

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO VIDUYA Y VIDUYA, ACCUSED WHOSE DEATH SENTENCE IS
UNDER REVIEW.**

G.R. No. L-36510. May 17, 1980

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PER CURIAM:

This is a case of rape with homicide. On July 3, 1972, a search party found the dead body of Leonida Rivera, 17, in the river eight meters away from its bank in Barrio Lloren, Tubao, La Union. It was covered with rice straws, partly submerged and weighted down by two big stones on the chest and legs.

The autopsy conducted in the afternoon of that day disclosed that the hymen was lacerated at the six and three o'clock positions. Two fingers could be inserted into the vagina. The half-naked body, which was covered by a blouse but without underwear, was bloated and in a state of decomposition. The eyeballs were bulging.

Death was caused by asphyxia due to strangulation as shown by the tongue which protruded about an inch and by the marks, swelling and discoloration around the neck. The physician surmised that death had occurred within the last forty-eight hours.

The finger of suspicion pointed to Antonio Viduya, 25, a farmer residing at Barrio Lloren, as the culprit. His wife informed the police that her husband was in Barrio Pagdala-gan, San Fernando, La Union. In the evening of July 3, 1972, a posse of policemen went to the house in that barrio where Viduya was reported to be staying. He was not arrested there.

At about six o'clock in the morning of July 4, Viduya was seen running towards the mountain west of the national road. After a chase, he was arrested and brought to the police station in Pugo.

On that day, July 4, he executed a confession in the Ilocano dialect which was sworn to before the municipal judge. He narrated in that confession that at about four-thirty in the afternoon of Saturday, July 1, 1972, he met Leonida, who was walking on the western bank of the river in Barrio Tavora Este, Pugo. He grabbed her, pulled her by the hand and forced her to lie on a banana stalk. He removed her pants and panties and, while she was struggling, shouting and scratching him and with his right hand holding her neck, he forcibly inserted his private part into her tight genital organ.

After he had ejaculated and on noting that she was dead, he dragged her along a distance of about two hundred meters to the river bank in Barrio Lloren, Tubao, hid her there, covered her body with rice straws and placed stones on her breast and abdomen.

Viduya explained that, while he was ravishing Leonida, he was at the same time strangling her. Her head, including the nose, was submerged in the water about seven inches deep.

The confession was taken by Patrolman Adriano E. Fanganilo of the Pugo police department. Barrio Captain Gualberto Mapalo and two barrio councilmen signed the confession as witnesses.

The municipal judge in a certification dated July 5, 1972 attested that Viduya spontaneously acknowledged his confession when it was read to him. On that same day, Leonida's father, Mamerto Rivera, filed against Viduya in the municipal court a complaint for rape with homicide.

Also on that day, the municipal health officer examined Viduya and found an abrasion on his right eyebrow caused by Leonida's fingernails (Exh. E), an injury noted by the municipal judge in his certification.

The prosecution's evidence further shows that early in the afternoon of July 1, 1972, Leonida, a high school graduate and a resident of Barrio Tavora Este, asked permission from her parents to gather some weeds, locally known as "pallay-pa", at the creek (a tributary of the river) near her house to be used for the aquarium of the Pugo Catholic School where she was attending a seminar for catechists.

When Leonida failed to return home in the evening, her parents notified the chief of police of Pugo that she was missing. She was not in the environs of the creek nor in school. It was theorized that she might have eloped with her boyfriend.

The next day, the mayor and some inhabitants of the barrio undertook a search for Leonida. Her short pants were found lying on a stone partly immersed in water in the creek at Tavora Este. About twenty meters downstream her panties were found submerged and wedged between stones. Then, her umbrella and slippers and a scabbard were recovered in a banana grove about fifty meters away from the place where her panties and pants were found. The name "Leong" was embroidered on her pants and umbrella. The scabbard (kaluban) belonged to Viduya.

The search was continued the next day. At Barrio Lloren, Tubao, about a kilometer away from the area where her panties, slippers and umbrella were recovered, her father found her body in the river.

Viduya pleaded guilty at the preliminary investigation. The case was elevated to the Court of First Instance where the fiscal filed an information for rape with homicide. At the arraignment, he pleaded not guilty.

At the trial, the prosecution offered his confession in evidence and proved his prior convictions which were alleged in the information:

- Convicted on February 6, 1964 by the municipal court of Pugo of slight physical injuries and sentenced to eleven days of arresto menor.
- Convicted by the Court of First instance of La Union on September 29, 1967 of acts of lasciviousness and sentenced to one year of prision correccional, the original charge being attempted rape.
- Convicted on March 1, 1972 by the Court of First Instance of La Union of less serious physical injuries and sentenced to two months and one day of arresto mayor.

He had three separate convictions for theft (Exh. O).

Testifying in his defense, he pleaded an alibi. He declared that at eight o'clock in the morning of July 1, 1972, he went to his uncle's house, which was near the river, to get rice. He returned at about nine-thirty to his house in Barrio Lloren, which is about half an hour's walk from Barrio Tavora Este, and allegedly never left it on that day.

The trial court, regarding his alibi as a fabrication, convicted him of rape with homicide, aggravated by abuse of superiority, despoblado and recidivism, sentenced him to death and ordered him to pay the heirs of Leonida Rivera an indemnity of twelve thousand pesos. The case was elevated to this Court for review en consulta of the death penalty.

Counsel de oficio contends that, because Viduya repudiated his confession and testified that he was maltreated, that confession was inadmissible under section 20, Article IV of the Constitution which provides that "any person

under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

That contention cannot be sustained. Viduya's pretension that he was maltreated and that the answers in his confession were not his own cannot be given any credence. The details mentioned in his confession and the testimonies of Patrolman Fangonilo and the municipal judge, together with the latter's certification, prove conclusively that the confession was voluntarily made.

We have already held that the provisions of section 20 cannot be given retroactive effect to confessions obtained before January 17, 1973 when the Constitution took effect (*Magtoto vs. Manguera*, L-37201-02, *Simeon vs. Villaluz*, L-37424 and *People vs. Isnani*, L-38929, March 3, 1975, all decided on March 3, 1975, 63 SCRA 4).

There is no reasonable doubt as to the guilt of the accused. The trial court acted correctly in convicting him of rape with homicide for which the penalty is death, an indivisible penalty which is applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed (Arts. 63 and 335 as amended by Republic Acts Nos. 2632 and 4111).

As to prior cases on rape with homicide, see *People vs. Matela*, 58 Phil. 718; *People vs. Acosta*, 60 Phil. 158; *People vs. Dahino*, 88 Phil. 789; *People vs. Lopez*, 107 Phil. 1039; *People vs. Yu*, 110 Phil. 793; *People vs. Obaldo*, 111 Phil. 838; *People vs. Garcia*, L-44364, April 27, 1979, 89 SCRA 440; *People vs. Francisco*, L-37418, September 28, 1979; *People vs. Ramos*, L-34355, July 30, 1979.

WHEREFORE, the trial court's judgment is affirmed. Costs de oficio.

SO ORDERED.

Barredo, Acting C.J., Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando and Teehankee, JJ., are abroad.

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