

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELINO NABONG Y OSENAR (A.K.A. SALVADOR ABAQUITA), ALVIN LAGUIT Y BRENDON AND NOLFE LADIAO (A.K.A. ROEL SALUTARIO), ACCUSED-APP...

G.R. NO. 172324. April 04, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR No. 00731 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 66, finding accused-appellants Celino Nabong y Ocenar (aka Salvador Abaquita), Alvin Laguit y Brendo and Nolfie Ladiao (aka Roel Salutario) guilty of the complex crime of attempted rape with homicide and imposing upon them the death penalty.

On 5 April 1999, the Office of the City Prosecutor of Makati City filed with the Regional Trial Court of Makati City an Information for the crime of Attempted Rape with Homicide against the appellants and a certain Arnel Miraflor y Awitan.

On 21 April 1999, the prosecution filed a Motion to Admit Amended Information on the ground that certain material evidence arose subsequent to the filing of the original information which necessitated its amendment. Said motion was granted on the same date.[3]

An Amended Information was filed on 21 April 1999, indicting appellants and Arnel Miraflor for the crime of Attempted Rape with Homicide, punishable under Republic Act No. 8357, committed as follows:

That on or about the 23rd day of March 1999 in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-accused men conspiring, confederating and mutually helping each other and taking advantage of nighttime, superior strength and by means of treachery, evident premeditation, force and violence, did then and there, willfully, unlawfully and feloniously attempt to have sexual intercourse with a woman AAA,[4] against her will and consent, thereby commencing the commission of the crime of rape directly by overt acts but did not perform all the acts of execution which would produce the crime of rape as a consequence by reason of causes independent of their own spontaneous desistance, that is, AAA resisted; and by reason or on the occasion of the attempted rape the accused, with intent to kill, attack, assault and stabbed with a bladed weapon AAA on the different parts of her body thereby inflicting serious physical injuries which directly caused her death.[5]

Upon arraignment, all of the accused pleaded not guilty[6] of the crime charged. Hence, trial ensued.

The prosecution proved the following facts.

The four accused, Celino Nabong (Nabong), Alvin Laguit (Laguit), Nolfie Ladiao (Ladiao) and Arnel Miraflor (Miraflor), were all construction workers employed as steelmen by EEI, a construction firm, and assigned at its OCW-RCBC Plaza Project located at Ayala Avenue, Makati City.

The victim, AAA was a 22-year old accountant employed as junior auditor at the Alba and Romeo Auditing Firm.

Reynaldo Patenio, a steelman of EEI construction and a co-worker of the accused, testified that on the fateful night of 23 March 1999, at about 9:00 o'clock in the evening, he and the four accused, together with their co-workers, Rogelio Amit, Lilia and Ariel Cortez, were inside the worker's barracks at the OCW-RCBC Plaza when they decided to go out for a drinking session. They walked from their barracks and at about 9:15 p.m. reached a nearby videoke bar in Amorsolo Street in Makati City, just across the Makati Medical Center. There, each of them consumed six bottles of Colt 45 beer.

By 11:30 p.m., they stopped drinking when the videoke bar closed for the night. Rogelio Amit, Lilia and Ariel Cortez left ahead of the group. The four accused proceeded to Ayala Avenue and stopped at a vacant lot in front of the Makati Medical Center, where concrete pipes used for construction were lying around. Reynaldo Patenio, who decided to call it a day, also stepped out of the videoke bar and was just about five meters away from the four accused, when they invited him to join them. When Reynaldo Patenio joined the group, they taunted him and made fun of him by pushing him around like a ball being tossed from one man to another.

Patenio was able to extricate himself from the group and was about to leave when he heard one of the accused saying loudly "Huwag nayan, lagas nayan," which was directed at a woman who was then boarding a jeepney. The word "lagas" means old in the Visayan dialect. At about the same time, AAA was walking towards the center island near the corner of Buendia Avenue and Ayala Avenue with her officemate Minerva Arguelles Frias. Laguit and Ladio, who were then standing by the corner of Ayala Avenue and Buendia Avenue, spotted the two women. Therefrom, Laguit and Ladio crossed the street and waited at the island for the two women. Minerva Arguelles Frias then boarded a bus, leaving AAA alone with Laguit and Ladio.

Laguit took his shirt off and was laughing while waving his shirt in the air. Ladio, who was between Laguit and AAA, had a smirk on his face. Nabong then appeared from the dark portion of the vacant lot holding a "kabilya," a 7-inch pointed metal bar, sort of an improvised iced pick, and approached Laguit, Ladio and AAA. Nabong suddenly stabbed AAA on the right thigh using the pointed metal bar. Simultaneously, Ladio jumped at AAA and covered her mouth. The victim slumped on the pavement while Ladio, Laguit, Nabong and Miraflor crowded around the woman.

Miraflor, upon seeing what his companions were doing, hurriedly left and went to the barracks. Patenio also left the scene and went back to the barracks about the same time Miraflor did.

Witness Ofelia A. Camba, a vendor at the RCBC Plaza, testified that on that same night between 11:00 and 11:30, while she was walking towards a creek to urinate, she overheard a group of men talking. Upon hearing their voices, she changed her mind and instead continued to walk towards her house at the Botanical Garden, near Urban Avenue. When she passed by the group from where the voices emanated, she noticed two men who were seated and a man who was standing. She later identified the man standing as Nabong. She heard Nabong, who was two meters away from her saying "Huwag yan, lagas na yan." Having understood the remark, she suddenly felt scared.

For her part, Virginia Mabayao, another vendor in the area, testified that at or before midnight of 23 March 1999, while she was walking along Buendia Ave., she saw three men who told her, "Hi, ate pakape ka naman." She responded by telling them to go to her vending place located at Ayala Avenue near RCBC. They did not follow her. She noticed that one of them who was standing held a piece of metal while swaying his head from left to right. The other two were seated. At around 1:00 a.m. the next day, she heard from the barangay captain of the killing incident. Later, at the Makati police station, she saw the same men again whose identities she subsequently learned as Nabong, Miraflor, and Laguit. She recalled that Nabong was the man who was standing.

Minerva Arguelles Frias, through her sworn statement, disclosed that she was with the victim that night. They walked from their office until they reached Ayala Avenue where she boarded a bus, leaving the victim on site.

PO3 Libretto Buisan testified that on the night of the incident, he, together with PO1 Elmer Garcia, was on a patrol duty at the Pasong Tamo, Buendia Avenue and Makati Avenue area from 8:00 p.m. to 8:00 a.m. the following day. At around 11:45 that night, they noticed a commotion along Buendia Avenue near Tindalo Street. As they went closer, they discovered the body of a woman, later identified to be that of the victim, lying on the pavement on her back, her undergarment pulled down almost exposing her private parts. Her brassiere was torn off leaving her left breast exposed. Her dress was torn and raised showing her belly. PO3 Buisan found the left side of the victim's body heavily bloodied. The center part of the street was splattered with blood. There were also drops of blood on the vacant lot where the concrete pipes were located as well as on the extension of Tindalo Street. He asked the barangay tanod to bring the victim to the hospital.

Arnel Marzan, a traffic enforcer and a Bantay Bayan at Barangay San Lorenzo, testified that at past midnight, on 24 March 1999, he received a call for assistance. He proceeded to the scene and found the victim still breathing and moaning. He carried the victim to a tricycle that passed by, and together with a certain Joven Lopez, took her to the Makati Medical Center.

PO2 Rico S. Bulacan, the investigator assigned to the case, narrated that in the early morning of 24 March 1999, he conducted a spot investigation at the scene of the crime. There, he found six concrete pieces of culvert pipes at the dark side portion of Tindalo Street corner Buendia Avenue. He also found out that the nearby traffic post which was about 200 meters away from the corner of Tindalo St. was stained with freshly dried blood. The bloodstains, upon laboratory examination, tested positive for human blood. Later, he found an earring belonging to the victim near one of the concrete culvert pipes. It was to him that witness Mabayao first confided that she saw Nabong holding onto the traffic sign post the previous night.

Pastor Maghamil, the security guard on duty at the worker's barracks said that Patenio and Miraflor entered the barracks at around 1:30 a.m. of 24 March 1999. He also saw a man wearing a bull cap, in white "cheleko" vest and pants walking normally toward Ayala Avenue Extension. At round 9:00 a.m. of the same day, he learned of the incident from the construction workers. Later in the evening, policemen arrived at the barracks to inquire as to who among the workers arrived at dawn. He informed them that Patenio and Miraflor did.

Police inspector Thomas C. Sipin, the team leader of the group who apprehended the accused, testified that at around 8:00 p.m. of 24 March 1999, he went to the crime scene at Buendia Avenue. He discovered bloodstains at the back of the parking sign located at the sidewalk along Buendia Avenue. He took samples of said bloodstains, which, upon NBI laboratory examination, turned out to be Type O human blood. He proceeded to the RCBC barracks then to the RCBC construction site. There, he was able to talk to two vendors, Mabayao and Camba, and the security guard. On the morning of 25 March 1999, he came back to the barracks and invited Nabong, Miraflor and Patenio. At the police station, PO2 Bulacan conducted an investigation of the three invited persons.

Dr. Ronaldo Mendez, the medico-legal officer of the NBI, testified that the victim was stabbed six times with the use of sharp, pointed, single-bladed instrument, three on the left chest, one on the right chest, one on the back right side chest level, and one on the right thigh. He said that the cause of death of the victim was hemoperigonio or collection of blood at the abdominal cavities caused by the stab wounds.

BBB, the mother of AAA, testified specifically on the civil liability of the accused.

The defense, on the other hand, presented the testimonies of the four accused who denied having committed the crime and offered the defense of alibi.

The four accused admitted that they went on a drinking spree at the videoke bar at around 9:00 p.m. of 23 March 1999 with Patenio and the other co-workers. They all claimed that they left the bar at past midnight, after which they proceeded to the nearby Burger Machine to drink coffee. They also admitted that they never had any quarrel with Patenio.

According to Nabong, after drinking coffee with the group they parted ways. He went home to Marikina and arrived there at around 2:00 a.m. He slept and woke up at 6:00 a.m., got his bag then went to the barracks, arriving there at 8:00 a.m. where he slept again. When he woke up at 12 noon, he left the barracks to see a movie and returned at 2:00 p.m. He said he chose to start to work at 6:00 p.m. that day since it was very hot to work at daytime.

For his part, Laguit testified that he consumed four bottles of Colt 45 beer at the videoke bar. They left at past midnight and stayed at the Burger Machine for a few minutes. From there, he proceeded to the barracks with Miraflor and Patenio. He heard of the killing on 24 March 1999, from the guard. The whole day he stayed in the barracks. At 9:00 a.m. of 25 March 1999, he was arrested and brought to the police station where the police asked him to confess to the killing, but he refused.

According to Ladio, the videoke bar was only less than five minutes walk from the barracks. He returned to the barracks after dropping by the Burger Machine. On 25 March 1999, the police took him to the police station.

Miraflor testified that after drinking coffee at the Burger Machine, he returned to the barracks with Patenio, while Laguit followed them. Upon reaching the barracks, he slept. The following morning, 24 March 1999, he proceeded to work. At around 9:00 p.m. of the same day, the security guard assigned in the barracks told him and Patenio about the incident and that some policemen were looking for them. The following day, he and Patenio did not report for work and waited for the policemen to arrive. When the policemen arrived, they were told that they will be investigated. They were later brought to the police station where two vendors arrived and identified them as the ones responsible for the death of AAA.

The trial court subsequently rendered a decision dated 18 June 2002, finding Celino Nabong, in conspiracy with Alvin Laguit and Nolfie Ladio, guilty beyond reasonable doubt of the special complex crime of Attempted Rape with Homicide under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 or the "Anti-Rape Law of 1997." For insufficiency of evidence to sustain his conviction, Arnel Miraflor was acquitted. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding the three accused Celino Nabong y Osenar (aka Salvador Abaquita), Alvin Laguit y Brendo and Nolfie Ladio (aka Roel Salutario) guilty beyond reasonable doubt of the crime of Attempted Rape with Homicide who are hereby sentenced to suffer the penalty of death, to indemnify the heirs of the victim in the amount of fifty thousand pesos (P50,000.00), as exemplary damages, one hundred eleven thousand two hundred thirty-nine pesos (111,239.00) as actual damages, one million five hundred eight thousand one hundred thirty pesos (P1,508,130.00) for loss of earning capacity and fifty thousand pesos (P50,000.00) as moral damages. Arnel Miraflor Awitan is acquitted for insufficiency of evidence.[7]

Due to the imposition of death penalty on appellants, the case was directly elevated to this Court for review. This Court, however, referred the case to the Court of Appeals for intermediate review, conformably with the ruling in the case of *People v. Mateo*.^[8]

The Court of Appeals rendered its Decision on 9 September 2005 affirming the conviction of appellants, with modification:

WHEREFORE, premises considered, the assailed decision dated June 18, 2002 of the RTC, Branch 66, Makati City in Criminal Case No. 99-569 is hereby **AFFIRMED** with **MODIFICATION** that the amount of Fifty

Thousand Pesos (P50,000.00) be awarded to the heirs of AAA as civil indemnity.[9]

Appellant Nabong filed a motion for reconsideration which was denied by the Court of Appeals in a Resolution dated 23 January 2006.

Hence, the instant case.

Appellant Nabong assigns the following errors:

- I. The Honorable Court failed to appreciate witness Reynaldo Patenio's motive to perjure himself.
- II. There is no evidence on record that accused conspicuously adopted the alleged surprised attack as a means of executing the crime.
- III. There is sufficient basis on record to justify the appreciation of intoxication and low degree of instruction as mitigating circumstances in favor of accused.
- IV. The fundamental right of accused to legal counsel was violated.

For their part, appellant Laguit and Ladio assign the following error:

BASED ON REASONABLE DOUBT, THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS ALVIN B. LAGUIT AND NOLFE LADIO OF THE OFFENSE CHARGED HEREIN.

Appellants contend that the RTC and the Court of Appeals erred in finding them guilty beyond reasonable doubt of the special complex crime of attempted rape with homicide. They claim that the circumstantial evidence adduced by the prosecution is meager to sustain their convictions and that reasonable doubt exists in their favor.

We say that, contrary to appellants' posture, the prosecution has discharged, through circumstantial evidence, the burden of proving beyond the shadow of doubt that the appellants are guilty of the charge.

This Court cites with approval circumstantial evidence adduced by the prosecution on the crime of attempted rape as found by the trial court:

Ofelia Camba xxx testified that at about 11:30 p.m. of March 23, 1999, shortly before the commission of the crime, she passed by a place near where she sold cigarettes and some food items. She was about to proceed to the foot of a bridge at a nearby creek to urinate when she heard some voices from a group of three persons, two of who were seated while the other was standing. She distinctly heard one of them- the person standing- say softly to the other two: "Huwag na yan, lagas na yan." She was only two meters away when she heard the words uttered by one of the three person. "Lagas," according to Camba, meant old. Obviously she was the one being referred to. She positively identified Nabong as the one who uttered the aforequoted words.

May it be recalled at this juncture that Patenio had also testified that he heard one of the three accused — Ladio, Laguit and Nabong- utter the same words. He said he was just a few yards away from the three accused and heard distinctly one of them say: "Huwag na yan. Lagas na yan."

When the body of the victim was found by PO3 Liberato Buisan and PO1 Elmer Garcia, of the Makati City Police Mobile Unit, her undergarment was "nakababa" (pulled down) and her private parts were almost exposed. Her brassiere was torn off leaving her entire left breast open to view. Her dress was torn apart that her belly was likewise exposed.

Such conditions were highly suggestive of force or violence applied upon the victim that is normally preparatory to sexual attack. Moreover, there was effort on the part of the attackers to keep the victim from screaming or shouting for help. Patenio saw Ladio cover the mouth of the victim.

The words of injunction against taking interest in an old woman which can only mean that Camba, at 46, was not worth their while, give an inkling of what the three accused had in mind. Such words gave away their mischievous intent which, coupled with the conditions that were found in the sprawled body of the victim when discovered, may well prove the complex crime of attempted rape with homicide even in the absence of direct evidence.[10]

Likewise, the fact of the victim's killing by the appellants was sufficiently established with moral certainty by the prosecution. As aptly discussed by the trial court:

The testimonies of the prosecution witnesses as to the fact of killing have not been successfully refuted by the defense. Patenio saw Nabong as he struck the first blow- the stab on the victim's thigh. While he did not see the succeeding five strikes upon the woman with the sharpened pointed (sic) "kabilya", there can be no doubt that it was made by Nabong or any of the two others or both. That it could not be ascertained if the succeeding stab wounds were inflicted by one or the other of the accused, it would not make any difference anyway since there was unquestionably conspiracy among the three accused in the commission of the crime.

Patenio gave testimony with details only an eyewitness could have given. He was candid even to admit he felt a bit resentful that the accused made fun of him. His testimony clearly showed that Nabong, Laguit and Ladio performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design which is to rape the victim- and kill her, as they did. Laguit and Ladio gave the victim no chance to escape nor to shout for help. They blocked her way at the slightest indication she would escape. They covered her mouth so she could not call for help. Then Nabong appeared and stabbed her in the thigh to prevent her even more from running away.[11]

In an attempt to discredit witness Patenio's testimony, appellant Nabong insists that the former's testimony is unreliable based on the following: (a) Patenio has an ax to grind against appellants for making fun of him; (b) since Patenio was initially taken as a suspect, he was compelled to offer perjurious testimony against the appellants to save himself from being included as one of the perpetrators of the crime; (c) even as Patenio allegedly saw Nabong stab the victim in the thigh, he did not lift a finger to dissuade Nabong from his supposed act, or at least report the incident to the police.

As a rule, the trial court's assessment of the credibility of witnesses is generally accorded the highest degree of weight and respect, if not finality, for the reason that the trial judge has the unique opportunity to observe the deportment of witnesses while testifying.[12]

In the case under consideration, appellant Nabong imputes ill motive to the prosecution witness Patenio, alleging that the latter has a score to settle with the appellants for making fun of him. However, such fact does not conclusively establish that the prosecution witness, in testifying against the appellants, was moved by a desire to retaliate against the latter. In the absence of sufficient proof of improper motive, the presumption is that the said witness was not so moved and his testimony is thus entitled to full faith and credit.[13] Besides, it must be recalled that it was witness Patenio who admitted before the trial court that he felt a bit resentful that the appellants made fun of him. This candid admission of the prosecution witness in fact bolsters his credibility and fortifies his testimony against the appellants.

The fact that Patenio was one of the first suspects in the commission of the crime does not make his testimony less credible. As noted by the Court of Appeals:

Granting that Patenio was initially taken as a suspect in the crime, this fact does not affect his credibility as a witness. Not all persons invited for questioning by the police turn out to be the real culprits. It is but normal that the police will have several suspects for initial investigation. This procedure helps the authorities to determine with clarity the real perpetrators. Some of these witnesses even turn out to be state witnesses or

eye-witness as in the case of Patenio.[14]

Witness Patenio's failure to report immediately to the proper authority does not impinge on his credibility. This Court has ruled that, when confronted with startling occurrences, behavioral responses of witnesses are diverse.[15] Indeed, there is no uniform reaction or standard behavioral response to grisly events.[16] In numerous instances, this Court has declared that the reluctance of eyewitnesses to testify on a crime and to get involved in a criminal investigation are but normal and do not by themselves affect the witnesses' credibility.[17] The sealed lips of said witnesses are but a natural and spontaneous reaction.[18] They may opt to remain silent rather than to imperil their own lives.[19]

In the instant case, witness Patenio, fearing for his safety, kept silent about the incident. This is understandable because the witness has no relatives residing in the metropolis who may be able to lend him a safe abode in case the appellants would retaliate against him for his testimony. In the same vein, being an ordinary mortal, the witness, who may not have the virtues of fortitude and altruism, cannot be expected to risk his life by preventing the appellants from completing their criminal objective.

Appellants assert that the trial court and the Court of Appeals erred in appreciating treachery since the evidence is bereft of proof that appellants plotted to carry out the attack on the victim.

Appellants' contention is unmeritorious.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[20] Thus, this Court has ruled that even frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[21] Treachery can still be appreciated even when the victim was forewarned of the danger to his/her person.[22] What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.[23] In the present case, the victim did not even have sufficient warning of the danger that was looming, since the attack against her came from behind and was so sudden and unexpected, thus giving the victim no time to flee or to prepare her defense or enable her to offer the least resistance to the sudden assault.

Appellant Nabong faults the lower courts in not appreciating intoxication and low degree of instruction in his favor.

For intoxication to be considered as mitigating circumstance, it must be shown that the intoxication impaired the will power of the accused and that he did not know what he was doing or could not comprehend the wrongfulness of his acts.[24] The person pleading intoxication must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.[25] This, the appellants failed to do. The records are bereft of any evidence that the quantity of liquor they had taken was of such quantity as to affect their mental faculties. On the contrary, the fact that appellants could recall details of what had transpired after their drinking session is the best proof that they knew what they were doing during that occasion. The deception, the device, the place and manner of perpetrating the crime all point to the fact that appellants had complete control of their minds.

Neither can appellant Nabong's alleged lack of instruction be appreciated in his favor. Illiteracy alone will not constitute such circumstance; it must be accompanied by lack of sufficient intelligence and knowledge of the full significance of one's act.[26] Besides, one does not have to be educated or intelligent to be able to know that it is unlawful to take the life of another person.[27]

In a desperate effort to exculpate himself from the charge against him, Nabong clutches at straws. He argues that his fundamental right to legal counsel was violated when his counsel did not bother to secure the attendance of

witnesses in his defense, particularly Nabong's cousin, whose supposed testimony would support his defense of alibi.

This argument deserves scant consideration. As correctly observed by the Solicitor General, this issue was raised belatedly by appellant Nabong for the first time before the Court of Appeals in a motion for reconsideration. The rule is that an issue not raised in the trial cannot be raised for the first time on appeal, much less in a motion for reconsideration.[28]

At any rate, the records do not show that Nabong's counsel had been remiss in his duty. Defense witnesses were presented in the person of the four accused and cross-examination had been conducted by the defense counsel.

As to the award of actual damages, the trial court ordered the appellants to pay the heirs of the victim the following amounts: (a) P6,499.00 as medical expenses; (b) P35,000.00 as burial expense; (c) P25,740.00 cost of the burial lot; and (d) P44,000.00 expenses incurred during the wake.

Appellant Nabong questions the award of P44,000.00 spent for the wake of the victim claiming that the prosecution did not present official receipts for said expenses. The mother of the victim testified that she expended the said amount for the wake of her daughter. Said expenses were reduced into writing and marked as Exh. "V". The defense did not object to this during the direct examination of the witness for the prosecution nor in the formal offer of evidence. Thus, the rule stating that "evidence not objected to is deemed admitted" finds application in the case under consideration.[29] For this reason, the trial court can take into account such evidence in arriving at the judgment.[30] Hence, the trial court's judgment ordering appellants to pay P44,000.00 for the expenses incurred during the wake is correct.

Also assailed is the certification of the victim's monthly salary from her employer. It is contended that said evidence is hearsay since nobody from the office of the victim's employer testified on the said document.

Again, this contention is unavailing. Failure on the part of the appellants to object to the presentation of such evidence during the direct examination of the prosecution witness and the formal offer of the certificate of employment dated 25 October 1999 issued by the victim's employer and marked as Exh. "W" makes the said evidence admissible and one that can be considered by the trial court in its verdict.

The computation of the trial court with respect to lost earning capacity is correct. At the time of her death, the victim was 22 years old. She had been earning P6,500.00 monthly. Loss of earning capacity is computed by applying the following formula:[31]

Net Earning Capacity = life expectancy x Gross Annual Income (GAI) — living expenses (50% of GAI)

[2/3(80-age at death)]

x = [2/3(80-22) x GAI] — [50% of GAI]

x = 2 (58) x P78,000 — P39,000
3

x = [116/3] x [P39,000]

= [38.67] [P39,000]

Net Earning Capacity of the victim = P1,508,130.00

Proceeding now to the appropriate penalty, it must be noted that the penalty for the crime of attempted rape with homicide is "reclusion perpetua to death." Since the penalty is composed of two indivisible penalties, then for the purpose of determining the imposable penalty, Article 63 of the Revised Penal Code must be considered.[32] It

provides in part:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

With the presence of the aggravating circumstance of treachery and there being no mitigating circumstance, the higher penalty of death should be imposed.[33]

In view, however, of the passage of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on 24 June 2006, the imposition of the death penalty has been prohibited.[34] Thus, the penalty imposed upon appellants should be reduced to reclusion perpetua, without eligibility of parole under the Indeterminate Sentence Law.[35]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. No. 00731, dated 9 September 2005 as well as its Resolution dated 23 January 2006 are hereby AFFIRMED insofar as the conviction of appellants and the amount of damages are concerned. The sentence that shall be imposed upon appellants, however, is MODIFIED. In view of Republic Act No. 9346 prohibiting the imposition of the death penalty, appellants are hereby sentenced to reclusion perpetua without parole. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Garcia, and Velasco, Jr., JJ., concur.
Nachura, J., no part. name appears in pleadings as Sol. Gen.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Rosmari D. Carandang and Estela M. Perlas-Bernabe, concurring; rollo, pp. 3-29.

[2] Penned by Judge Ricardo R. Rosario.

[3] Records, p. 51.

[4] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real names of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[5] Records, p. 47.

[6] Id. at 59.

[7] Id. at 313.

[8] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[9] Rollo, p. 313.

[10] Records, pp. 304-306.

[11] Id. at 306-307.

[12] People v. Salome, G.R. No. 169077, 31 August 2006.

[13] People v. Jamiro, G.R. No. 117576, 18 September 1997, 279 SCRA 290, 309.

- [14] Rollo, p. 304.
- [15] *Hugo v. Court of Appeals*, 437 Phil. 260, 271-272 (2002).
- [16] *People v. Catubig*, G.R. No. 89732, 31 January 1992, 205 SCRA 643, 655.
- [17] *People v. Jamiro*, *supra* note 13 at 302.
- [18] *Id.*
- [19] *Id.* at 303.
- [20] *People v. Belaro*, G.R. No. 99869, 26 May 1999, 307 SCRA 591, 607.
- [21] *Id.*
- [22] *People v. Pidoy*, G.R. No. 146696, 3 July 2003, 405 SCRA 339, 348.
- [23] *Id.*
- [24] *People v. Empante*, G.R. Nos. 130665 and 137996-97, 21 April 1999, 306 SCRA 250, 263.
- [25] *People v. Buenaflor*, G.R. No. 93752, 15 July 1992, 211 SCRA 492, 500.
- [26] *People v. Belaro*, *supra* note 20 at 611.
- [27] *Id.* at 610.
- [28] *Lim v. Queensland Tokyo Commodities, Inc.*, G.R. No. 136031, 4 January 2002, 373 SCRA 31, 41.
- [29] *People v. Sumalinog*, G.R. No. 128387, 5 February 2004, 422 SCRA 55, 71.
- [30] *Id.*
- [31] *People v. Pansensoy*, G.R. No. 140634, 12 September 2002, 388 SCRA 669, 689-690.
- [32] *People v. Navida*, G.R. No. 132239-40, 4 December 2000, 346 SCRA 821, 834.
- [33] *Id.* at 835.
- [34] *People v. Salome*, *supra* note 12.
- [35] *Id.*

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