PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. KIM OJANO Y CLAUSTRO, ACCUSED-APPELLANT.

Ponente: BUESER, J.

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BUESER, J.:

Accused-Appellant, Kim Ojano y Claustro was charged before the Regional Trial Court, Branch 221 of Quezon City in Criminal Case No. Q-05-134722 for the rape of AAA.[1]

In the Information dated 31 May 2005, herein accused-appellant was specifically charged with the crime of Rape with Homicide, viz:

> "That on or about the 27th day of May 2005, in Quezon City, Philippines, the above-named accused, by means of forces and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA all against her will and without her consent; on the occasion of the said Rape, the accused strangled the said victim which resulted to Asphyxia by strangulation, which was the immediate case of the untimely death of the said AAA, to the damage and prejudice of the heirs of the said AAA."[2]

After trial, the Regional Trial Court promulgated its decision dated 18 July 2012 finding herein accused-appellant guilty beyond reasonable doubt of the crime of Rape with Homicide and sentenced him to suffer the penalty of reclusion perpetua and to pay the heirs of AAA civil indemnity and damages.

Thereafter, on 07 September 2012, herein accused-appellant appealed the decision of the Regional Trial Court to this Court.[3]

However, in a letter dated 25 August 2013, during the pendency of the instant appeal, P/Supt IV Venancio J. Tesoro, Superintendent of the New Bilibid Prison informed this Court that herein accused-appellant died on 14 July 2013 at the New Bilibid Prison Hospital.[4] P/Supt IV Tesoro attached in the said letter a certified true copy of the Death Certificate of herein accused-appellant signed by Juan Villacorta II, M.D., Medical Officer III of the NBP Hospital stating that herein accused-appellant, 35 years old, died at about 2:20 p.m. on 14 July 2013.[5] P/Supt IV Tesoro's letter was received by this Court on 28 August 2013.

In a Resolution dated 20 September 2013, this Court directed the counsel for the accused-appellant to comment on the letter filed by P/Supt IV Tesoro within ten (10) days from notice thereof. Noting that no compliance has been filed as of 20 November 2013, this Court in a resolution dated 22 November 2013 required anew the counsel for accused-appellant to comply with the 20 September 2013 Resolution.

On 13 December 2013, the Public Attorney's Office filed its Compliance with this Court's 20 September 2013 Resolution.[6]

Paragraph 1 of Article 89 of the Revised Penal Code clearly states that, viz:

> ART. 89. How criminal liability is totally extinguished. – Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is

> extinguished only when the death of the offender occurs before final judgment.

xxx

As correctly pointed out by the Office of the Solicitor General in its Manifestation dated 06 February 2014, the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon as held by the Supreme Court in the case of People vs. Bayotas.[7]

Hence, the death of herein accused-appellant pending the instant appeal extinguishes his criminal liability, as well as his civil liability.

WHEREFORE, in view of the foregoing, the Court hereby RESOLVES the following, to wit:

> 1. NOTE P/Supt IV Tesoro's letter dated 25 August 2013 providing the Court with a certified true copy of Kim Ojano's Death Certificate;
>
> 2. DISMISS the instant appeal due to the death of herein accused-appellant. Accordingly, the civil liability imposed upon the accused-applleant based on his criminal liability is hereby EXTINGUISHED.
>
> 3. NOTE WITHOUT ACTION the Appellant's Brief filed by the Public Attorney's Office dated 02 October 2013 and Motion for Extension of Time to File Brief filed by the Office of the Solicitor General dated 08 November 2013.

Zalameda[*] (Acting Chairperson) and Sempio Diy,[**] JJ., concur.

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[*] Vice Justice De Guia-Salvador per Office Order No. 184-14-ABR dated May 5, 2014.

[**] Acting Junior Member per Office Order No. 187-14-ABR dated May 6, 2014.

[1] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] Rollo, p. 44

[3] Rollo, p. 5

[4] Rollo, p. 73

[5] Rollo, p. 74.

[6] Rollo, p. 121

[7] G.R. No. 102007, September 2, 1994.

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