

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO SANTOS Y CRUZ, ACCUSED-APPELLANT.

G.R. No. L-44973. November 04, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of the decision of the defunct Circuit Criminal Court of Pasig, Rizal, which imposed the death penalty on ERNESTO SANTOS y CRUZ in CCC-VII-1698-Rizal.

The appellant was accused of rape by means of a verified complaint signed by Erlita Francisco y Fernando. The complaint reads as follows:

"That on or about the 21st day of July, 1976, at Manuel L. Quezon Extension, Municipality of Antipolo, Province of Rizal and within the jurisdiction of this Honorable Court, the above-named accused, an escapee from Davao Penal Colony, with deliberate intent, by taking advantage of his superior strength, by means of force, intimidation and at knife point succeeded in having carnal knowledge with the herein victim, ERLITA FRANCISCO Y FERNANDO, a ten year old virgin at a secluded place." (Expediente, p. I.)

When the accused was arraigned with the assistance of counsel de oficio, he pleaded guilty. (Id., p. 29.) Despite the plea of guilty, the trial court received evidence of the crime consisting of the testimony of Erlita, the complainant; Dr. Dario Gajardo of the PC Crime Laboratory who conducted the medical examination on Erlita; Bernarda Serato, Principal of Juan Sumulong Elementary School; and Policemen Rolando Gomez and Quirino Calica of the Antipolo Police Station who investigated the incident.

There is no dispute that the crime of rape was committed on the person of Erlita. Rape was committed not only because the carnal knowledge was accomplished with the use of a deadly weapon (a 6-inch knife) but also because Erlita was then under twelve years of age. Under these circumstances, the penalty for the crime shall be reclusion perpetua to death. (Art. 335 of the Revised Penal Code, as amended by R. A. No. 4111 [June 20, 1964].) And when the accused pleaded guilty, he should have been sentenced to reclusion perpetua only. But he was sentenced to death because "of Art. 160 of the Revised Penal Code which states that when a person commits a felony after having been convicted by final judgment before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new penalty." (Decision, pp. 3-4.)

Art. 160 of the Revised Penal Code insofar as relevant reads as follows: "any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony."

Appellant's counsels de oficio Godofredo P. Ramos (now deceased) and Ramon T. Oben dispute the application of Art. 160 of the Revised Penal Code for which reason they submit that the appropriate penalty is not death but reclusion perpetua only. They argue that since the appellant who at the time of the crime was admittedly "an escapee from Davao Penal Colony" he did not commit the rape "while serving the same" because as an escapee he

was then free from restraint and could not be said to be serving sentence.

We do not have to rule on the argument of counsels for the appellant who are to be commended for their zeal in protecting his rights while at the same time condemning his "moral depravity", his "callous heart" and his "conscienceless soul."

Art. 160 of the Revised Penal Code requires as a condition sine qua non that the accused must have been "convicted by final judgment." There is nothing in the record to show that the appellant had been convicted of final judgment when he raped the complainant. The fact that he was an escapee from the Davao Penal Colony does not prove conviction by final judgment; he could have been still a detention prisoner.

WHEREFORE, the judgment under review is modified in that the appellant shall suffer the penalty of reclusion perpetua only but the indemnity shall be increased to P20, 000.00. Costs against the appellant.

The Clerk of Court is hereby directed to pay to Mrs. Godofredo P. Ramos her deceased husband's compensation as attorney de oficio in the amount of P500.00.

SO ORDERED.

Makasiar, C.J., Teehankee, Aquino, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Concepcion, Jr., and Relova, JJ., on leave.

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