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FIRST DIVISION

[G.R. No. 133228-31. July 30, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GODOFREDO TIZON, JR.** *y* **LADRILLO, RANDY UBAG** *y* **DELA ROSA, ARNOLD LADRILLO** *y* **GARCIA and NESTOR CRISOSTOMO** *y* **LAGO,** *accused-appellants.*

SYNOPSIS

Appellants were found guilty of four counts of rape each and were each sentenced to suffer the penalty of *reclusion perpetua*. Their conviction was based mainly on their extrajudicial confessions owning the rape of the victim. The trial court observed that their confessions were replete with details, they corroborated each other substantially, and corresponded to the physical evidence offered by the prosecution.

Appellant's claim that their extrajudicial statements were allegedly extracted from them in violation of their constitutional rights, because: they were made before a lawyer chosen by the police who was not their chosen counsel; and they were induced by promise of leniency by the police station commander.

On appeal, the Supreme Court affirmed their conviction on appeal, ruling: that a lawyer chosen by the police is deemed engaged by the accused for he could have requested for another lawyer or voiced an objection but they instead voluntarily executed their extrajudicial confessions; that the trial court's finding that appellants were accorded a competent and independent counsel in the person of Atty. Guinalon is entitled to respect: and that the promise of immunity by the police Station Commander who is not a prosecuting officer who could grant or even recommend a lower penalty for the appellants, did not render their statements inadmissible.

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SYLLABUS

1. CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO COUNSEL; LAWYER INITIALLY CHOSEN BY INVESTIGATORS IS DEEMED THE ACCUSED'S FINAL CHOICE WHERE HE NEVER OBJECTED TO THE LAWYER'S APPOINTMENT BUT INSTEAD VOLUNTARILY EXECUTED HIS EXTRAJUDICIAL STATEMENTS; CASE AT BAR. — While the initial choice of the lawyer in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the lawyer's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THAT APPELLANTS WERE ACCORDED A COMPETENT AND INDEPENDENT COUNSEL IS ENTITLED TO RESPECT ON APPEAL; CASE AT BAR. — We agree, therefore, with the trial court's finding that appellants were accorded a competent and independent counsel in the person of Atty. Guinalon. . . . The Court finds no reason to depart from the assessments of the trial court. As to who between the prosecution and the defense witness are to be believed, the trial court's assessment thereof enjoys a badge of respect for the reason that the trial court has the advantage of observing the demeanor of the witness as they testify, unless found to be clearly unfounded. The trial judge is in the best position to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity

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that has nothing to distort or conceal. Only the judge trying the case can see all these and on the basis of his observations, arrive at an informed and reasoned verdict.

3. ID.; ID.; EXTRAJUDICIAL CONFESSION; ADMISSIBILITY; STATEMENTS GIVEN ON ACCOUNT OF A PROMISE OF IMMUNITY BY ONE WHO COULD NOT COMPLY WITH HIS PROMISE ARE ADMISSIBLE; CASE AT BAR. — In *People vs. De Torres*, this Court held that a promise "of immunity by one who is not a prosecuting officer who could not honor or comply with his promise, is no ground for objecting the admissibility of the confession." Citing De Torres, the same rule was applied in *People vs. Hipolito*. Similarly, the Police Station Commander has no power to grant, or even recommend, a lower penalty for the suspects. His promise of leniency, therefore, did not render the statements of appellants inadmissible.

APPEARANCES OF COUNSEL

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

D E C I S I O N

KAPUNAN, *J.*:

Accused-appellants assail the decision of the Regional Trial Court (RTC) of Negros Occidental, Branch 47[1] convicting them of four counts of rape and sentencing each of them to suffer the penalty of *reclusion perpetua*.

The victim, Cynthia Barena, was 38 years old, single and, as a result of a nervous breakdown, mentally imbalanced. Her mental condition made her the butt of jokes in the neighborhood store.[2] On May 4, 1997, her body was found naked in the rice field at Hacienda Guanzon, Barangay Mansilingan, Bacolod City. She was dead.

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[1] Presided by Judge Edgar G. Garvilles.

[2] TSN, November 20, 1997, pp. 24-25.

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Zenaida Ladrillo awoke that morning to the tragic news that her sister Cynthia had been raped and killed. Roused from her sleep by Ernesto Crisostomo,[3] Zenaida quickly proceeded to the rice field where Cynthia's remains were discovered. Cigarette burns dotted the victim's body, her legs splayed over a rice paddy. Cynthia's blouse,[4] overalls[5] and panty[6] were scattered alongside her remains. Also found in the field were a pair of slippers[7] and a rubber sandal.[8] Later, the police arrived and asked Zenaida some questions. A photographer took pictures[9] of the crime scene.[10]

The police also interviewed other people in the area, including one Myrna Bacosa. She said that her brother Nestor Crisostomo owned the pair of slippers found at the crime scene. From the investigation they conducted, the police were able to identify the suspects to the crime as Godofredo Tizon, Jr., Randy Ubag, Arnold Ladrillo and Nestor Crisostomo.

At around 11:30 that same morning, the police apprehended suspect Godofredo Tizon, Jr. The following day, May 5, 1997, Tizon, Jr., allegedly assisted by counsel and after being apprised of his rights, executed a statement admitting his presence at the crime scene and pointing to Nestor Crisostomo, Randy Ubag and Arnold Ladrillo as those who ravaged Cynthia Barena.[11]

On May 6, 1997, the families of suspects Randy Ubag, Arnold Ladrillo and Nestor Crisostomo informed the police that the

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[3] The father of accused Nestor Crisostomo.

[4] Exhibit "B".

[5] Exhibit "A".

[6] Exhibit "C".

[7] Exhibit "D".

[8] Exhibit "E".

[9] Exhibits "F", "F-1" to "F-3".

[10] TSN, November 20, 1997, pp. 2-12.

[11] TSN, December 4, 1997, p.m. session, pp. 11-16.

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three were willing to surrender. After their arrest, the three also executed statements confessing that they, including Godofredo Tizon, Jr., all took turns raping Cynthia. They claimed that the crime was Tizon, Jr.'s idea.

Subsequently, the four suspects were charged with four counts of Rape with Homicide in four amended informations[12] stating:

That on or about the 4th day of May, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse upon the person of CYNTHIA BARENA *y* LAMPREA against the will of the latter and by reason or on the occasion thereof, the herein accused with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, box and strangle the neck of CYNTHIA BARENA *y* LAMPREA, thereby inflicting upon her person the following injuries, to wit:

1. Contusion, right eye, with hematoma.
2. Strangulation mark at the neck.
3. Contusion in the mouth.
4. Contusions in the abdomen, thighs, front, hip, right, knees with hematoma.
5. Contusion-abrasion at the back.
6. Presence of cigarette burns in the chest and abdomen.

CAUSE OF DEATH:

Cardio-respiratory arrest, asphyxia, suffocation due to strangulation

which were the direct and immediate cause of her death.

When arraigned, all four accused pleaded not guilty.

PO3 Luvimin Lopez, who conducted the investigation at the crime scene, testified for the prosecution.[13] Other prosecution

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[12] I Records, pp. 34-35; II Records, pp. 1-2; III Records, pp. 1-2; IV Records, pp. 1-2.

[13] TSN, December 4, 1997, p.m. session, pp. 3-18.

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witnesses included the deceased's sister Zenaida Ladrillo and brother Norberto Barena.

Zenaida said all the accused lived near their residence. In fact, she was related to two of them. Godofredo Tizon, Jr. is a cousin of her husband Romulo Ladrillo. Arnold Ladrillo, on the other hand, is Romulo Ladrillo's nephew, the son of another cousin.

Sometime in the months of July and August 1997, after the filing of the charges for rape with homicide, Zenaida was approached by relatives of the four accused to ask if they could settle the case. Each of them submitted written offers all dated August 19, 1997.

Violeta Ladrillo, the mother of Arnold Ladrillo, proposed to pay Zenaida the amount of ₱4,000.00 "for lowering the penalty of the case."[14] Plesing Ubag, the mother of Randy Ubag, stated that she would pay Zenaida ₱8,000.00.[15] Nestor Crisostomo's sister Delia wrote that she would "pay Zenaida [their] carabao valued [at] ₱8,000.00 on condition that the penalty of Nestor Crisostomo will be lowered."[16] Jovito Tizon, Godofredo Tizon Jr.'s brother, also said he "will pay Zenaida...[,] for [his] brother[,] the amount of ₱8,000.00 provided that the penalty will be lowered."[17] Zenaida did not accede to these offers.

Zenaida also averred that the pair of slippers found at the crime scene was owned by Nestor Crisostomo, who lived in the house behind theirs. She said she often saw him wearing them.[18]

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[14] Exhibit "G", The signature of Violeta Ladrillo is marked as Exhibit "G-1".

[15] Exhibit "H", The signature of Plesing Ubag is marked as Exhibit "H-1".

[16] Exhibit "I", The signature of Delia Crisostomo is marked as Exhibit "I-1",

[17] Exhibit "J", The signature of Jovito Tizon is marked as Exhibit "J-1".

[18] TSN, November 20, 1997, pp. 12-22.

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The victim's brother, Norberto Barena, makes a living delivering water to residents of Pagla-um Village, which is adjacent to Hacienda Guanzon. At around 9:00 p.m. of May 3, 1997, Norberto was on his way home, having finished delivering water to his customers. As he passed the house of Jovito Tizon, the brother of accused Godofredo, he noticed several people drinking outside the house. Present at the party were Rogelio Ladrillo, Leopoldo Tizon, and the four accused. They even invited Norberto to join them but he just stared at them and left.

The following day, at about 5:00 a.m., Norberto was awakened by the calls of Annalina Gardose, who told him that his younger sister Cynthia was found at the rice field. As Norberto walked towards the field, he again passed the house of Jovito Tizon and noticed Godofredo sweeping the backyard. Arriving at the field, he saw his sister's body lying face up, naked.

Norberto recalled that sometime in January 1997, around midnight, he heard Cynthia shout, "Daddy, help me." (Norberto and Cynthia's father was still alive then.) Norberto immediately raced to his sister's home and saw Godofredo running out of the house towards the river. Randy Ubag, Nestor Crisostomo and Arnold Ladrillo, who were previously standing outside the house, ran with Godofredo. Norberto asked his sister what happened. She said that Godofredo had entered the house and "invited her to go out." Norberto never confronted Godofredo or the others about the incident because he (Norberto) was afraid of them.[19]

Dr. Johnnie Aritao, a medico-legal officer, conducted the post-mortem examination on the victim's remains. He reduced his findings[20] in writing as follows:

1. Contusion, right eye, with hematoma.
2. Strangulation mark at the neck.
3. Contusion mouth.

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[19] TSN, December 16, 1997, a.m. session, pp. 26-41; TSN, December 16, 1997, p.m. session, pp. 4-7.

[20] Exhibit "P".

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4. Contusions abdomen, thighs, front, hip, right, knees, with hematoma.
5. Contusion-abrasion, back.
6. Vaginal introitus admits two fingers with ease.
7. No hymenal lacerations noted.
8. Presence of particles of soil in the vaginal introitus.
9. Presence of cigarette burns chest and abdomen.

Cause of death:

Cardio - respiratory arrest Asphyxia, suffocation due to strangulation.

Expounding on his findings, Dr. Aritao testified that a blunt object, such as a clenched fist, could have caused the contusion with hematoma in the right eye, while the assailant's hand or fingers probably caused the strangulation mark around the neck. He also attributed the contusions in the mouth, abdomen, front thighs and knees to a blunt object. The contusions and abrasions at the victim's back could have been a result of the body rubbing against the ground. Perhaps, he said, the victim was dragged.

That the vaginal introitus easily admitted two fingers meant that the victim had engaged in sexual intercourse, possibly even before the date of the victim's death on May 4, 1997. While there were no lacerations in the hymen, the doctor explained that there are women with thick hymens that could not be easily lacerated by sexual intercourse. In this case, however, the doctor could not determine if the victim's hymen was thin or thick. Dr. Aritao also revealed that it was "not highly possible" that sexual abuse committed on bare ground accounted for the soil particles in the vaginal opening. He agreed, though, that the soil particles could have been introduced into the vagina intentionally. The doctor noted that there were no sperm cells in the vagina but that the soil particles inside the vagina could have contaminated any sperm.[21]

To prove that the accused's extra-judicial statements adhered to constitutional requirements, the prosecution offered the

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[21] TSN, December 9, 1997, pp. 2-9.

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testimonies of SPO2 Virgilio Q. Pachoro,[22] who took down the statements of Godofredo Tizon, Jr. and Nestor Crisostomo, PO3 Lorenzo Rios,[23] who took down Randy Ubag's statement, and PO3 Levy Pangue,[24] who recorded Arnold Ladrillo's confession. The police officers invariably testified that they informed the accused of their rights and of the consequences of their acts before their statements were taken down.

The prosecution also called to the stand Atty. Serafin Guinalon, who purportedly acted as counsel for all the suspects at the time their statements were taken down. Sometime in May 1997, Police Senior Inspector Pedro Laza, the Station Commander of Mansilingan, informed Atty. Guinalon that the suspects to the killing of Cynthia Barena had already been arrested and needed a lawyer. Known to the four as a leader in the community, Atty. Guinalon was requested to assist in the execution of their extra-judicial statements. The lawyer asked the suspects why they requested him in particular. They replied that they knew him and that he, in turn, knew all of them.

Atty. Guinalon conferred with the suspects, who expressly signified their intention to put into writing what happened that fateful night. He explained to them that by making a confession, they would be admitting to the commission of a grave crime, which carried with it a severe penalty. After Atty. Guinalon apprised them of their constitutional rights, the four proceeded to execute their respective statements. Atty. Guinalon was in front of the suspects when they gave their statements and was present during the entire investigation. During the trial, Atty. Guinalon readily identified the affidavits executed by the four and affirmed that they were read and signed by each of them voluntarily.[25]

Manuel Cardinal, Jr., Assistant City Prosecutor of Bacolod City, subscribed the extra-judicial statements of the four accused.

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[22] TSN, December 4, 1997, p.m. session, pp. 19-39.

[23] TSN, December 16, 1997, a.m. session, pp. 3-23.

[24] TSN, December 16, 1997, p.m. session, pp. 20-29.

[25] TSN, December 4, 1997, a.m. session, 1997, pp. 2-72.

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He testified that before he signed the statement of Godofredo Tizon, Jr. on May 6, 1997, he explained to the suspect the consequences of his action, making sure that the latter understood the contents of his statement. The Assistant City Prosecutor told Tizon, Jr. that the same could be used against him and that he could be severely punished for his crime.

On May 8, 1997, Asst. City Prosecutor Cardinal also subscribed the extra-judicial confessions of Randy Ubag, Arnold Ladrillo and Nestor Crisostomo. Prior to the signing of these statements, he asked the suspects if the police threatened them or forced them to sign the statements. They answered that they were not. To avert any compulsion, the prosecutor even asked the police officers to leave his cubicle before asking the suspects any question. He also examined their hands and bodies for any injuries and asked them whether they were promised any reward. He found no signs of injury on the suspects, who categorically declared that they were not threatened and that no reward was promised them. Assistant City Prosecutor Cardinal then instructed them to examine every page of the documents and to sign the statements in the presence of their counsel.[26]

The four accused pleaded denial and alibi, and disowned their respective statements.

Godofredo Tizon, Jr., 27, years old, an elementary graduate, and a member of the CAFGU, testified that he was with his brother Jovito in Hacienda Guanzon when the alleged rape and killing took place. On May 3, 1997, Godofredo, Jovito and Rodolfo Tizon celebrated Jovito's birthday. They started drinking at around 3:00 in the afternoon. None of his co-accused, admittedly his friends, were at the party.

At around 8:00 in the evening, Godofredo asked leave to retire for the night as he had to report for duty early the following day. He awoke at around 5:00 the next morning and promptly proceeded to his station in Barangay Minoyan.

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[26] TSN, December 16, 1997, pp. 8-19.

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At around 12:30 in the afternoon, Police Senior Inspector Pedro Laza arrived, accompanied by several policemen. They asked Godofredo to go with them and brought him to BAC-UP 7 in Mansilingan then to the headquarters in Taculing. Godofredo was put in a cell, where he was detained for two days.

On May 6, 1997, Senior Police Inspector Laza and Atty. Guinalon visited Godofredo in his cell and told him to sign something so he could leave immediately. Godofredo complied, and affixed his signature on a document. He denied that SPO2 Pachoro asked him the questions contained in his affidavit before he signed it. Neither was he shown the contents thereof. The accused maintained that he was not informed of his constitutional rights.

Godofredo also denied that he requested Atty. Guinalon to be his counsel during the taking of his statement. He claimed he did not know Atty. Guinalon personally, having met the lawyer only on the day of the investigation. The lawyer told him just to sign the document, assuring him that he "would have no problem with it."

Godofredo refuted Asst. City Prosecutor Cardinal's testimony that the latter explained to him the consequences of signing his statement. He claimed the prosecution did not say anything to him and merely affixed his (Cardinal's) signature on the affidavit.[27]

Jovito Tizon, brother of accused Godofredo, testified that on his birthday on May 3, 1997, he was in his house in Barangay Mansilingan, Bacolod City. He caught a chicken to serve his guests, who included his elder brother Leopoldo, his brother-in-law Juan Celix and his younger brother Godofredo, who lived with him. The four started the celebration, drinking and singing, at about 2:30 in the afternoon. The party ended at 8:00 in the evening and Godofredo went to sleep. Jovito followed him to bed soon after.

At about 1:00 a.m., Jovito was awakened by the barking of dogs. He went outside but not seeing anything suspicious he

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[27] TSN, January 13, 1998, pp. 3-40.

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returned to the house. Inside, Godofredo was throwing up, drunk from the revelry. Jovito gave Godofredo some warm water, which the latter drank, and the brothers then went back to bed. Jovito awoke at about 4:30 in the morning. At about 5:00 a.m., he woke up Godofredo because the latter had to report for duty.[28]

Leopoldo Tizon corroborated his younger brothers' story that Godofredo was at Jovito's party and that an already intoxicated Godofredo went to bed at around 8:00 p.m.[29]

Accused Arnold Ladrillo was 21 when he testified. His highest educational attainment is Grade 4. Arnold maintained that he was with his mother and brother in their house in Hacienda Guanzon on May 3, 1997. After taking his supper at about 7:00 in the evening, he excused himself to go to sleep. He awoke at 7:00 a.m. the following day. After taking a bath, he told his mother that he would be going to church in Murcia with Randy Ubag. The two were in church until 9:00 a.m. then they went to see Nestor Crisostomo in Hacienda Carmen, where Nestor lived with his elder sister Paning Crisostomo.

Finding Nestor, Randy Ubag invited the two to go with him to his aunt's house in Hacienda Cansilayan. The three took a tricycle and arrived there at about noon. They drank some whisky and had to stay the night; Randy's aunt did not allow them to leave because they were drunk.

On the morning of May 5, 1997, they heard over the radio that they were suspects in the rape and killing of Cynthia Barena and that the police were looking for them. They requested Randy's aunt to see their parents so they could arrange their surrender. Randy's aunt went to see Randy's mother and informed her of their whereabouts. When Randy's mother arrived, they asked her to go to the police so she could relay their intention to surrender. Subsequently, the police picked them up and brought them to the Police Station in BAC-UP 7, Mansilingan. They

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[28] *Id.*, at 42-60.

[29] *Id.*, at 61-66.

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explained to Police Senior Inspector Pedro Laza that they were innocent of the crime but Laza still wanted them to admit to the crime. He assured them that they would be set free.

Arnold denied the contents of his supposed statement. He claimed the police never asked him the questions reflected in his affidavit. He denied that he was informed of his constitutional rights before he signed the document. Police Senior Inspector Pedro Laza told him to just sign it so he could go home.[30]

Violeta Ladrillo, Arnold's mother, corroborated her son's account regarding his whereabouts on the evening of May 3, 1997 and the morning of May 4, 1997.[31]

Accused Randy Ubag, 23, and an elementary graduate, lived with his mother Preciosa Ubag and his brother-in-law Ernesto Araña. He claimed that on May 3, 1997 he arrived at their house in Hacienda Guanzon at about 6:00 in the evening, after working in the sugarcane field. He bathed then rested. After a while, he took his dinner and watched television. At about 7:30 p.m., he went to bed.

He awoke at 4:00 a.m. the next day, had coffee, then went back to work in Hacienda Guanzon. Thereafter, he led the carabao to graze and returned home. At about 8:00 a.m., Arnold Ladrillo dropped by and invited him to go to church in Murcia. From the church, the two left for Hacienda Carmen to see Nestor Crisostomo, who then invited them to the house of his elder sister Paning. Paning invited the three for breakfast. Thereafter, they watched some basketball and volleyball games. Randy then invited Arnold and Nestor to the house of his aunt Editha Alvarez in Barangay Cansilayan to get his fighting cock. They arrived there at about 12:00 noon. Tadong, Editha's second husband, invited the three for a drink. They drank until 4:00 in the afternoon. The three then prepared to leave but Editha advised them not to go home because they were drunk. The friends thus spent the night in Editha's house.

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[30] *Id.*, at 67-94.

[31] TSN, January 14, 1998, a.m. session, pp. 2-6.

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The following day, they heard over the radio that they were suspects in the rape and killing of Cynthia Barena. They waited for Editha to arrive from work so they could ask her to look for Randy's mother. When Randy's mother Preciosa Ubag arrived, they asked her to see Police Senior Inspector Laza to arrange for their surrender. At 4:00 in the afternoon, Police Senior Inspector Laza and some policemen came and immediately handcuffed Randy, Nestor and Arnold. They were brought to the police station, where they were detained for three days. The police never questioned them but asked the three to sign a document. Neither Police Senior Inspector Laza nor Atty. Guinalon informed Arnold of his constitutional rights. He was not even allowed to read the contents of his affidavit before he signed it. Randy added that he did not know Atty. Guinalon. He claimed he never requested the lawyer to assist him.[32]

Preciosa Ubag[33] and Ernesto Araña,[34] Randy's mother and brother-in-law, respectively, affirmed his testimony that he was at home on the evening of May 3, 1997.

Accused Nestor Crisostomo, 23, only finished Grade 5. He testified that in the afternoon of May 3, 1997 he was at the basketball court, waiting for his friends to arrive so they could play baseball. The game started at 2:30 p.m. and Nestor played catcher. After the game ended at past 5:30 p.m., Nestor with his friends, Panoynoy, Taytong, Insoy and a few others strolled along the basketball court. He went home at around 6:00 p.m. to change clothes and then went to the store to converse with his friends. He left for home at about 9:30 p.m. and slept.

The following morning, May 4, 1997, Arnold Ladrillo and Randy Ubag came to his house and the three proceeded to the house of Randy's aunt Editha. On May 5, 1997, while they were still in Editha's house, Nestor heard over the radio that he was one of the suspects in the killing of Cynthia Barena.

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[32] *Id.*, at 7-30.

[33] TSN, January 14, 1998, p.m. session, pp. 32-35.

[34] *Id.*, at 37-39.

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They asked Editha to see Randy's mother so she could request the police to fetch them. Later, the police, headed by Police Senior Inspector Laza, arrived and brought the three to the police station. There, Randy met Atty. Guinalon for the first time. Police Senior Inspector Laza and Atty. Guinalon gave him a piece of paper to sign. Police Senior Inspector Laza told him that if he signed the document he would be set free. Nestor claimed that he was not informed of his constitutional rights before he affixed his signature on the document. After signing the document, Nestor was brought back to his cell.

Nestor admitted that the pair of slippers (Exhibit "D") found at the crime scene were similar to that owned by his sister Myrna Bacosa. He denied borrowing his sister's slippers, however. When asked in court to try them on, the prosecution manifested that Nestor's feet fit the slippers.[35]

Nestor's brother-in-law, Mario Jurada, corroborated Nestor's story.[36] Likewise, Rosalina Lachica, a storeowner in Hacienda Carmen, said that at around 4:00 in the afternoon of May 3, 1997, she went out of the house to watch the basketball game and saw Nestor Crisostomo. Later, at about 9:00 in the evening, she saw Nestor again when he went to her store for snacks. Nestor was with his friend, Abner Lihita. The two left for home at around 9:30 p.m.[37]

Myrna Bacosa, Nestor's elder sister, denied that Exhibit "D" belonged to her and that Nestor had borrowed and worn them prior to Cynthia's death. She said the slippers could not have been hers because they were new when she lost them on March 13, 1997 during her aunt's wake. Unlike Exhibit "D", which had a tear in the strap, hers were undamaged. However, when compelled to wear the slippers in court, the prosecution manifested that the slippers fit her "perfectly."

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[35] TSN, January 20, 1998, pp. 2-23.

[36] *Id.*, at 24-33.

[37] *Id.*, at 34-37.

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The prosecution confronted Myrna with the affidavit[38] she executed on May 5, 1997, stating that the slippers belonged to her brother:

05. Q- Will you relate to us this news of an unusual incident you have heard of?

A- That at around 6:00 o'clock in the morning more or less while I was at our house, my father ERNESTO CRISOSTOMO suddenly arrived and called me and said to me that "DING (Myrna), come here" and when I approached him and asked him what he wants he said to me 'YOUR BROTHER IS IN DANGER (NESTOR CRISOSTOMO, *alias* "Dodoy"). Because of my surprised (sic) I asked my father what happened to my brother. My father then said that "YOUR BROTHER IS INVOLVED WITH THE DEATH OF CYNTHIA WHICH WAS DISCOVERED" and my father told me further that my slippers colored brown were found at the scene of the incident and these slippers of mine were worn earlier by my brother Nestor Crisostomo *alias* Dodoy and my father further told me that he has already confronted my brother and my brother had admitted that he was present when Cynthia was killed but according to my father, my brother further said that he did not touch nor participate in the killing of Cynthia and my brother said that it was Godofredo Tizon, Jr. *alias* "Jr. Polis" who raped and strangled to death, my father likewise said that my brother Nestor Crisostomo *alias* "Dodoy" have already fled.

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12. Q- After you have seen your slippers what did you do?

A- I immediately informed the family of the victim that the pair of slippers found at the scene of the incident is mine and it was worn earlier by my brother Nestor Crisostomo *alias* "Dodoy" and when members of the Police Station 7 were conducting an investigation, I told Capt. Laza the head of Police Station 7 about this.[39]

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[38] Exhibit "R".

[39] I Records, pp. 142-143.

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Myrna explained, however, that she was not given the opportunity to read the affidavit. The police said that "there was no need to read it," that "they will try their best to exclude [her] brother from the charges," and that "what was written in the affidavit won't harm [her] brother." Myrna thus signed the affidavit, relying on the police's assurance that if she "cooperates by giving [her] statement[,] they could give a chance to free [her] brother."[40]

On rebuttal, the prosecution offered the testimony of Police Senior Inspector Pedro Laza, Station Commander of Mansilingan, Bacolod City. He testified that the accused themselves requested him to call Atty. Guinalon. He also said he never promised any of the accused that they would be set free if they signed their respective statements.[41]

All the accused testified on sur-rebuttal. They reiterated that they never engaged the services of Atty. Guinalon and that they were never given the opportunity to read their respective statements.[42]

After trial, the RTC rendered its decision convicting the four accused of four counts of rape. The dispositive portion of the RTC decision reads:

> WHEREFORE, finding accused Godofredo Tizon, Jr. *y* Ladrillo, Randy Ubag *y* de la Rosa, Arnold Ladrillo *y* Garcia and Nestor Crisostomo GUILTY beyond reasonable doubt of Rape under Section 11, Republic Act No. 7659, amending Article 335 of the Revised Penal Code, in Criminal Cases Nos. 97-18381, 97-18554, 97-18555, 97-18556, JUDGMENT is hereby rendered condemning each of them to suffer *RECLUSION PERPETUA* in each of these four (4) cases, as well as the accessory penalty provided by law. All of them are also ordered to pay the family of Cynthia Barena ₱50,000.00 per case, or a total of ₱200,000.00, as indemnity for the crimes, and another ₱25,000.00 per case, or an aggregate of ₱100,000.00, as moral damages, to be apportioned among them in equal shares. Costs against the accused.

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[40] TSN, January 20, 1998, pp. 37-39.

[41] TSN, January 22, 1998, p.m. session, pp. 5-29.

[42] TSN, January 29, 1998, pp. 2-9.

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Said accused being detained by reason of the instant cases, the period of their preventive imprisonment shall be credited in their favor and to be deducted from the service of their sentence even if meted out with *reclusion perpetua* (*People vs. Corpus*, 231 SCRA 480) in each of these four (4) cases, provided they have agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal Code.[43]

The RTC found insufficient evidence to hold the accused liable for the killing of Cynthia Barena. The medico-legal findings showed that the cause of the victim's death is "Cardio-respiratory arrest, asphyxia, suffocation due to strangulation" but none of the accused admitted strangling the victim.

The four accused seasonably filed their appeal, questioning their conviction, which was based in large part on the extra-judicial declarations extracted from them allegedly in violation of their constitutional rights.

This sole issue requires a close scrutiny of the testimonies of the police officers who took down appellants' extra-judicial confessions and that of lawyer Serafin Guinalon's who allegedly assisted appellants during the custodial investigation.

The right to be informed of one's constitutional rights during custodial investigation refers to an effective communication between the investigating officer and the suspected individual, with the purpose of making the latter understand these rights. Understanding would mean that information transmitted was effectively received and comprehended. Hence, the Constitution does not merely require the investigating officers to "inform" the person under investigation; rather, it requires that the latter be "informed."[44]

Records reveal that the police officers who took the extra-judicial statements of each accused categorically declared that before the statements were taken appellants were informed of their right to remain silent and their right to counsel of their

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[43] I Records, pp. 217-218.

[44] *People v. Muleta*, 309 SCRA 148 (1999).

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own choice. The police made sure that they understood that the statements that they would give could be used against them. The police investigators informed the appellants of their constitutional rights in Ilonggo. Appellants replied that they understood the consequence of their acts and that they were giving their statements voluntarily and freely.

Appellants did not offer any evidence that they were forced, coerced or pressured by the police to sign their respective affidavits. Against the positive assertion of the police investigators that they fully apprised appellants of their constitutional rights, appellants' self-serving testimonies that they were denied of such rights cannot hold water. Appellants did not show that the police investigators were impelled by any ill motive to falsely testify against appellants. In the absence of such motive, police officers are presumed to have acted regularly and to have afforded appellants their constitutional rights when they elicited the extra-judicial statements.[45]

Moreover, appellants' extra-judicial statements were subscribed to before Asst. Prosecutor Manuel Cardinal who testified that he asked the appellants if they were forced by the police to sign their statements. They declared that everything was of their own free will. Prosecutor Cardinal examined appellants' bodies to determine if they were harmed. The prosecutor even told the police to get out of the office to preclude any intimidation. Moved by remorse, appellants said they were giving their statements freely and voluntarily.

Appellants deny that they sought the services of Atty. Guinalon as their counsel during the taking of their extra-judicial statements. According to appellants, Atty. Guinalon was only provided by Police Senior Inspector Laza. They maintain that they were not able to invoke their constitutional rights to remain silent because the advice of their counsel was insufficient. Had Atty. Guinalon advised them that by executing said extra-judicial statements they were already admitting the crime charged, they would not have signed the same. Moreover, had the lawyer

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[45] *People vs. Deang, et al.*, G.R. No. 128045, August 24, 2000.

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explained to them the complete significance of their constitutional rights, they would not have executed said statements.

Atty. Guinalon, however, belied appellants' assertions that appellants did not request his services during the investigation. He said that he was known to appellants not only because he was a resident of a nearby village, but was a prominent lawyer and a civic leader. He added that he used to be a candidate for political office in their locale. Atty. Guinalon testified:

FISCAL INGSON:

Q You mean to say Atty. Guinalon that you were informed by Chief Inspector Laza that the four accused wanted to see you?

WITNESS GUINALON:

A Yes, I was.

Q Now, when you went there in station 7, Bgy. Mansilingan, did you ask the four accused why you, in particular, was requested by them to assist them?

A Yes.

Q And what was their answer?

A Their answer was that, because they knew me and on the other hand, I know them.

Q And were you able to confer with them?

A Yes, in fact, they signify their intention to put in writing what happened in that previous night.

FISCAL INGSON:

Q Did you explain to them the consequences of their intention?

WITNESS ATTY. GUINALON:

Yes, I did. In fact, I told them that it would bring a severe penalty to them but they were relying that they were drunk at that time and that other persons or persons had committed the crime.[46]

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[46] TSN, December 4, 1997, pp. 7-8.

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If Atty. Guinalon was not really appellants' chosen counsel, they could have requested for another lawyer or voiced their objection. Appellants never did but instead voluntarily executed their extra-judicial statements. While the initial choice of the lawyer in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the lawyer's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer.[47]

Atty. Guinalon further testified that he explained to appellants their constitutional rights and asked them if they understood those rights. He told them the possible consequences of their statements. He even advised them not to give any statement if they were in doubt and to think things over. Still, appellants insisted.

Atty. Guinalon told appellants that they have the right not to sign their statements if they think that it may incriminate them. Knowing the gravity of the offense, he took pains to explain to them that they were charged with a grave crime and that by their confessions they would be admitting to the commission of the crime.[48]

We agree, therefore, with the trial court's finding that appellants were accorded a competent and independent counsel in the person of Atty. Guinalon. We quote with approval the trial court's ratiocination on this score:

That Atty. Guinalon is a competent and independent counsel (Article III, Section 12 [1]), having been a public prosecutor, a member of the Practicing Lawyer Association of Negros Occidental (PLANO), and of the Integrated Bar of the Philippines and a civil leader in the

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[47] *People vs. Continente,* G.R. Nos. 100801-02, August 25, 2000.

[48] TSN, December 4, 1997, pp. 8-11.

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community, and the way he steadfastly and painstakingly assisted the four accused during the entire proceedings in the custodial investigation to safeguard their constitutional rights and his attendance before Asst. City Prosecutor Manuel Cardinal when the four accused subscribed to their corresponding extra-judicial statements. He even signed these statements to attest to his presence and the regularity of the proceedings. x x x[49]

The Court finds no reason to depart from the assessments of the trial court. As to who between the prosecution and the defense witness are to be believed, the trial court's assessment thereof enjoys a badge of respect for the reason that the trial court has the advantage of observing the demeanor of the witness as they testify, unless found to be clearly unfounded.[50] The trial judge is in the best position to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. Only the judge trying the case can see all these and on the basis of his observations, arrive at an informed and reasoned verdict.[51]

Appellants' contention that they executed their extra-judicial statements are inadmissible because they were induced by promises of leniency fails to persuade this Court.

The Constitution provides that "no torture, force, violence, threat, intimidation, or any other means which vitiate the free

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[49] RTC Decision, p. 48.

[50] *People vs. Estorco*, 331 SCRA 38 (2000).

[51] *People vs. Cruz*, (2000).

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will shall be used against" any person under investigation for the commission of an offense.[52] Any confession or admission obtained in violation of this constitutional provision shall be inadmissible in evidence against him.[53]

One of the fundamental requirements for the admissibility of a confession (or admission) is that the confession (or admission) be given freely and voluntarily, without compulsion, trickery or inducement.[54] To constitute an inducement, the same must be accompanied with threats or promises in the form of violence, intimidation, or a promise of reward or leniency.[55]

To recall, appellants testified that Police Senior Inspector Pedro Laza, the Station Commander of Mansilingan, asked them to sign their respective statements so they would be set free. On rebuttal, Police Senior Inspector Laza denied making any such promise. Nevertheless, he admitted telling appellant Tizon, Jr. that if he told the truth his penalty will be lowered:

Q Mr. Witness, this accused Godofredo Tizon, Jr. here declared that he was made to sign his extra-judicial confession already been marked as Exhibit "K" because of the promise that upon signing the said extra-judicial confession he will be set free, is that true or not?

A No, your Honor.

Q Why, what is the truth?

A In fact, I did not promise them... I just told them that if they will tell the truth the penalty will be lighten.

Q And that is the reason why this Godofredo Tizon, Jr. admitted his participation in the commission of the crime because his penalty will be lightened or lowered?

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[52] Article III, Section 12 (2).

[53] *Id.*, Section 12 (3).

[54] *People vs. Fabro*, 277 SCRA 19 (1997).

[55] *People vs. Calvo, Jr.*, 269 SCRA 676 (1997).

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A Yes, sir.[56]

Police Senior Inspector Laza made the same promise to appellants Ubag, Ladrillo and Crisostomo that he made to Tizon, Jr.:

Q Now Mr. Witness, these three accused Randy Ubag, Arnold Ladrillo and Nestor Crisostomo, claimed here in their testimony that they just signed their respective extra-judicial confession because of your promise that upon signing, they will be set free, is this true or not?

A No, sir.

Q Why, what is the truth?

A I told them if they will tell the truth their penalty will be lowered but I did not promise them that they will be set free.

Q So considering that they want their penalty to be lowered, they voluntarily surrendered and execute[d] their respective extra-judicial confession, is that what you mean?

A Yes, sir.[57]

The Court holds appellants' statements admissible. In *People vs. De Torres*,[58] this Court held that a promise "of immunity by one who is not a prosecuting officer who could not honor or comply with his promise, is no ground for objecting the admissibility of the confession." Citing *De Torres*, the same rule was applied in *People vs. Hipolito*.[59] Similarly, the Police Station Commander has no power to grant, or even recommend, a lower penalty for the suspects. His promise of leniency, therefore, did not render the statements of appellants inadmissible.

It bears clarifying at this point that appellant Tizon, Jr.'s statements are merely an admission, not a confession. A

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[56] TSN, January 22, 1998, p.m. session, pp. 18-19. Italics supplied.

[57] *Id.*, at 23. Italics supplied.

[58] 110 Phil. 982 (1961).

[59] 106 SCRA 610 (1981).

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confession, as distinguished from an admission, is a declaration made at any time by a person voluntarily, without compulsion or inducement, stating or acknowledging that he has committed or participated in the commission of a crime. The term admission, on the other hand, is usually applied in criminal cases to statements of fact by the accused which do not directly involve an acknowledgment of the guilt of the accused or of criminal intent to commit the offense with which he is charged.[60] Tizon, Jr.'s statement does not acknowledge that he committed, or participated in, the killing or rape of Cynthia Barena, only that he was present at the scene of the crime. He maintained that:

> At around 7:00 in the evening, there at Hda. Guanzon, Bgy. Mansilingan, Bacolod City. We were drinking because it was the birthday of my elder brother Jovito Tizon, and present were Nestor "Dodoy" Crisostomo, RANDY "GAMAY" UBAG, ARNOLD GARCIA and myself. And other visitors of Jovito. We were drinking beer and whisky. At around 11:20 other visitors went home, and the four of us went to the house of Cynthia and invited her to go strolling. We proceeded to the Basketball Court, proceeded to the road and took a shortcut in the sugarcane field. When we were on the vacant ricefield, Nestor embraced Cynthia and Randy and Arnold held the two hands of Cynthia. Cynthia struggled to free herself while shouting for help. Nestor covered the mouth of Cynthia. Randy, Arnold and Nestor started boxing Cynthia. When they fall down to the ground they started smashing the body of Cynthia. Randy then removed the clothes of Cynthia until she was naked. Nestor also removed his shirt, pants and brief and raped Cynthia while the two were holding the hands of Cynthia. While they were raping Cynthia I went home and sleep. (Exhibit "1-C.")

On the other hand, the statements of appellants Nestor Crisostomo, Randy Ubag and Arnold Ladrillo are indeed confessions for they admitted to raping and abetting the rape of Cynthia Barena. Appellant Nestor Crisostomo declared that:

> x x x At around 7:00 in the evening, Saturday and the third day of May 1997, I went to the house of Jovito Tizon because there was a birthday and we drank together with Nestor Crisostomo, Randy Obag,

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[60] *People vs. Lorenzo*, 240 SCRA 624 (1995).

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Junior Tizon (Godofredo Tizon) and other visitors. At around 10:00 in the evening more or less, Godofredo Tizon *alias* Junior Pulis went away without us knowing it. A few minutes later, Jr. Pulis went back, and told us to go with him, but we told him we'll just follow him and the three of us, Randy Obag, Nestor Crisostomo saw Godofredo Tizon with a woman named Cynthia Barena who were walking towards the road. While they were walking, the three of us were just following them, and suddenly they were out of sight. A few minutes later we heard the voice of Cynthia coming from the direction of the ricefield and when the three of us went there, I saw that Cynthia was already naked. And Godofredo told us to hold Cynthia and we held Cynthia and I saw Godofredo exposed his penis and was able to rape Cynthia despite the fact that Cynthia was struggling to free herself and he was boxing her and *he* told us to join in boxing that girl and we did so. After Godofredo raped Cynthia he told me that I will be the next but I refused because I was afraid but he threatened and I was able to rape Cynthia.[61]

Appellant Randy Ubag gave a similar account:

x x x At around 6:00 in the afternoon of May 3, 1977, I went to the birthday celebration of Jovito Tizon, and I was invited by Godofredo Tizon for a drink. Moments later, Nestor and Arnold arrived and joined us. We drunk Tanduay and Gin and at 10:30 Godofredo went away and came back later and secretly told us to go with him and/or follow him. We followed him later and when we passed the house of Cynthia we saw Godofredo holding Cynthia while walking. When we reached the basketball court, we continued following them until in the slope. Moments later, we heard the voice of Cynthia and when we went to the direction of the voice we saw Cynthia already naked and being grappled by Godofredo and we were called by him to hold down Cynthia for she is struggling to free himself and saying something. I held the feet of Cynthia while the two were holding her hands. While we were holding Cynthia, Godofredo started to punch Cynthia and told us to punch her also and Godofredo raped her. After Godofredo finished raping, he let Arnold took his turn and at first Arnold refused but when he was threatened by Godofredo he also raped Cynthia. While Arnold was raping Cynthia we notice that she stopped moving. After Arnold raped Cynthia, I was the next

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[61] Exhibit "L-7-A"; also Exhibit "2-C".

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who raped Cynthia and after me, it was Nestor who raped Cynthia. After Nestor raped Cynthia, we went home and left Cynthia whom we thought wa just unconscious. But before that Godofredo went home ahead of us.[62]

Finally, appellant Arnold Ladrillo narrated that:

x x x At around 6:00 in the afternoon, I went to the birthday celebrant Jovito Tizon, on the 3rd day of May 1997. There was already there Rudy Ubag and GodofredoTizon, Jr. and other visitors of Jovito. Moments later, Arnold Ladrillo *y* Garcia, *Alias* Arnold Garcia *y* Ladrillo arrived. And we drank Tanduay and Gin, and it was Godofredo who poured our drink. At around 10:30, Godofredo left and came back later and secretly told the three of us to follow him. We immediately followed Godofredo and when we passed by the house of Cynthia we saw Cynthia and Godofredo walking while holding their hands. We followed them walking towards the basketball court, straight acorss the street and took the short cut in the sugarcane field. Moments later, we heard the voice of Cynthia. And we immediately walk towards the voice. And we saw Cynthia and Godofredo grappling with each other and Godofredo called upon us to help him hold Cynthia. And I saw Cynthia with no clothes on and I immediately held Cynthia on one hand and Arnold on the other hand. Cynthia continued in struggling to free herself and saying words and Godofredo boxed her and we also boxed her. While we were holding the hands of Cynthia, Godofredo raped her. When Godofredo finished, he let Arnold took his turn. Arnold then took his turn and I felt Cynthia was no longer moving, but Arnold continued in raping her. After Arnold, Randy took his turn in raping Cynthia, and I was the last in raping Cynthia. We immediately went home but Godofredo went home ahead.[63]

Generally, a confession is admissible against the confessant alone and is considered as hearsay against his co-accused and a violation of the *res inter alios acta* rule.[64] An exception is when the confession is to be used as a circumstantial evidence

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[62] Exhibit "M-7-A"; also Exhibit "3-F".

[63] Exhibit "N-7-A"; also Exhibit "4-D".

[64] *People vs. Suarez*, 267 SCRA 119 (1997).

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to show the probability of participation of said co-accused in the crime committed.[65] Thus, the confessions of appellants Randy Ubag, Arnold Ladrillo and Nestor Crisostomo are admissible also against their co-accused Godofredo Tizon, Jr. for that purpose.

The Court upholds the observation of the trial court that the statements of the co-accused are replete with details and corroborate each other substantially that "it is difficult to suppose that they have been merely derived from the creative imagination of the police officers involved."[66] Moreover, the contents of these three appellants' confessions correspond to the physical evidence offered by the prosecution. Cynthia Barena was found naked and dead in the rice field. Dr. Aritao, the physician who conducted the post-mortem examination on the body, declared that the victim had sexual intercourse. The trial court observed that appellants' statements are consistent with the pictures the police photographer took of the victim's body at the crime scene.[67] The slippers found at the crime scene also ties Nestor Crisostomo to the rape. His sister Myrna Bacosa's belated denial of the ownership of the brown slippers is a feeble and pathetic attempt to absolve Nestor.

The trial court correctly dismissed appellants' respective alibis:

> In view of their extrajudicial confessions owning the rape of the victim, the defense of alibi by all the accused crumbles. Except Nestor Crisostomo who claims to be in Had. Carmen, Murcia, all the remaining accused averred to be in their respective houses in Had. Guanzon on the night of May 3 to the morning of the next day. The crimes as charged, happened at about past midnight of May 3, or the early morning of May 4. As pointed out earlier, Crisostomo's presence at the scene of the crime at Had. Guanzon on May 4 was demonstrated by the brown slippers he left behind thereat. On the other hand, per account of accused Arnold Ladrillo, his house is about a kilometer away from the spot where the victim's body was recovered; Randy

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[65] 231 SCRA 426 (1994).

[66] *People vs. Alvarez*, 226 SCRA 683 (1993).

[67] RTC Decision, pp. 52-55.

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Ubag's house is of the same distance to the crime scene; Nestor Crisostomo's house is about one and a half kilometers to the place of the incident; x x x.

Unquestionably, such houses are within the same *barangay* and are within walking distance to the place of the incident. It is not physically impossible for the accused to be at the scene of the crime. Therefore, their alibi is inherently weak and hardly credible. In jurisprudence, alibi is generally considered a weak defense because of the facility with which it can be fabricated. Thus, courts have always looked upon it with suspicion and have received it with caution. It is a well settled rule that in order for an alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else. (*People vs. Magana, supra*). A three (3) kilometer (sic) distance to the scene of the crime is a manageable distance to travel in a few minutes (*People vs. Cristobal*, G.R. No. 116279, January 29, 1996). And so is a two (2) kilometer distance, which can be traversed in a lesser time (*People vs. Cañada,* G.R. No. 112176, February 6, 1996), or a one and a half kilometer space in a much lesser duration (*People vs. Alberca*, 257 SCRA 613). Their alibi is simply unavailing, for even liberally assuming *arguendo* that they were in their respective houses at the time of the incident, still it is not sufficient alibi to warrant their acquittal. Their houses are just a short distance away from the crime scene (*People vs. Escoto*, G.R. No. 91756, May 11, 1995). It is now a stale and trite doctrine which we have to interminable reiterate that for alibi to prosper, it is not enough to prove that accused was somewhere else when the crime was committed. It must likewise be demonstrated that he was also so far away that he could not have been physically present at the time of its commission (*Ibid.*). And even if we suppose, *a gratia argumenti*, that accused Nestor Crisostomo was at Had. Carmen, Murcia, his going home to Had. Guanzon was not a physical impossibility or to preclude his presence at the place of the incident at the time of the commission of rape on Cynthia Barena. Had. Carmen is also just a few kilometers away from Had. Guanzon. Transportation like passenger jeepneys, cargo trucks loaded with sugarcane and tricycles, are readily available.

The three appellants' statements also show that they acted in concert with each other. Thus, the trial court correctly ruled:

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Likewise, from the statements or confessions of the four accused, conspiracy is apparent. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence, as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or details by which an illegal objective is to be carried out. The rule is that conviction is proper upon proof that the accused acted in concert, each of them doing his part the common design to commit the crime. In such case, the act of one becomes the act of all and each of the accused will thereby be equally guilty of the crime committed. (*People vs. Quinao*, G.R. No. 108454, March 13, 1997).

In the cases at bar, conspiracy was evident from the coordinated movements and acts of the four accused. In the words of accused Tizon, after partaking whisky in the birthday party of Jovito Tizon, accused Godofredo Tizon, Jr., Randy Ubag, Arnold Ladrillo and Nestor Crisostomo, and Ladrillo uniformly said, however, that they followed Tizon, when told, to the house of Cynthia. The three tailed Tizon and Cynthia, passing the basketball court and the highway to a sugarcane field. There, they undressed the victim, even boxing her, and took turns raping her. After venting their beastly desires on her, they fled together, with Tizon ahead of the three. These acts clearly show their joint purpose and design, and community of interest (*Ibid.*). The incident was preceded by the aborted attempt of the same four accused to bring Cynthia out of her house in January 1997. Where the unity of the accused's criminal design is clearly evident from their concert action, from the time they took Cynthia from her house to the time she was sexually abused, conspiracy may be properly appreciated (*People vs. Peralta*, 251 SCRA 6).

Thus, each of the four accused who raped the victim, having conspired with the others to rape her, is responsible not only for the rape committed personally by him, but also for those committed by others, because each sexual intercourse had, through force, by each one of them with the victim was consummated separately and independently from that had by each of the others. Each of the accused was held liable for four crimes of rape, in the commission of which he participated by direct execution and by acts without which

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the commission of the crimes would not have been accomplished. (*People vs. Villa, et al.,* 81 Phil. 193).[68]

Accordingly, the trial court did not err in finding appellants guilty of rape. Its award of moral damages, however, must be increased to ₱50,000.00 for each rape in accordance with more recent jurisprudence.[69]

WHEREFORE, the decision of the Regional Trial Court of Negros Occidental, Branch 47 in Crim. Cases Nos. 97-18381, 97-18554, 97-18555 and 97-18556 is *AFFIRMED*. Appellants Randy Ubag, Arnold Ladrillo and Nestor Crisostomo are hereby found *GUILTY* of four counts rape each and, for each count, are each sentenced to suffer the penalty of *reclusion perpetua*. They are each ordered to pay the heirs of the victim Cynthia Barena the amount of ₱200,000.00 as civil indemnity and ₱200,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Ynares-Santiago, and *Austria-Martinez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 135496. July 30, 2002]

LONGOS RURAL WATERWORKS AND SANITATION ASSOCIATION, INC. (LRWSAI) represented by MIGUEL ORTEGA and ANDRES D. MANUEL, SR., *petitioners, vs.* **HON. ANIANO A. DESIERTO, in his capacity as Ombudsman; VIRGILIO ORTEGA,**

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[68] RTC Decision, Feb. 26, 1997, pp. 60-62.

[69] See *People vs. Cuadro*, 352 SCRA 537 (2001).