sur, Sison Pangasinan on October 6, 1996 and went to Baguio City. He did not return to Sison, his previous residence, from October 6, 1996 up to the time of his arrest on October 2, 1997, despite the fact that he was informed that he was a suspect in the killing of Rowena Telles. The Court noted that he took a flight from his place of residence at Sison, Pangasinan, to Baguio City. He did not bring any clothings of personal belongings necessary for his daily life. It was indicative that he was guilty. [25]

and concluded, thus:

In sum, the combination of these circumstances satisfy Section 4, Rule 133, of the Revised Rules of Court. There is no doubt in the mind of the Court that it was Jose Navarro, Jr. who was the perpetrator of the dastardly act of sexual abuse with homicide. The evidence that Rowena was sexually abused was borne out by the testimony of the Doctor that Rowena Telles was sexually abused as a result of his examination of the genital area of Rowena Telles when he testified that the surrounding tissue in the genital area is inflamed and reddish and that there was trauma in the area which means that hard rigid instrument penetrated said area. Furthermore, the vestibular mucosa of the genital organ of Rowena show signs of congestion and inflammation which means that trauma in the genital area caused by hard rigid instrument penetrated the area, like erect instrument of

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[25] RTC Decision dated January 5, 1998, pp. 11-12.

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a male person. The examination of the Doctor further shows that Rowena Telles was choked to death as borne out by the bleeding on the nose and mouth as a result of Asphyxia. On the external injuries of the victim, the Doctor found cyanosis which shows blueness of the skin which suggested loss of oxygen during death caused by asphyxia. There were multiple contusions on the neck and temple of the child caused by hard smooth blunt instrument, like piece of wood, stone and fist of a man.

When the accused fled to Baguio City, this behavior of flight is evidence of his guilt. It is safe to conclude from all circumstantial evidences that the accused was the one who sexually abused Rowena Telles and thereafter killed her. . . .[26]

imposing upon appellant the penalty of death.

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In his Brief, appellant raises the following Assignment of Errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT ON THE BASIS OF CIRCUMSTANTIAL EVIDENCE DESPITE FAILURE OF THE PROSECUTION TO SATISFY THE EQUALLY EXACTING STANDARD OF MORAL CERTAINTY UNDER RULE 133, SEC. 4 OF THE REVISED RULES OF COURT

II

THE TRIAL COURT ERRED IN NOT GIVING DUE WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[27]

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[26] *Id.*, pp. 12-13.

[27] *Rollo*, p. 52.

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which boil down to the principal issue of whether or not there was sufficient circumstantial evidence that warrants the conviction of appellant beyond reasonable doubt.

Appellant argues:

(1) There is no direct evidence showing that he was the perpetrator of the crime charged.

(2) His presence as well as that of Dulay's near the scene of the crime was not established. The trial court relied on the uncorroborated and unsubstantiated testimony of Dulay. His alleged drinking companions that afternoon, namely: Jaime Juralbal and Danilo Aurea were not presented in court. Dulay's testimony is flawed because he testified that he saw the victim and the appellant allegedly proceed towards the western direction where the guava trees are located while the victim's body was allegedly discovered in the northern direction where '*buhos*' are found. Dulay testified that he saw the victim's body at around 8:00 in the morning of October 7, 1996 while prosecution witness SPO2 Jovencio Fajarito testified that the victim's body was discovered at around 10:30 in the morning that day. Dulay testified that about 15 persons were involved in looking for the victim's body only to say later that there were only four of them present in searching for the victim. Dulay testified that when the victim's body was found, she was not wearing a panty but according to SPO2 Fajarito, the victim was found wearing an underwear.

(3) The testimony of Jeffrey Veniegas that he saw appellant's t-shirt with blood stains in the afternoon of October 6, 1996 does not appear to be plausible since a person who had just committed a heinous crime would not dare show his face to the public much less expose his clothes tainted with blood. The fact that Veniegas did not immediately report the same to the authorities and instead remained silent for a year also shows that his alleged identification was only meant to strengthen the prosecution's weak case. Veniegas' testimony is riddled with inconsistencies such as his testimony on direct examination where he said that he was inside his house, but on cross-examination, he stated that he was not home but inside the house of his neighbor. He also testified that he saw appellant drinking in the

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afternoon of October 6, 1996 but later said that he did not actually see him drinking that afternoon.

Appellant also points out that he has fully explained his whereabouts the whole day of October 6, 1996 and that he did not flee nor attempt to hide from the authorities. According to him, he was in Baguio City, just a few kilometers away from Sison, Pangasinan, working as a driver of a passenger jeepney for almost a year from the time of the incident without being apprehended by the police. When he learned that he was a suspect in the killing of Rowena Telles, he planned to surrender to the Baguio Police but feared for his life since there was a "shoot-to-kill" order against him. The fact that he did not bring any clothing or personal belongings to Baguio is not an indication of guilt since he has a house at lower Quirino Hills, Baguio City, hence, there was no need for him to bring clothes.[28]

Appellant insists that the trial court's findings that he sexually abused the victim and thereafter choked her to death must be reversed since the doctor testified that the cadaver was already in an advanced state of decomposition hence it can no longer be determined if there was indeed sexual abuse.

Finally, appellant argues that there is compelling reason to believe that the prosecution witnesses Ruben Telles and Erlinda Telles were motivated by ill-will in testifying against him because he did not help the son of Ruben when he was jailed in Baguio City while Erlinda has a deep seated grudge against accused when he told her to vacate the place where her house was erected.[29]

The Solicitor General contends that the testimony of Dulay which is the principal basis of herein before enumerated facts (1) to (4) found by the trial court to have been duly established, is credible.[30] Dulay is not motivated by ill-will. His testimony related to significant matters that occurred even before anybody

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[28] *Rollo*, pp. 62-63.

[29] *Rollo*, p. 64.

[30] *Rollo*, p. 106.

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found out about the death of Rowena. Dulay, when asked by Erlinda, said that appellant went with Rowena to look for guavas. He had no idea, then, that a crime had been committed and that by telling Erlinda that he saw Rowena with appellant, the latter would be implicated to such a heinous crime. The Solicitor General adds that there is no inconsistency as to the time when the body was found because while Dulay testified that the body of Rowena was found at around 8:30 in the morning, it was only at 10:30 in the morning that SPO2 Fajarito received the report. The Solicitor General further contends that there was also no inconsistency as to the number of people who searched for Rowena. Dulay had testified there were about 15 persons who were divided into smaller groups. As to whether Rowena had an underwear or not is likewise immaterial since the discrepancy in the observations of the two witnesses relates to a matter that has nothing to do with the commission of the crime but with the investigation thereafter conducted.

The Solicitor General counters that the non-presentation by the prosecution of Jaime Juralbal and Danilo Aurea does not affect the credibility of Dulay's testimony since the decision as to whom to present as witness for the prosecution is addressed to the sound discretion of the prosecutor handling the case and the non-presentation of certain witnesses by the prosecution is not a plausible defense. If the defense had wanted to refute Dulay's testimony, it should have presented Juralbal or Aurea to testify to the contrary.[31]

The Solicitor General maintains that there is no evidence that Erlinda Telles has ill-motive to testify against appellant. It argues that assuming, without admitting, that appellant had told Erlinda to vacate her house, such is not a compelling enough reason for Erlinda to fabricate a very serious accusation against appellant who is a nephew of her husband. Also, Erlinda, while not yet aware of the murder of her daughter looked for appellant because of the information that Rowena went with him and she

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[31] *Rollo*, p. 111.

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had reported the matter to the police and the *barangay* captain before the body of Rowena was found.[32]

The Solicitor General also points out that the testimony of Jeffrey Veniegas that he saw appellant with blood stained t-shirt established the fifth circumstance as enumerated earlier. The claim of appellant that Veniegas was an 11th hour witness is negated by the fact that Veniegas gave a sworn statement to the police on October 8, 1996 or two days after the incident. [33] The inconsistencies pointed out by appellant refer only to minor details which show that Veniegas was not coached or rehearsed with his testimony.[34]

The Solicitor General further argues that the circumstance that the cadaver of Rowena was found at the northern side where appellant and Rowena proceeded was sufficiently established. Dulay's testimony that he saw appellant and Rowena proceed to the west direction does not militate against the fact that Rowena's body was discovered on the northern part as it turned out that it was not really the intention of the appellant to pick guavas.[35]

The OSG maintains that appellant's contention that he did not flee from Sison, Pangasinan to Baguio City on October 6, 1996 was belied by his own admission that he left Sison on said date and never returned to Sison until his arrest in Baguio City on October 2, 1997. Moreover, his reason that he was afraid to return to Sison because there was a shoot-to-kill order is ludicrous since he could have surrendered to the Baguio City Police.

The Solicitor General asserts that the fact that Rowena was raped has been sufficiently established. Absence of spermatozoa is not evidence that a woman has not been raped. The testimony

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[32] *Rollo*, p. 112.

[33] *Rollo*, p. 113.

[34] *Rollo*, p. 114.

[35] *Rollo*, p. 115.

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of Dr. Bandonill proves beyond reasonable doubt that rape has been committed against Rowena Telles.[36]

Thus, the Solicitor General in sum contends that the circumstances in this case form a chain that establish the guilt of appellant beyond reasonable doubt.[37]

As to damages, the Solicitor General claims that private complainant is entitled to ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.[38]

Appellant submitted a Reply Brief dated April 14, 2000 reiterating his previous arguments.[39]

After reviewing the entire records of this case, we find that the guilt of the appellant in committing the crime of rape has been proven beyond reasonable doubt.

While it is established that nothing less than proof beyond reasonable doubt is required for a conviction, this exacting standard does not preclude resort to circumstantial evidence when direct evidence is not available. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden.[40] Crimes are usually committed in secret and under conditions where concealment is highly probable.[41] If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove.[42]

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[36] *Rollo*, pp. 115-116.

[37] *Rollo*, p. 120.

[38] *Rollo*, pp. 121-122.

[39] *Rollo*, pp. 136-142.

[40] *People vs. Santiago*, G.R. No. 133445, February 27, 2003.

[41] *People vs. Roa*, 167 SCRA 116, 122 (1988).

[42] *People vs. Casitas, Jr.*, G.R. No. 137404, February 14, 2003.

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Here, the trial court relied on circumstantial evidence in finding appellant guilty of the crime charged.

Circumstantial evidence has been defined as that which indirectly proves a fact in issue.[43] To be sufficient for conviction, Sec. 4 of Rule 133 of the Rules of Court provides that the following requisites must concur:

(a) there is more than one circumstance;

(b) the facts from which the inferences are derived are proven; and

(c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Also, jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.[44]

Reviewed in light of the requirements set forth in Sec. 4, Rule 133, as well as established jurisprudence, we find no reason to depart from the findings of the trial court. There was more than one circumstance relied upon, the facts from which the inferences were derived were proven, and the combination of all the circumstances was such as to produce a conviction of the appellant beyond reasonable doubt to the exclusion of all others.

As borne by the records, the prosecution was able to prove the following: Witness Dulay and the accused were drinking with two others in the afternoon of October 6, 1996. Later when their two companions left, the child, Rowena Telles arrived eating guavas. Appellant conversed with the child in the presence of Dulay. Soon thereafter, or at 3:30 in the afternoon, appellant left with the child, holding her hand towards the forested area of their backyard. Later that afternoon, at around 4:30, witness

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[43] *People vs. Fabon*, G.R. No. 133226, 328 SCRA 302, 316 (2000).

[44] *People vs. Rosario, et al.*, G.R. No. 146689, September 27, 2002.

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Veniegas saw appellant come from the direction of the bamboo groves wearing black *maong* pants and white t-shirt with blood stains. The next morning, the dead body of the child was found in the northern direction where the appellant and the child proceeded the day before. Appellant left Sison, Pangasinan on October 6, 1996 and stayed in Baguio for almost a year, that is, on October 2, 1997, when he was arrested by the Baguio police for another offense. Finally, an examination of the cadaver by a medico-legal expert showed signs that the child was raped.

We have explained on many occasions that:

> . . . findings of facts of the trial court, its calibration of the collective testimonies of witnesses and its assessment of the probative weight thereof and its conclusions culled from its findings are accorded by the appellate court great respect, if not conclusive effect, because of its unique advantage of observing at close range the demeanor, deportment and conduct of the witnesses as they give their testimonies before the court.[45]

Finding no grave abuse of discretion nor any misapprehension of facts on the part of the trial court, we accord such findings with utmost respect.

Also, while there may be only two witnesses who placed the accused at the scene of the crime, we deem these as sufficient considering that the testimony of a single witness, if found credible and positive, is sufficient on which to anchor a judgment of conviction for the truth is established not by the number of witnesses but by the quality of their testimonies.[46]

We find no merit to the claim of the appellant that Ruben Dulay and Erlinda Telles were motivated by ill-will in pointing to him as the accused. The motives imputed by him are too shallow so as to compel said witnesses to falsely accuse anyone of a heinous crime which warrants the imposition of the penalty of death in case of conviction. Appellant was positively identified as the last person seen with the child before the lifeless body of

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[45] *People vs. Delim*, G.R. No. 142773, January 28, 2003.

[46] *People vs. Caloza, Jr.*, G.R. No. 138404-06, January 28, 2003.

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Rowena was discovered. Furthermore, it is unnatural for an aggrieved relative, let alone the mother of the victim, to falsely accuse someone other than the real culprit.[47]

The defense of the appellant consists primarily of denial and alibi. He claims that he went to Baguio at around 11:00 in the morning of October 6, 1996 since he was following his wife with whom he was having a quarrel. To corroborate this story, the mother of the accused testified that she saw her son in Baguio at around 1:00 p.m.

As we have always held, the defense of alibi is always looked upon with suspicion and received with caution because not only is this kind of defense inherently weak and unreliable, it is also easy to fabricate.[48] In this case, we find unlikely the story of the appellant that he followed his live-in partner to Baguio to continue their exchange of words considering that he admitted that he woke up with a hang-over from drinking the night before. Also, we have repeatedly held that the defense of alibi cannot prevail over the positive testimonies of the prosecution witnesses that appellant was seen in Sison, Pangasinan in the afternoon of October 6, 1996.

Consequently, we find that the trial court did not err in convicting appellant of Rape with Homicide under Art. 335 of the Revised Penal Code, in relation to R.A. 7659, which provides that when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

Three members of the Court maintain their position that R.A. 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

As to the damages awarded, however, we find that some modifications need to be made. Jurisprudence has held that in

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[47] *People vs. Ansowas,* G. R. No. 140647, December 18, 2002.

[48] *People vs. Alarcon*, G.R. Nos. 133191-93, 335 SCRA 457, 475-476 (2000).

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cases of rape with homicide, civil indemnity in the amount of ₱100,000.00 should be awarded to the heirs of the victim, together with ₱50,000.00 in moral damages.[49] Temperate damages in the amount of ₱25,000.00 should also be awarded if the prosecution failed, as in this case, to adduce sufficient documentary evidence to prove actual damages incurred by the heirs of the victim.[50]

WHEREFORE, the Court *AFFIRMS* the decision of the Regional Trial Court, Urdaneta, Pangasinan (Branch 46) convicting Jose Navarro, Jr., of Rape with Homicide and sentencing him to suffer the penalty of *DEATH* with *MODIFICATIONS* to the effect that appellant is ordered to pay the heirs of the victim the sum of ₱100,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages.

Upon finality of this Decision, in consonance with Section 25 of R.A. 7659, amending Article 83 of the Revised Penal Code, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of the pardoning power.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.,* concur.

Quisumbing and *Sandoval-Gutierrez, JJ.,* on official leave.

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[49] *People vs. Principe*, G.R. No. 135862, May 2, 2002.

[50] *People vs. Garcia*, G.R. No. 145505, March 14, 2003.