PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RALPH VELEZ DIAZ ALIAS “JIMBOY,” ACCUSED-APPELLANT.

G.R. No. 130210. December 08, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

FRANCIS BART FULACHE, eleven (11) years old, was found dead at Bulacao Bridge, Cebu City, on 4 December 1996. Subsequently, for his death, Ralph Velez Diaz alias "Jimboy" was charged before the Regional Trial Court[1] of Cebu City with murder in relation to RA 7610.

On 3 December 1996 at around 8:00 o'clock in the evening Francis Bart Fulache and his 10-year old brother Felbart went to Pier 3 to defecate. They were with 30-year old Ralph Velez Diaz, a friend Francis Bart knew from the hantakan, a gaming place near their store. Francis Bart then invited his brother Felbart to go with them to Pier 4 but the latter was not inclined so he went home.

Francis Bart did not return home that evening. But Felbart was not alarmed as his brother was used to going around and doing anything he wanted to without telling him nor asking permission from their parents. However when Francis Bart still failed to show up in the afternoon of the next day their parents got worried and started searching for him.[2]

Meanwhile, at noontime of the same day, SPO2 Ramon Villar received a report that a body of a boy between ten (10) to twelve (12) years of age was found dead at the Bulacao Bridge. The body was in a sickening state of nudity and physical abuse. The face was covered with a big stone in an apparent attempt to hide the body. After the routine taking of photographs the body was brought to the Cosmopolitan Funeral Homes for a post-mortem examination.[3]

The autopsy conducted by the PNP Medico-Legal Officer, Dr. Jesus P. Cerna, revealed that the cause of death was "intracranial hemorrhage, extensive, with skull fracture, traumatic."[4] The examination also disclosed contusions, abrasions and lacerations all over the boy's body the most prominent of which was the comminuted and depressed fracture on his head. There were, quite notably, multiple lacerations in his rectum.[5]

With respect to the injuries in the boy's rectal area, Dr. Cerna opined that a blunt instrument like a male organ in full erection could have caused them. He claimed that in an attempt to avoid any violation of his rectum the boy could have suffered more pain considering his soft and tender skin and the violation would necessarily result in hemorrhage which could cause instantaneous death.[6]

On 4 December 1996 while the Fulache family continued their search for Francis Bart a couple by the name of Degamo claimed the body of the young victim in the belief that it was their missing son Joseph Johnson Degamo. After two (2) days however, their missing son came home so the Degamos returned the body to the funeral parlor. What was good news for the Degamos was bad news for the Fulaches. The body now back in the funeral home turned out to be their Francis Bart. Bartolome Fulache, father of the Fulache boys, identified the corpse after

hearing over the radio that the cadaver of a boy remained unclaimed at the Cosmopolitan Funeral Homes.[7]

On 9 December 1996 at around 1:00 o'clock in the morning a person acting suspiciously but unknown to the Fulache spouses went to the wake. There he created a spectacle of himself by reciting poems for Francis Bart and singing the theme song from the movie "The Lion King," and giving emphasis to the word "surrender." Bartolome Fulache reported to the authorities the unusual behavior of their "uninvited guest." The police immediately went to the Fulache residence to observe the person. They invited him to their headquarters for further observation and questioning. He went with them voluntarily. He was identified later as herein accused-appellant Ralph Velez Diaz.

Before conducting their investigation the police authorities as well as a certain Atty. Abellanosa[8] apprised accused-appellant of his constitutional rights in Cebuano, a language known to accused-appellant, in the presence of men from the media[9] who themselves affixed their signatures in the sworn statement of accused-appellant to attest to the fact that he was duly informed of his rights under the Constitution. The investigation proceeded where accused-appellant revealed his sexual perversity by narrating in detail how he perpetrated the ghastly crime against Francis Bart.

But this extra-judicial confession of accused-appellant was however declared inadmissible by the trial court on the ground that Atty. Abellanosa who assisted accused-appellant during the custodial investigation was not an independent counsel of the accused as required under the Constitution.[10]

The following day, between 11:00 o'clock in the morning and 12:00 noon, a reenactment was made at the scene of the crime. Those present were accused-appellant Ralph Velez Diaz, Felbart Fulache, police officers Monilar, Montebon and Tumakay, and people from the ABS-CBN, Sun Star Daily, Freeman and Superbalita. There accused-appellant demonstrated, with Felbart as victim, sexually abused Francis Bart and later killed him. The reenactment was published in the 11 December 1996 issue of the Sun Star Daily, but because only an unauthenticated photocopy of the newspaper was presented in court, it was likewise declared inadmissible in evidence. But the trial court nevertheless took judicial notice thereof.

On his part, accused-appellant sought to establish the defense of insanity by presenting Dr. Wilson Tibayan, a government physician connected with the National Center for Mental Health. The doctor's testimony however did not help accused-appellant's case because although he admitted having initially categorized accused-appellant as insane, the doctor eventually diagnosed accused-appellant to be afflicted with pedophilia, a mental disorder not synonymous with insanity. He explained that pedophilia is a sexual disorder wherein the subject has strong, recurrent and uncontrollable sexual and physical fantasies about children which he tries to fulfill, especially when there are no people around. He claimed, however, that despite his affliction the subject could distinguish right from wrong. In fact, he maintained that pedophilia could be committed without necessarily killing the victim although injuries might be inflicted on the victim in an effort to repel any resistance.

Also worthy of note was Dr. Tibayan's testimony that accused-appellant had disclosed to him that his pedophilic acts were done in revenge as he himself as a child was also a victim of sexual abuse. Finally, Dr. Tibayan declared that accused-appellant's affliction had a very low prognosis thus making him very dangerous to society.

On 11 April 1997 the court a quo found accused-appellant Ralph Velez Diaz guilty beyond reasonable doubt of "murder in relation to sexual abuse (sodomy) of a child, attended by treachery." He was sentenced to death and ordered to pay the heirs of the victim P50,000.00 as death indemnity, P250,000.00 as moral damages, P100,000.00 as exemplary damages and P40,000.00 as reimbursement for funeral expenses.[11]

The trial court was convinced that notwithstanding the exclusion of the extrajudicial confession of

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accused-appellant and the absence of any eyewitness to the crime, there were enough pieces of circumstantial evidence to support his conviction, to wit: (a) the testimony of 10-year old Felbart that he saw his brother last alive in the company of accused-appellant; (b) the physical evidence of sexual abuse through sodomy committed against the victim; (c) the exculpatory plea of insanity which only tended to negate liability but was an admission of guilt; (d) the reenactment of the crime by accused-appellant the details of which could not have been known to anybody but himself; and, (e) the fact that accused-appellant voluntarily confessed to the crime without any evidence of coercion, duress or intimidation exerted upon him.

The case is now before this Court for automatic review pursuant to Art. 47, par. 2 of the Revised Rules of Court, as amended by RA 7659. Accused-appellant submits that the trial court erred in (a) finding him guilty beyond reasonable doubt of murder, and (b) imposing upon him the supreme penalty of death. It is the contention of accused-appellant that if he is guilty his guilt would only be for homicide and not murder as the qualifying circumstances of treachery, abuse of superior strength and evident premeditation are absent.

The contention is untenable. We agree with the trial court that the crime committed by accused-appellant was murder even in the absence of the qualifying circumstance of evident premeditation because treachery and abuse of superior strength were present - either of which qualified the crime to murder.

"There is treachery or alevosia when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[12] In the instant case, treachery characterized the killing of eleven (11)-year old Francis Bart. Well-settled is the doctrine that the killing of children who by reason of their tender years cannot be expected to put up a defense is considered attended with treachery even if the manner of attack is not precisely shown.[13] Thus, the killing of Francis Bart must be deemed ipso facto qualified by treachery by reason of his inherent defenselessness.[14]

Likewise, there is a clear case of abuse of superior strength given the blatant inequality of strength between the victim and accused-appellant.[15] However, this cannot be appreciated even as a generic aggravating circumstance being necessarily absorbed in treachery.[16]

Anent the second assigned error, we agree with accused-appellant that he should not be meted the supreme penalty of death. A careful scrutiny of the records shows that the Information charged him only with murder qualified by treachery, abuse of superior strength and evident premeditation. It failed to mention the commission of sexual abuse or "sodomy" on the victim. The Information designated the crime as "murder in relation to RA 7610," but as a rule, what controls is not the designation of the offense but its description in the complaint or information.[17] The real nature of the criminal charge cannot be determined from the caption or preamble of the information or from the mere reference to a particular provision of law alleged to have been violated because they are conclusions of law. On the contrary, it is determined by the actual recital of facts in the complaint or information. The technical name given by the fiscal appearing in the title of the information does not determine the character of the crime but the facts alleged in the body of the information.[18] Thus, even if there is positive proof of sexual abuse accused-appellant cannot be convicted therefor as it was not so alleged in the information.

We cannot share the view of the Solicitor General that the trial court did not apply the provisions of RA 7610 in imposing the death penalty but merely made reference to them as sexual abuse, which was established to have been committed by accused-appellant. He contends that the sodomy could be considered as an aggravating circumstance for adding ignominy to the crime as the sexual abuse certainly augmented the wrong done to the victim thus unduly increasing his pain.

We do not agree. The trial court was clear in declaring that "[c]onsidering the aggravating circumstance of

alevosia and the seriousness of the sexual assault on the victim (in itself a heinous crime), this court after a soul-searching and prayerful consideration has arrived at a firm resolution to impose the maximum penalty of death."[19] Moreover, "ignominy is a circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime."[20] Thus, for ignominy to be appreciated as an aggravating circumstance in the instant case, it must be shown that the sexual assault on Francis Bart was done by accused-appellant to put the former to shame before killing him. This is clearly not the case here for accused-appellant's intention was shown to be the commission of sexual abuse on the victim as an act of revenge for his similar experience as a child. Surely, the killing was done to eliminate the only witness to his crime.

We should not be misunderstood for our failure to hold accused-appellant responsible for committing sexual abuse on his victim despite strong evidence in support thereof. We have no choice as our hands are tied by the failure of the public prosecutor to file the appropriate information for accused-appellant's sexual assault on the victim.

The defense, invoking the doctrine of parens patriae, also appeals to this Court for the psychiatric examination and evaluation of accused-appellant if indeed he is found to have committed the crime charged. The defense emphasizes the fact that accused-appellant was institutionalized twice within a considerable period in the National Center for Mental Health; consequently, there is no certainty that he was sane when he committed the crime imputed to him.

We cannot grant the request. When accused-appellant was committed to the National Center for Mental Health, he was not diagnosed as insane but was suffering from pedophilia. Thus, there is no doubt in our mind that he was sane during his two-year confinement in the center, pedophilia being dissimilar to insanity.

A defendant in a criminal case who interposes the defense of mental incapacity has the burden of establishing that fact, i.e., he was insane at the very moment when the crime was committed.[21] He must prove it by clear and positive evidence.[22] In the instant case, the defense of insanity as an exempting circumstance was not established and did not overcome the legal presumption that a person's acts are of his own free will and intelligence. The settled rule is that the onus probandi rests upon him who invokes insanity as a defense, and the defense failed to discharge this burden. Thus, the conviction of accused-appellant no doubt is in order.

The civil indemnity for the death of the victim in the amount of P50,000.00 is upheld in accordance with recent jurisprudence,[23] as well as the award of actual damages in the amount of P40,000.00 representing funeral expenses. The award of P250,000.00 as moral damages is excessive warranting its reduction to P100,000.00 considering that the purpose of the award is to compensate the heirs for injuries to their feelings and not to enrich them. Similarly, the amount of P100,000.00 as exemplary damages is reduced to P25,000.00.

WHEREFORE, the 11 April 1997 Decision of the RTC-Br. 15, Cebu City, is MODIFIED. Accused-appellant Ralph Velez Diaz is found guilty beyond reasonable doubt of murder and sentenced to reclusion perpetua instead of death. He is also ordered to pay the legal heirs of Francis Bart Fulache the amount of P50,000.00 as death indemnity, P100,000.00 as moral damages, P25,000.00 as exemplary damages and P40,000.00 as reimbursement for funeral expenses. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Panganiban, J., in the result.

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[1] Raffled to Br. 15.

[2] arch 1997, pp. 2-13.

[3] TSN, 17 March 1997, pp. 2-12.

[4] Necropsy Report, p. 1; Records, p. 51.

[5] Ibid.

[6] TSN, 28 February 1997, pp. 2-9.

[7] TSN, 18 February 1997, pp. 2-9.

[8] Atty. Abellanosa was from the City Attorney's Office who was appointed by the Chief of the Homicide Section to represent Diaz in the absence of any lawyer from the Public Attorney's Office.

[9] Ramil Paicam and Marlon Mergazo (both from the ABS-CBN Broadcasting Network).

[10] Citing People v. Bandula, G.R. No. 89223, 27 May 1994, 232 SCRA 566.

[11] Decision penned by Presiding Judge German G. Lee, Jr., RTC-Br. 15, Cebu City.

[12] Art. 14 (16), The Revised Penal Code.

[13] People v. Gonzales, G.R. No. 130507, 28 July 1999, citing People v. Valerio, Jr., No. L-4116, 25 February 1982, 112 SCRA 208.

[14] People v. Bacalto, G.R. Nos. 116307-10, 14 August 1997, 277 SCRA 252.

[15] [People v. Gatcho, No. L-27251, 26 February 1981, 103 SCRA 207.]

[16] People v. Sancholes, G.R. Nos. 110999 and 111000, 18 April 1997, 271 SCRA 527.

[17] Socrates v. Sandiganbayan, G.R. Nos. 116259-60 and 118896-97, 20 February 1996, 253 SCRA 773, citing People vs. Maravilla, et al., G.R. No. L-47646, 19 September 1988, 165 SCRA 392.

[18] Ibid., citing Reyes vs. Camilon, et al., No. L-46198, 20 December 1990, 192 SCRA 445.

[19] See Note 10, p. 11; Rollo, p. 30.

[20] U.S. v. Abaigar, 2 Phil. 417 (1903); People v. Acaya, No.L-72998, 29 July 1988, 163 SCRA 768.

[21] People vs. Bascos, 44 Phil. 204 (1922).

[22] Ibid.

[23] People v. Espanola, G.R. No. 119308, 18 April 1997, 271 SCRA 689.

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