



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**PEOPLE OF THE
 PHILIPPINES,**

G.R. No. 247718

Plaintiff-Appellee,

Present:

- versus -

PERALTA, C.J., Chairperson,
 CAGUIOA,
 GESMUNDO,*
 CARANDANG, and
 ZALAMEDA, JJ.

**JAYNARD AGUSTIN y
 PARAGGUA,**

Promulgated:

Accused-Appellant.

MAR 03 2021

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DECISION

PERALTA, C.J.:

Before the Court is an appeal from the September 26, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08557, which affirmed with modifications the July 18, 2016 Judgment² of the Regional Trial Court (RTC), Branch 4, Tuguegarao City in Criminal Case No. 13738, finding accused-appellant Jaynard Agustin y Paraggua (*Agustin*) guilty beyond reasonable doubt of Rape with Homicide committed against AAA.³

* Designated additional Member per Raffle dated February 8, 2021.

¹ Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Supreme Court), with Associate Justice Ramon M. Bato, Jr. and Associate Justice Samuel H. Gaerlan (now a Member of the Supreme Court), concurring; *rollo*, pp. 3-15.

² Penned by Judge Lyliha L. Abella-Aquino; records, pp. 183-189.

³ In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

The antecedent facts are as follows:

Agustin was indicted for the crime of Rape with Homicide in an Information,⁴ dated November 3, 2010, the accusatory portion of which reads:

That on or about November 1, 2010 in the municipality of [REDACTED], province of Cagayan and within the jurisdiction of this Honorable Court, the said accused JAYNARD AGUSTIN y PARAGGUA with lewd design and by the use of force, threat and intimidation carry, drag and brought the victim, AAA, minor 12 years old into a sugarcane plantation and while thereat, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the complainant, AAA, a minor 12 years of age against her will. That on the same occasion of the rape, the accused with intent to kill, did, then willfully, unlawfully and feloniously strangle the victim, AAA, a minor 12 years old which caused her death and accused in order to prevent the discovery of the victim and to conceal his overt acts buried the victim in the same sugar plantation where he raped the victim.

CONTRARY TO LAW.⁵

During arraignment, the above Information was read and explained to Agustin in the Ilocano dialect, to which he is fully conversant with, and thereafter, he entered a plea of not guilty to the offense charged.⁶ After the termination of the pre-trial, trial on the merits ensued.

Version of the Prosecution

To substantiate its charge against Agustin, the prosecution presented BBB, Dr. Francisco Romulo D. Villaflor (*Dr. Villaflor*), Atty. Luis Donato, Jr. (*Atty. Donato, Jr.*), Barangay Captain Alfredo Ruam (*Brgy. Capt. Ruam*) and Police Officer 3 Joel Mora (*PO3 Mora*) as its witnesses.

BBB, the mother of AAA, testified that her deceased daughter was born on September 28, 1998. AAA was only 12 years old when said victim was killed on November 1, 2010. BBB averred that she was in Manila working as a housemaid when the incident happened.⁷

BBB's further testimony was dispensed with after the prosecution and defense entered into a stipulation that in the event that Agustin is convicted of the crime charged, he shall be liable to pay the heirs of the victim the amount of ₱50,000.00 by way of civil indemnity.⁸

⁴ Records, pp. 3-4.

⁵ *Id.* at 3.

⁶ *Id.* at 30.

⁷ TSN, June 8, 2011, pp. 1-3

⁸ Order dated June 13, 2012, records, p. 80.

Dr. Villaflor, a medico-legal officer at the Regional Crime Laboratory Office 2, ██████████, Tuguegarao City, testified that he conducted a post-mortem examination on the cadaver of AAA on November 2, 2010. He recalled that the whole body of AAA was almost covered with soil debris. He described the cadaver to be in the state of secondary flaccidity, the condition of the body after having undergone rigor mortis, which usually occurs 18 hours after death. During post-mortem examination, he noted that AAA sustained a total of eight (8) injuries, excluding those inflicted upon her genitalia. The most prominent of these injuries were the hematomas with superimposed abrasion found on the left and right portions of the anterior neck of the victim. He opined that the victim could have sustained those injuries while she was being strangulated. He concluded that the cause of the victim's death is asphyxia by strangulation.

Dr. Villaflor added that he found three (3) injuries in the genitalia of AAA. The first injury was a fresh abrasion with hematoma found on the lower wall of the victim's vagina. The second injury was a fresh hymenal laceration at 5 o'clock position extending to the left vaginal wall. He opined that the hymenal laceration could have been caused by the insertion of blunt object, like a hardened male organ, into the victim's vagina, or by a forceful and violent sexual intercourse. The third injury was a fresh laceration at the fourchette which is the lower part of the victim's vagina. He opined that these three (3) injuries were all inflicted within the last two or three days from the time the victim's vagina was examined. His medical findings were reduced in writing and were reflected in the Medico-Legal Report No. M-078-2010.⁹

At the witness stand, Atty. Donato, Jr. recounted that police officers from ██████████ Police Station requested for his presence at the police station to render assistance to Agustin who wants to give a confession relative to the commission of a crime. He is a resident of the ██████████. He surmised that this could have been the reason why the police officers choose him to be the lawyer who will assist Agustin. He saw Agustin at the police station and requested the police officers to leave the room so he could have some moment alone with said accused to confer with him. Initially, the police officers gave him only two (2) minutes to talk with the accused, but he asked for additional time considering the gravity of the offense involved. He claimed that Agustin confessed his guilt for the rape and killing of AAA and even related to him how said incident took place in the afternoon of November 1, 2020. He recalled that Agustin gave exactly the same narration to the police investigator during the taking of the latter's extrajudicial confession.

Atty. Donato, Jr. recalled that before Agustin gave a confession, he apprised the latter of his right to remain silent. He also reminded Agustin that whatever statement he will give can be used against him. However, accused

⁹ TSN, August 30, 2012, pp. 1-12

was insistent and later, he confessed to the rape and killing of AAA during the investigation. He translated the questions propounded by the investigating officer in Ilocano dialect to Agustin, who answered the queries also in Ilocano dialect. He is conversant with the Ilocano dialect. He explained to Agustin the questions asked by the investigating police officer. He translated the answers of Agustin in English to the investigating police officer, who reduced said accused's confession in typewritten form.

Atty. Donato, Jr. claimed that he was with the Agustin during the entire time of the investigation. There was also another police officer who witnessed the proceedings. Agustin placed his thumbmark on the printed copy of his extrajudicial confession as proof that he voluntarily gave the same. After thoroughly reading the printed copy of the Agustin's extrajudicial confession, he affixed his signature thereon to prove that he assisted accused while the latter was giving his confession. The other police officer who witnessed the taking of Agustin's statement also signed the printed copy of the document.

He clarified that his purpose for coming over to the police station was to ask Agustin if the latter wants his assistance while said accused gives his confession/statement. He described accused as unschooled, that the latter cannot read nor write. During trial, he identified Agustin as the same person he assisted during the investigation held on November 2, 2010 on which occasion, said accused gave an extrajudicial confession of his authorship of the crime charged.¹⁰

The prosecution also called to the witness stand Brgy. Capt. Ruam of [REDACTED], Cagayan, at the time material to the case. Brgy. Capt. Ruam testified that he knows accused Agustin and identified AAA as the daughter of CCC and BBB. Thereafter, the court reset the trial of the case to a later date for the continuation of Brgy. Capt. Ruam's direct testimony.¹¹ However, he was no longer presented by the prosecution in the succeeding hearings.

During the hearing held on September 2, 2014, the testimony of PO3 Mora was dispensed with after the parties stipulated that he was the investigator of the [REDACTED] Police Station who took down the extrajudicial confession of Agustin.¹²

Thereafter, the prosecution rested its case and offered its documentary evidence.

¹⁰ TSN, March 12, 2014.

¹¹ TSN, April 10, 2012, pp. 1-4.

¹² Order dated September 2, 2014, records p. 133.



Among the evidence submitted and offered by the prosecution is the document denominated as “*EXTRA JUDICIAL CONFESSION OF JAYNARD AGUSTIN Y PARAGGUA TAKEN BY PO3 JOEL MORA INVESTIGATOR OF [REDACTED] POLICE STATION THIS 2ND DAY OF NOVEMBER 2010 IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ATTY. LUIS DONATO TO WHICH STATEMENT WAS TAKEN IN ENGLISH LANGUAGE BUT TRANSLATED IN ILOCANO DIALECT IN WHICH THE DECLARANT FULLY SPEAKS AND UNDERSTAND*”¹³ In substance, it was stated in the said extrajudicial confession stated that: on November 1, 2010 at about 3:00 o’clock in the afternoon, the confessant saw AAA taking a bath in a pump well; AAA was then naked while taking a bath; when AAA saw him, she ran at the back of her house; he chased her and when he cornered her, he brought her to the sugarcane plantation of [REDACTED] in [REDACTED], Cagayan where he succeeded in raping her; after raping AAA, he strangulated her and then buried her inside the same sugarcane plantation; the following day, November 2, 2010, he admitted to Brgy. Capt. Ruam and to PO3 Ronie Laxa that he raped and killed AAA. This written extrajudicial confession bore the thumbmark purportedly of the said accused which was placed above the printed name “JAYNARD P. AGUSTIN.”

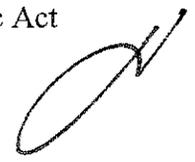
Version of the Defense

The defense presented accused Agustin as its lone witness. Agustin interposed the defense of outright denial. He denied any involvement in the commission of rape with homicide against AAA. He denied placing his thumbprint on the subject extrajudicial confession at the police station of [REDACTED], Cagayan. He denied to have known Atty. Donato, Jr. He denied affixing his thumbmark on another document when he was brought by the police officers to Tuguegarao City. He knew that Brgy. Capt. Ruam, AAA and CCC, the victim’s father, were from [REDACTED], but denied having knowledge that AAA was killed on November 1, 2010. He alleged that he never went to school and hence, does not how to read and write.¹⁴

The RTC Ruling

On July 22, 2016, the RTC promulgated its July 18, 2016 Judgment finding accused-appellant Agustin guilty as charged. The *fallo* of which reads:

ACCORDINGLY, accused is hereby found GUILTY beyond reasonable doubt of the crime of Rape with Homicide defined and penalized under Article 266 A No. 1 (a) and (d) in relation to Article 266-B fourth paragraph and 249 of the Revised Penal Code, as amended by Republic Act No. 8353.



¹³ Exhibit “H,” records, p. 14.

¹⁴ TSN, February 11, 2015, pp. 1-3.

Accused is sentenced to suffer the penalty of *RECLUSION PERPETUA*. He is likewise ordered to pay the amount of ₱50,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.

Records show that the accused was under the custody of the Bureau of Jail Management and Penology, Tuguegarao City, Cagayan since November 3, 2010. The preventive [imprisonment] of the accused during the pendency of this case shall be credited in full in his favor if he abided in writing with the disciplinary rules imposed upon convicted prisoners.

SO ORDERED.¹⁵

The RTC ruled in favor of the admissibility of the subject written extrajudicial confession ratiocinating that all the cardinal requirements for its admissibility had been complied with. It found Agustin's extrajudicial confession as sufficient to hold him liable for the crime charged. The RTC declared that Agustin's confession was corroborated by the findings in the medico-legal report of Dr. Villaflor that AAA's vagina sustained injuries indicating forced coitus and that the cause of her death was asphyxia by strangulation. According to the RTC, the evidence adduced by the prosecution convincingly established the commission of the crime of rape with homicide and pointed to Agustin as the perpetrator thereof.

Not in conformity, Agustin appealed the RTC's verdict of conviction before the CA.

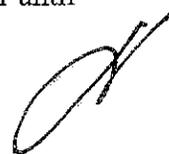
The CA Ruling

On September 26, 2017, the CA rendered its assailed Decision affirming the conviction of Agustin, but modified the amounts of damages to be awarded. The dispositive portion of which states:

WHEREFORE, premises considered, the Judgment dated July 18, 2016 of the Regional Trial Court of Tuguegarao City, Branch 4 in Criminal Case No. 13738 is AFFIRMED with MODIFICATION. Accused-Appellant Jaynard Agustin y Paraggua is hereby ordered to pay the heirs of AAA the following amounts:

Civil Indemnity	Php100,000.00
Moral Damages	Php100,000.00
Exemplary Damages	Php100,000.00

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from date of finality of this Decision until fully paid. The rest of the decision stands.



SO ORDERED.¹⁶

The CA also found the written extrajudicial confession admissible in evidence. It concurred with the RTC's observation that Agustin's written extrajudicial confession is consistent with the physical evidence as established by the Medico-legal Report No. M-078-2010¹⁷ prepared by Dr. Villaflor. The CA noted that the subject extrajudicial confession contained details that only the person who committed the crime could have possibly known. The CA observed that nowhere in the evidence on record does it show that violence or coercion was employed on the person of Agustin to compel him into admitting liability of the crime under investigation. Lastly, the CA rejected the retraction by Agustin as a flimsy machination to extricate himself from criminal liability.

The Issues

Unfazed, Agustin filed the present appeal and posited the same assignment of errors he previously raised before the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [AGUSTIN] OF THE CRIME CHARGED DESPITE THE INADMISSIBILITY OF HIS EXTRAJUDICIAL CONFESSION.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [AGUSTIN] OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁸

In the Resolution,¹⁹ dated August 5, 2019, the Court directed both parties to submit their supplemental briefs, if they so desired. On November 28, 2019, accused-appellant Agustin filed a Manifestation (In Lieu of Supplemental Brief)²⁰ averring that he would adopt all his arguments in his Appellant's Brief filed before the CA. On December 5, 2019, the Office of the Solicitor General filed its Manifestation and Motion (In Lieu of Supplemental Brief)²¹ stating that it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issue raised.

¹⁶ *Rollo* p. 14.

¹⁷ Records, p. 10.

¹⁸ *CA rollo* p. 28.

¹⁹ *Rollo*, pp. 22-23.

²⁰ *Id.* at 27-29.

²¹ *Id.* at 32-33.

The Court's Ruling

In seeking the reversal of the challenged decision, Agustin mainly contends that the extrajudicial confession upon which the trial court placed heavy emphasis to convict him of the crime charged suffers from constitutional infirmity because the same was extracted from him by the police officers in violation of his constitutional rights. Specifically, he maintains that although the extrajudicial confession states that he was informed of his constitutional rights under custodial investigation, there was no showing that said rights were explained to him in a way that an uneducated person like him could understand. He argues that the questions asked of him during the custodial investigation should have been thoroughly explained to him and that he should have been asked whether he understood all of them. He stresses that the mere presence of Atty. Donato, Jr. during the custodial investigation did not satisfy the constitutional requirement because the latter is not a competent and independent counsel of his own choice.

In the ultimate, the foregoing boils down to whether the evidence adduced by the prosecution establishes the guilt of Agustin beyond reasonable doubt. Two points will be addressed: *first*, the admissibility of Agustin's extrajudicial confession; and *second*, the sufficiency of the evidence to sustain Agustin's guilt.

The nexus that connects Agustin to the rape-slay perpetrated against AAA was his extrajudicial confession. After an exhaustive examination of the records, the Court finds that the Agustin's written extrajudicial confession is inadmissible and must perforce be discarded for having been obtained in clear violation of his rights enshrined in the Constitution. The remaining evidence proffered by the prosecution, on the other hand, is sorely insufficient to sustain a finding of guilt beyond reasonable doubt. Hence, the appeal is impressed with merit.

Section 12 of Article III of the 1987 Constitution embodies the mandatory protection afforded a person under investigation for the commission of a crime and the correlative duty of the State and its agencies to enforce such mandate. It states:

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited.

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

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Republic Act No. 7438²² (*R.A. No. 7438*) has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read:

Section 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers. –

(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

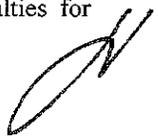
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To be acceptable, extrajudicial confession must conform to the constitutional requirements. An extrajudicial confession is not valid and inadmissible in evidence when the same is obtained in violation of any of the following rights of an accused during custodial investigation: (1) to remain silent, (2) to have an independent and competent counsel preferably of his choice, (3) to be provided with such counsel, if unable to secure one, (4) to be assisted by one in case of waiver, which should be in writing, of the foregoing, and (5) to be informed of all such rights and of the fact that anything he says can and will be used against him.²³

An extrajudicial confession must meet the foregoing requirements. Otherwise, it is disregarded in accordance with the cold objectivity of the exclusionary rule. This exclusionary rule sprang from the recognition that police interrogatory procedures lay fertile grounds for coercion, physical and psychological of the suspect to admit responsibility for the crime under

²² An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violation Thereof; approved on April 27, 1992.

²³ *People v. Muleta*, 368 Phil. 451, 462-463 (1999).



investigation.²⁴ Its purpose is not to discourage the accused from confessing guilt, if he voluntarily and intelligently so desires, but to preclude the slightest coercion as would lead the accused to admit something false.

It must appear clearly that the accused have been beforehand accorded his right to be informed of such rights. Let it be underscored that law enforcement agencies are required to genuinely and concretely communicate the rights of a person under investigation and to insure that it is fully understood by him. The right of a person under custodial investigation to be informed of his rights entails an effective communication that results in an understanding thereof. Any effort falling short of this standard is a denial of such right.²⁵ As elucidated by the Court in *People of the Philippines v. Tizon, Jr.*,²⁶ thus:

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."²⁷ (Citation omitted)

Flagrantly violated in the case at bench is Agustin's right to be informed of his rights under custodial investigation.

As proof of compliance with the constitutional standards, the extrajudicial confession contains the following statements:

PRELIMINARY: Mr. Jaynard Agustin you are being informed that you are under investigation for your alleged involvement in the commission of an offense particularly an alleged Rape with Homicide committed on November 1, 2010 at [REDACTED], Cagayan. But before we proceed further, I wish to inform you that pursuant to Article III, Section 12 of the 1987 Philippine Constitution, You have the right to remain silent, anything you may say can be used for against you in any court proceedings, to be assisted by a counsel preferably of your own choice and if you cannot provide your own counsel, you will be provided one to assist in this investigation. Is this clear and understood by you?

ANSWER: Yes, sir.

QUESTION: Do you have any lawyer to assist you in this investigation?

ANSWER: There is none sir.

QUESTION: Do you like that we will provide you a lawyer to assist?

²⁴ *People v. Bravo*, 376 Phil. 940-941 (1999).

²⁵ *People v. Binamira*, 343 Phil. 1, 19 (1997).

²⁶ 434 Phil. 588 (2002).

²⁷ *Id.* at 605.

ANSWER: Yes, sir.

QUESTION: We will provide Atty. Luis Donato to assist in this investigation. Do you like to confer him?

ANSWER: Yes, sir.

QUESTION: So we will give two (2) minutes for you to confer with Atty. Luis Donato.

ANSWER: Yes, sir.

x x x x²⁸

The extrajudicial confession itself shows that in the course of the custodial investigation, Agustin was not adequately informed of his constitutional rights. Appellant was supposedly apprised of these rights through a kilometric sentence punctuated by a terse answer of "Yes, sir" initiated by him. This, in our view, did not satisfy the strict requirements mandated by the Constitution. Too, it was not demonstrated that Agustin understood his constitutional rights. Thus, there was only a perfunctory, superficial and ceremonial reading of his rights without the slightest consideration of whether the same would result in an understanding by Agustin of what was conveyed to him.

To reiterate, in order to comply with the constitutional mandates, there should be meaningful communication to and understanding of his rights by the appellant, as opposed to a routine, peremptory and meaningless recital thereof.²⁹ Since comprehension is the objective, the degree of explanation required will necessarily depend on the education, intelligence, and other relevant personal circumstances of the person undergoing investigation.³⁰ Here, it was undisputed that Agustin is an illiterate at the time of the investigation and could only speak and understand Ilocano. This fact should engender a higher degree of scrutiny in determining whether he understood his rights as allegedly communicated to him.

Appellant should have been made to understand comprehensively the full extent of his rights using the Ilocano dialect. Also, care should have been observed by PO3 Mora when Agustin was specifically asked those questions considering that the latter cannot read and write. The records are bereft of any finding that PO3 Mora labored to properly apprise Agustin and make him understand his constitutional rights in Ilocano or the local vernacular.

Strikingly, while it was made to appear in the subject extrajudicial confession that Agustin was informed of his right to a counsel of his own choice and that the police shall provide him with one if he cannot afford the

²⁸ Records, p. 14.

²⁹ *People v. Porio*, 427 Phil. 82, 97-98 (2002).

³⁰ *People v. Canoy*, 385 Phil. 73, 86 (2000).

services of counsel, it was overlooked that it was not similarly made to appear in the same statement that appellant was advised that he had the option to reject the counsel provided for him by the police authorities. Also, Agustin was not even informed that he may waive his constitutional rights only in writing and in the presence of counsel. Truly, PO3 Mora was remiss in performing his duty.

A confession made in an atmosphere characterized by deficiencies in informing the accused of all the rights, to which he is entitled, would be rendered valueless and inadmissible, perforated, as it is by non-compliance with the procedural and substantive safeguards to which an accused is entitled under the Bill of Rights and as now further implemented and ramified by statutory law (R.A. No. 7438).³¹ The foregoing lapses on the part of the police authority are fatal to the admissibility of the extrajudicial confession supposedly given by Agustin to PO3 Mora.

The punctilious and artificially stately style of the subject extrajudicial confession do not create an impression of voluntariness or even understanding on the part of Agustin. The statements do not evince a clear and sufficient effort to inform and explain to Agustin his constitutional rights, much less satisfy the constitutional prerequisites. Indeed, the showing of a spontaneous, free and unconstrained giving up of a right is wanting.

In any event, the Court finds the written extrajudicial confession to be unreliable. Records show that since Agustin is unschooled, the questions in English language had to be translated to Ilocano dialect, while his answers in Ilocano were translated to English for the benefit of the investigating officer. This Court has held that such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the said answers is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for a capital offense.³² Further, it was not shown that the confession was read and translated to Agustin by PO3 Mora and that said appellant understood every part of it.

The illegality of the subject extrajudicial confession is further demonstrated by the fact that Agustin exercised no satisfactory waiver of his rights. In this jurisdiction, the burden to prove that an accused waived his constitutional right before making a confession under custodial investigation rests with the prosecution. The burden has to be discharged by clear and convincing evidence.³³ The prosecution miserably failed to do so.

³¹ *People v. Dela Cruz*, 344 Phil. 653, 661 (1997).

³² *People v. Maisug, et al.*, 137 Phil. 161, 173 (1969).

³³ *People v. Bariquit*, 395 Phil. 823, 851 (2000).

Agustin allegedly made an express waiver of his constitutional rights through the Certification portion of the extrajudicial confession, viz.:

CERTIFICATION

I, JAYNARD AGUSTIN Y PARAGGUA, do hereby certify that before taking down any sworn statement, the investigator had fully explained my constitutional right under Article III, Section 12 of the 1987 Philippine Constitution which I fully understood and hereby waive the aforestated right as provided by Article III, section 12 of the 1987 Philippine Constitution.³⁴
(Underscoring supplied)

To the mind of the Court, this is not the waiver that the Constitution clearly and strictly required. The waiver failed to show Agustin's understanding of his rights, his waiver of those rights, and the implications of his waiver. The waiver was not couched in a manner clearly manifesting his desire to do so. Noteworthy is the part of the confession in which the appellant allegedly waived his rights referred to them as "*the aforestated right as provided by Article III, section 12 of the 1987 Philippine Constitution.*" As presented, the prosecution would have us refer to the first part of the extrajudicial confession for guidance, as if it were a footnote saying "please see first part."

At any rate, there is no basis for declaring that Agustin knowingly and intelligently waived his constitutional right, because as we discussed earlier, such rights were not properly and effectively imparted to and understood by him. It cannot be said the waiver of his rights is an informed one in all aspects. Verily, the waiver itself is lamentably insufficient to constitute a waiver of his rights cherished and enshrined in our fundamental law.

Lastly, we find that Atty. Donato, Jr. failed to act as the competent and independent counsel envisioned by the Constitution.

The words "competent and independent counsel" in the constitutional provision is not an empty rhetoric. It emphasizes the need to provide the accused with a diligent and capable lawyer who will fully safeguard his constitutional rights while under the uniquely stressful conditions of a custodial investigation. Swept into a strange and unfamiliar environment and surrounded by intimidating police officers, the suspect really needs the guiding hand of an effective and vigilant counsel. The Court's ruling in *People v. Peñaflor*³⁵ is instructive on this score, to wit:

To be a competent and independent counsel in a custodial investigation, the lawyer so engaged should be present at all stages of the interview, counselling or advising caution reasonably at every turn of the

³⁴ Records, p. 14.

³⁵ 766 Phil. 484 (2015).

investigation, and stopping the interrogation once in a while either to give advice to the accused that he may either continue, choose to remain silent or terminate the interview. It has been made clear that counsel should be present and able to advise and assist his client from the time the confessant answers the first question until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.³⁶ (Citations omitted)

In the case at bench, Atty. Donato, Jr. did not provide effective and adequate legal assistance to Agustin. He did not display any measure of zeal commensurate to the magnitude of his responsibility. He made no effort to determine whether Agustin was treated well upon conferring with the latter to rule out any possibility that he was coerced, intimidated or forced to give a statement. There was no showing that Atty. Donato, Jr. warned Agustin the possible consequences of his confession that he allegedly intends to give freely and voluntarily. Neither did Atty. Donato, Jr. advise Agustin not to give any statement if he was in doubt and to think things over. He never advised appellant that the latter has the right not to affix his thumbmark on the extrajudicial confession if he thinks that it may incriminate him. Knowing the gravity of the offense, Atty. Donato, Jr. did not explain to Agustin that he was being investigated for a grave crime punishable by a long period of imprisonment and that by his confession, he would be admitting to the commission of the crime.

In *People v. Obrero*,³⁷ the Court wrote:

Ideally, therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition. Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.³⁸

A perusal of the records disclosed that Atty. Donato, Jr. was merely picked out and provided by the police officers of the [REDACTED] Police Station, thus putting into serious doubt his independence and competence in assisting Agustin during the investigation. Atty. Donato, Jr. merely observed the entire investigation and from a reading of the subject extrajudicial confession, there was no indication that he constantly advised Agustin from the time the latter

³⁶ *Id.* at 500-501.

³⁷ 387 Phil. 937 (2000).

³⁸ *Id.* at 953.

answered the first question until he placed his thumbmark thereon. It appears that said lawyer's role was reduced to a mere witness to the affixing of the thumbprint by Agustin. Such token participation is not the kind of legal assistance that should be accorded to appellant in legal contemplation.

Clearly, Atty. Donato, Jr. failed to meet the exacting standards of a competent and independent counsel as required by the Constitution. Hence, the extrajudicial confession executed by Agustin, even if gospel truth, is deemed an uncounseled confession, and must be struck down as inadmissible in evidence.

It may not be amiss to observe at this juncture that there is no showing from the records that Agustin thumbmarked the subject written extrajudicial confession in the presence of any of the witnesses enumerated in Section 2, paragraph D of R.A. No. 7438, to insure its genuineness and due compliance with the constitutional requirements. Such omission rendered the extrajudicial confession inadmissible in evidence in any proceeding. Said provision states:

Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –

x x x x

(c) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, **and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.** (Emphasis supplied)

x x x x

Inasmuch as the extrajudicial confession executed by Agustin was given in violation of the safeguards in Section 12 of Article III of the 1987 Constitution and of Section 2, paragraph b of R.A. No. 7438, we hold that the same is totally inadmissible, and it was erroneous for the RTC to use it in convicting Agustin. No presumption of constitutionality may be accorded any extrajudicial confession until the prosecution convincingly establishes the regularity of its taking and its compliance with the Constitution. This is the price the prosecution has to pay before it can be allowed to use such formidable evidence against the accused.³⁹ Without the extrajudicial confession, the conviction of Agustin cannot stand.

³⁹ *People v. Santos*, 347 Phil. 723, 736 (1997).

The only other prosecution evidence left is the Medico-legal Report No. M-078-2010 with which the confession supposedly coincides, as the RTC concluded. However, since the extrajudicial confession is inadmissible, it becomes irrelevant whether it dovetails with the medico-legal findings. The corroboration that medico-legal or autopsy report lends to an extrajudicial confession becomes relevant only when the latter is considered admissible. In *People v. De la Cruz*,⁴⁰ we held, to wit:

It is significant that, with the exception of appellant's putative extrajudicial confession, no other evidence of his alleged guilt has been presented by the People. The proposition that the medical findings jibe with the narration of appellant as to how he allegedly committed the crimes falls into the fatal error of figuratively putting the horse before the cart. Precisely, the validity and admissibility of the supposed extrajudicial confession are in question and the contents thereof are denied and of serious dubiety, hence the same cannot be used as the basis for such a finding. Otherwise, it would assume that which has still to be proved, a situation of *petitio principii* or *circulo en probando*.⁴¹

Although the defense of denial interposed by Agustin is weak, this fact alone would not warrant his conviction. The burden is on the prosecution to prove his guilt beyond reasonable doubt, not on him to prove his innocence. Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution.⁴² Courts should not magnify the weakness of the defense and overlook the prosecution's failure to discharge the *onus probandi*.

Our Constitution and our laws dearly value individual life and liberty and require no less than moral certainty or proof beyond reasonable doubt to offset the presumption of innocence. Courts are task to determine whether the prosecution has submitted sufficient legally admissible evidence showing beyond reasonable doubt that a crime has been committed, and that the accused committed it. In the case at bench, the prosecution has failed to present adequate proof demonstrating beyond reasonable doubt that accused-appellant Agustin was the culprit who raped and killed the victim AAA. The unpardonable assault on the 12-year old girl is tragic; and the RTC, even the CA, may have been swayed by the tide of human indignation. We must, however, uphold the primacy of the presumption of innocence in favor of the accused when the evidence at hand falls short of the required quantum of proof necessary to support a conviction.

WHEREFORE, the appeal is **GRANTED**. The September 26, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08557 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jaynard Agustin y Paragua is hereby **ACQUITTED** of the crime of Rape with

⁴⁰ *Supra* note 31.

⁴¹ *Id.* at 666.

⁴² *People v. Tomaquin*, 478 Phil. 885, 912 (2004).



Homicide on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

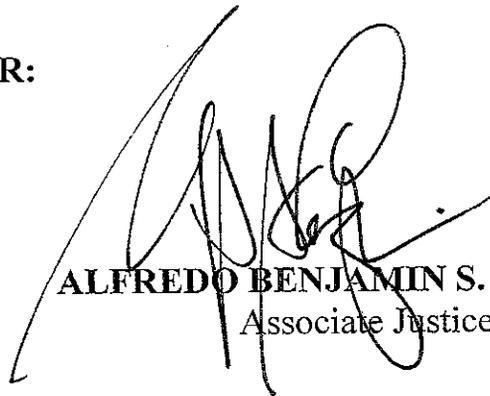
Let a copy of this Decision be furnished to the Director of the Bureau of Corrections of Muntinlupa City for immediate implementation. The said Director is ordered to report to this Court the action he has taken within five (5) days from receipt hereof.

SO ORDERED.

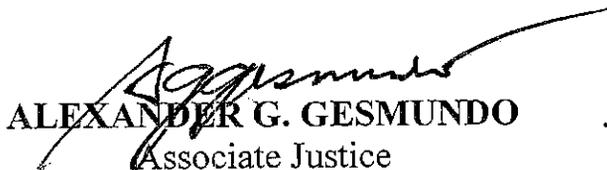


DIOSDADO M. PERALTA
Chief Justice

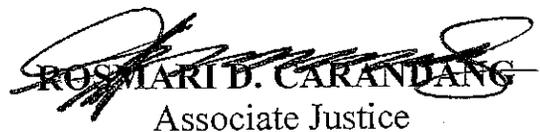
WE CONCUR:



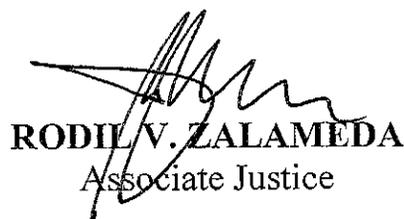
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



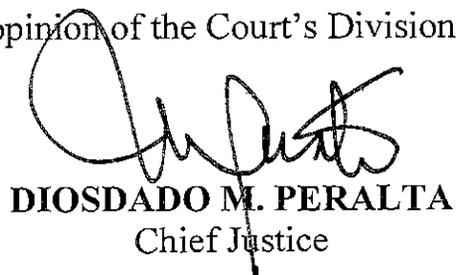
ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice