

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROMUALDO LOPEZ, DEFENDANT AND APPELLANT.

G.R. No. L-14347. April 29, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Romualdo Lopez was charged with the crime of rape with murder before the Court of First Instance of Negros Occidental for having had carnal knowledge with Estelita Fajardo Vda. de Caballero by means of intimidation and violence and after accomplishing his illegal purpose he feloniously stabbed her with a dagger causing her death.

Upon arraignment, the accused pleaded, guilty, but in view of the gravity of the offense charged, the court placed him on the witness stand so that he may explain the circumstances surrounding its commission.

He testified that he is 19 years old, single, and a laborer earning P1.50 a day; that he is living at Hacienda Arabay, Bacolod City, with his mother, two brothers, one of whom is married, and a sister; that he has no love affairs with any other woman except the deceased widow who is 35 years old, and to whom he expressed his love twice but he was rejected; that one night he met her alone at a cane field, and thinking that it was an opportunity to abuse her, he dragged her inside the field and hit her with his fist blows when she wanted to shout, thus rendering her unconscious; that after committing sexual intercourse with her while she was unconscious, he became afraid that his act might be discovered, and so he killed her and buried her with earth and debris, but in his hurry to leave, he was unable to cover her feet which were left protruding out.

Based on his testimony and his plea of guilty, the lower court rendered decision finding him guilty of the crime of rape with murder and sentenced him to suffer the supreme penalty of death, to pay the heirs of the deceased the sum of P5,000.00, and the costs.

A motion for reconsideration was filed by his counsel de oficio on the ground that the crime committed was not a complex one but two distinct offenses of rape and murder and that the trial court erred in imposing the death penalty. The prosecution filed an opposition to the motion contending that the crime committed is complex because accused's act of rendering the deceased unconscious with his fist blows and in killing her after committing sexual intercourse while unconscious constitute just one and single continuous act resulting in the grave felonies of rape and murder and, therefore, the death penalty was correctly imposed upon the accused.

In its order of September 22, 1958, the court denied the motion for reconsideration. The case was elevated to this Court for review considering the nature of the penalty imposed.

Counsel for the accused does not dispute in this instance the finding made by the trial court that the crime committed is a complex one which is that of rape with murder for the reason that they arose out of a single act, but the government is the one that now contends that what was committed is not the complex crime of rape with murder but the crimes of rape and murder separately for the reason that upon the facts as brought out by the testimony of the accused as well as the recitals contained in the information, the crimes charged are rape

independently of murder. The government avers that the act of the accused in delivering fist blows to his victim which caused her unconsciousness is an essential element in the perpetration of his desire to have carnal knowledge of her. On the Other hand, accused's stabbing of his victim which caused her instantaneous death was generated by his purpose of concealing what he has done upon the woman he had expressed his love.

With this contention we disagree. We are inclined to sustain the theory of the provincial fiscal to the effect that the crime committed is a complex one because the accused's act of rendering the deceased unconscious with his fist blows and in killing her after committing sexual intercourse while unconscious constitute just one and single continuous act resulting in the commission of the felonies of rape and murder and so the two cannot be considered as two independent crimes.

But counsel de oficio contends that the trial court erred in not appreciating in favor of the accused the mitigating circumstances of lack of instruction and voluntary surrender, in addition to lack of intention to commit so grave a wrong and the plea of guilty because the first two circumstances are borne out by the evidence of record.

The contention is untenable, for it is well settled that lack of instruction cannot be considered as a mitigating circumstances in the crime of rape (*Molesa vs. Director of Prisons*, 59 Phil., 406; *U. S. vs. Gamilla*, 39 Phil., 234). With regard to voluntary surrender, the record is not clear that the accused surrendered to the authorities immediately after the commission of the act although there is a certification of the city warden that he was turned over to the provincial jail two days before the warrant of arrest was issued against him. If the claim of counsel were true, there is no reason why the record will not show it, nor is there any statement to that effect on the part of the provincial fiscal. This doubt cannot be resolved in favor of the accused considering that he buried the body of his victim which would not have been discovered if not because her feet were left protruding out.

But with regard to the circumstance that the accused did not intend to commit so grave a wrong as the one committed, we believe that an error has been committed by the trial court, for this runs counter to what he manifested that after having satisfied his carnal lust and fearing that his crime might be discovered, he decided to kill his victim by stabbing her with a dagger.

Counsel also contends that the trial court erred in appreciating the aggravating circumstance of disregard of respect to sex considering the nature of the crime charged. To this we agree. Being a sex crime or one committed against a woman, the trial court erred in considering it as aggravating circumstance it being inherent in the crime of rape. The circumstance, however, of nighttime was properly considered by the trial court for it cannot be disputed that the accused has taken advantage of the darkness of the night in ravishing his victim and satisfying his evil design of possessing her. It would be different if the only crime committed be murder qualified by treachery because in that case nighttime would be deemed absorbed by this circumstance.

In resume, we find that in the commission of the crime the accused can only be given the benefit of plea of guilty while on the other hand it militates against him the aggravating circumstance of nighttime, and so the imposable penalty is death. However, for lack of the requisite number of votes, the Court has resolved to impose upon him merely the penalty of reclusion perpetua.

Wherefore, with the modification that the accused be sentenced to suffer reclusion perpetua, with the corresponding accessory penalties of the law, the decision appealed from is affirmed in all other respects, with costs against appellant.

Paras, C. J., Bengzon, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.
Montemayor, J., concurs in the result.

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