

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RADEL GALLARDE, ACCUSED-APPELLANT.

G.R. No. 133025. February 17, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

This is an appeal from the judgment of the Regional Trial Court of Tayug, Pangasinan, Branch 51, finding accused-appellant Radel Gallarde[1] (hereafter GALLARDE) guilty beyond reasonable doubt of the crime of murder in Criminal Case No. T-1978 and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of Editha Talan (hereafter EDITHA) the amount of P70,000 as actual damages.[2]

On 24 June 1997, GALLARDE was charged with the special complex crime of rape with homicide in an information whose accusatory portion reads as follows:

That on or about the 6[th] day of May 1997, in the evening, amidst the field located at Brgy. Trenchera, [M]unicipality of Tayug, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one EDITHA TALAN, a minor-10 years of age, against her will and consent, and thereafter, with intent to kill, cover the nose and mouth of the said minor resulting to her death and then bury her in the field, to the damage and prejudice of the heirs of said EDITHA TALAN.[3]

During the arraignment on 1 September 1997, GALLARDE, with the assistance of counsel, entered a plea of not guilty.[4] Trial of the case immediately ensued as the defense waived the holding of the pre-trial conference.

The witnesses presented by the prosecution were Mario Fernandez, Jaime Cabinta, Rosy Clemente, Felicisimo Mendoza, Alfredo Cortez, Renato Fernandez, SPO4 Oscar B. Lopez, and Dr. Perfecto Tebangin. The relevant and material facts established by their testimonies are faithfully summarized in the Appellee's Brief as follows:

In the evening of May 26, 1997, at the house of spouses Eduardo and Elena Talan in Brgy. Trenchera, Tayug, Pangasinan, their neighbors converged. Among them were appellant Radel Gallarde, Francisco, Renato, Edwin, all surnamed Fernandez, Romel Hernandez, Jaime Cabinta, Rosy Clemente, Jon Talen, Noel Arellaga and Ramil Bargon. Idling by was Editha, 10 year old daughter of spouses Talan. A fluorescent lamp illuminated them as they partook beer (TSN dated October 13, 1997, pp. 3-4).

After a while, Roger stood up and invited Jaime and appellant to dine in the kitchen. As they partook of the meal, appellant suddenly left. Jaime, too, stepped out of the kitchen to urinate. Outside the house, he chanced upon appellant and Editha talking to each other. Jaime whistled at appellant but instead of minding him, the latter sprinted towards the road leading to his house (Id., pp. 4-6).

Thereafter, Editha entered the kitchen and took hold of a kerosene lamp. Jaime followed her and asked where she was going. Editha answered that she would look for appellant. Soon Editha left enroute to where appellant fled (Id., pp. 7-8).

By 10:00 o'clock that evening, the drinking buddies had dispersed but Jaime, Francisco, Edwin and Rose regrouped at Renato's place where they talked and relaxed. Moments later, Roger arrived and informed them that Editha was missing. Roger asked the group to help look for her (Id., p. 10).

Elena Talan informed his uncle, Barangay Ex-kagawad Mario Fernandez, about her daughter's disappearance. The latter, together with his son Edwin, wife Virginia and nephew Freddie Cortez wasted no time in joining their neighbors search the houses, dikes and fields to look for the missing child. The searchers used a lighted rubber tire (TSN dated Sept. 24, 1997, pp. 8-10 and 24).

When Jaime mentioned that appellant was the last person he saw talking to Editha, the searchers went back to the house of appellant. About 7 meters away from appellant's house, one of the searchers, Alfredo Cortez, found Editha's left foot slipper (TSN dated October 22, 1997, pp. 4-6). Suddenly, Edwin Fernandez announced: "Tata, Radel is here!" pointing to the toilet about 6 meters away from appellant's house. The searchers found appellant squatting with his short pants. His hands and knees were covered with soil. When confronted by ex-kagawad Hernandez why he was there, appellant answered he was relieving himself (Id., pp. 11-16).

Asked where Editha was, appellant replied: "I do not know, I did not do anything to her." When told – "according to Jimmy, you were with Editha," appellant responded "I let her go and brought her back to the dike and let her go home." To the next question, "where did you come from since a while ago you were not yet in this toilet?" appellant answered "I was with Kiko, I was asleep in their house. One of the searchers Mario Bado, got angry and countered that appellant's statement was impossible because Kiko was with him drinking (Id., pp. 16-20).

After the confrontation at the toilet, Ex-kagawad Fernandez brought appellant to Brgy. Captain Felicisimo Mendoza, informing the latter that appellant was the last person seen talking with the missing child. Fernandez then rejoined the searchers (Id., pp. 21-22).

Back in the field, Virginia Fernandez tripped on a wet ground. As she reached for her slipper, she saw Editha's right foot slipper (the other one was earlier found near the house of appellant) (Id., pp. 23-24).

Around 3 meters farther from Editha's right foot slipper; another slipper was found. It was old, 8 to 9 inches in length and appellant was seen wearing it in the morning of that day (TSN dated Sept. 25, 1997, pp. 25).

The searchers, thereafter, noticed disheveled grasses. Along the way, they saw a wide hole among the disheveled grass. Ex-kagawad Fernandez accidentally dropped the lighted rubber tire and as his nephew Freddie picked it up, the latter exclaimed: "Uncle, look at this loose soil!" Ex-kagawad Fernandez forthwith scratched some earth aside and then Editha's hand pitted out. The Fernandez screamed in terror (Id., pp. 5-6).

Meantime, Barangay Captain Mendoza heard shouts saying: "She is here, she is now here already dead!" Mindful of appellant's safety, Brgy. Captain Mendoza decided to bring appellant to the municipal building. On their way though, they met policemen on board a vehicle. He flagged them down and turned over the person of appellant, saying: "Here is the suspect in the disappearance of the little girl. Since you are already here, I am giving him to you" (TSN dated Oct. 21, 1997, pp. 4-5).

The policemen together with appellant proceeded to where the people found Editha. One of the policemen shoved more soil aside. The lifeless Editha was completely naked when she was recovered. (Id., pp. 9-10).

The cause of Editha's death as revealed in the post-mortem examination showed "suffocation of the lungs as a result from powerful covering of the nose and mouth, associated with laceration of the vagina and ruptured hymen (Exh. "T", TSN dated Oct. 23, 1997, pp. 22-23)."[5]

On the other hand, GALLARDE was the lone witness for the defense. He interposed a denial and the alibi that he was at home with his mother and brothers at the time the crime occurred. He declared that he is 18 years old,

single, a former construction worker. He knew EDITHA, a neighbor whom he considered as a sister because she used to come to his house. They never had a quarrel or misunderstanding. He neither raped nor killed Editha.[6]

On cross-examination by the prosecutor and to questions propounded by the court, GALLARDE admitted that he saw Editha on the night of 6 May 1997 in her parent's house, particularly in the kitchen. He was there because he joined a group drinking Colt 45 beer, as he was called by Rudio Fernandez. He drank and had dinner in the kitchen. After dinner he returned to the drinking place and eventually went home because he was then a little drunk. He knows Kgd. Mario Fernandez, but after he left the Talan residence he did not see Kgd. Fernandez anymore. Kgd. Fernandez saw him inside his (Gallarde's) toilet on the night of May 6; thereafter Fernandez took him to the barangay captain and later he was turned over to the PNP at Camp Narciso Ramos. The police informed him that he was a suspect in the rape and killing of Editha Talan, and he told them that he did not commit the crime. At the Talan residence he was wearing short pants and rubber slippers. Fernandez asked him at the police headquarters to pull down his shorts and he complied. He was then wearing briefs with a hemline that was a little loose. He was informed that a cadaver was recovered near his house. When he was asked questions while in police custody, he was not represented by any lawyer.

GALLARDE further declared on cross-examination and on questions by the court that he considered Editha Talan as a sister and her parents also treated him in a friendly manner. When he came to know that Editha's parents suspected him of the crime, he was still on friendly terms with them. However, he did not go to them to tell them he was innocent because they brandished a bolo in anger.

Finally, he testified that in the evening of May 6 he came to know that Editha died. She was still alive when he was drinking at the back of the Talan house and left for home. From the time he arrived, he never left again that night, and his mother and brothers knew it for a fact.[7]

On 12 February 1998, the trial court rendered a decision convicting GALLARDE of the crime of murder only, not of the complex crime of rape with homicide because of the lack of proof of carnal knowledge. It observed:

Exh. "T" and Dr. Tebangin's testimony thereon show that the late Editha Talan sustained slit wounds inflicted as a means of suffocating her to death, a laceration of the lower portion of her vagina, and a ruptured hymen. What allegedly oozed from her vagina was blood, coupled with dirt. Had there been observed the presence of even just a drop of seminal fluid in or around her vagina, the Court would readily conclude that the laceration and rupture resulted from phallic intrusion. Without such observation, however, "carnal knowledge" as element of rape would be an open question.

The trial court did not appreciate the alternative circumstance of intoxication either as a mitigating or aggravating circumstance pursuant to Article 15 of the Revised Penal Code because GALLARDE's alleged inebriation on the night of 6 May 1997, was not satisfactorily proven.

As to the civil aspect of the case, the trial court considered the stipulation of the parties on 27 October 1997 fixing a liquidated amount of P70,000 as actual damages, and leaving the matter of moral damages to the discretion of the court. The trial court was not inclined to award moral damages because the "evidence before it tends to disclose that on the night of 6 May 1997, before she died, Editha was a much-neglected child."

Accordingly, in its decision[8] of 12 February 1998, the trial court decreed:

WHEREFORE, his guilt having been established beyond a reasonable doubt, the Court hereby convicts the accused RADEL GALLARDE Y HERMOSA of the crime of MURDER, and sentences him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the late Editha Talan in the negotiated sum of P70,000.00.[9]

His motion for reconsideration,[10] having been denied by the trial court in its Resolution[11] of 28 February 1998, GALLARDE seasonably appealed to us.

We accepted the appeal on 9 September 1998.

In his Appellant's Brief filed on 16 March 1999, GALLARDE alleges that the trial court committed the following errors:

- In convicting [him] of the crime of murder in an information for rape with homicide.
- In concluding that the prosecution has proven beyond reasonable doubt that [he] was responsible for the death of Editha Talan.
- In not acquitting [him] on the ground of notches of proof beyond reasonable doubt.[12]

We sustain GALLARDE's contention that the trial court erred in convicting him of murder in an information charging him of rape with homicide. A reading of the accusatory portion of the information shows that there was no allegation of any qualifying circumstance. Although it is true that the term "homicide" as used in special complex crime of rape with homicide is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on the occasion of rape,[13] it is settled in this jurisdiction that where a complex crime is charged and the evidence fails to support the charge as to one of the component offense, the accused can be convicted of the other.[14] In rape with homicide, in order to be convicted of murder in case the evidence fails to support the charge of rape, the qualifying circumstance must be sufficiently alleged and proved. Otherwise, it would be a denial of the right of the accused to be informed of the nature of the offense with which he is charged.[15] It is fundamental that every element of the offense must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.[16]

In the absence then in the information of an allegation of any qualifying circumstance, GALLARDE cannot be convicted of murder. An accused cannot be convicted of an offense higher than that with which he is charged in the complaint or information under which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, but an accused cannot be convicted of any offense, unless it is charged in the complaint or information for which he is tried, or is necessarily included in that which is charged. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial. To convict an accused of a higher offense than that charged in the complaint or information under which he is tried would be an unauthorized denial of that right.[17]

Nevertheless, we agree with the trial court that the evidence for the prosecution, although circumstantial, was sufficient to establish beyond reasonable doubt the guilt of GALLARDE for the death of EDITHA.

Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[18] The prosecution is not always tasked to present direct evidence to sustain a judgment of conviction; the absence of direct evidence does not necessarily absolve an accused from any criminal liability.[19] Even in the absence of direct evidence, conviction can be had on the basis of circumstantial evidence, provided that the established circumstances constitute an unbroken chain which leads one to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[20]

The rules on evidence and precedents sustain the conviction of an accused through circumstantial evidence, as long as the following requisites are present: (1) there must be more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond doubt of the guilt of the accused.[21]

The importance of circumstantial evidence is more apparent in the prosecution of cases of rape with homicide. The nature of the crime of rape, where it is usually only the victim and the rapist who are present at the scene of the crime, makes prosecutions for the complex crime of rape with homicide particularly difficult since the victim can no longer testify against the perpetrator of the crime. In these cases pieces of the evidence against the accused are usually circumstantial.[22]

The circumstantial evidence in the case at bar, when analyzed and taken together, leads to no other conclusion than that GALLARDE, and no other else, killed EDITHA and that he is guilty therefor. We quote with approval the lower court's enumeration of the circumstantial evidence in this case:

- Gallarde, 18, and Editha, 10, were neighbors and friends, even as she used to frequent his place.
- Both were at the Talan residence on the night of May 6, 1997 while neighbors indulged themselves in beer.
- Among said neighbors Cabinta saw them hand in hand by the toilet situated five (5) meters east of the Talan kitchen.
- After Cabinta whistled he saw Gallarde run home towards north after letting go of Editha's hands. Neighbor Clemente also noticed that Gallarde disappeared, and that Editha returned to the kitchen.
- Cabinta followed Editha back to the kitchen, and saw her holding a kerosene lamp. She told him that she was going to look for "Dalpac," and off she went in the same direction Gallarde took.
- Gallarde wore short pants and rubber slippers at the drinking place. Subsequently he was seen wearing shorts in his own toilet.
- At past 10:00 in the evening during an intensive search for the then missing Editha, her lifeless body was found in a shallow grave situated some distance behind Gallarde's residence.
- Before Editha's body was discovered, a searcher found a girl's slipper (Exh. "B"), 5-6 inches long, among thickets seven meters away from Gallarde's house.
- Another searcher saw a second slipper (Exh. "B-1"), of the same color and size as the first one. Both slippers were Editha's, the searchers recalled.
- A third rubber slipper (Exh. "C") was thereafter found in the field, near Exh. "B-1." It was an old slipper, 8-9 inches long and with a hole at the rear end.
- Soil stuck to each one of the three slippers.
- Gallarde was not at home when searchers went to look for him there, after Cabinta told them that Editha was last seen with Gallarde.
- When Gallarde was discovered squatting in the dark toilet behind his house and beside the thickets, his shorts were up and on. His hands and knees were soiled.
- At the toilet he was asked the innocent question of where Editha was and he answered revealingly, thus: "I did not do anything to her" and "I let her go and brought her back to the dike and let her go home."
- When asked where he had been, as the toilet was first seen empty, Gallarde said he was with Kiko and he slept at the latter's house, which answer Mario Bado promptly refuted saying, "Vulva of your mother... Kiko

was with me drinking." Bado and Kiko were not at the place of the Talans that night.

- Yanked out of the dark toilet near his own house, Gallarde joined Kgd. Mario Fernandez sans protest.

- Dr. Tebangin found on Editha's cheeks two slit wounds, each being an inch away from her nostrils. Both wounds were fresh and reddish.

From the lower portion of Editha's vagina blood oozed, accompanied by dirt.

Her hymen was ruptured and was still bleeding.

The medico-legal concluded that there must have been a forceful covering of Editha's nose and mouth because of the presence of the slit wounds on both sides of her face, and that in 30 seconds unconsciousness and weakening resulted, with the vaginal injuries contributing to her death.[23]

As to the crime of rape, there is much to be desired with respect to the prosecution's evidence therefor, but not for the reason adduced by the trial court, namely, the absence of spermatozoa in EDITHA's private part and thereabout. It is well settled that the absence of spermatozoa in or around the vagina does not negate the commission of rape.[24] Our doubt on the commission of rape is based on the fact that there is at all no convincing proof that the laceration of the vagina and the rupture of the hymen of EDITHA were caused in the course of coitus or by a male organ. Our meticulous reading of the testimony of Dr. Tebangin disclosed that he was never asked if the laceration and the rupture could have been caused by the penis of a human being. Needless to state, these could have been caused by any object other than the penis of a person.

We cannot sustain the contention of GALLARDE that he was not positively identified as the assailant since there was no eyewitness to the actual commission of the crime. It does not follow that although nobody saw GALLARDE in the act of killing EDITHA, nobody can be said to have positively identified him. Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[25] If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.

As discussed above, the circumstantial evidence as established by the prosecution in this case and enumerated by the trial court positively established the identity of GALLARDE, and no one else, as the person who killed EDITHA.

We cannot agree with the trial court's rejection of the photographs (Exhibits "I," "J" and "K") taken of GALLARDE immediately after the incident on the ground that "the same were taken while [GALLARDE] was

already under the mercy of the police." The taking of pictures of an accused even without the assistance of counsel, being a purely mechanical act, is not a violation of his constitutional right against self-incrimination.

The constitutional right of an accused against self-incrimination[26] proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required.[27] The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act.[28] Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy;[29] and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim;[30] to expel morphine from his mouth;[31] to have the outline of his foot traced to determine its identity with bloody footprints;[32] and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.[33]

There is also no merit in GALLARDE's argument that the failure of the prosecution to prove beyond reasonable doubt the place and time of the commission of the crime is fatal and will justify his acquittal.

The place, time and date of the commission of the offense are not essential elements of the crime of rape with homicide. The gravamen of the offense is the carnal knowledge of a woman and that on the occasion of or as a reason thereof, the crime of homicide was committed. Conviction may be had on proof of the commission of the crime provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information, within the period of the statute of limitation, and within the jurisdiction of the court.[34]

The allegation of the place of commission of the crime in the complaint or information is sufficient if it can be understood therefrom that the offense was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court.[35] The rule merely requires that the information shows that the crime was committed within the territorial jurisdiction of the court. The Court may even take judicial notice that said place is within its jurisdiction.[36]

As to the time of the commission of the crime, the phrase "on or about" employed in the information does not require the prosecution "to prove any precise date or time," but may prove any date or time which is not so remote as to surprise and prejudice the defendant."[37]

Contrary to the claim of GALLARDE, the prosecution was able to establish the proximate time of the commission of the crime, which was sometime between 9:00 p.m., when GALLARDE left the house of Talan followed by EDITHA, and 10:30 p.m., when the body of EDITHA was found. This was further corroborated by the examining physician who testified, on the basis of the degree of rigor mortis, that EDITHA died more or less, at 10:00 p.m. of 6 May 1997.[38]

Likewise, GALLARDE's alibi and bare denial deserve no consideration. He did not present witnesses who could confirm his presence in his house. No member of his family corroborated him on this matter. The defenses of denial and alibi, if unsubstantiated by clear and convincing evidence, are negative and self-serving, deserve no weight in law, and cannot be given evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[39]

Moreover, even assuming that GALLARDE's claim is true, his stay in his house did not preclude his physical presence at the locus criminis or its immediate vicinity. The place where the body of EDITHA was found buried

was a few meters from his house, the place pointed to in the alibi and can be reached in a short while. For the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, he must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[40]

Besides, no evil motive has been established against the witnesses for the prosecution that might prompt them to incriminate the accused or falsely testify against him. It is settled that when there is no showing that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that the witnesses were not so actuated and their testimonies are thus entitled to full faith and credit.[41] Testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given credence.[42]

With respect to GALLARDE's claim that he was arrested without warrant, suffice it to say that any objection, defect, or irregularity attending an arrest must be made before the accused enters his plea.[43] The records show no objection was ever interposed prior to arraignment and trial.[44] GALLARDE's assertion that he was denied due process by virtue of his alleged illegal arrest is negated by his voluntary submission to the jurisdiction of the trial court, as manifested by the voluntary and counsel-assisted plea he entered during arraignment and by his active participation in the trial thereafter.[45] It is settled that any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived.[46] It is much too late in the day to complain about the warrantless arrest after a valid information had been filed and the accused arraigned and trial commenced and completed and a judgment of conviction rendered against him.[47] Verily, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error; such arrest does not negate the validity of the conviction of the accused.[48]

Homicide, which we find to be the only crime committed by GALLARDE, is defined in Article 249 of the Revised Penal Code and is punished with reclusion temporal. In the absence of any modifying circumstance, it shall be imposed in its medium period. GALLARDE is entitled to the benefits of the Indeterminate Sentence Law. Accordingly, he can be sentenced to suffer an indeterminate penalty ranging from ten (10) years of the medium period of prision mayor as minimum to seventeen (17) years and four (4) months of the medium period of reclusion temporal as maximum.

As to the civil aspect of the case, the parties agreed on P70,000 as liquidated damages. This should be construed as actual damages. However, as indemnity for death, the additional sum of P50,000, per current case law, should be awarded.

WHEREFORE, the assailed decision of the Regional Trial Court, Branch 51, Tayug, Pangasinan, in Criminal Case No. T-1978 finding accused-appellant RADEL GALLARDE guilty of the crime of murder is hereby modified. As modified, RADEL GALLARDE is hereby found guilty beyond reasonable doubt, as principal, of the crime of Homicide, defined under Article 249 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty ranging from ten (10) years of the medium period of of prision mayor as minimum to seventeen (17) years and four (4) months of the medium period of reclusion temporal as maximum, and to pay the heirs of the victim, Editha Talan, the sum of P70,000 as liquidated actual damages and P50,000 as indemnity for the death of Editha Talan.

Costs against accused-appellant RADEL GALLARDE in both instances.

SO ORDERED. DAVIDE, JR.J

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Spelled GALLARDI in the Information but corrected, upon order of the trial court made in open court on 17 December 1997 when accused told the court that his surname is GALLARDE (TSN, 17 December 1997, 5)

[2] Rollo, 23-47. Per Judge Ulysses Raciles Butuyan.

[3] Rollo, 12.

[4] Original Record, vol. I (OR 1), 37.

[5] Rollo, 76-83.

[6] TSN, 17 December 1997, 3-4.

[7] Rollo, 7-13.

[8] Supra note 1.

[9] Rollo, 47.

[10] OR I, 142-144.

[11] Id., 146.

[12] Rollo, 57.

[13] See *People v. Penillos*, 205 SCRA 546, 564 (1994); *People v. Sequino*, 264 SCRA 79,101 (1996)

[14] *U.S. v. Lahoylahoy*, 38 Phil. 330,334 (1918)

[15] *People v. Pardilla*, 92 SCRA 591 (1979)

[16] *People v. Ramos*, 296 SCRA 559, 576 (1998), citing *Balitaan v. CFI of Batangas, et al.*, 115 SCRA 729 (1982)

[17] *Ibid.*, citing *Matilde, Jr. v. Jabson, etc., et al.*, 68 SCRA 456 (1975)

[18] *People v. Danao*, 253 SCRA 146 (1996)

[19] *People v. Lopez*, G.R. No. 131151, 25 August 1999.

[20] *People v. Tiozon*, 198 SCRA 368 (1991); *People v. Garcia*, 215 SCRA 349 (1992); *People v. Alvero*, 224 SCRA 16 (1993)

[21] Section 4, Rule 133, Rules of Court; *People vs. Abrera*, 283 SCRA 1 (1997)

[22] *People v. Cristobal*, 245 SCRA 620 (1995)

[23] Rollo, 44-46.

[24] *People v. Tismo*, 204 SCRA 535 [1991]; *People v. Yabut*, G.R. No. 133186, 28 July 1999.

[25] *People v. Raquino*, G.R. No. 132480, 30 September 1999.

[26] Section 12, Article III, Constitution.

- [27] *People v. Olvis, et al.*, G.R. No. 71092, 154 SCRA 513 (1987)
- [28] *People v. Casinillo*, 213 SCRA 777 (1992); *People v. Tranca*, 235 SCRA 455 (1994); *People v. Rondero*, G.R. No. 125687, 9 December 1999.
- [29] *Villaflor v. Summers*, 41 Phil. 62 (1920)
- [30] *U.S. v. Tan Teng*, 23 Phil. 145 (1912)
- [31] *U.S. v. Ong Siu Hong*, 36 Phil. 735 (1917)
- [32] *U.S. v. Salas*, 25 Phil. 337 (1913); *U.S. v. Zara*, 42 Phil. 308 (1921)
- [33] *People v. Otadora, et al.*, 86 Phil. 244 (1950)
- [34] *People v. Puedan*, 196 SCRA 388, 393 (1991)
- [35] Sec. 10, Rule 110 of the Revised Rules of Court.
- [36] *U.S. v. Chua Mo*, 23 Phil. 233 (1912)
- [37] *People v. Borromeo*, 123 SCRA 253 (1983)
- [38] TSN, 23 October 1997, 25-26.
- [39] *People v. Gayon*, 269 SCRA 587 (1997); *People v. Patalin, et al.*, G.R. No. 125539, 25 July 1999.
- [40] *People v. Compendio*, 258 SCRA 254, 263-264 (1996); *People v. Alshaika*, 261 SCRA 637, 646 (1996); *People v. Naguita, et al.*, G.R. No. 130091, 30 August 1999.
- [41] *People v. Hernandez*, G.R. No. 108027, March 4, 1999.
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- [43] *Padilla v. Court of Appeals*, 269 SCRA 402 (1997)
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- [45] *People v. Navarro*, 297 SCRA 338 (1998)
- [46] *People v. Lopez, Jr.*, 245 SCRA 95 (1995)
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