

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADELAIDO RAMOS, ALIAS BAYOT, ACCUSED WHOSE DEATH SENTENCE IS UNDER AUTOMATIC REVIEW.

G.R. No. L-34355. July 30, 1979

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PER CURIAM:

The Circuit Criminal Court of Cebu in its decision of September 27, 1971 convicted Adelaido Ramos of rape with murder, sentenced him to death and ordered him to pay the heirs of Leonora Sipalay an indemnity of twelve thousand pesos (Criminal Case No. 417).

The judgment of conviction was based on his plea of guilty, extrajudicial confession and testimony. He did not appeal. The case was elevated to this Court for review en consulta.

In the evening of August 17, 1971, Ramos, an illiterate twenty-two-year old farmer, married with three children, slept in the house of his first cousin, Rogelio Sipalay, located at Sitio Capilla (Consaguibo), Barrio Tigbawan, Tabuelan, Cebu. Ramos, who hailed from Ormoc City, was temporarily residing with his family at Camotehan, Villahermosa, a barrio near Tigbawan. Ramos went to Rogelio's house ostensibly to get the chicken which the latter had promised to give him.

At around six-thirty in the morning of the following day, August 18, Rogelio invited Ramos to take a bath at the well near the house of his father, Juan Sipalay. After the two had walked some distance, Ramos told Rogelio that he was going to return to the latter's house because he had allegedly forgotten his comb. Rogelio told him to hurry so that they could take a bath together.

On arriving at Rogelio's house, Ramos revealed to Leonora Estaño, the wife of Rogelio, that the latter was robbed of his cow and that he (Ramos) had eluded the robbers. That fictitious tale scared Leonora. She told Ramos not to leave her. He asked her to give him Rogelio's pistol so that he could defend her in case the robbers would come to the house. She complied with his request.

At the suggestion of Ramos, Leonora and her two children left the house and took refuge on the top of a hill. Leonora carried the baby, Ronabeth, one year and three months old, while Ramos carried the older one, Gerlito, four years old. After being ensconced in that secluded area, Ramos, who had courted Leonora when she was still unmarried, reminded her of their past romance and proposed to have sexual congress with her.

Leonora, who was four months pregnant, refused to have any criminal conversation with him. On this point, there is some discrepancy in the record. According to the confession of Ramos and his testimony at the preliminary investigation, he succeeded in raping Leonora. He pleaded guilty to the information for consummated rape with murder.

The municipal health officer speculated that "there is a possibility of consummated rape because of forcible tearing of the panty and the whitish substance or specimen sent to the laboratory for analysis" (Exh. G).

However, when Ramos testified after arraignment, he declared on direct examination that he did not have carnal intercourse with Leonora. On cross-examination, when he was confronted with his extrajudicial confession that he raped her, he conceded that he "attempted to rape her" and that he was not able to consummate the rape (16 and 20 tsn).

After the rape or attempted rape, Leonora slapped him. She shouted for help. To avoid discovery, Ramos killed her and her two children with his bolo (sundang). He cut the ear lobe of Nora, took her earrings and placed them inside his wallet.

He went to his home at Sitio Camotehan and apprised his wife, Magdalena Nuñez, that he had killed Leonora and her children. He asked his wife to escape with him because he expected that the police would arrest him. As she was in failing health, she reluctantly went with him to hide in an uncultivated area (libon).

The police, accompanied by Miguel Canciran, Ramos' brother-in-law, discovered the hiding place but Ramos was able to escape. He was arrested later at Barrio Ilihan, Tabogon, Cebu on his way to Leyte.

The autopsy disclosed that the lobule of Leonora's left ear was cut; that her neck was almost severed from her body, leaving only two millimeters of skin; that she sustained a circular wound on her left shoulder, and that she had wounds on the fingers, an indication that she tried to parry the bolo thrusts. Her uterus was enlarged.

Gerlito sustained a fourteen-centimeter incised wound in the skull. He had also a wound in the mastoid region. His neck was almost severed. Ronabeth had an incised wound in the neck which left only a small portion of skin in the neck before it would be completely separated from the body. Evidently, Ramos in a murderous frenzy intended to behead his three victims.

The chief of police charged Ramos in the municipal court with robbery, multiple murder and rape. The robbery was based on the statement of Rogelio Sipalay that, on returning home, he discovered that the sum of P1,200 which he was keeping inside the loka-loka was missing and that the coins deposited in the piggy bank (puyo-puyo) were also missing.

Aside from Rogelio's statement and the extrajudicial confession of Ramos, the police took the statements of Ramos' wife and his brother-in-law, Canciran. The district state prosecutor filed an information for rape with murder with the aggravating circumstances of treachery, evident premeditation, abuse of superior strength, uninhabited place, "disrespect to sex" and deliberately augmenting and causing other wrongs not necessary for the commission of the crime.

For the killing of the children, Gerlito and Ronabeth, two informations for murder were filed against Ramos (Criminal Cases Nos. 418 and 419). He pleaded guilty and was sentenced to two reclusion perpetuas. He did not appeal.

At the arraignment, Ramos was assisted by three counsels de oficio, one for each of the three cases. In the instant case for rape with murder, his counsel de oficio manifested that after conferring with Ramos, the latter informed his counsel that he was willing to plead guilty. After the information was read to Ramos in the Cebuano dialect, he pleaded guilty.

The trial court asked him whether he understood the meaning of his plea of guilty, whether he admitted all the material allegations of the information, and whether he was aware of the gravity of the charge. He gave a "yes" answer to those questions.

Then, the trial judge informed Ramos that death would be the penalty imposable on him. He was asked whether he still wanted to plead guilty. He answered yes. When the same question was repeated, he answered: "That is up

to the Honorable Judge."

After that dialogue, Ramos was placed on the witness stand. As already stated, he testified that he committed only attempted rape. He admitted having hacked to death Leonora and her children under the circumstances already narrated.

The fiscal presented in evidence the bolo used by Ramos, his wallet containing the pair of earrings, his bloodstained polo shirt and pants, his extrajudicial confession, the necropsy report and the death certificate for Leonora Estañero-Sipalay.

The trial court, proceeding on the assumption that Ramos had consummated the rape, convicted him of rape with murder aggravated by abuse of superiority, disregard of sex, despoblado and cruelty. It appreciated the mitigating circumstance of plea of guilty which offset only one of the four aggravating circumstances. Hence the death penalty was imposed.

In this automatic review of the trial court's decision, counsel de oficio contends that Ramos' plea of guilty was not an admission that he committed rape with murder and that the trial court erred in holding that Ramos was guilty of that complex offense beyond reasonable doubt. Counsel insinuated that Ramos made an improvident plea and that, since he denied having consummated the rape, there should have been a full-dress trial.

We hold that even if the crime committed by Ramos is categorized as attempted rape with homicide, death is still the penalty that should be meted to him under the penultimate paragraph of article 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111.

The appreciation in his favor of the extenuating circumstance of voluntary confession of guilt would not alter the result because when the Code prescribes a single indivisible penalty like death, it is impossible regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime (Art. 63, Revised Penal Code).

Inasmuch as Ramos in his testimony admitted having committed at least attempted rape with homicide (which being used in a generic sense includes murder), it cannot be justifiably argued that he had made an improvident plea of guilty.

He is guilty beyond reasonable doubt of attempted rape with homicide, an offense included in the charge of rape with murder. He cannot complain that he was not duly informed of the nature and cause of the accusation against him.

Craft and fraud (*astucia y fraude*), despoblado, abuse of superiority and cruelty aggravated that special complex crime. Treachery, evident premeditation and disregard of sex, which were alleged in the information, are not aggravating.

Although no offended party filed a complaint against Ramos, we hold that, like robbery with rape, rape with homicide or attempted or frustrated rape with homicide can be prosecuted de oficio. That is the ruling in *People vs. Yu*, 110 Phil. 793, 797.

Ramos, in entering a plea of guilty with the knowledge that he would be sentenced to death, realized the horrendousness or monstrosity of his crimes which included abortion. Because of his fiendish and atrocious misdeeds, the full weight of retributive justice should be brought to bear upon him.

WHEREFORE, the judgment of the lower court is affirmed with the modification that the designation of the special complex crime committed by the accused should be attempted rape with homicide and not rape with murder. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., no part.

Santos and Abad Santos, JJ., abroad.

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