

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MARIANO Y ALEJANDRO ALIAS NEGRO, DEFENDANT-APPELLANT.

G.R. No. L-45966. November 10, 1978

Ponente: PER CURIAM: This is an automatic review of the decision of the Circuit Criminal Court, 6th Judicial District, Manila in Criminal Case No. CCC-VI-2466 entitled "The People of the Philippines vs. Mario Mariano y Alejandro" convicting the accused of the crime of rape with homicide and sentencing him to death and to indemnify the heirs of the victim the sum of P12,000.00 for the death of the latter and the sum of P8,000.00 as moral damages and to pay the costs.[1]The accused was charged with the crime of rape with homicide in the following: "I N F O R M A T I O N The undersigned accuses MARIO MARIANO Y ALEJANDRO alias Negro of the crime of Rape with Homicide, committed as follows: That on or about November 11, 1976, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously and by means of force, violence and intimidation, to wit: by then and there pinning down one LUNINGNING MAPOLA Y DIWATA, a minor, six years of age, putting his left hand on her mouth and holding her left arm with his right hand and her lower extremities with his body, succeeded in having carnal knowledge with her and as a result thereof she suffered traumatic laceration of the vagina as well as traumatic injuries on the head causing profuse hemorrhages and other injuries which are necessarily fatal and which were the direct cause of her death thereafter. Contrary to law. (SGD) ARTEMIO G. TUQUERO Assistant Fiscal"[2] Upon being arraigned on November 19, 1976, and after the information was translated to Tagalog, the accused, assisted by his counsel de oficio, manifested his desire to enter a plea of guilty to the offense charged. Despite the warning of the trial judge that the imposable penalty is death, the accused spontaneously entered a plea of guilty. Considering the gravity of the offense charged and in order to determine the nature of the crime and precise culpability of the accused, the trial court set the case for hearing on November 25, 1976 at 8:30 o'clock in the morning. On said date the accused was assisted by his counsel de parte, Atty. Narciso Santiago. The prosecution presented as witnesses Juanita Mapola, adopting mother of the victim, Rebecca Molina, Santiago Vargas, a patrolman, WPD, MPF and Luis Larion, medico legal officer, WPD, MPF. Juanita Mapola declared that the victim, Luningning Mapola, who was her 6-year old adopted child in fact, was missing on Thursday, November 11, 1976; and that she looked for Luningning and through the information of a small boy, Juanita found Luningning on the following day at 3:00 o'clock in the afternoon in an uninhabited house in Fernandez Street, Tondo, Manila, already dead with the dress rolled up to her abdomen, without panty, and her eyes swollen with blood having oozed from the left eye. Rebecca Molina, a 13-year old student, testified that on November 11, 1976 at about 2:00 o'clock in the afternoon, while she was walking at the corner of Fernandez and Laong Nasa Streets, the accused, Mario Mariano, whistled at her, and she ran away. Santiago Vargas, a patrolman, testified on his investigation of the case in the process of which, the accused gave his written confession voluntarily (Exhibit "B") and re-enacted the commission of the crime (Exhibits "E", "E-1" and "E-2"). Luis Larion, medico legal officer, declared on his autopsy of the victim (Exhibits "G" to "J"). The accused, Mario Mariano, declared that he was born on May 29, 1956 as shown by his birth certificate (Exhibit "1") and that he did not intend to kill the victim. On December 13, 1976, the trial court, entertaining doubt on the application of Article 189 in relation to Article 192 of Presidential Decree No. 603, at its own instance, re-opened the case and set it for trial on December 17, 1976 at 8:30 o'clock in the morning for the reception of additional evidence to determine whether the accused is legally married or not, this fact being material in the application of Presidential Decree No. 603. The trial on December 17, 1976 was reset to December 29, 1976 and then to January 18, 1977 and finally to January 25, 1977. On this last date, the prosecution presented the marriage contract of the accused showing that he was married on March 11, 1975 (Exhibits "L" and "L-1"). The accused also presented as additional witnesses Angelo Singian, Medico Legal Section, WPD, MPF, who declared that the death of the victim, Luningning, was due to the laceration of the vagina caused by a stiffened male organ or by the insertion of a hard blunt object out of proportion to the size of the vagina and

that the traumatic head in-jury was only contributory to the cause of death. Cesar Villanueva declared that on November 11, 1976 at 3:00 o'clock in the afternoon, he saw the accused walking unsteadily and when the witness asked the accused why, the latter answered that he took something but without saying what it was. The trial court concluded from the evidence that the accused really committed the offense charged. The contention of the counsel de oficio of the accused-appellant that the trial court erred in improvidently accepting the plea of guilty of defendant-appellant without inquiring into the causes which brought about the same, or whether the defendant-appellant fully understood the serious charge and the necessary implications of his plea to a capital offense, in not taking the proper precautions directed in the decisions of the Supreme Court and dictated by prudence under the circumstances, and, thereafter, convicting the defendant-appellant to suffer the penalty of death has no merit. That the defendant-appellant was fully apprised of the charge against him and the consequences of his plea of guilt is clearly shown by the following dialogue between the accused and the lower court: "COURT: Your lawyer here has manifested your desire to enter a plea of guilty to the crime charged, rape with homicide, do you agree to that manifestation of your lawyer? A Yes, Your Honor. Q Do you know that by agreeing to that manifestation you are admitting the commission of the crime charged, rape with homicide? A Yes, Your Honor. Q And for which reason this court will sentence you to imprisonment probably up to life or death, the maximum penalty provided by law? A Yes, Your Honor. Q And notwithstanding what is explained to you, you still insist in your desire to enter a plea of guilty to the offense charged? A Yes, Your Honor. Q Notwithstanding again the warning of the court that the maximum penalty imposable is death? A Yes, Your Honor. COURT: Arraign the accused. (T.S.N., pp. 2 and 3, Nov. 19, 1976). and, again, the dialogue between him and the court after he entered a plea of guilty: COURT: Do you understand the information read to you in the vernacular? A Yes, Your Honor. Q Where did this happen? A In Laong-Nasa, Your Honor. Q Where is that? A 2206 Mr. Dizon St., Tondo, Manila, Your Honor. Q In whose house did this happen? A I do not know who is the owner of the house, sir. Q Do you know this child? A I do not know her, Your Honor. Q How did you happen to be in that house? A I was there to fly my kite, sir. Q What time did this incident happen? A Between 4:00 and 5:00 p.m., sir. Q In the house? A Yes, Your Honor. Q In what part of the house? A Inside a room, your Honor. Q Did you really have access with the child? A Yes, Your Honor. Q And why did you have to kill yet the child? A It was by accident, Your Honor. Q How? A She was struggling, Your Honor. Q And in the course of the struggle why will she die as she was only struggling? A Her head hit the pavement, Your Honor. Q What prompted you to rape the child? A I was not in my right senses, Your Honor, I am an addict. (T.S.N., pp. 3 and 4, Nov. 19, 1976)."[3] The lower court took pains in explaining to the accused the precise nature of the crime charged in the information as shown by the following dialogue between the accused and the lower court at the trial on November 25, 1976: "COURT: The last time you were called for arraignment on November 19, 1976 you entered a plea of guilty to the offense charged, rape with homicide, but no decision was rendered against you in order to give you a chance to maturely reflect on the consequence of your plea. Now, have you maturely reflected on the consequence of your plea of guilty? ACCUSED: I am still pleading guilty, your Honor. ATTY. SORIANO: Your Honor, please, Atty. Narciso Santiago, I understand is going to appear as de parte counsel of the accused. ATTY. SORIANO: May I respectfully enter my appearance as counsel de parte for the accused, Your Honor. COURT: O R D E R It appearing that accused has already a counsel de parte in person of Atty. Narciso Santiago, Atty. Manuel Soriano, Jr., is hereby discharged as counsel de oficio. SO ORDERED. Open Court, Manila, November 15, 1976. Q What do you say Atty. Santiago about the statement of the court to the accused, were you aware? ATTY. SORIANO: Yes, Your Honor, I was aware that he pleaded guilty in the arraignment and he is still insisting with his plea of guilty. COURT: As a matter of fact, did you interview him? ATTY. SANTIAGO: Yes, Your Honor. COURT: What did he tell you? ATTY. SANTIAGO: He is still pleading guilty, Your Honor. COURT: Is it true that Atty. Santiago manifested here that you insist in your plea of guilty? ACCUSED: Yes, Your Honor. (T.S.N., pp. 2-3, Nov. 25, 1976)."[4] It will be noted from the above-quoted portions of the transcript that the trial court used simple words which could have been easily understood by the accused who said that he finished

Grade 6 at Princesa Urduja School at Solis, Tondo, Manila (Exhibit "B"). Moreover, the record shows that the information was read to him in Tagalog. In spite of the efforts of the trial judge to explain the nature of the charges against the accused and the effect of his plea of guilty, the accused then assisted by his counsel of choice, Atty. Narciso Santiago, reiterated his plea of guilty to the crime charged. It cannot be said, therefore, that the accused-appellant was sentenced to death on an improvident plea. When the accused-appellant was represented by his counsel of choice, he could have withdrawn his plea of guilty entered by him when he was first arraigned then assisted by counsel de oficio. The accused was given all the time and opportunity to withdraw his plea. The contention that when the case was called on November 25, 1976 his fate was already sealed has no merit. The testimony of the accused that he was prompted to rape the victim because he was not in his right senses inasmuch as he was an addict is no defense at all. Drug addiction is punishable by law. Nobody should profit therefrom. It is to be noted that independent of the plea of guilty of the accused, there is sufficient evidence to convict the accused-appellant beyond reasonable doubt. He executed an extra-judicial confession (Exhibit "B") the regularity of which was never assailed. The extrajudicial confession shows that he gave coherent answers to the questions propounded to him. Moreover, the accused re-enacted the commission of the crime. He could not have recalled the events that transpired if he was not in his right senses when he committed the crime. There is no question that the death of the victim was brought about by the rape committed by the accused-appellant. That he did not intend to kill her was of no moment. A person who performs a criminal act is responsible for all the consequences of said act regardless of his intention.[5] The testimonies of Dr. Luis Larion, a prosecution witness, and Dr. Angelo Singian, a defense witness, established beyond doubt that the death of the victim was due to profused hemorrhage brought about by the laceration of the vagina caused by a stiffened male organ or by the insertion of a hard blunt object. (p. 19, tsn, Nov. 25, 1976; p. 6, tsn, Jan. 25, 1977). The extrajudicial confession of the accused is fully corroborated by proof of corpus delicti. Hence, said extra-judicial confession is sufficient to support conviction. WHEREFORE, the decision appealed from is hereby affirmed and the accused-appellant is sentenced to death and ordered to indemnify the heirs of the victim the sum of Twelve Thousand Pesos (P12,000.00) for the death of the latter, and the sum of Eight Thousand Pesos (P8,000.00) as moral damages and to pay the costs. SO ORDERED. Barredo, Antonio, Muñoz Palma, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur. Castro, C.J., concurs in the result. Teehankee, J., concurs in the separate opinion of Justice Makasiar. Makasiar J., concurs in a separate opinion. Aquino J., see concurring opinion. Fernando, J., did not take part. [1] Rollo, pp. 4-13. [2] Rollo, p. 2. [3] Brief for the Appellee, pp. 6-8, Rollo, p. 73. [4] Brief for the Appellee, pp. 8-10, Rollo, p. 73. [5] People vs. Renegado, 57 SCRA 275. CONCURRING OPINION MAKASIAR, J.

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The accused was charged with the crime of rape with homicide in the following:

"I N F O R M A T I O N

The undersigned accuses MARIO MARIANO Y ALEJANDRO alias Negro of the crime of Rape with Homicide, committed as follows:

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Contrary to law.

(SGD) ARTEMIO G. TUQUERO
Assistant Fiscal"[2]

Upon being arraigned on November 19, 1976, and after the information was translated to Tagalog, the accused, assisted by his counsel de oficio, manifested his desire to enter a plea of guilty to the offense charged. Despite the warning of the trial judge that the imposable penalty is death, the accused spontaneously entered a plea of guilty.

Considering the gravity of the offense charged and in order to determine the nature of the crime and precise culpability of the accused, the trial court set the case for hearing on November 25, 1976 at 8:30 o'clock in the morning. On said date the accused was assisted by his counsel de parte, Atty. Narciso Santiago. The prosecution presented as witnesses Juanita Mapola, adopting mother of the victim, Rebecca Molina, Santiago Vargas, a patrolman, WPD, MPF and Luis Larion, medico legal officer, WPD, MPF.

Juanita Mapola declared that the victim, Luningning Mapola, who was her 6-year old adopted child in fact, was missing on Thursday, November 11, 1976; and that she looked for Luningning and through the information of a small boy, Juanita found Luningning on the following day at 3:00 o'clock in the afternoon in an uninhabited house in Fernandez Street, Tondo, Manila, already dead with the dress rolled up to her abdomen, without panty, and her eyes swollen with blood having oozed from the left eye.

Rebecca Molina, a 13-year old student, testified that on November 11, 1976 at about 2:00 o'clock in the afternoon, while she was walking at the corner of Fernandez and Laong Nasa Streets, the accused, Mario Mariano, whistled at her, and she ran away.

Santiago Vargas, a patrolman, testified on his investigation of the case in the process of which, the accused gave his written confession voluntarily (Exhibit "B") and re-enacted the commission of the crime (Exhibits "E", "E-1" and "E-2").

Luis Larion, medico legal officer, declared on his autopsy of the victim (Exhibits "G" to "J").

The accused, Mario Mariano, declared that he was born on May 29, 1956 as shown by his birth certificate (Exhibit "1") and that he did not intend to kill the victim.

On December 13, 1976, the trial court, entertaining doubt on the application of Article 189 in relation to Article 192 of Presidential Decree No. 603, at its own instance, re-opened the case and set it for trial on December 17, 1976 at 8:30 o'clock in the morning for the reception of additional evidence to determine whether the accused is legally married or not, this fact being material in the application of Presidential Decree No. 603.

The trial on December 17, 1976 was reset to December 29, 1976 and then to January 18, 1977 and finally to January 25, 1977. On this last date, the prosecution presented the marriage contract of the accused showing that

he was married on March 11, 1975 (Exhibits "L" and "L-1"). The accused also presented as additional witnesses Angelo Singian, Medico Legal Section, WPD, MPF, who declared that the death of the victim, Luningning, was due to the laceration of the vagina caused by a stiffened male organ or by the insertion of a hard blunt object out of proportion to the size of the vagina and that the traumatic head in-jury was only contributory to the cause of death.

Cesar Villanueva declared that on November 11, 1976 at 3:00 o'clock in the afternoon, he saw the accused walking unsteadily and when the witness asked the accused why, the latter answered that he took something but without saying what it was.

The trial court concluded from the evidence that the accused really committed the offense charged.

The contention of the counsel de officio of the accused-appellant that the trial court erred in improvidently accepting the plea of guilty of defendant-appellant without inquiring into the causes which brought about the same, or whether the defendant-appellant fully understood the serious charge and the necessary implications of his plea to a capital offense, in not taking the proper precautions directed in the decisions of the Supreme Court and dictated by prudence under the circumstances, and, thereafter, convicting the defendant-appellant to suffer the penalty of death has no merit.

That the defendant-appellant was fully apprised of the charge against him and the consequences of his plea of guilt is clearly shown by the following dialogue between the accused and the lower court:

"COURT:

Your lawyer here has manifested your desire to enter a plea of guilty to the crime charged, rape with homicide, do you agree to that manifestation of your lawyer?

A Yes, Your Honor.

Q Do you know that by agreeing to that manifestation you are admitting the commission of the crime charged, rape with homicide?

A Yes, Your Honor.

Q And for which reason this court will sentence you to imprisonment probably up to life or death, the maximum penalty provided by law?

A Yes, Your Honor.

Q And notwithstanding what is explained to you, you still insist in your desire to enter a plea of guilty to the

offense charged?

A Yes, Your Honor.

Q Notwithstanding again the warning of the court that the maximum penalty imposable is death?

A Yes, Your Honor.

COURT:

Arraign the accused.

(T.S.N., pp. 2 and 3, Nov. 19, 1976).

and, again, the dialogue between him and the court after he entered a plea of guilty:

COURT:

Do you understand the information read to you in the vernacular?

A Yes, Your Honor.

Q Where did this happen?

A In Laong-Nasa, Your Honor.

Q Where is that?

A 2206 Mr. Dizon St., Tondo, Manila, Your Honor.

Q In whose house did this happen?

A I do not know who is the owner of the house, sir.

Q Do you know this child?

A I do not know her, Your Honor.

Q How did you happen to be in that house?

A I was there to fly my kite, sir.

Q What time did this incident happen?

A Between 4:00 and 5:00 p.m., sir.

Q In the house?

A Yes, Your Honor.

Q In what part of the house?

A Inside a room, your Honor.

Q Did you really have access with the child?

A Yes, Your Honor.

Q And why did you have to kill yet the child?

A It was by accident, Your Honor.

Q How?

A She was struggling, Your Honor.

Q And in the course of the struggle why will she die as she was only struggling?

A Her head hit the pavement, Your Honor.

Q What prompted you to rape the child?

A I was not in my right senses, Your Honor, I am an addict.

(T.S.N., pp. 3 and 4, Nov. 19, 1976)."[3]

The lower court took pains in explaining to the accused the precise nature of the crime charged in the information as shown by the following dialogue between the accused and the lower court at the trial on November 25, 1976:

"COURT:

The last time you were called for arraignment on November 19, 1976 you entered a plea of guilty to the offense charged, rape with homicide, but no decision was rendered against you in order to give you a chance to maturely reflect on the consequence of your plea. Now, have you maturely reflected on the consequence of

your plea of guilty?

ACCUSED:

I am still pleading guilty, your Honor.

ATTY. SORIANO:

Your Honor, please, Atty. Narciso Santiago, I understand is going to appear as de parte counsel of the accused.

ATTY. SORIANO:

May I respectfully enter my appearance as counsel de parte for the accused, Your Honor.

COURT:

O R D E R

It appearing that accused has already a counsel de parte in person of Atty. Narciso Santiago, Atty. Manuel Soriano, Jr., is hereby discharged as counsel de oficio.

SO ORDERED.

Open Court, Manila, November 15, 1976.

Q What do you say Atty. Santiago about the statement of the court to the accused, were you aware?

ATTY. SORIANO:

Yes, Your Honor, I was aware that he pleaded guilty in the arraignment and he is still insisting with his plea of guilty.

COURT:

As a matter of fact, did you interview him?

ATTY. SANTIAGO:

Yes, Your Honor.

COURT:

What did he tell you?

ATTY. SANTIAGO:

He is still pleading guilty, Your Honor.

COURT:

Is it true that Atty. Santiago manifested here that you insist in your plea of guilty?

ACCUSED:

Yes, Your Honor.

(T.S.N., pp. 2-3, Nov. 25, 1976)."[4]

It will be noted from the above-quoted portions of the transcript that the trial court used simple words which could have been easily understood by the accused who said that he finished Grade 6 at Princesa Urduja School at Solis, Tondo, Manila (Exhibit "B"). Moreover, the record shows that the information was read to him in Tagalog. In spite of the efforts of the trial judge to explain the nature of the charges against the accused and the effect of his plea of guilty, the accused then assisted by his counsel of choice, Atty. Narciso Santiago, reiterated his plea of guilty to the crime charged. It cannot be said, therefore, that the accused-appellant was sentenced to death on an improvident plea.

When the accused-appellant was represented by his counsel of choice, he could have withdrawn his plea of guilty

entered by him when he was first arraigned then assisted by counsel de oficio.

The accused was given all the time and opportunity to withdraw his plea. The contention that when the case was called on November 25, 1976 his fate was already sealed has no merit.

The testimony of the accused that he was prompted to rape the victim because he was not in his right senses inasmuch as he was an addict is no defense at all. Drug addiction is punishable by law. Nobody should profit therefrom.

It is to be noted that independent of the plea of guilty of the accused, there is sufficient evidence to convict the accused-appellant beyond reasonable doubt. He executed an extra-judicial confession (Exhibit "B") the regularity of which was never assailed. The extrajudicial confession shows that he gave coherent answers to the questions propounded to him. Moreover, the accused re-enacted the commission of the crime. He could not have recalled the events that transpired if he was not in his right senses when he committed the crime.

There is no question that the death of the victim was brought about by the rape committed by the accused-appellant. That he did not intend to kill her was of no moment. A person who performs a criminal act is responsible for all the consequences of said act regardless of his intention.[5] The testimonies of Dr. Luis Larion, a prosecution witness, and Dr. Angelo Singian, a defense witness, established beyond doubt that the death of the victim was due to profused hemorrhage brought about by the laceration of the vagina caused by a stiffened male organ or by the insertion of a hard blunt object. (p. 19, tsn, Nov. 25, 1976; p. 6, tsn, Jan. 25, 1977). The extrajudicial confession of the accused is fully corroborated by proof of corpus delicti. Hence, said extra-judicial confession is sufficient to support conviction.

WHEREFORE, the decision appealed from is hereby affirmed and the accused-appellant is sentenced to death and ordered to indemnify the heirs of the victim the sum of Twelve Thousand Pesos (P12,000.00) for the death of the latter, and the sum of Eight Thousand Pesos (P8,000.00) as moral damages and to pay the costs.

SO ORDERED.

Barredo, Antonio, Muñoz Palma, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Castro, C.J., concurs in the result.

Teehankee, J., concurs in the separate opinion of Justice Makasiar.

Makasiar J., concurs in a separate opinion.

Aquino J., see concurring opinion.

Fernando, J., did not take part.

[1] Rollo, pp. 4-13.

[2] Rollo, p. 2.

[3] Brief for the Appellee, pp. 6-8, Rollo, p. 73.

[4] Brief for the Appellee, pp. 8-10, Rollo, p. 73.

[5] People vs. Renegado, 57 SCRA 275.

CONCURRING OPINION

MAKASIAR, J.:

Two mitigating circumstances should at least be considered to warrant a commutation of the sentence by the Chief Executive. Lack of intent to commit as grave a wrong as that committed and illness of the offender which diminishes the exercise of will power without depriving him of consciousness of his act or at least a circumstance of similar or analogous nature (Pars. 3, 9 and 10, Art. 13, RPC).

The accused, when the crime was committed, was about 20 years, 5 months and 13 days old. His state-ment, after pleading guilty, in answer to the question of the trial Court, that the 6-year old victim died by accident as she hit her head on the pavement while struggling and that he was not in his right senses because he is an addict, is not disputed nor contradicted by any evidence. It is therefore apparent that he did not intend to kill the girl but merely wanted to ravish her and that he was under the influence of drugs which impaired his will power. This is further corroborated by the fact that he was newly married and therefore to a wife presumably as young as, if not younger than, himself. In his normal state, uninfluenced by any drug, his sexual desires could have been easily satisfied by his own wife. But the drug that he imbibed that early afternoon must have so excited his sex impulses now rendered so uncontrollable, that he had to gratify the same with any female that crossed his path. As a matter of fact, one witness Enrica Molina, a 13-year old student, testified that at two o'clock that afternoon, the accused whistled at her causing her to run away. It was most unfortunate that the 6-year old victim happened to pass his way about three o'clock that same afternoon near an uninhabited house where he sexually assaulted her.

Our own criminal law jurisprudence recognizes that a drug, like opium, is "pernicious and dangerous to a degree in its effect, mental, moral and physical, upon the individual addicted thereto x x x. Its usual con-comitants are imbecility, pauperism and crime (U.S. vs. Tan Tayco, 12 Phil. 739; underscoring supplied). Justice Malcolm, speaking for the Court, reaffirmed that opium or any other drug is dangerous, because "the weak and unwary, unless prevented, may use it to their physical and mental ruin. x x x Indulgence in this unwholesome, disgusting and degrading habit generates diseases, pauperism and crime. The usual concomitants are degeneration, neglect of appearance, of family and of duty, abject poverty and criminal propensities" (US vs. Delgado, 41 Phil. 372, 376, citing US vs. Lim Sing, 23 Phil. 424 and American cases; US vs. Tan Tayco, *supra*, italics supplied).

American jurisprudence regards criminal responsibility where an act is committed under the influence of drugs the same as when it is committed under the influence of intoxicating liquor. In some cases, it may lead to acquittal, akin to the exempting circumstance of compulsion of an irresistible force under paragraph 5 of Article 12 of the Revised Penal Code.

"What little authority has been found indicates that the rules as to criminal responsibility where an act is committed under the influence of drugs are the same as when it is committed under the influence of intoxicating liquor (People vs. Sameniego, 118 Cal. App. 165, 4 P2d 809, reh den 118 Cal App 174, 5 P2d 653 [statute dealing with effect of voluntary intoxication includes all forms of voluntary intoxication, not just those caused by alcohol]; De Berry v. Commonwealth [Ky] 289 SW2d 495, cert den 352 US 881, 1L ed 2d 81, 77 S Ct. 105; State vs. White, 27 NJ 158, 142 A2d 65; Couch v. State [Okla Crim] 375 P2d 978). Thus, the voluntary nonmedicinal use of narcotics is no defense to a crime committed under their influence (State vs. White, Couch vs. State; State vs. Blassingame, 221 SC 169, 69 SE2d 601), although it may lead to acquittal where it excludes the required specific intent (State vs. White 27 NJ 158, 142 A2d 65). [Underscoring supplied].

"Involuntary narcosis, however, like involuntary alcoholic intoxication, may negative criminal responsibility

(State vs. Rippy, 104 NC 752, 10 SE 259, holding to be a complete defense that a crime was committed in a frenzy produced by an overdose of morphine administered as medicine). Intoxication resulting from drugs medically administered is considered as involuntary (Saldiveri vs. State, 217 Md 412, 143 A2d 70; State vs. Rippy, 104 NC 752, 10 SE 259). Apparently it may be so considered even where the drug was self-administered (where a defendant took intoxicating pills to ward off an attack of epilepsy, it was a question for the jury whether this was sufficient to render his intoxication involuntary. People vs. Baker, 42 Cal 2d 550, 268 P2d 705). And although the rule seems to be the other way in the case of chronic alcoholism, it has been held that a person who has become addicted to a narcotic and is unable to resist the craving for it cannot be said to act voluntarily in its continued use (Prather vs. Commonwealth, 215 Ky 714, 287 SW 559)." [21 Am Jur 2d 188-189; italics supplied].

This young man can still be rehabilitated and ultimately rescued from his present addiction. While it is true that under Article 335 of the Revised Penal Code, as amended, the death penalty for rape with homicide is mandatory, regardless of the presence of mitigating circumstances, the unusual or abnormal predicament of the accused herein justifies the interposition of the executive benign prerogative of mercy to commute the sentence from death to life imprisonment, which I strongly recommend. The fault does not lie entirely with the accused as he is a victim of his own poverty as well as the failure of the government to completely eliminate all drug pushers and peddlers and to effectively control the smuggling and marketing of narcotics or prohibited drugs.

CONCURRING OPINION

AQUINO, J.:

Appellant's case (the case of a pedophile) is covered by the last paragraph of article 335 of the Revised Penal Code which imposes the death penalty when by reason of the rape, a homicide is committed. Death, as a single indivisible penalty, is applied regardless of the mitigating or aggravating circumstances which may have attended the commission of the deed (Art. 63, Revised Penal Code).

Presidential Decree No. 1179, which took effect on August 15, 1977 and which amended article 189 of the Child and Youth Welfare Code by providing that the youthful offender should be below eighteen years of age (instead of twenty-one years, as originally prescribed) may be applied retroactively to the appellant who is now over twenty-one years old (he was twenty years and 163 days old when the crime was committed on November 11, 1976).

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