

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUIS GABIERREZ, JR., ACCUSED-APPELLANT.

*G.R. No. L-33427. March 29, 1982*

Ponente: ERICTA, J.

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### ERICTA, J.:

This is an automatic review of the decision of the Court of First Instance of Oriental Mindoro finding Luis Gabierrez, Jr., guilty beyond reasonable doubt of the crime of rape with homicide and imposing upon him, among others, the extreme penalty of death.

The principal parties involved are the defendant Luis Gabierrez, Jr. and the victim Rosario Rodriguez, a twelve-year-old girl, who is the daughter of Pedro Rodriguez. She lived with her parents at Barrio Barcenaga, Naujan, Oriental Mindoro.

The defendant Luis Gabierrez, Jr. is the nephew of Pedro Rodriguez. The defendant's mother and Pedro Rodriguez are first cousins. The defendant actually resided at Dart St., Paco, Manila, but he went for vacation to Barrio Barcenaga, Naujan, where he had been living with the family of Pedro Rodriguez for about one (1) month before the incident in question happened.

The events that ultimately led to a tragedy follow:

At about 4:00 o'clock in the morning of October 24, 1969, Rosario Rodriguez went in company with her father, Pedro Rodriguez, to the house of her godmother in order to help the latter in making a native delicacy called "suman." The house of the godmother was closed, so the two decided to return home. On their way home, they met the defendant Luis Gabierrez, Jr. Pedro Rodriguez left his daughter in the care of the accused, asking him to accompany her to the house of her godmother. Pedro went home alone. At daybreak of the same morning, Rosario and the defendant did not return home. Alarmed by the failure of their daughter to return home, Rosario's parents began to search for her. Rosario's mother went to the house of the godmother to verify if her daughter stayed in her house. She found out that her daughter did not stay in her godmother's house. Pedro Rodriguez asked pupils, teachers and friends of his missing daughter about her whereabouts, but to all queries, he received negative answers. He even went to Calapan in search for his daughter, but he did not find her.

Investigation was immediately conducted by the police and PC authorities led by Sgt. Perfecto de la Rosa of the Calapan PC Command. Two days later, or in the morning of October 26, 1969, the dead body of Rosario was found in the tall grasses (talahiban) in Barcenaga, 500 meters from the street corner where Pedro earlier entrusted Rosario to the defendant. Sgt. de la Rosa repaired to the crime scene where he found the victim lying face upward. Found near her body were a jacket, a girl's panty and egg shells. Upon request of the investigators, Dr. Arturo Magadia, Municipal Health Officer of Naujan, conducted an autopsy in the open fields of Barcenaga at 10:00 o'clock in the morning of October 26, 1969. Dr. Magadia found the dead body of Rosario lying face upward, in a state of early decomposition, without a panty and her clothes were raised upward towards her waist. There was a contused wound in the victim's right jaw, 3 inches in length and 1 inch in width. Maggots (larvae) were all over

the mouth and eyeballs. He found a bullae formation, i.e., the ballooning of the skin. The victim's vagina was deeply lacerated, 1½ inches long corresponding to 6:00 o'clock of the face of the watch involving one-half of the vaginal canal. The hymen was also lacerated. According to the doctor, the lacerations were caused by the penetration of a male sexual organ into her vagina. He further stated that the contused wound on the victim's body could have been caused by a blunt instrument like a piece of wood. The cause of death was "shock due to cerebral concussion due to a blow on the head." After conducting the investigation at the crime scene, de la Rosa interrogated the mother of the victim from whom he learned that the accused who was then living with them and to whom her husband entrusted Rosario in the morning of October 24, 1969, did not return to their house. She suspected the accused as the probable killer of her daughter. Sgt. de la Rosa ordered the arrest of the defendant and one hour later, the defendant was apprehended and brought before Sgt. de la Rosa at the Shell Station in Barcenaga. Sgt. de la Rosa brought the defendant to the house of Councilor Maraña where the defendant was ordered to undress in the toilet. There were many scratches all over the body of the defendant. Dr. Magadia, who was summoned to examine the body of Luis Gabierrez, stated in the presence of the accused that the scratches on the cheek, neck, back and other parts of the defendant's body were about two days old and could have been caused by the fingernails of a woman. Dr. Magadia issued a "medical examination report" to this effect dated December 26, 1969 (Exhibit "H").

In Councilor Maraña's house in Barcenaga, the defendant admitted the raping and the killing of Rosario Rodriguez. Sgt. de la Rosa then brought the defendant to the PC head-quarters at Calapan, Mindoro where the defendant's admission was reduced into writing and signed by him (Exhibit "B"). The written statement which was in Tagalog in question and answer form was synthesized by the trial Judge in his decision to read substantially as follows:

"That at about 4:00 o'clock in the morning of October 24, 1969, while he (defendant) was at the corner of Barcenaga, the victim Rosario Rodriguez approached him and asked for a "balut." He bought one for her and while giving it to her, he told the latter that her friend Daisy was waiting for her in the field around 400 meters from the provincial road. Because of her trust and confidence with the accused, she went with him to the place and while there, she asked where Daisy was. He did not answer but instead he embraced and kissed her telling her to remove her panty which she resisted. He delivered a fist blow on the stomach of the offended girl. Because of fear, she removed her panty and was forced to submit herself to the carnal desire of the accused. The girl cried telling the accused that she would reveal the matter to her parents. She ran but was followed by the accused holding a piece of wood in his hand. He admitted having struck the victim on the head causing her to fall on the ground. He left the scene and at the back of the Caltex station, he threw the piece of wood which he used in striking the victim."[1]

The defendant was then taken to the Fiscal's Office where he swore to his statement before Assistant Provincial Fiscal Ramon Añonuevo. Thereafter, he was brought to the Naujan Municipal Court where he was charged with the crime of rape with homicide. During the preliminary examination in the Municipal Court, the defendant signed another statement in the form of question and answer and he swore to the truth of his statement before the Municipal Judge (Exhibit "A"). The defendant's statement in the preliminary examination which was in Tagalog was also synthesized by the trial Judge in his decision to read as follows:

"At around 4:00 o'clock in the morning of October 24, 1969, while he (defendant) was playing "pingpong" in the corner of Barcenaga, Rosario Rodriguez arrived asking him a preserved egg "balut." He gave her the "balut" she asked for and told her that her friend Daisy was calling for her at the market place. They went to the field and upon reaching at a place around five hundred meters away from the national road, she asked him, where Daisy was, but instead of answer-ing about her whereabouts, he told Rosario to undress and upon the latter's refusal to undress herself, he gave her a fist blow on the stomach. She removed her panty and was forced to lie down, and while lying down he forced the girl to submit to his carnal desire. He was told by

Rosario that she would report the matter to her parents and because of fear he lost control of himself and struck the victim once with a piece of wood that fell her down on the ground, after which he left the place. The accused further stated in Exhibit "A" that he was living with the parents of the victim for about a month prior to the incident he being a relative of the father of Rosario.[2]

When the defendant was arraigned during the second stage of the preliminary investigation, "the complaint was read to the accused in Tagalog, a dialect known to him. When asked how he would plead, the accused pleaded guilty to the crime charged" (Exhibit "I", p. 40 of the record of the case).

On the other hand, the defendant Luis Gabierrez, Jr., who was the sole witness for the defense, testified as follows:

In the morning of October 24, 1969, he was in the house of his uncle, Pedro Rodriguez, where he was staying. Upon being informed of the disappearance of Rosario, he helped in the search for two days until her cadaver was found in the bushes of Barcenaga on October 26, 1969. He further testified that from October 24 up to October 26, 1969, he never left the house of his uncle. On October 26, 1969, he was apprehended and brought to the house of Mr. Maraña where he was interrogated by Pat. de la Rosa. He was later brought to the PC headquarters of Calapan where he was allegedly continuously subjected to maltreatment by the PC soldiers, some of whom gave fist blows on his stomach and the others alternately kicked him. The first officer to deliver fist blows on his body on the first day of his arrival was Sgt. Belano. He was placed in the stockade where there were other detained prisoners. The defendant further stated that four (4) PC soldiers led by Sgt. Belano alternately gave fist blows on his stomach and other parts of his body. Some prisoners maltreated him. Other prisoners advised him to confess the commission of the crime in order to avoid maltreatment and in order to save his life because the soldiers were determined to kill him. His back was burned with a piece of burning wood. Pepper (sili) was applied on his private organ. He further testified that on the witness stand, he opened his clothes and showed the back part of his body to the Judge. He also declared that because of the mal-treatment he received, he agreed to confess the commission of the offense of rape with homicide. The confession appears in the extra-judicial statement marked as Exhibit "B". After signing the extra-judicial statement, he was brought to the Office of the Provincial Fiscal where he swore to the state-ment before Assistant Fiscal Añonuevo. Allegedly, he signed the extra-judicial confession because he was threatened bodily harm should he refuse to sign it.

In the rebuttal, Sgt. de la Rosa declared that the defendant was never threatened, forced or maltreated before and during the time the extra-judicial confession was being prepared, and further reiterated that the defendant freely and voluntarily executed the extra-judicial confession (Exhibit "B").

We affirm the judgment of conviction.

In at least four (4) occasions, the defendant admitted that he raped Rosario Rodriguez and later killed her. The first occasion was his arrest on October 26, 1969 by Sgt. De la Rosa, two days after the disappearance of Rosario Rodriguez. Upon the arrest of the defendant, Sgt. de la Rosa brought the defendant to the house of Councilor Maraña where he was made to undress. When he was naked, Sgt. de la Rosa saw several scratches all over his body. Sgt. de la Rosa called for Dr. Magadia who examined the scratches and the doctor gave his opinion that the scratches were inflicted two days before his arrest and that those scratches were produced as a result of the resistance probably of a girl being forced to sexual intercourse. This statement of Dr. Magadia was made in the presence of the defendant. With the presence of the scratches showing resistance by the victim, Sgt. de la Rosa confronted the defendant. Sgt. de la Rosa testified as follows:

"After that, I tried to confront Luis Gabierrez, the suspect, that it is quite impossible for him to deny his participation in the killing and raping of the victim and after some systematic methods, he admitted to me that

he raped and killed the girl. However, he stated that he has no intention of killing her. During the course of the investigation, I can remember that he even told me that he was able to lure the girl going to the bushes on the pretext that they are going to eat a balut and he bought a balut for the girl, the reason why I collected the wrapper of the balut, Exhibit "G".[3]

During the trial, the defendant never denied this testimony of Sgt. de la Rosa.

After the oral admission of guilt in the house of Councilor Maraña, Sgt. de la Rosa brought the defendant to the PC barracks in Calapan to reduce to writing the admission of the defendant dated October 27, 1969 (Exhibit "B"). This is the second admission of the defendant.

On the witness stand, however, the defendant testified that he was coerced, intimidated and maltreated into signing this confession. The defendant alleged that he was boxed repeatedly in the different parts of his body; that a piece of burning wood was applied on the different parts of his body and that crushed pepper (sili) was applied on his private organ.

The alleged maltreatment is hard to believe. Aside from the denial of Sgt. de la Rosa that the confession was extorted by violence, there are several circumstances which negate the allegation of the defendant that he was maltreated. When he was brought to Fiscal Añonuevo on October 27, 1969 to swear to his statement, the defendant admitted the following:

He never reported to the Fiscal that he was maltreated by the PC investigators. Before the defendant signed his name on his statement (Exhibit "B"), Fiscal Añonuevo read one by one the questions to the defendant but he admitted having given the answers and he did not reveal any maltreatment. (p. 31 tsn, id., March 30, 1971). Fiscal Añonuevo also required the defendant to undress and he found no marks of violence in the body of the defendant. (p. 32-33, tsn, id.).

The defendant claims that the maltreatment took place in the evening of October 26, 1969. He was brought to Fiscal Añonuevo the following day of October 27, 1969. If the defendant was really maltreated, as he claimed, signs of violence all over the body would have been very visible. The fact that Fiscal Añonuevo saw nothing belies the claim of the defendant that he was maltreated. Moreover, during the trial, when the defendant testified on the alleged maltreatment, the defendant was made to undress in the courtroom. The Court found no signs of violence, saying:

"While in the witness stand, the accused was unable to point any scar of the injuries and wounds allegedly inflicted upon him. If there were scars, they could have corroborated his declarations. But none was found and hence, his testimony becomes a self-serving statement which would merit no consideration from this Court. What was found tattooed on his back are the big letters "BAHALA NA GANG".[4]

Another indication that the confession is voluntary is that he made corrections in his statement. The corrections are found in paragraphs 5, 8, 9 and 18 of Exhibit "B" and after the corrections, the defendant placed his initials. Moreover, there are details in the confession which only the defendant could have furnished. In his affidavit (Exhibit "B") and in his oral admission before the investigators at the house of Councilor Maraña, the defendant admitted that he lured the victim by buying her balut. The "balut" shells (Exhibit "G") were found near the body of the deceased. The defendant also stated in his affidavit (Exhibit "B") that he used a club in killing the deceased. He later led the investigators in retrieving the club near the gasoline station.[5] The admission of the defendant that he used a club in killing the deceased is corroborated by the medical findings (Exhibit "K").

The third confession was written and signed by the defendant before Jovino Raquepo, the Municipal Judge of Naujan, during the preliminary examination (Exhibit "A"). This statement was taken before the Municipal Judge on November 21, 1969, about one (1) month after the commission of the crime. As to the taking of this statement

(Exhibit "A"), Judge Raquepo testified:

"I remember he was brought to the office by the PC officers. Then before conducting the preliminary examination, I told all the PC officers to get out and what was left in the office was my clerk, and the Municipal Judge, myself. Then I asked the accused if he was going ... if the affidavit taken from him by the PC officers subscribed before the Fiscal was given voluntarily by him or not and he told me it was given voluntarily by him and I asked him if he was willing to give a statement to me and he said he was. So, I told him to stand up and raise his right hand in order to swear that whatever he was going to tell is the truth and nothing but the truth. After swear-ing, I told him to sit down and I myself asked the questions and typewrote myself the questions and the answers that he made." [6]

In his testimony during the trial, the defendant never assailed this statement (Exhibit "A") made during the preliminary examination by alleging that he was maltreated into signing the same.

The fourth admission was made during the arraignment at the second stage of the preliminary investigation. At the arraignment, the defendant was assisted by a counsel de oficio by the name of Ruben Genilo.[7] With the assistance of the counsel de oficio, he voluntarily pleaded guilty (Exhibit "I").

When the defendant testified, he did not allege that the trial Judge intimidated or coerced him into pleading guilty.

Aside from the four admissions made on different occasions by the defendant, there are other circumstances indicating his guilt. The defendant had been living, eating and sleeping in the house of the Rodriguez family before Rosario was killed on October 24, 1969. In the morning of October 24, 1969, she was entrusted to the defendant for him to bring her to her godmother. Rosario never returned home and from October 24, 1969 when Rosario disappeared up to October 26, 1969, the defendant never returned to the house of the Rodriguez family.[8] He was apprehended later in the afternoon of October 26, 1969.

The several scratches found on the body of the accused, according to Dr. Magadia, were inflicted sometime on October 24, 1969, the very day of the disappearance of Rosario.[9] Dr. Magadia further testified that these scratches could have been caused by the fingernails of a woman.[10]

Finally, the defendant unwittingly admitted that he used to hide in the bushes because he was afraid that the father of the victim might kill him because the victim was entrusted to him that early morning before she disappeared.[11]

The foregoing facts have established the guilt of the defendant with moral certainty. Under Article 335 of the Revised Penal Code, as amended by Republic Act 4111, the penalty should be death. But for lack of the necessary votes, it is hereby reduced to reclusion perpetua.

WHEREFORE, with the foregoing modification, the judgment of the lower Court is hereby affirmed. With costs.

### **SO ORDERED.**

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Erica, Plana, and Escolin, JJ., concur. Teehankee, J., votes for affirmance of the death penalty in a separate brief opinion.

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[1] Record, pp. 12-13.

[2] Record, pp. 13-14

[3] tsn, p. 9, March 17, 1971.

[4] Record, pp. 19-20.

[5] tsn, pp. 16-17, March 17, 1971.

[6] tsn, p. 5, March 13, 1971.

[7] tsn, p. 9, id.

[8] tsn, p. 7, March 17, 1971.

[9] tsn, p. 8, id.

[10] tsn, p. 12, March 29, 1971.

[11] tsn, p. 8, March 17, 1971.

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### SEPARATE OPINION

#### **TEEHANKEE, J.:**

I vote for affirmance of the death penalty, pursuant to Article 335 of the Revised Penal Code, as amended by R. A. No. 4111, enacted on June 20, 1964, which mandatorily imposes the single indivisible penalty of death "when by reason or on the occasion of the rape, a homicide is committed" regardless of any mitigating or aggravating circumstances, as in the case at bar. (Article 63, Revised Penal Code) The accused's detention for over ten years may be a ground for invoking executive clemency for commutation of the death penalty.

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