

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO GUMIMBA Y MORADANTE ALIAS ROWING AND RONTE ABABO (ACQUITTED), APPELLANTS,

G.R. NO. 174056 [Formerly G.R. No. 138257]. February 27, 2007

Ponente: TINGA, J.

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TINGA, J.:

For review before the Court is the Decision[1] of the Court of Appeals (CA) dated 26 April 2006, affirming with modification the Decision[2] of the Regional Trial Court (RTC), Ozamiz City, Branch 15,[3] dated 10 March 1999, finding appellant guilty beyond reasonable doubt of the crime of rape with homicide.

In an Information[4] dated 17 April 1997, appellant Rogelio Gumimba y Morandante alias Rowing and co-accused Ronie Abapo (Abapo) were charged before the RTC, with the crime of rape with homicide of an eight (8)-year old child, thus:

That on or about April 8, 1997, in Barangay Pantaon, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation, to wit: by then and there pinning down one [AAA] ,[5] a minor, 8 years of age, and succeeded in having carnal knowledge with her and as a result thereof she suffered 6-12 o'clock lacerated wounds of [sic] the vagina as well as fatal stab wounds on the different parts of her body and which were the direct cause of her death thereafter.

CONTRARY to Article 335 in relation with Article 249 of the Revised Penal Code.

On 16 May 1997, appellant and Abapo both entered a plea of not guilty on arraignment.[6] Thereafter, the case proceeded to trial with the prosecution first presenting two witnesses: (1) Emelio Magallano, President of Purok I, Barangay Pantaon, Ozamiz City; and (2) Sofronio Arañas, a Civilian Volunteer Officer (CVO) of the same barangay.

Magallano and Arañas testified that at around 9 o'clock in the evening of 10 April 1997, appellant went to Magallano's home and confessed to him that he alone and by himself raped and killed his (appellant's) niece, AAA, in Purok Pantaon, Ozamiz City. Subsequently, Magallano accompanied appellant to the residence of Arañas where he reiterated his confession. That same night, Magallano, Arañas, appellant and family members of the witnesses proceeded to the home of Barangay Captain Santiago Acapulco, Jr. who conducted an investigation. Appellant repeated his narration and confessed to the barangay captain that he had raped and killed the victim, and that he was alone when he committed the crime. As a result thereof, Acapulco, Jr., in the company of the others, brought appellant to the Ozamiz City Hall and turned him over to the police authorities.[7]

However, appellant manifested through counsel (before the court) at the following hearing on 22 May 1997 that he would like to change his earlier plea of not guilty to a plea of guilty.[8] The RTC ordered appellant's re-arraignment and the latter accordingly entered a plea of guilty.[9] The court conducted an inquiry to ascertain the voluntariness of appellant's plea and his full comprehension of the consequences thereof. Prosecution was

likewise charged to establish the guilt and degree of culpability of appellant.[10]

In accordance with the court's directive, the prosecution continued with the presentation of its evidence in chief. It presented Dr. Pedrita Rosauro, the physician who conducted the autopsy on the body of the victim, and who testified that the victim was raped before she was killed. The examination by Dr. Rosauro revealed that AAA sustained four (4) stab wounds in front, two (2) stab wounds in her back and one (1) lacerated wound each on her neck and on her middle upper extremity. Furthermore, she found 6 and 12 o'clock laceration wounds on the external genital organ of the victim.[11]

Before resting its case, the prosecution presented appellant as witness against his co-accused Abapo. Appellant testified that he and Abapo raped and killed the victim. He likewise explained that he had previously confessed to Magallano, Arañas and Acapulco that he alone committed the crime in the hope that the parents of the victim, who were relatives of his, might take pity on him.[12]

In his defense, Abapo testified that at the time the crime was allegedly committed, he was with his mother and three (3) siblings at the Labo River, about two (2) kilometers away from Barangay Pantaon, washing their clothes.[13] In support thereof, Abapo presented his mother Virgencita Abapo, Elisa Carreon and Raymundo Orot, all of whom corroborated his alibi.[14] The defense also presented witness Arañas who reiterated his earlier testimony that appellant confessed to him that he alone was responsible for the raping and killing of the victim.[15] Finally, Eugenio Bucog, a teacher at Capucan Elementary School, was presented to demonstrate Abapo's good character when he was his student.[16]

On 10 March 1999, the RTC promulgated its Decision. On the basis of appellant's plea of guilty, the RTC found him guilty beyond reasonable doubt of the crime as charged. Appellant was sentenced to suffer the death penalty and ordered to indemnify the heirs of the victim in the amounts of P50,000.00 as indemnity for the life of the victim, P30,000.00 as moral damages, and costs.[17] On the other hand, the trial court acquitted Abapo on the ground that his guilt was not established beyond reasonable doubt. Except for the lone testimony of appellant, the RTC held that no other evidence was adduced to prove the participation of Abapo. Moreover, the court a quo found that appellant's testimony implicating Abapo was not worthy of credence coming as it did from a polluted source.[18]

With the death penalty imposed on appellant, the case was elevated to this Court on automatic review. Pursuant to this Court's decision in *People v. Mateo*,[19] the case was transferred to the Court of Appeals.

On 26 April 2006, the appellate court rendered its Decision[20] affirming the appellant's conviction, but with modification as to damages awarded to the heirs of the victim. The dispositive portion of the said Decision states:

"WHEREFORE, premises considered, the instant Appeal is DISMISSED for lack of merit. The Decision dated March 10, 1999 of the Regional Trial Court, Branch 15, of Ozami[s] City, is hereby AFFIRMED with the MODIFICATION that the amount of civil indemnity ex delicto is hereby increased from P50,000.00 to P100,000.00, including the award of moral damages from P30,000.00 to P50,000.00. Conformably with the ruling of the Supreme Court in *People of the Philippines v. Efren Mateo*, We refrain from entering judgment, and the Division Clerk of Court is hereby directed to elevate the entire records of the case to the Honorable Supreme Court for its final disposition.

SO ORDERED."[21]

On 3 October 2006, the Court issued an order requiring the parties to simultaneously submit supplemental briefs within thirty (30) days from notice should they so desire.[22] On 21 November and 24 November 2006, appellant and appellee filed similar manifestations that they are adopting the briefs they filed before the Court of Appeals.[23]

Thus, appellant raises the following errors in this petition for review:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF HIS IMPROVIDENT PLEA OF GUILTY AND HIS ALLEGED SEPARATE CONFESSIONS TO ONE EMILIO MAGALLANO, AND ONE SOFRONIO ARAÑAS, THE LATTER BEING HEARSAY AND WITHOUT PROBATIVE VALUE WHATSOEVER.

II

THE COURT A QUO LIKEWISE ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE LATTER'S GUILT BEYOND REASONABLE DOUBT, AND THE ACCUSED-APPELLANT OWNING UP ONLY TO THE CRIME OF SIMPLE RAPE.[24]

The ultimate issue is whether appellant's guilt was established by evidence beyond reasonable doubt.

It must be conceded at the outset that the trial court failed in its duty to conduct the prescribed "searching inquiry" into the voluntariness of appellant's plea of guilty and full comprehension thereof. Consequently, appellant's plea of guilty was made improvidently and it is rendered inefficacious.[25] Nevertheless, the Court must rule against appellant as the evidence on record is ample to sustain the judgment of conviction independent from his plea of guilty.

The crime of rape with homicide is punishable with death under Article 335 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, which provides:

Article 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape is punishable by reclusion perpetua.

x x x x

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

x x x x

The Information, to which appellant pleaded guilty, alleged that homicide was committed by reason or on the occasion of the rape of AAA. This, if proven, would warrant the penalty of death at that time.[26] Accordingly, a plea of guilty to such charges calls into play the provisions of Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, thus -

Sec. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Based on this rule, when a plea of guilty to a capital offense is entered, there are three (3) conditions that the trial court must observe to obviate an improvident plea of guilty by the accused: (1) it must conduct a searching

inquiry into the voluntariness and full comprehension by the accused of the consequences of his plea; (2) it must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) it must ask the accused whether he desires to present evidence on his behalf, and allow him to do so if he so desires. [27]

There is no hard and fast rule as to how a judge may conduct a "searching inquiry," or as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit.[28] However, the logic behind the rule is that courts must proceed with caution where the imposable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.[29] An improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.[30] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[31]

In the instant case, when the accused entered a plea of guilty at his re-arraignment, it is evident that the RTC did not strictly observe the requirements under Section 3, Rule 116 above. A mere warning

that the accused faces the supreme penalty of death is insufficient.[32] Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry," as follows:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[33]

An examination of the records of the proceedings will illustrate the court's treatment of appellant's change of plea,

viz:

Atty. Cagaanan:

Considering the voluntary plea of guilty of the accused[,] we pray that the mitigating circumstance to prove his plea of guilty be appreciated in favor of the accused. We likewise pray that another mitigating [circumstance] of voluntary surrender be appreciated in his favor.

Pros. Edmilao:

Considering the gravity of the crime, may we ask your Honor that we will present evidence inorder [sic] that it will give also justice to the victim.

Court:

Present evidence to prove gravity of the crime.

Pros. Edmilao:

Our first witness is the ABC president.

Court:

What matter will Santiago Acapulco testify?

Court:

Was there cruelty done by the accused in picking [sic] the life of the minor girl?

x x x x

Pros. Edmilao:

May we ask that we will present her [sic] in the next hearing.

Court:

The court will call the accused to the witness stand.

x x x x

(The witness after having administered an oath, took the witness stand and declared that he is:

ROGELIO GUMIMBA

20 years old

Single

Occupation- duck raising

Resident of Capucaon, Ozamiz City)

x x x x

Court:

The court will allow the prosecutor or the defense to profound [sic] question [sic] on the matter and the accused understand [sic] and fully comprehend [sic] the consequence of his plea of guilty.

x x x x

Pros. Edmilao:

Q.

Mr. Rogelio Gumimba[,] are you the same accused in this case in Crim. Case No. RTC 2074?

A.

Yes, sir.

Q.

Now the victim in this case is [AAA] , a minor, 8 years of age[.] Since you have admitted this in what particular place wherein [sic] you raped and slew [AAA] ?

A.

Purok Pantaon, Ozamiz City.

Q.

How far is that place wherein you slew and raped [AAA] from her house?

A.

Very near, sir.

Q.

Can you estimate how many meters?

A.

One meter, sir.

Q.

Was it committed inside or outside the house?

A.

Outside.

Q

In what particular place of the house[:] in front, at the side or at the back?

A.

At the back of the house of the victim.

Q.

Will you please tell the court, how did you do it, will you please narrate.

A.

I raped her by tying her hand, then I killed her.

Q.

Before you raped and killed [AAA] , where did you get her?

A.

I saw her roaming around.

Q.

In committing the crime, were you alone?

Atty. Anonat:

Objection...

Court:

Sustained.

Pros. Edmilao:

You stated that you pushed her and even tied her hand and raped her and stabbed her, were you the one alone [sic] ?

Atty. Anonat:

Objection...

Court:

Sustained.

Court:

Q.

When you said you raped her, you mean you inserted your penis inside the vagina of [AAA] ?

A.

No, Your Honor.

Q.

When you said you raped her, what do you mean?

A.

I was drank [sic] at that time.

Q.

And you said you tied [AAA] , what did you use in tying her?

A.

Banana skin.

Q.

How did you tie [AAA] ?

A.

I tied both her hands.

Q.

The hands of [AAA] , you placed at the back?

A.

In front of her.

Q.

After tying her [,] what did you do to her?

A.

After that I went home.

Q.

You did not stab [AAA] ?

A.

I stabbed her, Your Honor.

Q.

What weapon did you use in stabbing her?

A.

A long bolo.

Q.

You mean you were bringing [a] long bolo at that time?

A.

Yes, Your Honor.

Q.

After stabbing her, what did you do to her?

A.

No more, Your Honor.

Q.

How many times did you stab [AAA] ?

A.

I could not count how many stab wounds I inflicted to [sic] her.

Q.

But you will agree that you have stabbed her many times?

A.

I could no longer count how many stab wounds, Your Honor.

Q.

When you were arraigned, you pleaded guilty, do you understand the consequence of your pleading guilty?

A.

I do not know Your Honor [,] the consequence.

Q.

You pleaded guilty to the offense of rape with homicide, did you understand?

A.

Yes, Your Honor, I understand.

Q.

That by your pleading guilty to the offense you will be sentenced to die?

A.

Yes, I am aware.

Q.

Your act of pleading guilty to the offense charged is your voluntary will?

A.

Yes, I admitted that crime, but we were two.

Q.

You mean to say there were two of you who raped [AAA] ?

A.

Yes, your Honor.

Q.

Before raping her, was [AAA] wearing clothes?

A.

Yes, Your Honor.

Q.

Was [AAA] wearing [a] panty before you raped her?

A.

Yes, Your Honor.

Q.

Did you remove her panty before raping her?

A.

No, Your Honor, I did not.

Q.

How did you rape [AAA] ?

A.

I have sexed [sic] with her.

Q

What do you mean by I "remedio" her, you mean you have inserted your penis into the vagina of [AAA] ?

A.

No, Your Honor, my penis did not penetrate into the vagina of [AAA] .

Q.

Why your penis did [sic] not able to penetrate into the vagina of [AAA] ?

A.

The vagina of [AAA] is very small.

Q.

Can you tell this Court how tall was [AAA] ?

A.

(The witness demonstrated that from the floor about 3 feet high was the height of [AAA])

Q.

If you are standing and [AAA] is also standing side by side with you, up to what part of your body is the height of [AAA] ?

A.

Up to my waist line.

Atty. Cagaanan:

Q.

When you pleaded guilty [,] was it in your own free will?

A.

Yes, sir.

Q.

Were you not forced or coerced by anybody with this crime?

A.

No, sir.[34]

The inefficacious plea of guilty notwithstanding, the totality of the evidence for the prosecution undeniably establishes appellant's guilt beyond reasonable doubt of the crime of rape with homicide. Apart from his testimony upon changing his plea to a plea of guilty, appellant gave a subsequent testimony when he was presented by the prosecution as a witness against his co-accused. This second testimony which constitutes another judicial confession, replete with details and made consciously as it was, cured the deficiencies which made his earlier plea of guilty improvident. The latter testimony left no room for doubt as to the voluntariness and comprehension on appellant's part of his change of plea, as well as completed his narration of how he raped and killed the victim. The pertinent portions of the second testimony follow, thus:

Pros. Jose A. Edmilao:

Q.

While you were gathering firewoods [sic] and Ronie Abapo was pasturing carabao, do you recall of any untoward incident that happened?

A.

We raped and killed.

Q.

Whom did you rape and kill?

A.

[AAA] .

Q.

And when you said [AAA] , who was then your companion, because you said we?

A.

Ronie Abapo.

x x x x

Q.

While she [AAA] was there gathering oranges, you mean to say you were close to the place [AAA] was?

A.

I, together with Ronie Abapo go [sic] near to the place [AAA] was.

Q.

When you were already near at [sic] the place where [AAA] was climbing, was she still up there at the orange tree?

A.

She already came down.

Q.

When she came down, what followed next then?

A.

We held her hands.

Q.

Who held her hands?

A.

The two of us.

Q.

You mean one hand was held by you and the other hand was held by Ronie Abapo?

Atty. Anonat:

Objection, leading.

Pros. Edmilao:

Q.

You said that you were holding the hands of [AAA] , how did you do it?

A.

We held her hands and tied it [sic] with banana skin.

Q.

Who tied the hands of [AAA] ?

A.

Both of us.

Q.

After tying the hands of [AAA] [,] with banana stalk where did you place her?

A.

We brought her to the [sic] grassy place.

Q.

What happened then after [AAA] was brought to the [sic] grassy place?

A.

We killed her.

Q.

Before you killed her, what did you do to her?

A.

We raped her.

Q.

Who raped her first?

A.

It was Ronie Abapo, then followed by me.

Q.

How did you rape her?

A.

We undress[ed] her.

Q.

What was she wearing at that time?

A.

She wore a dress.

Q.

What about Ronie Abapo?

A.

He did not undress.

Q.

How did you let your penis out?

A.

I removed my t-shirt.

Q.

How about your pants?

A.

I also removed my pants.

Q.

What was then the reaction of [AAA] , when you first tied her hand?

A.

She did not cry, because we covered her mouth.

Q.

Who covered her mouth? You or Ronie?

A.

Ronie.

Q.

What [sic] you said that it was Ronie Abapo, what did you do then when he was on [sic] the act of raping her?

A.

I was just near to [sic] them.

Q.

The after Ronie Abapo, what did you do then?

A.

He told me that you will be the next [sic] .

Q.

So when he told you that you will be the next [sic] , what did you do next?

A.

I also raped her.

Q.

Again, when you said you raped her, you inserted your penis into the vagina of [AAA] ?

A.

It did not enter [sic] .

Q.

Why?

A.

It did not penetrate, because I was afraid.

Q.

But your penis erected [sic] ?

A.

No, Your Honor.

Q.

You said that Ronie was the first to have sexual intercourse, was he able to insert his penis into the vagina of [AAA] ?

A.

No, sir, because he was watching, if there was person [sic] around.

Q.

Were you able to see the penis of Ronie inserted into the vagina of [AAA] ?

A.

I have [sic] not seen.

x x x x

Q.

You said that you and Ronie Abapo raped [AAA] , what do you mean or what do you understand by the word rape?

A.

We undressed her.

Q.

Why did you undress her?

A

We undressed her, because we want [sic] to do something to her.

Q.

What is that something that you want [sic] to do to [AAA] ?

A.

We raped her.

Q.

When you said we raped her, you mean, you inserted your penis inside the vagina of [AAA] ?

A.

No, sir.

Q.

But you tried to insert your penis inside the vagina?

A.

Yes, sir.

Q.

And your penis touched the vagina of [AAA] ?

A.

Yes, sir.

Q.

Only your penis was not able to enter the vagina because [AAA] is [sic] still a small girl?

A.

Yes, sir.

Q.

After trying to insert your penis after Ronie Abapo, what did you do to [AAA] ?

A.

I walked away, but he called me.

Q.

Who called you?

A.

Ronie Abapo.

Q.

Why did he call you?

A.

He asked me, what to do with [AAA] . It might be that she will tell us to somebody [sic] , we will kill her.

Q.

What did you do?

A.

I did not answer.

Q.

And what was your answer?

A.

Because he keep [sic] on persuading me.

Q.

How did he persuade you?

A.

He persuaded me because we might be caught.

Q.

And what did he tell you to do?

A.

That we will kill [AAA] .

Q.

How did he tell you that?

A.

Rowing[,] we will kill her.

Q.

And what was your reply?

A.

I refused.

Q.

When you refused, what did he do then?

A.

He keep [sic] on persuading me.

Q.

And what did eventually came [sic] to your mind?

A.

Evil came to my mind, so we killed her.

Q.

How did you kill her?

A.

We stabbed her.

Q.

What weapon you used [sic] when you killed her?

A.

A long bolo.

Q.

Whose [sic] the owner of that long bolo?

A.

Mine, but Ronie Abapo used it.

Q.

Who was the first one to use it?

A.

Ronie Abapo.

Q.

But the bolo was in your hands, how did [sic] he be able to use it?

A.

I put it on the ground and he got it.

Q.

You said that he made the first struck [sic] . Where was [AAA] first hit?

A.

In the stomach.

Q.

How many times did Ronie Abapo strike her with the use of that bolo?

A.

I cannot remember anymore.

Q.

Aside from the stomach, where were the other pants [sic] of [AAA] also hit?

A.

At the left side.

Q.

How about you, did you made [sic] the following stab to [AAA] ?

A.

I was hesitant to stab, but eventually I stabbed her.

Q.

How many times?

A.

Only one.

Q.

What part of her body was she hit?

A.

At the stomach.

Q.

Do you mean to say that you also got the bolo from the hands of Ronie Abapo and also stabbed [AAA] ?

A.

Yes, sir.

Q.

Why was [AAA] not killed, when Ronie Abapo made stabbed [sic] on her?

A.

He [sic] was already dead.

Q.

Why did you stab her, when she was already dead?

A.

I just stabbed her, because I thought that she was still alive.

x x x x

Q.

Do you know where is [sic] the bolo used in stabbing [AAA] ?

A.

No, sir.

Q.

After killing [AAA] , where did you place the bolo?

A.

In our place.

Q.

It [sic] it there in your home?

A.

Already taken.

Q.

Who got?

A.

The barangay captain.

Q.

Now, did you tell to [sic] anybody regarding the raping and killing of [AAA] aside from here in Court?

A.

I have already told.

Q.

Who was the person whom you talked about [sic] ?

A.

My neighbor.

Q.

Whose [sic] the name of that neighbor?

A.

Emilio Magallano.

Q.

After Emilio Magallano[,] to whom did you report?

A.

Sofronio Aranas.

Q.

Who else?

A.

Rico Magallano.

Q.

Who else?

A.

The wife of Panyong.

Q.

In the reporting [sic] this matter[,] were you together with Ronie Abapo telling these persons that you raped [AAA] ?

A.

I was alone.

Q.

And did you tell her that you were two in killing and raping with Ronie Abapo?

A.

No, sir.

Q.

Why not?

A.

According to Emilio that the mother of the victim might be [sic] pity enough to me, because I am related to them.

Q.

When you reported to these persons you have mentioned, did you also tell them that you were together with Ronie Abapo in killing and raping?

A.

No, sir.[35]

While the trial court found appellant's second testimony insofar as it implicated his co-accused to be unworthy of credence, there is absolutely nothing on record which militates against its use as basis for establishing appellant's guilt. In fact, in his Brief, appellant submits that he must be convicted of simple rape alone and not rape with homicide. Thus, he admits in writing, albeit implicitly, that he raped the victim.

Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.[36] Thus, as we have ruled in *People v. Derilo*: [37]

While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand the case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on evidence proving the commission by the accused of the offense charged.

Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction. x x x x

Here, the prosecution was able to establish, through the separate testimonies of appellant, that at around 1:00 o'clock in the afternoon of 8 April 1997, appellant was gathering firewood not far from the house of the victim AAA in Barangay Pantaon, Ozamiz City. He met co-accused Ronie Abapo who was then pasturing his carabao also within the vicinity of the victim's home. They spotted the victim picking oranges with her three (3)-year old brother at the back of their house and together approached her from behind, tied her hands with banana skin and dragged her to a grassy place.[38] Abapo raped the victim first.[39] Thereafter, appellant followed suit.[40] Once they had finished with their dastardly acts, they stabbed and killed the victim with a long bolo which belonged to appellant.[41]

Through the testimony of the physician who conducted the autopsy on AAA's body, it was established that the victim had 6 and 12 o'clock lacerations on her external genital organ. Thus, it is clear that the rape was consummated.

Appellant challenges the testimonies of the witnesses Magallano and Arañas on what appellant had confessed to or told them for being hearsay. The challenge fails. The testimonies, it should be conceded, cannot serve as a proof of extrajudicial confession for an extrajudicial confession has to be in writing, among others, to be admissible in evidence.[42] That is why the testimonies are of use in the case as corroborative evidence only.

Such utility, however, cannot be defeated by the hearsay rule. The testimonies covered are independently relevant statements which are not barred by the hearsay rule.

Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply. The statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[43]

Moreover, where, as in the case at bar, there is no evidence to show any dubious reason or improper motive for a prosecution witness to bear false testimony against the accused or falsely implicate him in a crime, his or her testimony should be given full faith and credit.[44]

Next, we address appellant's contention that he can only be convicted of simple rape, as this is the only crime to which he has owned up. Arguing that the victim may have already been dead after his co-accused had allegedly hacked her first, appellant theorizes that he, at most, would be guilty of an impossible crime.

Appellant is clutching at straws. It is extremely doubtful that appellant could have known positively that the victim was already dead when he struck her. The proposition not only completely contradicts his judicial confession, it is also speculative as to cause of death. In light of the particular circumstances of the event, appellant's mere conjecture that AAA had already expired by the time he hacked her cannot be sufficient to support his assertion of an impossible crime. An examination of the testimony is again called for, thus:

Pros. Edmilao:

Q.

You said that he (Abapo) made the first strike, where was [AAA] first hit?

A.

In the stomach.

Q.

How many times did Ronie Abapo strike her with the use of that bolo?

A.

I cannot remember anymore.

Q.

Aside from the stomach, where were the other pants [sic] of [AAA] also hit?

A.

At the left side.

Q.

How about you, did you made [sic] the following stab to [AAA] ?

A.

I was hesitant to stab, but eventually I stabbed her.

Q.

How many times?

A.

Only one.

Q.

What part of her body was she hit?

A.

At the stomach.

Q.

Do you mean to say that you also got the bolo from the hands of Ronie Abapo and also stabbed AAA?

A.

Yes, sir.

Q.

Why was [AAA] not killed, when Ronie Abapo made stabbed [sic] on her?

A.

He [sic] was already dead.

Q.

Why did you stab her, when she was already dead?

A.

I just stabbed her, because I thought that she was still alive.[45]

Thus, the finding of guilt as pronounced by the RTC and the Court of Appeals should be sustained. However, with the passage of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the penalty of death can no longer be imposed. Accordingly, the penalty imposed upon appellant is reduced from death to reclusion perpetua without eligibility for parole.[46]

With respect to the civil liability of appellant, we modify the award in light of prevailing jurisprudence. Accordingly, appellant is ordered to indemnify the heirs of AAA in the amount of P100,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as temperate damages and P100,000.00 as exemplary damages.[47]

WHEREFORE, the Decision of the Court of Appeals in CA G.R. CR-HC No. 00193 is **AFFIRMED WITH MODIFICATION**. Appellant is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay the heirs of the victim, AAA, in the amounts of P100,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as temperate damages, and P100,000.00 as exemplary damages, plus costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Chico-Nazario, Garcia, and Velasco, Jr., concur.
Carpio-Morales, and Callejo, Sr., JJ., on leave.

Azcuna, J., on official leave.

Nachura, no part.

[1] Rollo, pp. 4-19. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

[2] CA rollo, pp. 25-28.

[3] Presided by Judge Pedro L. Suan.

[4] CA rollo, p. 12.

[5] The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[6] TSN, 16 May 1997, pp. 3-4.

[7] *Id.* at 7-11, 15-19; See also Exhibits "1-C" and "2-C."

[8] TSN, 22 May 1997, p. 1.

[9] *Id.* at 1-2.

[10] *Id.*

[11] Records, p. 26; Exhibit "A."

[12] Records, dorsal side of p. 26; Exhibit "A-10." TSN, 26 September 1997, pp. 4-5.

[13] TSN, 16 February 1998, pp. 21-23.

[14] TSN, 16 February 1998, 19 February 1998.

[15] TSN, 3 November 1997, p. 3.

[16] TSN, 13 February 1998, pp. 2-3.

[17] *Supra* note 2.

[18] *Id.* at 27.

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

[20] Rollo, pp. 4-19.

[21] *Id.* at 18-19.

[22] *Id.* at 20.

[23] *Id.* at 21-24.

[24] *Id.* at 9.

[25] See *People v. Tonyacao*, G.R. Nos. 134531-32, 7 July 2004, 433 SCRA 513.

[26] See R.A. No. 9346, entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," which was signed into law on 24 June 2006.

- [27] *People v. Espidol*, G.R. No. 150033, 12 November 2004, 442 SCRA 360, 372 citing *People v. Bello*, G.R. Nos. 130411-14, 13 October 1999, 316 SCRA 804, 811.
- [28] *People v. Apatay*, G.R. No. 147965, 7 July 2004, 433 SCRA 658, 663; *People v. Segnar, Jr.*, G.R. No. 133380, 18 February 2004, 423 SCRA 206, 211 citing *People v. Dayot*, G.R. No. 88281, 20 July 1990, 187 SCRA 637, 643.
- [29] *People v. Tonyacao*, *supra* note 25 at 521; *People v. Daniela*, 449 Phil. 547, 561 (2003) citing *People v. Arizapa*, 328 SCRA 214 (2000).
- [30] *People v. Daniela*, *supra*.
- [31] *People v. Tonyacao*, *supra* note 25; *People v. Pastor*, 428 Phil. 976 (2002).
- [32] *People v. Nadera, Jr.*, 381 Phil. 484 (2000); *People v. Tonyacao*, *supra* note 25 at 522 citing *People v. Principe*, 381 SCRA 642, 649 (2002), *People v. Molina*, 372 SCRA 378, 387 (2001), *People v. Alborida*, 359 SCRA 495 (2001), *People v. Hermoso*, 343 SCRA 567, 576 (2000).
- [33] *People v. Tonyacao*, *supra* note 25 at 522-523; *People v. Pastor*, *supra* note 31 at 987 citing *People v. Aranzado*, 418 Phil. 125 (2001); *People v. Chua*, 418 Phil. 565 (2001); *People v. Alicando*, 321 Phil. 657 (1995); *People v. Albert*, 321 Phil. 500 (1995).
- [34] Emphasis supplied. TSN, 22 May 1997, pp. 2-8.
- [35] TSN, 16 September 1997, pp. 8-17.
- [36] *People v. Nadera*, 381 Phil. 484 (2000). See also *People v. Lakindanum*, 364 Phil. 69 (1999); *People v. Molina*, 423 Phil. 637 (2001); *People v. Murillo*, G.R. No. 134583, 14 July 2004, 434 SCRA 342.
- [37] 338 Phil. 350, 374 (1997). See also *People v. Ostia*, 446 Phil. 181 (2003); *People v. Nismal*, 199 Phil. 649 (1982); *People v. Petalcorin*, G.R. No. 65376, 29 December 1989, 180 SCRA 685.
- [38] TSN, 16 September 1997, pp. 7-10.
- [39] *Id.* at 10.
- [40] *Id.*
- [41] *Id.* at 14-16.
- [42] *People v. Porio*, 427 Phil. 82, 93 (2002) citing *People v. Gallardo*, 323 SCRA 219, 2000; *People v. Bacor*, 306 SCRA 522 (1999). See *People v. Oranza*, 434 Phil. 417 (2002); *People v. Valdez*, 395 Phil. 207 (2000); *People v. Base*, 385 Phil. 803 (2000); *People v. Lumandong*, 384 Phil. 390 (2000); *People v. Calvo, Jr.*, 336 Phil. 655 (1997).
- [43] *People v. Lobrigas*, 442 SCRA 382, 392 (2002) citing *People v. Velasquez*, 352 SCRA 455 (2001).
- [44] *Roca v. Court of Appeals*, 403 Phil. 326 (2001); *People v. Conde*, 386 Phil. 859 (2000) citing *People v. Cristobal*, 322 Phil. 551 (1996); and *People v. Villanueva*, 363 Phil. 17 (1999).
- [45] Emphasis supplied. TSN, 11 September 1997, pp. 15-16.
- [46] *People v. Teodoro*. G.R. No. 170473, 12 October 2006.
- [47] *People v. Apatay*, *supra* note 28.

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