THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO NANAS ALIAS “IKOT”, ACCUSED-APPELLANT.

G.R. No. 137299. August 21, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

For our review is the decision[1]of the Regional Trial Court of Iloilo City, Branch 31, dated July 31, 1998 finding the accused-appellant Francisco Nanas, alias "Ikot" guilty beyond reasonable doubt of the crime of rape with homicide in Criminal Case No. 43624 and sentencing him to the supreme penalty of death.

The accused-appellant Francisco Nanas was charged with the crime of rape with homicide in an information[2] dated May 23, 1994 which reads as follows:

> "That on or about April 25, 1994, in the municipality of Miagao, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, armed with a knife, bolo, and a piece of bamboo, and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously had sexual intercourse with Edna Fabello without her consent and against her will and on the occasion of such rape, with deliberate intent and decided purpose to kill, did, then and there willfully, unlawfully and feloniously attack, assault and stab, hack and strike said Edna Fabello with the weapons which the accused was then provided, hitting the victim on the different parts of her body which caused her death."

On August 3, 1994, accused-appellant was arraigned whereupon he entered a plea of not guilty to the crime charged.[3]

The prosecution presented four (4) witnesses: Dr. Mary Joyce M. Faeldan, Bienvenido Beatisola, Serapion Feronilmo, and Primitivo Fabello. The case against the accused-appellant, as culled from the testimonial and documentary evidence presented by the prosecution, is as follows:

At about 8:00 in the evening of April 25, 1994, witness Bienvenido Beatisola and a certain Esteban Jumadron arrived at the dance hall in Barangay Tugara-ao, Miagao, Iloilo, where a dance was being held on the occasion of the fiesta of the barangay. Beatisola saw the victim Edna Fabello at the gate of the dance hall pinning ribbons on some of the revelers at the dance hall. As he was acquainted with the victim, he approached her and exchanged some pleasantries. Edna Fabello asked Beatisola to help her sister who was a candidate in the fund raising contest but he replied that he has no money[4].

After this brief conversation with the victim, Beatisola went out of the dance hall to urinate and there he saw accused-appellant Francisco Nanas, alias "Ikot", drinking beer at the store under a camachile tree located some six (6) arms length from him. The appellant offered him a drink but he declined and instead he went back to the dance hall[5].

Beatisola noticed that Edna Fabello constantly went in and out of the dance hall. She had no companions. He last saw her going out of the dance hall and he was able to observe her passing the place where accused-appellant was

drinking on her way to the rice paddies[6].

Beatisola and his companion Esteban Jamadron left the dance hall at about 12:00 o'clock midnight and they proceeded to the house of a certain Elias Monsale, the brother-in-law of the witness. While walking thru the rice paddies, Beatisola paused to urinate by the bushes. He then heard a thudding sound and when he looked around, he saw a person lying face down on the ground. He surmised that the person was a girl as she had long hair tapering down to her shoulders. The girl was being beaten up by two other persons with the use of a wooden bamboo pole. From his vantage point, he was able to identify accused-appellant as one of the persons beating up the girl. He was able to identify him because of the moonlight and because during one instance, accused-appellant's companion pointed a flashlight at accused-appellant's face[7].

The companion of accused-appellant apparently saw the witness hiding behind some cassava and banana plants and told accused-appellant about it. Instead of running away, accused-appellant allegedly drew his bolo and said "make them come because I will kill them." Accused-appellant then hacked the girl twice. Beatisola and his companion became scared and they ran to the house of his brother-in-law. When they reached the house, Beatisola immediately told his brother-in-law about what he witnessed and that accused-appellant had killed a person. However, he did not initially report the incident he witnessed to the authorities[8].

It was only in June 1996 that Beatisola became aware that the person who was killed was Edna Fabello. She learned this from her sister Editha who apparently was the aunt of the victim. He decided to testify on what he had witnessed because of the pleas of his sister[9].

Primitivo Fabello, the father of the victim, also attended the fund raising dance. He left the dance hall at around 3:00 in the early morning of April 26, 1994 and he began looking for Edna whom he noticed was missing. He proceeded to the cornfield and there he chanced upon the accused-appellant who was apparently searching for something. When Primitivo asked what he was doing, accused-appellant told him that he was looking for his knife. Primitivo then continued to search for his daughter[10].

A short while later and while accused-appellant was still nearby, Primitivo found the shoes, hairpin and handkerchief of his daughter. The accused-appellant suddenly became agitated and he immediately fled the scene. After appellant was gone, Primitivo continued looking for his daughter and he was able to see bloodstains on the dike and on a bamboo pole. He followed the trail of blood and this led him to the dead body of his daughter lying face down in a canal. Thereafter, he reported the incident to the Barangay Captain and later on he turned over the personal effects of his daughter to the police[11].

Police Officer Serafin Feronilmo, who received the report about the crime, went to the crime scene and there he found the dead body of Edna Fabello in the canal. Edna's neck was slashed and her body bore stab wounds. Nearby, he found a bloodstained bamboo pole, a pair of slippers, the scabbard of a knife, a toy gun and a hair clip.

As Primitivo Fabello had earlier told him that he had chanced upon accused-appellant near the place where the body was found, he proceeded to the place of accused-appellant to continue his investigation. Accused-appellant was in his house and so the police officer invited the accused-appellant to the police station for questioning. In the station, accused-appellant allegedly admitted to the police officer that he owned the pair of red rubber slippers found at the crime scene but he denied responsibility for the crime[12].

The body of Edna Fabello was retrieved and it was examined by Dr. Mary Joyce M. Faeldan, the acting Municipal Health Officer of Miag-ao, Iloilo. She identified her medico-legal report[13] in open court. However, she was deemed by the trial court as not qualified to be an expert witness and so she was not allowed to elaborate on her findings[14]. Her report showed that the witness died from avulsion of the parts of the brain and asphyxia

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secondary to a hack wound. Her body bore contusions and hematoma and she was found to have been stabbed and hacked twelve (12) times on different parts of her body. The speculum examination on her sex organ revealed that there were "positive multiple minute lacerations around the external (opening) of the cervix" and "positive hymenal lacerations at (the) 3 o'clock and 10 o'clock positions."[15]

For his part, accused-appellant denied the charge leveled against him. He admitted that on April 25, 1994, the date of the criminal incident, he was in Miag-Ao, Iloilo as he was taking part in the fiesta celebrations. He admitted further that he was at the dance hall of the barangay with his brother, sister, and daughter as his companions. He denied ever seeing witness Bienvenido Beatisola at the dance hall. He claimed that he was at the dancehall all night and that he only left the place at around 4:00 a.m. the following day as he was already sleepy and he had work that morning[16]. His companions stayed behind as the dance was still ongoing.

On his way home, accused-appellant passed through some corn paddies and when he was about fifty meters away from the dancehall, he saw Primitivo Fabello, the father of the victim. He denied, however, the testimony of Primitivo that he was looking for his knife and that he ran away when the shoes of Edna were found. He claimed that Primitivo only asked him whether he had seen his daughter Edna Fabello to which he replied that that he saw her earlier in the evening but he had not seen her since.[17] He then continued on his way home and he arrived there past 4:00 in the morning.

He woke up the following morning at around 8:00 a.m. He was then told by a barangay councilor that the policemen were looking for him and so he looked for the policemen on the road. When he met the policemen, he was asked whether he was Francisco Nanas to which he replied in the affirmative. The policemen then took him to his house where they proceeded to look for his clothes and bolo. They were able to find his clothes and bolo but there were no bloodstains on them. The policemen left the clothes and the weapon and instead they said that accused-appellant should accompany them to the police station for questioning. There he was placed inside a prison cell and since then he had not been released from detention.[18]

He denied that he raped and killed Edna Fabello and that he admitted in the police station that he owned the red rubber slippers found at the crime scene. He likewise denied the accusation of Bienvenido Beatisola that he beat up and hacked a girl in the corn paddies. He claimed that Beatisola was a planted witness who had a quarrel with him sometime in 1980.

Teresa Napilanga, the sister of the accused, corroborated the account of her brother regarding the incident which happened at their house in the morning of April 26, 1994, right after the body of Edna Fabello was found. She claimed that the police came to their house and questioned her brother about the death of Edna Fabello and that they also searched the house for evidence against the accused-appellant. They were not able to find any evidence linking his brother to the crime yet the policemen still brought accused-appellant to the police station for questioning and thereafter proceeded to detain him[19]. Teresa likewise corroborated the testimony of her brother on the long-standing enmity between him and the witness Bienvenido Beatisola[20].

Romeo Famanila, the barangay captain of Calagtangan, Miag-Ao, Iloilo and a distant relative of accused-appellant, testified that there was a fight between accused-appellant and witness Bienvenido Beatisola in their barangay sometime in May 1980. The two of them were fighting with knives but they ran away when they saw him. According to him, Beatisola likewise assaulted accused-appellant the day after the fighting incident[21]. On cross-examination, Famanila admitted that the incident was never recorded in the barangay nor reported to the police[22].

After trial on the merits, the court a quo convicted accused-appellant of the complex crime of rape with homicide and sentenced him to the supreme penalty of death. The dispositive portion of the decision dated July 31, 1998

reads:

> "WHEREFORE, finding the accused Francisco Nanas guilty beyond reasonable doubt for the crime of Rape with Homicide, under Art. 355 of the Revised Penal Code as amended by Rep. Act No. 7659, judgment is hereby rendered sentencing the said accused to suffer the penalty of death, and further ordering the accused to pay the heirs of Edna Fabello the sum of P50,000.00 for civil indemnity and P100,000.00 for exemplary and moral damages. Costs against the accused.
>
> SO ORDERED."[23]

Due to the imposition by the trial court of capital punishment, the case is now before us on automatic review.

In his Appellant's Brief, accused-appellant raises the following assignment of errors[24]:

> A. THAT THE TRIAL COURT ERRED IN HOLDING THAT ALL THE ELEMENTS OR RAPE HAVE BEEN ESTABLISHED. THE ELEMENTS WHICH HAVE NOT BEEN ESTABLISHED BY THE EVIDENCE OF THE PROSECUTION ARE THE FOLLOWING:
>
> A.1 THE ELEMENT OF CARNAL KNOWLEDGE OR SEXUAL INTERCOURSE AS NO EXPERT MEDICAL OPINION WAS PRESENTED TO PROVE SUCH FACT AND LACERATIONS REFLECTED IN THE MEDICAL REPORT, BY ITSELF, DO NOT CONCLUSIVELY ESTABLISH SEXUAL INTERCOURSE.
>
> A.2 ASSUMING WITHOUT ADMITTING THAT THE PROSECUTION ESTABLISHED SEXUAL INTERCOURSE, IT FAILED TO ESTABLISH THE ELEMENT OF RAPE THAT THE INTERCOURSE IS ACCOMPLISHED BY THE FOLLOWING CIRCUMSTANCES, TO WIT:
>
> a) By using force or intimidation;
> b) When the woman is deprived of reason or otherwise unconscious; or
> c) When the woman is under 12 years of age;
>
> A.3 ASSUMING THAT A SEXUAL INTERCOURSE HAS BEEN ESTABLISHED AND IT WAS ACCOMPLISHED UNDER THE ABOVE-ENUMERATED THREE CIRCUMSTANCES OF ACCOMPLISHING RAPE, THERE IS NO EXPERT TESTIMONY SHOWING THAT IT WAS MADE DURING THE DAY OF THE ALLEGED COMMISSION OF THE CRIME AND NO EVIDENCE THAT THE AUTHOR OF IT IS THE ACCUSED.
>
> A.4 PROSECUTION WITNESS BIENVENIDO BEATISOLA, ASSUMING HIS TESTIMONY TO BE CREDIBLE, HAS ONLY WITNESSED CIRCUMSTANCES TO HOMICIDE AND NOT RAPE WHILE THE REST OF THE WITNESSES TESTIFIED ON CIRCUMSTANTIAL EVIDENCE ON HOMICIDE AND NOT RAPE.
>
> B. THE TRIAL COURT ERRED IN RELYING IN THE TESTIMONY OF PROSECUTION WITNESS BIENVENIDO BEATISOLA AS HE IS NOT A CREDIBLE WITNESS, WITH UNREBUTTED CRIMINAL RECORDS AND HAS THE MOTIVE TO FABRICATE AGAINST THE ACCUSED.
>
> C. THE TRIAL COURT ERRED IN RELYING ON THE ACCOUNT OF PROSECUTION WITNESSES WHICH IS INCREDIBLE AND FULL OF INCONSISTENCIES.
>
> D. THE TRIAL COURT ERRED IN HOLDING THAT THE PROSECUTION ESTABLISHED THE CRIMINAL LIABILITY OF THE ACCUSED BEYOND REASONABLE DOUBT.
>
> E THAT TRIAL COURT ERRED IN NOT APPRECIATING MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND INTOXICATION.

It is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be

established beyond reasonable doubt[25]. In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide resort to circumstantial evidence is usually unavoidable[26].

In the case at bench, there was no eyewitness to the crime of rape allegedly committed on the person of Edna Fabello. Bienvenido Beatisola only witnessed the accused beating-up and hacking a woman, acts which are consistent with homicide but not with rape. The father of the victim Primitivo Fabello merely testified that he saw accused-appellant near the scene of the crime at the time of the incident. He did not actually witness accused-appellant rape his daughter. As such, if the crime of rape is to be proven, resort must be had to circumstantial evidence.

Circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which inferences are derived are proven; and (c) the combination of all circumstances is such as to produce conviction beyond reasonable doubt[27]. Sadly, not one of these requisites is present in the case at bar.

In the present case, the only evidence offered by the prosecution which has any connection with a finding that the victim has been raped is the report of Dr. Mary Joyce M. Faeldan which stated that there were multiple lacerations around the external opening of the cervix of the victim and on her hymen.

It is axiomatic that hymenal laceration is not necessary to prove rape[28]. Thus, the presence of lacerations does not likewise conclusively prove its commission.

In People vs. Domantay[29], we had occasion to expound on the evidentiary value of a finding of hymenal lacerations. To wit:

> "(A) medical certificate or the testimony of the physician is presented not to prove that the victim was raped but to show that the latter had lost her virginity. Consequently, standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence proving carnal knowledge that rape may be deemed to have been established.
>
> This conclusion is based on the medically accepted fact that a hymenal tear may be caused by other objects other than the male sex organ or may arise from other causes." (citations omitted)

In the case at bar, not only is there an absence of other circumstances from which it might be reasonably inferred that rape was committed, there is also no testimony that the hymenal lacerations themselves may have been caused in the course of coitus or by a male organ. It must be recalled that Dr. Faeldan merely identified the medico-legal report which she executed. Because of her lack of experience, the trial court, to which the prosecution agreed, deemed her not to be an expert on the matter and thus, she was prevented from giving expert medical opinion on the implications of her findings.

For their part, the prosecution did not present any other doctor or witness who was qualified to render a medical opinion that rape may indeed have occurred. As such, there is no proof that the lacerations and ruptures found on the sex organ of the victim were caused by sexual intercourse[30]. Consequently, the trial court erred in concluding that rape was committed.

To be sure, this Court has sustained a number of convictions for rape with homicide based on purely circumstantial evidence. In those instances however, the prosecution was able to present other telltale signs of rape such as the location and description of the victim's clothing, especially her undergarments, the position of the body when found, and the like.[31] In the case at bar, there is no convincing circumstantial evidence from which we might establish beyond reasonable doubt that accused-appellant sexually abused the victim. There is no

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evidence that the victim was naked when found, that her undergarments were torn or missing, that there was spermatozoa in the girl's vaginal canal and other such evidence from which we might infer that rape was committed.

While we sustain the contention of accused-appellant that rape was not proven beyond reasonable doubt, we do not agree with his argument that his guilt of the crime of homicide was likewise not proven beyond reasonable doubt. In contrast with the evidence for rape offered by the prosecution, the circumstantial evidence linking accused-appellant to the death of Edna Fabello is sufficient to convict him of the crime of homicide.

We quote with approval the following finding of the trial court on the circumstantial evidence linking the accused-appellant to the death of Edna Fabello:

> "It is argued that evidence with respect to the identity of the victim is circumstantial in nature. Yet, the circumstantial evidence if you may, is not isolated, but consist of a chain of circumstances, like the finding and recovery of the personal effects of Edna Fabello by her father who without doubt is very familiar with the personal belongings of his daughter since they live under the said roof, the fact that as testified to by Bienvenido Biatisola, he saw the accused hack twice a person lying in the canal whom he suspected to be a girl with long hair that tapers to her shoulder, the fact that when Primitivo Fabello met the accused at the cornfield at around 3 o'clock in the morning of April 26, 1994, he was looking for his knife, the scabbard of which was likewise found by Fabello in the cornfield together with the victim's shoes, hairpin, and handkerchief, and the fact that no other victim except Edna Fabello was found dead in the canal the following morning after her disappearance from the dance hall. (These) are overwhelming circumstantial evidence, which together with the oral testimony of eye-witnesses Primitivo Fabello and Bienvenido Beatisola point to no other logical conclusion except that of the guilt of the accused Francisco Nanas...[32]"

Aside from these pieces of circumstantial evidence cited by the trial court, we likewise have the testimony of Police Officer Serapion Feronilmo who stated that accused-appellant admitted in the police station that he was the owner of the red slippers recovered from the crime scene.

To the unprejudiced mind, the circumstantial evidence in the case at bar, when analyzed and taken together, leads to no other conclusion except that of accused-appellant's culpability for the death of the victim. Accused-appellant admitted that he was near the crime scene at the time the crime was being committed. He was seen by a witness beating up and hacking a girl with a bolo. He was seen by the father of the victim lingering near the crime scene apparently looking for his knife. He ran away from the crime scene when the personal effects of the victim were found. The dead body of Edna Fabello was found near the place where he was seen beating up and hacking a girl. Finally, he admitted before the police authorities that he owned the pair of rubber slippers found at the crime scene. Conviction based on circumstantial evidence will be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person,[33] a conclusion adequately established in this case.

It is suggested by accused-appellant that the testimony of witness Bienvenido Beatisola should be rejected considering the witness's questionable reputation and personal background as evidenced by the criminal charges filed against him[34].

It is true that under the Rules of Court, a witness may be impeached by evidence that his general reputation for truth, honesty, or integrity is bad. However, a witness cannot be impeached by evidence of particular wrongful acts unless there is a showing of previous conviction by final judgment[35]. such that not even the existence of a pending information may be shown to impeach him[36]. In the present case, there was no testimony that the reputation of Beatisola for truth, honesty or integrity is bad. The defense merely presented evidence of the witness's alleged previous wrongful acts by the introduction into evidence of criminal complaints filed by police

officers and offended parties against the witness before the municipal trial court. There is no showing that these cases were eventually tried and that Beatisola was convicted thereof. Thus, they only establish that criminal complaints were filed against the witness and as such, the fact thus established will not detract from Beatisola's competence as a witness[37].

Accused-appellant likewise points to the alleged bad blood between him and Beatisola as the motive behind his testimony linking him to the crime. Allegedly, they engaged in a knife fight sometime in 1980 which was witnessed by the people in their barangay.

We cannot give credence to the alleged motive of witness Beatisola in testifying against accused-appellant. Besides the fact that there is absolutely no record of the fight between the two either with the barangay or in court, the witnesses who testified on this matter were admittedly biased and interested witnesses. Moreover, even if there had been a fight between accused-appellant and Beatisola sometime in 1980, it is incredible to believe that the latter would be inclined to wait for fourteen (14) years before exacting his revenge if such indeed was his inclination.

As to accused-appellant's argument that Beatisola only came out to testify about six months after the death of Edna Fabello and not immediately after, suffice it to say that it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. In fact, the natural reticience of most people to get involved is a matter of judicial notice.[38] As aptly explained by Beatisola, he only decided to testify when his sister, a relative by affinity of the victim, cried before him and told him to testify as to his knowledge about the incident[39].

Moreover, as previously shown, the trial court did not convict accused-appellant solely on the testimony of Beatisola. The trial court likewise took into account the testimonies of the father of the victim and the policeman who investigated the killing. The Court notes that accused-appellant merely imputes a motive against Beatisola for falsely testifying against him. He cannot impute any ill motive against the other witnesses as in fact, there was none.

Finally, accused-appellant argues that the trial court erred in relying on the account of prosecution witnesses which allegedly was incredible and full of inconsistencies. According to accused-appellant, no person in his right mind would stay at the scene of the crime despite knowing that he was already noticed and that no person will talk to the father of his victim at the scene of the crime despite the fact that he was already recognized and the body of the victim was still at the crime scene.

The submission of accused-appellant is bereft of any sustainable basis. The improbabilities alluded to are more imagined than real and they do not adversely affect the credibility of the witnesses[40]. Moreover, we have previously held that the criminal mind is generally an irrational mind and hence, its actuations are often abnormal, erratic, and unpredictable[41].

In view of the foregoing, we hold that it was only the crime of homicide which was proven beyond reasonable doubt. It is well 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.[42] It is true that in the special complex crime of rape with homicide, the term "homicide" is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on occasion of the rape[43]. However, 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 for which he is charged[44]. In the case at bench, no circumstance which would qualify the killing to murder was sufficiently alleged in the information charging

accused-appellant with rape with homicide. Consequently, considering that the evidence presented fails to support the charge for rape, accused-appellant may only be convicted of homicide.

With regards to the imposable penalty, we are not persuaded by the submission of accused-appellant that the mitigating circumstances of voluntary surrender and intoxication should be appreciated in his favor. With respect to the circumstance of voluntary surrender, accused-appellant claims that the same must be appreciated considering that he voluntarily went to the police station when his presence was requested the morning immediately following the incident.

However, for voluntary surrender to be considered, the following requisites must concur: (1) the offender was not actually arrested; (2) he surrendered to a person in authority or to an agent of a person in authority; and (3) his surrender was voluntarily[45]. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities either because (a) he acknowledges his guilt or (b) he wishes to save them the trouble and expense necessarily incurred in his search and capture[46].

That accused-appellant submitted himself to the custody of law even though there was yet no warrant of arrest or information against him is of no moment. The police authorities had to go to the house of accused-appellant in order to take the latter to the police station. Accused-appellant did not present himself voluntarily to the police; neither did he ask them to fetch him at his house so he could surrender. The fact alone that he did not resist but went peacefully with the police officers does not mean that he voluntarily surrendered[47]. Besides, voluntary surrender presupposes repentance[48]. This circumstance was not present in the instant case as accused-appellant denied any participation and knowledge of the crime when he was in the custody of the police authorities. Hence, the mitigating circumstance of voluntary surrender cannot be appreciated.

Neither can we appreciate in favor of accused-appellant the alternative circumstance of intoxication. To be mitigating, the accused must show that (1) at the time of the commission of the criminal act, he has taken such quantity of alcoholic drinks as to blur his reason and deprive him of a certain degree of self-control; and (2) such intoxication is not habitual or subsequent to the plan to commit the felony[49]. No such evidence was presented in the case at bar. The fact that accused-appellant was seen drinking before the incident does not lead to the conclusion that he has taken such quantity of liquor so as to deprive him of self-control. Similarly, there is also no evidence that his intoxication was not habitual.

Under Article 249 of the Revised Penal Code, the imposable penalty for homicide is reclusion temporal. Considering that no mitigating or aggravating circumstance may be appreciated, the penalty is to be imposed in its medium period. Applying the benefits of the Indeterminate Sentence Law, accused-appellant may thus be sentenced to an indeterminate penalty ranging from eight (8) years and one day of prision mayor as minimum to fourteen (14) years, eight (8) months and one day of reclusion temporal as maximum[50].

Consistent with current jurisprudence, we maintain the award made by the trial court in the amount of P50,000.00 as civil indemnity for the death of Edna Fabello[51]. The trial court erred, however, in awarding the amount of P100,000.00 as exemplary and moral damages.

Exemplary damages may not be awarded considering that such damages can only be recovered in criminal cases when the crime is committed with one or more aggravating circumstances[52]. In the case at bench, the prosecution failed to prove that the killing of Edna Fabello was attended by any aggravating circumstance. Consequently, the award for exemplary damages must be deleted for lack of legal basis.[53]

Likewise, despite the demise of the victim on account of the felonious act of accused-appellant, moral damages cannot be awarded to the victim's heirs. The prosecution here did not present evidence, testimonial or otherwise,

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to show that the heirs of the deceased are entitled thereto[54]. Under the present stage of case law on crimes involving the taking of human life, evidence must be adduced by the offended parties to warrant an award for moral damages[55].

WHEREFORE, the assailed decision of the Regional Trial Court, Branch 31, Iloilo City finding accused-appellant Francisco Nanas guilty of the crime of rape with homicide is hereby MODIFIED. As modified, Francisco Nanas is hereby found guilty beyond reasonable doubt 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 eight (8) years and one day of prision mayor as minimum to fourteen (14) years, eight (8) months and one day of reclusion temporal as maximum. Accused-appellant is likewise ordered to pay the heirs of the victim Edna Fabello the sum of P50,000 as civil indemnity.

SO ORDERED.

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

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[1] Penned by Judge Recaredo P. Barte; Rollo, pp. 19-27.

[2] Rollo, pp. 4-5.

[3] Records, p. 33.

[4] T.S.N., October 12, 1994, pp. 3-10.

[5] Ibid, pp. 8-9.

[6] Ibid, p. 11.

[7] Ibid, pp. 14-16.

[8] T.S.N., October 26, 1994, p. 6.

[9] Ibid.

[10] T.S.N., August 24, 1995, pp. 4-10.

[11] T.S.N., August 24, 1995, pp. 11-19.

[12] T.S.N., May 10, 1995, pp. 2-15.

[13] Exh. "A."

[14] T.S.N., September 1, 1994, p. 4.

[15] Exhibit "A", Records, p. 14.

[16] T.S.N., September 11, 1997, pp. 1-7.

[17] Ibid, pp. 9-10.

[18] Ibid, pp. 17-21.

[19] T.S.N., June 26, 1997, pp. 4-9.

[20] Ibid, pp. 12-13.

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[21] T.S.N., August 15, 1997, pp. 1-4.

[22] Ibid, p. 9.

[23] Decision dated July 31, 1998, p. 9; Rollo, p. 27.

[24] Rollo, pp. 45-46.

[25] People vs. Quisay, 320 SCRA 450; People vs. Dino, 160 SCRA 197.

[26] People vs. Robles, 305 SCRA 273.

[27] Revised Rules of Court, Rule 133, Section 4.

[28] People vs. Butron, 272 SCRA 352; People vs. Gabris, 258 SCRA 663; People vs. Alimon, 257 SCRA 658.

[29] 307 SCRA 1.

[30] People vs. Gallarde, 325 SCRA 835.

[31] People vs. Domantay, supra; People vs. Magana, 259 SCRA 380; People vs. Develles, 208 SCRA 101.

[32] Decision dated July 31, 1998, pp. 8-9; Rollo, pp. 26-27.

[33] People vs. Lopez, 313 SCRA 114; People vs. Bionat, 278 SCRA 454; People vs. Grefaldia, 273 SCRA 591.

[34] Exhibits "3" to "8".

[35] Revised Rules of Court, Rule 132. Section 11.

[36] De Leon vs. People, 210 SCRA 151; People vs. Arceo, 187 SCRA 265.

[37] De Leon vs. People, supra.

[38] People vs. Lagmay, 306 SCRA 157.

[39] T.S.N. October 26, 1994, pp. 5-6.

[40] People vs. Sioc, 319 SCRA 12.

[41] People vs. Batulan, 253 SCRA 52.

[42] People vs. Gallarde, supra; U.S. vs. Lahoylahoy, 38 Phil. 330.

[43] People vs. Penillos, 205 SCRA 546; People vs. Sequino, 264 SCRA 79.

[44] People vs. Gallarde, supra; People vs. Ramos, 296 SCRA 559.

[45] People vs. Rapanut, 263 SCRA 515.

[46] People vs. Camahalan, 241 SCRA 558; People vs. Lee, 204 SCRA 900.

[47] People vs. Deopante, 263 SCRA 691; People vs. Camahalan, supra.

[48] People vs. Rabanillo, 307 SCRA 613.

[49] People vs. Boduso, 60 SCRA 60.

[50] People vs. Mangahas, 311 SCRA 384; People vs. Albao, 287 SCRA 129.

[51] People vs. Silvestre, 307 SCRA 68.

[52] New Civil Code, Article 2230; People vs. Sagaysay, 308 SCRA 455; People vs. Langres, 316 SCRA 769.

[53] People vs. Pineda, 311 SCRA 368; People vs. Panique, 316 SCRA 757.

[54] People vs. Caballes, 274 SCRA 83; People vs. Ballabare, 264 SCRA 350.

[55] People vs. Benito, 303 SCRA 468.

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