

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARCELO AMIT, DEFENDANT AND APPELLANT.

G.R. No. L-29066. March 25, 1970

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PER CURIAM:

Marcelo Amit was charged in the court below with the complex crime of rape with homicide described and penalized in Article 335 of the Revised Penal Code, as amended. Arraigned, with the assistance of a counsel de oficio, he pleaded guilty.

Due to the gravity of the offense charged, however, the Court required additional evidence from the prosecution, which the latter presented in the form of (1) the extrajudicial confession of appellant in Ilocano (Exhibit A) and its translation into English (Exhibit A-1) wherein he narrated in detail how the crime was committed; (2) the autopsy report (Exhibit B) describing the injuries suffered by the victim as she resisted appellant's criminal advances against her honor; and (3) the medical certificate (Exhibit C) describing the personal injuries suffered by appellant himself during the struggle put up against him by the victim.

On the basis of appellant's plea of guilty and the abovementioned evidence, the trial court rendered judgment sentencing him "to suffer the supreme penalty of death, with the accessories prescribed by law; to indemnify the heirs of the deceased Rufina Arellano in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs". Pursuant to the provisions of Section 9, Rule 122 of the Revised Rules of Court, said judgment was elevated to Us for review.

While appellant does not question the correctness of the decision under review in so far as it finds him guilty of the crime charged, he claims, through his counsel de oficio, that the penalty of death imposed upon him should be reduced to reclusion perpetua in view of the presence of three mitigating circumstances which the trial court should have considered in his favor, namely: (1) plea of guilty; (2) voluntary surrender, and (3) lack of intention to commit so grave a wrong as the one actually committed.

The Solicitor General admits that the mitigating circumstances of plea of guilty and voluntary surrender have been proven, but denies that the mitigating circumstance of lack of intention to commit so grave a wrong as the one actually committed was similarly established. We agree with this latter contention.

Appellant's contention - because of its nature, must necessarily be judged in the light of the acts committed by him and the circumstances under which they were committed. Should they show a great disproportion between the means employed to accomplish the criminal act - on the one hand - and its consequences - on the other - the mitigating circumstance under consideration must be considered in favor of the accused (U.S. vs. Reyes, 36 Phil. p. 904, 906-907). Otherwise, it should not.

In the case at bar, the following excerpts taken from appellant's extrajudicial confession (Exhibit A-1, translation) give Us an idea of the acts committed by him in executing the crime:

"Q: And what did Rufina Arellano do to you when you made her lay down and you immediately placed

yourself on top of her?

A: She resisted a little, nevertheless I was able to do sexual intercourse with her, sir.

Q: In her act of resisting you, what did Rufina Arellano do to you?

A: She bit me and scratched me, sir.

Q: What part of your body did Rufina Arellano bit and scratched?

A: She bit me on a place a little below my shoulder and scratched me on my breast, sir.

Q: When Rufina Arellano put up a little resistance when you placed yourself on top of her, what did you do also?

A: I held her on the neck and pressed it downward, sir."

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"Q: The left cheek of Rufina Arellano even swelled, do you know how she sustained it that caused it to swell?

A: I boxed her when she resisted, sir.

Q: What hand of yours boxed the left cheek of Rufina Arellano?

A: My left hand, sir, for my right hand was holding her neck.

Q: So what was the position of Rufina Arellano when your right hand was holding her neck as you boxed her on the cheek with your left hand?

A: Rufina Arellano was lying down on her back and I was on top of her, sir." (pp. 23-24, rec.)

At the time of the commission of the crime, appellant was 32 years of age, while his victim was 25 years his senior; his victim resisted his attempt to rape her by biting and scratching him; to subdue her, appellant boxed her and then "held her on the neck and pressed it down" while she was lying on her back and he was on top of her. These acts, We believe, were reasonably sufficient to produce the result that they actually produced - the death of appellant's victim. Consequently, what we said in *People vs. Yu*, G.R. L-13780, promulgated on January 28, 1961, would seem to apply:

"The lack of intention to commit so grave a wrong as that committed can not be appreciated in favor of an accused who employed brute force - choking a 6-year old girl to death, who tried to shout while he was raping her - intention being gathered from and determined only by the conduct and external acts of the offender, and the results of the acts themselves."

The penalty of Death prescribed in the last paragraph of Article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111 being an indivisible penalty, it has to be imposed regardless of the presence of mitigating circumstances, especially in a case like the present where, according to the evidence of record, the crime was committed with the aggravating circumstances of nighttime and abuse of superior strength (first paragraph, Article 63, Revised Penal Code).

Moreover, the civil indemnity awarded by the trial court must be increased to P12,000.00.

MODIFIED AS ABOVE INDICATED, the judgment appealed from is affirmed in all other respects. With costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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