

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER GULPE AND RICARDO VIGAS, APPELLANTS.*G.R. No. 126280. March 30, 2004*

Ponente: AZCUNA, J.

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Appellants Roger Gulpe (Gulpe) and Ricardo Vigas (Vigas) were convicted of the crime of Rape with Homicide by the Regional Trial Court of Iriga City (RTC).[1] Appellants do not assail their conviction, but have filed the present petition to reverse the portion of the Court of Appeals' ruling which increased the penalty imposed upon them.

Based on eyewitness accounts,[2] in the afternoon of June 30, 1990, in Sitio Iraya, San Pedro, Iriga City, at about 4:00 o'clock, Gulpe was seen having sexual intercourse with the seven-year-old victim Lenly Ranola (Lenly). While this was happening, Vigas was holding down Lenly's right shoulder with his right hand, pinning her left shoulder on the ground with his left elbow and covering her mouth with his left hand. Thereafter, Gulpe exchanged positions with Vigas and the latter was then seen having sexual intercourse with Lenly while the other appellant was holding her down. When Vigas finished having sex with Lenly, they called for Villaruel, Jr., a co-accused who was acquitted. Villaruel, Jr., however, left. Vigas then got a piece of bamboo and stabbed the victim with it, causing her death.

The crime of Rape with Homicide carried with it the penalty of reclusion perpetua to death under Article 335 of the Revised Penal Code.[3] However, considering that at the time the crime was committed, on June 30, 1992, the death penalty had been reduced to reclusion perpetua by Section 19(1) of Article III of the Constitution and that Gulpe and Vigas were then 17 years old and 16 years old, respectively, the RTC appreciated the privileged mitigating circumstance of minority in their favor and reduced appellants' penalty by one degree lower from reclusion perpetua. Consequently, appellants were sentenced each to suffer an indeterminate penalty of 8 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal, as maximum.

On appeal, the Court of Appeals modified the penalty imposed. It opined that, even before the effectivity of Republic Act No. 7659,[4] the penalty prescribed for the special complex crime of Rape with Homicide was already death but death could not be imposed only because the Constitution had proscribed its imposition. Therefore, the Court of Appeals did not consider the death penalty abolished but as, in a sense, "in a state of hibernation." [5]

Since the death penalty was not abolished, the Court of Appeals concluded that in offenses where the death penalty is prescribed, it must still be reckoned with in determining the imposable penalty. In the present case, since the penalty for Rape with Homicide is death, the presence of the privileged mitigating circumstance of minority should reduce the penalty by one degree lower from death. Consequently, the Court of Appeals modified the judgment of the RTC and imposed upon appellants the penalty of reclusion perpetua.

The Court of Appeals is correct.

The issue in this case has already been discussed and resolved in *People v. Quintori*,^[6] to wit:

...[W]hile the trial court was correct in ruling that the prescribed penalty for rape was death, but that it could not, however, be imposed in view of the prohibition in Section 19(1) of Article III of the Constitution, the RTC nevertheless erred in reasoning that the prescribed penalty was changed to reclusion perpetua, hence, the penalty next lower in degree was reclusion temporal. In *People v. Munoz*, [170 SCRA 107 (1989)] we ruled that the constitutional prohibition did not alter the periods for the penalty for murder for purposes of determining the proper imposable penalty, i.e., the intent of the framers of the Constitution was merely to consider the death penalty automatically reduced to reclusion perpetua. The same thing may be said as regards rape with homicide. The penalty of death provided under the governing law then was deemed reduced to reclusion perpetua; however, for purposes of determining the proper penalty because of the mitigating circumstance of minority, the penalty of death was still the penalty to be reckoned with... (underscoring supplied)

Accordingly, the Court of Appeals correctly increased appellants' penalty to reclusion perpetua.

WHEREFORE, the petition for review is DENIED and the Decision of the Court of Appeals is AFFIRMED. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Carpio, JJ., concur.

[1] Branch 37; Criminal Case No. IR-2840.

[2] TSN, October 12, 1990, pp. 5-8.

[3] The crime was committed prior to the enactment of Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, which had repealed Article 335 of the Revised Penal Code.

[4] Death Penalty Law.

[5] Rollo, p. 38; Court of Appeals' Decision, p. 15.

[6] 285 SCRA 196 (1998).

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