

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. ANTONIO YU, ALIAS SOSTENES YONGCO, DEFENDANT AND APPELLANT.

G.R. No. L-13780. January 28, 1961

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PER CURIAM:

The amended information recites:

"The undersigned accuses Antonio Yu alias Sostenes Yongco of the crime of Rape with Murder, under Art. 335 in relation to Art. 248 of the Revised Penal Code, committed as follows:

That on or about November 14, 1957, in the City of Davao, Philippines, and within the jurisdiction of this Court, the abovementioned accused, by means of violence and intimidation, did then and there wilfully and feloniously have carnal knowledge of one Delia Abule, a girl 6 years of age against her will; that on the occasion of the said crime of rape the accused in order to silence the said Delia Abule who was then shouting, did then and there wilfully, unlawfully and feloniously, with abuse of superior strength and with intent to kill, attack, assault and strangle the said Delia Abule, and as a result thereof, the latter died.

The commission of the foregoing offense was attended by the following aggravating circumstances (1) that craft was employed and (2) that the acts were committed with evident premeditation."

With the assistance of counsel de oficio, the accused pleaded guilty to the crime charged, reserving, however, the right to prove the mitigating circumstance of "lack of intent to commit so grave a crime".

After hearing, the CFI of Davao rendered judgment, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING , the Court finds the accused guilty beyond reasonable doubt of the complex crime of Rape with Murder, charged in the Amended Information, attended by two aggravating circumstances, namely (1) evident premeditation; and (2) employment of craft, which are set off and compensated by the two mitigating, circumstances appreciated in favor of the accused, namely (1) plea of guilty before reception of evidence, and (2) lack of intent to commit so grave a wrong as that which resulted.

Under the express provisions of Art. 48 of the Revised Penal Code, the proper penalty to be imposed in case of a complex crime is the penalty for the most serious crime, the same to be applied in its maximum period. In the case at bar, Murder is the more serious crime, and the penalty provided for in Art. 248 is Reclusion Temporal in its maximum period to Death. With reluctance and a heavy heart therefore, inspired by the personal feeling and view of the undersigned with respect to the wisdom of the penalty of death for any crime, the Court finds itself with no other alternative but to impose the penalty provided for by express mandate of the law. The accused is hereby sentenced to death for the terrible crime he has committed, to indemnify the heirs of the deceased Delia Abule in the sum of P6,000.00, and to pay the costs."

The case is now before us for automatic review. Counsel de oficio assigned three (3) errors, supposedly committed by the trial court, to wit:

- The lower court was without jurisdiction to try the offenses;

- The lower court erred in finding that the defendant-appellant committed the complex crime;
- The lower court erred in imposing the death sentence on the defendant-appellant.

In order to facilitate the resolution of the above questions, we deem it convenient to first dispose of the second assigned error.

We are of the opinion that the appellant had committed the complex crime of rape with homicide (homicide used in its generic meaning). The amended information alleged a complex crime. The raping and the killing of the victim were simultaneously committed, making the crime a complex one. The killing is murder, in view of the attendance of the Qualifying circumstance of superior strength, considering the tender age of the victim, who was just a 6 year old girl (People vs. Jamoralin, G. R. No. L-2257, February 19, 1951). As aptly stated by the learned trial court, to which we agree: "There is unity of thought in the criminal purpose of the accused, and this unity of thought and action cannot be altered by the circumstances that both the crime of rape and the crime of murder resulted. The accused had to choke and strangle the girl at the same time that he was satisfying his lust on her. It was necessary for him to silence her so that he could consummate the rape, * * *. It is noteworthy that even when he testified, the accused did not claim that he killed the girl after he had already raped her in order to prevent detection of what he did to her."

The above conclusions of the trial court was strengthened by the accused himself when he testified that—

"My only intention was to abuse her, but when she tried to shout I covered her mouth and choked her and later I found out that because of that she died."

which carries the implication that the accused was abusing her when she shouted and that he strangled her to silence or stop her from resisting. The acts were simultaneous and constituted two or more grave or less grave felonies (Article 48, Revised Penal Code, as amended by Act No. 4000). The case of People vs. Matela, 58 Phil., 718, where, we found the accused guilty of two separate offenses (rape and homicide), under an information charging the accused with the complex crime of rape with homicide, finds no application in the case at bar, because, in said case, there was nothing before the Court to show, after proofs were adduced on a plea of not guilty, that both crimes were so connected as to constitute a complex crime under Article 48. In the present case, the amended information alleges that, "on the occasion of the said crime of rape the accused in order to silence the said Delia Abule who was then shouting, * * * attacked, assaulted and strangled her", and the accused voluntarily pleaded guilty thereto.

In connection with the first issue, we are of the opinion that the trial court had acquired jurisdiction to try and decide the case, notwithstanding the fact that the complaint was not signed by the parents or guardian of the victim, but by the prosecuting fiscal only. The crime committed being complex, and one being a public crime, the provincial fiscal alone could sign the complaint. In the case of Pueblo vs. Orcullo, 83 Phil., 787; 46 Off. Gaz., Supp. No. 11, pp. 240, 244, where the accused, charged with robbery in band with rape, claimed that the trial court did not acquire jurisdiction over the case, because the complaint was not subscribed to by the offended parties, we declared that the case of People vs. Martinez, 76 Phil., 599; 43 Off. Gaz., 135, was not applicable to said case, holding:

"Se trata hoy de un robo con violacion, que es un delito complejo, especialmente penado por el articulo 294 par. 2 delCodigo Penal Revisado. Si fuese una causa del violacion simple, la defensa tendria razon. La violacion es un delito que no se puede perseguir, sino a instancia de la parte ofendida, sus padres, abuelos o tutor (Art. 344 Codigo Penal Revisado). El delito de robo con violacion es perseguible de oficio aun sin instancia de la ofendida. La instancia de la ofendida no es indispensable en el caso presente."

There is no reason why the ruling above enunciated should not be relied upon in the instant case. A comment on this point states, with a great deal of persuasive effect, that—

"In cases of complex crimes where one of the component offenses is a public crime, the criminal prosecution may be instituted by the fiscal. The reason therefor is that since one of the component offenses is a public crime, the latter should prevail, public interest being always paramount to private interest. Thus, under the provisions of Republic Act No. 2632, amending Article 335 of the Revised Penal Code, if on the occasion or by reason of the commission of the crime of rape, whether consummated or attempted, homicide is committed, the criminal action may be instituted at the initiative of the prosecuting fiscal." (Kapunan, Criminal Procedure, 1960 Ed., p. 47).

The trial court, in finding the appellant guilty of the crime charged, considered the aggravating circumstances of: (1) evident premeditation; and (2) employment of craft, alleged in the amended information and compensated them with the mitigating circumstances of: (1) plea of guilty; and (2) lack of intention to commit so grave a wrong as that which resulted. Having pleaded guilty to the information, these aggravating circumstances were deemed fully established, for the plea of guilty to the information covers both the crime as well as its attendant circumstances (People vs. Acosta, 98 Phil., 642, 52 Off. Gaz., 1930; also People vs. Yamson, et al., 109 Phil., 795; II Moran on the Rules of Court, 823). We cannot, however, consider in favor of the appellant, the mitigating circumstance of lack of intention to commit so grave a wrong as that committed. To prove this circumstance, the appellant testified that "my only intention was to abuse her, but when she tried to shout, I covered her mouth and choked her and later I found out that because of that she died". Since intention partakes of the nature of a mental process, an internal act, it can, as a general rule, be gathered from and determined only by the conduct and external acts of the offender, and the results of the acts themselves. It is easy enough for the accused to say that he had no intention to do great harm. But he knew the girl was very tender in age (6 years old), weak in body, helpless and defenseless. He did not only cover her mouth to silence her, but choked her. He knew or ought to have known the natural and inevitable result of the act of strangulation, committed by men of superior strength, specially on an occasion when she was resisting the onslaught upon her honor. The brute force employed by the appellant, completely contradicts the claim that he had no intention to kill the victim (People vs. Orongon, 58 Phil., 421; People vs. Flores, 50 Phil., 549; People vs. Reyes, 61 Phil., 341).

It should be noted that the appellant pleaded guilty after he had prevailed upon the prosecution to amend the original information, deleting the aggravating circumstance of abuse of confidence, thereby leaving only the two appearing in the amended information. Appellant made only one reservation before entering a plea of guilty and that was to testify in his behalf to prove the mitigating circumstance of lack of intent to commit so grave a wrong as that which resulted. All of which go to show that appellant pleaded guilty after a careful and matured reflection on the facts and circumstances of the case and the consequences of such plea.

Finding as we do, that the crime committed by the appellant Antonio Yu alias Sostenes Yongco, is a complex crime, the penalty for the more serious offense (murder), penalized with reclusion temporal in its maximum period to death, should be imposed in its maximum degree, which is death. The judgment appealed from is, therefore, affirmed with costs. (Articles 48 and 248 of the Revised Penal Code).

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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