

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADEL TUANGCO, NELSON PINEDA, JR. AND SONNY TUANGCO, ACCUSED.

G.R. No. 130331. November 22, 2000

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PER CURIAM:

In the morning of January 4, 1995, the naked cadaver of Aurea Eugenio, a bookkeeper employed by the Centro Escolar University Credit Cooperative in Manila was found lying beside a creek about 50 meters away from the national highway in Apalit. Her body bore multiple stab wounds and her private parts were bloodied and showed signs of sexual abuse.

On May 18, 1995 two informations were filed in court charging Adel Tuangco y Dizon, Nelson Pineda Jr. alias "Jun Tattoo"[1], and Sonny Tuangco y Dizon alias "Baba" with the crimes of rape with homicide and theft.

The Information in Criminal Case No. 95-1609(M) states:

"That on or about January 3, 1995, between 7:30 to 8:30 in the evening, in Sitio Dalan Baka, Barangay Sulipan, Municipality of Apalit, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously, with intent to gain which came as an afterthought to them after executing their primordial intent to rape and kill victim AUREA EUGENIO, took and carried away her wrist watch, three rings, earrings, P3,000.00 cash money and camera, the total value of which amounts to P20,000.00, to the damage and prejudice of her heirs.

The commission of this offense added ignominy to the natural effects of the crime."

whereas the Information in Criminal Case No. 95-1610 (M) reads:

"That on or about January 3, 1995, between 7:30 to 8:30 in the evening, in Sitio Dalan Baka, Barangay Sulipan, Municipality of Apalit, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with evident premeditation, abuse of superior strength and taking advantage of nighttime, did then and there willfully, unlawfully, feloniously and with lewd design dragged Aurea Eugenio, reclined her in a tree, opened wide her thighs, inserted a bottle of Pidol syrup in her vaginal canal and forcibly took turns in having sexual intercourse with her against her will, after which, and by reason of such rape accused with intent to kill, did then and there, wilfully, unlawfully and feloniously stabbed several times Aurea Eugenio in her neck which caused her death.

That the commission of this offense was attended by the aggravating circumstance of evident premeditation, use of superior strength, nighttime which was purposely sought by the accused to facilitate and insure its commission.

CONTRARY to Article 335 of the Revised Penal Code as amended by Republic Act No. 2632 and Republic Act No. 411."[2]

Adel Tuangco was arraigned on June 5, 1995; he pleaded not guilty to both charges. In the course of the trial

accused Sonny Tuangco was apprehended and also pleaded not guilty. Nelson Pineda, Jr. remains at large.

The principal evidence against the accused consisted of the testimony of an eyewitness, Silvestre Sanggalan, a deaf-mute. He gave his testimony through sign language, which was interpreted by a sign language expert. The court's summation of the evidence is as follows:

"On January 3, 1995 at around 6:00 o'clock in the evening, he was inside a 'beer house' along the national highway. He had seven (7) companions at that time. (TSN, July 10, 1995, pp. 55-57). The group consisting of eight (8) persons including the witness arrived at the said place at day time. When nighttime came, witness Sanggalan together with three (3) of his companions left the place and proceeded to a rice field near the highway. (Ibid, p. 58). Sanggalan described and identified the said three (3) other persons as a) tricycle driver with tatoos over his body and scars on his arms; b) a person with a long chin and known as 'Baba' and c) accused Adel Tuangco. Sanggalan stepped down from the witness stand and identified accused Adel Tuangco as one of the three (3) other persons together with whom, he went to the rice field. (Ibid, pp. 58-59). The tricycle driver with tatoos over his body and the person with an elongated chin were not inside the court room at the hearing of these cases on July 10, 1995. Accused Adel Tuangco and the person with elongated chin are brothers. (Ibid, p. 60).

The group of eight (8) persons were drinking beer and gin inside the 'beer house'. When night time came, Sanggalan, accused Adel Tuangco, the person with tatoos over his body and the one with elongated chin proceeded to the rice field where there was a waiting shed in which they stayed for a while. Inside the waiting shed, the person with tatoos over his body, known as 'Tatoo', and the one with elongated chin, known as 'Baba', took Pidol cough syrup. (Ibid, pp. 61-65). They went to the rice field because they were very drunk. (Ibid, pp. 66). The four (4) stayed at the waiting shed until 8:00 o'clock in the evening. (TSN, July 21, 1995, p. 12).

The three, accused Adel Tuangco, 'Baba' and 'Tatoo' later left the waiting shed and went to the rice field to follow a girl who was wearing a long hair. Through photographs of the deceased Aurea Eugenio, witness Sanggalan identified her to be the girl whom the three followed into the rice field. (Ibid, pp. 14 and 27-28). As soon as they caught up with the deceased, 'Tatoo' pushed her. Adel Tuangco got hold of the shoulder bag which the deceased Aurea Eugenio was carrying at that time. 'Baba' and 'Tattoo' then pushed Aurea against a tree and stabbed her with a knife several times on the neck. At this point, Adel Tuangco joined the two and also stabbed the deceased. The deceased fell down. (Ibid, pp. 15-19).

After the deceased fell down on the ground, 'Tatoo' inserted a bottle of Pidol cough syrup into her private parts. Then 'Baba' pushed the bottle further into the private parts of the deceased. While the bottle was being pushed, Adel Tuangco was hugging the deceased who at that time was still alive and resisting the assault. Together, the three removed the blouse, bra, skirt and panty of Aurea Eugenio. Adel Tuangco raped the deceased. 'Tatoo' and 'Baba' likewise successively raped Aurea in that order. (Ibid, pp. 19-23). At the time that the three accused were raping Aurea Eugenio, witness Sanggalan was about three and one half (3½) meters away from them. While Adel Tuangco was raping the victim, 'Tatoo' and 'Baba' were beside them. When 'Baba' and 'Tattoo' took their respective turns in raping the victim the other two were holding her hands. (Ibid, pp. 24-25).

After raping the victim, Adel Tuangco took her bag, 'Tatoo' got her camera and cash money while 'Baba' got her ring, earrings and watch. (Ibid, pp. 25-26). After the incident, 'Tatoo' and 'Baba' went to the rice field while Adel Tuangco went to the other direction. (Ibid, p. 29). Earlier, during the incident, Adel Tuangco, 'Tatoo' and 'Baba', on two occasions, asked witness Sanggalan to leave. However, the witness merely hid behind the grasses and trees. (Ibid, p. 30 and TSN, August 7, 1995, p. 31). When recalled to the witness stand on January 17, 1996, Sanggalan identified accused Sonny Tuangco as the one he referred to as 'Baba'. [3]

Dr. Dominic Aguda, a medico legal officer at the National Bureau of Investigation, conducted an autopsy of the victim and made the following findings:

"Pallor, marked and generalized

Hematoma- 7.0 x 5.0 cms. left frontal region, head; 3.0 x 2 cms. right frontal region head; 7.0 x 6.0 cms. right auricular region; 4.0 x 2.0 cms. right palm; 3.0 x 2.0 cms., left palm 2.0 x 2.0 cms. chest; 3.0 x 2.0 cms. chin

Abrasion- 3.0 x 2.0 cms., right chin; 2.0 x 1.0 cms. right breast 2.0 x 2.0 cms. left breast.

Lacerated wound. 2.5 cms. pre-auricular area, left

Stab Wounds-

1. Six (6) in number, gaping, within an area of 9.0 x 6.0 cms. located on the left side of the neck directed medially involving the skin, blood vessels, lacerating the throat and esophagus, with depths from 2-5 cms. One end is contused the other is sharp.

2. Three (3) in number, gaping, within an area of 6.0 x 5.0 cms. one end is contused, the other is sharp, located on the right side of the neck; directed medially involving the skin, blood vessels, hitting the trachea with depths from 2.4 cms.

Brain and visceral organs-very pale

Heart chambers- contain a very small amount of dark clotted blood.

Stomach- empty

Hymen- fresh lacerations on all sides with an opening of about 4.0 x 3.0 cms., massive blood clots accumulated within vaginal canal.

Perineum- V- shaped median laceration measuring about 5.0 cms. (Exhibit "E")

Dr. Aguda explained the nature of the fresh lacerations on the hymen of the victim as well as the massive blood clots accumulated within the vaginal canal. He testified that these injuries were caused not only by human penis that penetrated the hymen but by a hard foreign object like a bottle. (Ibid, p. 30). The abrasions on the left and right breast could have been caused by human bites. (Ibid, p. 25). The stab wounds described as gaping and the stab wounds located within the neck area were inflicted on the victim by her assailant using a single bladed weapon. (Ibid, p. 26). It is very possible that the victim was sexually abused. (Ibid, p. 31). The heart chambers of the victim contained very small amount of dark clotted blood, which means there was not enough blood anymore in the heart as the victim suffered massive bleeding. This was due to the nine (9) stabbed wounds inflicted on the neck of the victim. The proximate cause of death of the deceased was severe hemorrhage secondary to multiple stab wounds. (Ibid, pp. 34-35). The abrasions and hematomas on the body of the victim are indications of struggling during the sexual attack on the victim. (Ibid, p. 34).[4]

Both accused denied the charges. Adel Tuangco testified that he was at home in the evening in question, a defense which was corroborated by his common-law wife Liza Reyes Tuangco,[5] by his mother, Erlinda Dizon Tuangco[6] and his sister Glessen. For his part Sonny Tuangco claimed he was alone in his house at Balungao, Calumpit, Bulacan in the evening of January 3, 1995.[7]

The trial court made the following findings of facts:

"From the evidence adduced in these cases, it was established that-

The victim Aurea Eugenio, single and a resident of Sitio Dalan Baka, Barangay Sulipan, Apalit Pampanga was working as a bookkeeper in Centro Escolar University Credit Cooperative located at the City of Manila.

On January 3, 1995, the first working day of the year, she reported to office bringing with her a Kodak camera to take pictures of her officemates for souvenir. At about 5:00 o'clock in the afternoon of the same day, she told her officemates that she will go to their house in Apalit, Pampanga although she was not scheduled to do so as it was an ordinary week day. She brought with her, the camera and the P3,000.00 cash money to be spent on

the occasion of their town fiesta. From the office, she proceeded to the terminal of Victory Liner Bus at Caloocan City, where, at 6:00 o'clock in evening, she boarded Victory Liner Bus No. 272.

Between 7:00 and 7:30 o'clock in the evening, the bus stopped at Sitio Dalan Baka, Barangay Sulipan, Apalit, Pampanga where the victim Aurea Eugenio alighted. From the national highway, the house of the victim was about three hundred (300) meters away. Although lights can be seen from the said house, it was very dark and silent on the road going to the same and coming from the highway. On either side of the road were tall grasses and trees. On the side of the highway was a waiting shed. Inside the waiting shed were four (4) persons. They were three (3) accused, namely, Adel Tuangco y Dizon, his brother Sonny Tuangco y Dizon alias 'Baba' and Nelson Pineda, Jr. alias 'Jun Tattoo' and the prosecution eye witness Silvestre Sanggalan alias 'Popoy, alias 'Pipi'.

Earlier, at around 6:00 o'clock in the evening of the same day, the three (3) accused and witness Sanggalan were inside a 'beer house' located along the national highway at Calumpit, Bulacan, drinking beer and gin. Together with four (4) other persons, they started their drinking spree when it was still daytime. When nighttime came, the three (3) accused and witness Sanggalan left their companions and proceeded to a rice field near the highway. They stayed in the waiting shed located at the opposite side of the road where the victim Aurea Eugenio alighted. The four (4) went to the rice field because they were already drunk. While inside the waiting shed, accused Sonny Tuangco and Nelson Pineda took Pidol cough syrup.

The three (3) accused left the waiting shed and went to the rice field to follow the victim who had already crossed the national highway and was walking towards her house. The three (3) accused asked Sanggalan to leave. However, instead of leaving, Sanggalan hid behind the bushes and trees, thus, he was able to witness the incident in question.

As soon as the accused caught up with the victim, Nelson Pineda, Jr. pushed her while Adel Tuangco got hold of her shoulder bag. Sonny Tuangco and Nelson Pineda pushed the victim Aurea Tuangco against a tree and stabbed her several times in the neck. At this point, Adel Tuangco joined the two (2) and he also stabbed the victim until she fell down. As the victim was lying on the ground, Nelson Pineda inserted the bottle of Pidol cough syrup in her private parts. Sonny Tuangco further pushed the bottle into the body of the victim. While the bottle was being pushed, Adel Tuangco was hugging the victim who was still alive and resisting the assault being made against her person. Together, the three (3) accused removed the blouse, bra, skirt and panty of Aurea Eugenio. Thereafter, Adel Tuangco, Nelson Pineda, Jr. and Sonny Tuangco, in that order, successively raped the victim. While Adel Tuangco was raping the victim, the two (2) other accused were beside him. When Nelson Pineda, Jr. and Sonny Tuangco were taking their respective turns in raping the victim, the two (2) other accused were holding her hands.

After raping the victim, Adel Tuangco took her bag, Pineda got her camera and cash money while Sonny Tuangco got her ring, earrings and watch. Thereafter, Nelson Pineda, Jr. and Sonny Tuangco went to the rice field while Adel Tuangco proceeded to the opposite direction.

The body of the victim was already stiff when found by witness Michael Enriquez the following day lying on the rice field owned by his grandfather, Ignacio Enriquez. The body was lying on its back with the hands upraised, the blouse raised upwards and naked from the waist down. The private parts of the victim had an opening of about two (2) inches and with blood all over it.

The fresh lacerations on the hymen of the victim as well as the massive blood clots accumulated within the vaginal canal were caused not only by human penis that penetrated her private parts but by hard foreign object like a bottle. The abrasions on the breast of the victim could have been caused by human bites. The stab wounds located within the neck area of the victim were inflicted by her assailant using a single bladed weapon. The nine (9) stab wounds in the neck induced severe hemorrhage which was the proximate cause of the victim's death. The abrasions and hematomas on the body of the victim are indications of struggling during the sexual attack on the victim."^[8]

The trial court ruled that the guilt of the accused as charged was established with the required quantum of evidence and concluded that the three accused conspired to commit the crimes charged. The accused were sentenced as follows:

"WHEREFORE, the Court finds the accused Adel Tuangco y Dizon and Sonny Tuangco y Dizon guilty beyond reasonable doubt as principals of the crime of theft defined in Article 309 in relation to Article 308 of the Revised Penal Code and of the crime of Rape with Homicide defined in Article 335, as amended, of the same Code and hereby renders judgment as follows:

1. In Criminal Case No. 95-1609(M), the said accused are convicted of Theft and hereby sentenced to suffer the indeterminate penalty ranging from six (6) months of arresto mayor as minimum to two (2) years, eleven (11) months and ten (10) days of prision correccional as maximum; the said accused are likewise ordered to indemnify the heirs of the victim Aurea Eugenio, jointly and severally, the amount of P3,000.00.

2. In Criminal Case No. 95-1610(M), the aforesaid accused are convicted of two (2) special complex crimes of Rape with Homicide and each of them is hereby sentenced to two (2) death penalties; both of them are ordered, jointly and severally, to indemnify the heirs of the victim Aurea Eugenio the sum of P105,150.00 as actual damages, and the further sums of a) P50,000.00 for the victim's death, b) P100,000.00 as moral damages and c) P50,000.00 as exemplary damages, or a total of P200,000, in each of the two (2) crimes which they have separately committed and each shall pay one-half (½) of the costs.

SO ORDERED.[9]

The case is before this Court on automatic review.

The Public Attorney's Office submits the following assignment of errors in the appellants' brief:

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE ALLEGED EYEWITNESS ACCOUNT OF SILVESTRE SANGGALAN WHO IS A DEAF-MUTE AND UNSCHOOLED.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING BOTH ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE AND THEFT."[10]

In discrediting the testimony of the deaf-mute eyewitness, accused- appellant points out that because Silvestre Sanggalan has had no formal schooling in a special school for deaf-mutes, the possibility that resort to conjectures and surmises, brought about by overzealousness to understand what his witness really wanted to say could not be discounted. Thus, accused-appellant cites certain portions of Sanggalan's testimony which appeared unclear, e.g., the witness admitted that the place where the incident happened was "very dark", and he was inconsistent as to who, between Adel Tuangco or Jun Tatoo, was the first to rape the victim. Thus, his handicap prevented a truthful narration of what really transpired.

The Solicitor General prays for an affirmance of the decision in all respects. He asserts that a deaf-mute is qualified to testify, and the interpreter explained that through sign language, Sanggalan demonstrated how Eugenio was raped and thereafter killed by appellants and Pineda, Jr. It is claimed that the inconsistencies pointed out are minor and do not detract from the positive identification made by witness Sanggalan of the accused-appellants as the persons who raped and killed Eugenio and took her personal effects.

After a very careful examination of the evidence of record, we resolve to affirm the judgment of conviction. We

find no cogent justification to disturb or set aside the finding of the trial court upholding the credibility of the deaf-mute witness, on the following rationalization:

"This Court, cognizant of the physical handicap of the eyewitness Silvestre Sanggalan, carefully scrutinized his testimony and noted that the same were made, on several occasions from July 10, 1995 when he was called for the first time to testify until July 5, 1996 when he was recalled for the purpose of cross-examination on behalf of accused Sonny Tuangco, in a candid and straightforward manner. While the Court observes minor inconsistencies in his declarations, these are not reasons to render his testimony incredible. On the contrary, it is well-established that minor inconsistencies in the testimony of a witness are indications that the same is not rehearsed and all the more should be considered credible. Thus, discrepancies in minor details indicate veracity rather than prevarication and only tend to bolster the probative value of such testimony. (*People vs. Mocasa*, 229 SCRA 422).

This Court likewise evaluated very carefully, the qualifications and competence of Eva Sangco, the sign language expert utilized by the prosecution and found the same to be sufficient to put on record with accuracy, the declarations being made by witness Sanggalan on the witness stand. According to Eva Sangco, sign language experts have different mode of communications. These are a) oral method b) simultaneous method c) pantomime d) reverse interpretation e) speech reading f) natural signs and gestures and g) interactive writings which are more on dramatization and drawing illustrations. In the interpretation of the declarations of witness Sanggalan, Eva Sangco employed the natural homemade sign method. Eva Sangco has undergone several trainings on this particular method. (TSN, July 21, 1995, pp. 7-8).

In its futile attempt to destroy the credibility of witness Sanggalan, the defense attacked his character and present a witness in the person of Merlita Baliber to show that he is a drunkard and a drug addict. Likewise the defense presented documentary evidence (Exh. "3") to show that Sanggalan had been accused of rape in a criminal case before the Regional Trial Court of Pasig, Rizal. These evidence presented by the defense are unavailing. In *People vs. Dominguez*, 217 SCRA 170, it was held that even a fact of prior criminal conviction alone does not suffice to discredit a witness. And in *People vs. Tanco*, 218 SCRA 494, it was held that the mere pendency of a criminal case against a person does not disqualify him from becoming a witness. For the test to measure the value of the testimony of a witness is whether or not such is in conformity to knowledge and consistent with experience of mankind. (*People vs. Morre*, 217 SCRA 219). This Court finds it unnecessary to reiterate the earlier discussion as to why it gives credence to the testimony of witness Sanggalan.

If at all, the evidence of the defense with respect to the character of Sanggalan substantiated the theory of the prosecution- that these people, witness Sanggalan, and the three (3) accused were often times seen drinking liquor and taking prohibited drugs. No less than defense witness Merlita Baliber testified that on one occasion, she saw witness Silvestre Sanggalan and accused Nelson Pineda, Jr. going out of the 'beer house' to join their three (3) other companions walking along the highway. That Baliber would deny that accused Adel Tuangco and Sonny Tuangco were among those people, is expected. For, as admitted by Baliber, she was asked by the mother of accused Adel Tuangco and accused Sonny Tuangco to testify in these proceedings to help the said accused. (TSN, February 7, 1996, p. 35). Then too, the demeanor by which Baliber was testifying immediately casts doubt on her motive for taking the witness stand and renders incredible her testimony. Thus, on several times at the witness stand, she had been observed smiling and not candid with her declarations. (TSN, February 7, 1996, p. 13). On one occasion, after stating that Adel Tuangco and Sonny Tuangco have nothing to do with the rape-slay of Aurea Eugenio, witness Baliber immediately laughed. (Ibid, pp. 25-26).[11]

The theory of the accused-appellant that Sanggalan "could not truthfully and convincingly convey what really transpired on that fateful night" because he had no formal schooling in a school for special persons like him and the interpreter was not the one who had taught him is not tenable.

A deaf-mute is not incompetent as a witness. All persons who can perceive, and perceiving, can make known their

perception to others, may be witnesses.[12] Deaf-mutes are competent witnesses where they (1) can understand and appreciate the sanctity of an oath; (2) can comprehend facts they are going to testify on; and (3) can communicate their ideas through a qualified interpreter.[13] Thus, in *People vs. De Leon*[14] and *People vs. Sasota*,[15] the accused was convicted on the basis of the testimony of a deaf-mute. Although in *People vs. Bustos*[16] the testimony of a deaf-mute was rejected, this was because there were times during his testimony that the interpreter could not make out what the witness meant by the signs she used. In the instant case, the interpreter was a certified sign language interpreter with twenty-two (22) years teaching experience at the Philippine School for the Deaf, had exposure in television programs and had testified in five other previous court proceedings. She possessed special education and training for interpreting sign language. The trial court evaluated her competence to put on record with accuracy the declaration made by witness Sanggalan on the witness stand, and she testified that she employed the natural or homemade sign method.[17] Needless to stress, the manner in which the examination of a deaf-mute should be conducted is a matter to be regulated and controlled by the trial court in its discretion, and the method adopted will not be reviewed by the appellate court in the absence of a showing that the complaining party was in some way injured by reason of the particular method adopted.[18] The imperfections or inconsistencies cited in appellants' brief arise from the fact that there is some difficulty in eliciting testimony where the witness is deaf-mute, but these do not detract from the credibility of his testimony, much less justify the total rejection of the same. What is material is that he knew personally the accused-appellants, was with them on the fateful night when the incident happened, and had personally witnessed the rape-slay and theft three and ½ (3 ½) meters away from the scene. He did not waver in the identification of the three accused despite rigorous cross-examination, and positively pointed to the accused-appellants as the persons who raped and killed Eugenio and took her personal effects.[19] The trial court's assessment of the credibility of Sanggalan, whose testimony was found to be candid and straightforward, deserves the highest respect of this Court.

Moreover, the testimony of Sanggalan was corroborated by the doctor who conducted the autopsy. Dr. Aguda testified that Eugenio had nine (9) stab wounds on the neck, fresh hymenal lacerations and massive blood clots within the vaginal canal, caused, among others, by the entry of a hard foreign object like a bottle and that the abrasions and hematomas on the cadaver indicated that Eugenio struggled during the assault.[20]

The defense of alibi must yield to the positive identification of the accused-appellants by Sanggalan, and the attempt of the mother of the accused-appellants, Erlinda Tuangco, a sister, Glessen Tuangco, and the common-law wife of Adel Tuangco, Liza Reyes, to corroborate such a defense must fail. Moreover, no proof was adduced to show the physical impossibility of the accused being at the scene of the crime; the evidence shows that the rape-slay took place in Sitio Dalan Baka, Barangay Sulipan, Municipality of Apalit, Pampanga, which was ten to fifteen minutes from the residence of Adel Tuangco in Frances Bukid, Calumpit, Bulacan.[21] In the case of Sonny Tuangco, who went into hiding after learning that his brother Adel was arrested, and who stayed with a relative in Caloocan City for about one (1) year until he was apprehended by the police authorities,[22] his flight should be taken as an admission of his guilt.

We also find no cogent reason to disturb the finding of conspiracy among the accused-appellants as rationalized by the trial court thus:

"First, they were together drinking in a pubhouse from where they proceeded to the rice field and stayed inside a nearby waiting shed.

Second, as soon as the victim was seen walking towards her house, the three (3) accused immediately followed her.

Third, when they caught up with the victim, they simultaneously attacked her by stabbing her neck with bladed

weapon. Thereafter, when the victim fell down, the accused aided each other in raping the victim.

Fourth, before fleeing from the scene of the crimes, the accused took the victim's cash money and personal belongings."^[23]

The impossible penalty for the rape with homicide is death. Pursuant to Article 335 of the Revised Penal Code, as amended by Section 11 of the Republic Act No. 7659, "when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death". Because of the finding of conspiracy in the commission of the complex crime of rape with homicide, the imposition of two death penalties upon each of the accused-appellants is correct.^[24]

The impossible penalty for theft is prision correccional in its minimum and medium period, if the value of the thing stolen is more than P200.00 but does not exceed P6,000.00. In this case, the amount of P3,000.00 which is the cash taken from the victim, was the only amount proven, as the value of the other objects taken was not established. Thus, the trial court correctly imposed an indeterminate penalty of six (6) months of arresto mayor as minimum to two (2) years, eleven (11) months and ten (10) days of prision correccional as maximum.

The civil indemnity must also be modified in line with prevailing jurisprudence.^[25] Thus, the civil indemnity ex delicto should be P100,000.00 for the victim's death. The award of exemplary damages is justified in view of the presence of the aggravating circumstances of cruelty, as the insertion of the bottle into the private part of the victim caused unnecessary moral and physical pain while the victim was still alive.

Four justices of this Court, however, have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the judgment convicting Adel Tuangco y Dizon and Sonny Tuangco y Dizon for the crimes of theft and rape with homicide in Criminal Case Nos. 95-1609(M) and 95-1610(M) is hereby affirmed with the modification that the civil indemnity ex delicto is increased to P100,000.00.

Upon finality of this decision, let certified true copies thereof, as well as the records of this case, be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

[1] Also spelled Tatoo.

[2] Rollo, pp. 120-121.

[3] Rollo, pp. 126-127.

[4] Rollo, p. 128-129.

[5] Tsn, January 15, 1996, pp. 5-16; pp. 25-26.

[6] December 8, 1995, pp. 7; 13; 21.

[7] Tsn, March 15, 1996, pp. 9, 13-14.

[8] Rollo, pp. 139-141.

- [9] Per Judge Sesonando E. Villon.
- [10] Appellant's Brief.
- [11] Rollo, pp. 141-143.
- [12] Rule 130, Section 20, Revised Rules of Court.
- [13] People vs. Hayag, 101 SCRA 67.
- [14] 50 Phil. 539.
- [15] 52 Phil. 281.
- [16] 51 Phil 389.
- [17] Tsn, July 21, 1995, p. 8.
- [18] People vs. Hayag, 101 SCRA 67.
- [19] Tsn, July 21, 1995, pp. 25-26.
- [20] Tsn, June 21, 1995, pp. 30-35.
- [21] Tsn, January 15, 1996, p. 22.
- [22] Tsn, June 17, 1996, p. 8.
- [23] Rollo, p. 144.
- [24] People vs. Jose, 37 SCRA 450.
- [25] People vs. Robles, 305 SCRA 273.

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