

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO LAOG Y RAMIN, ACCUSED-APPELLANT.

G.R. No. 178321. October 05, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For our review is the March 21, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00234 which affirmed appellant's conviction for murder in Criminal Case No. 2162-M-2000 and rape in Criminal Case No. 2308-M-2000.

Appellant Conrado Laog y Ramin was charged with murder before the Regional Trial Court (RTC), Branch 11, of Malolos, Bulacan. The Information,[2] which was docketed as Criminal Case No. 2162-M-2000, alleged:

That on or about the 6[th] day of June, 2000, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a lead pipe and with intent to kill one Jennifer Patawaran-Rosal, did then and there wil[l]fully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and hit with the said lead pipe the said Jennifer Patawaran-Rosal, thereby inflicting upon said Jennifer Patawaran-Rosal serious physical injuries which directly caused her death.

Contrary to law.

He was likewise charged before the same court with the crime of rape of AAA.[3] The second Information,[4] which was docketed as Criminal Case No. 2308-M-2000, alleged:

That on or about the 6[th] day of June, 2000, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation, that is, by attacking and hitting with a lead pipe one [AAA] which resulted [in] her incurring serious physical injuries that almost caused her death, and while in such defenseless situation, did then and there have carnal knowledge of said [AAA] against her will and consent.

Contrary to law.

When arraigned, appellant pleaded not guilty to both charges. The two cases were thereafter tried jointly because they arose from the same incident.

The prosecution presented as its principal witness AAA, the rape victim who was 19 years old at the time of the incident. Her testimony was corroborated by her grandfather BBB, Dr. Ivan Richard Viray, and her neighbor CCC.

AAA testified that at around six o'clock in the evening of June 6, 2000, she and her friend, Jennifer Patawaran-Rosal, were walking along the rice paddies on their way to apply for work at a canteen near the National Highway in Sampaloc, San Rafael, Bulacan. Suddenly, appellant, who was holding an ice pick and a lead pipe, waylaid them and forcibly brought them to a grassy area at the back of a concrete wall. Without

warning, appellant struck AAA in the head with the lead pipe causing her to feel dizzy and to fall down. When Jennifer saw this, she cried out for help but appellant also hit her on the head with the lead pipe, knocking her down. Appellant stabbed Jennifer several times with the ice pick and thereafter covered her body with thick grass.[5] Appellant then turned to AAA. He hit AAA in the head several times more with the lead pipe and stabbed her on the face. While AAA was in such defenseless position, appellant pulled down her jogging pants, removed her panty, and pulled up her blouse and bra. He then went on top of her, sucked her breasts and inserted his penis into her vagina. After raping AAA, appellant also covered her with grass. At that point, AAA passed out.[6]

When AAA regained consciousness, it was nighttime and raining hard. She crawled until she reached her uncle's farm at daybreak on June 8, 2000.[7] When she saw him, she waved at him for help. Her uncle, BBB, and a certain Nano then brought her to Carpa Hospital in Baliuag, Bulacan where she stayed for more than three weeks. She later learned that Jennifer had died.[8]

During cross-examination, AAA explained that she did not try to run away when appellant accosted them because she trusted appellant who was her uncle by affinity. She said that she never thought he would harm them.[9]

BBB testified that on June 8, 2000, at about six o'clock in the morning, he was at his rice field at Sampaloc, San Rafael, Bulacan when he saw a woman waving a hand and then fell down. The woman was about 200 meters away from him when he saw her waving to him, and he did not mind her. However, when she was about 100 meters away from him, he recognized the woman as AAA, his granddaughter. He immediately approached her and saw that her face was swollen, with her hair covering her face, and her clothes all wet. He asked AAA what happened to her, and AAA uttered, "Si Tata Coni" referring to appellant who is his son-in-law.[10] With the help of his neighbor, he brought AAA home.[11] AAA was later brought to Carpa Hospital in Baliuag, Bulacan where she recuperated for three weeks.

CCC, neighbor of AAA and Jennifer, testified that sometime after June 6, 2000, she visited AAA at the hospital and asked AAA about the whereabouts of Jennifer. AAA told her to look for Jennifer somewhere at Buenavista. She sought the assistance of Barangay Officials and they went to Buenavista where they found Jennifer's cadaver covered with grass and already bloated.[12]

Meanwhile, Dr. Ivan Richard Viray, a medico-legal officer of the Province of Bulacan, conducted the autopsy on the remains of Jennifer. His findings are as follows:

...the body is in advanced stage of decomposition[;] ... eyeballs and to[n]gue were protru[d]ed; the lips and abdomen are swollen; ... desquamation and bursting of bullae and denudation of the epidermis in the head, trunks and on the upper extremities[;] [f]rothy fluid and maggots coming from the nose, mouth, genital region and at the site of wounds, ... three (3) lacerations at the head[;] two (2) stab wounds at the submandibular region[;] four [4]punctured wounds at the chest of the victim[.]

... cause of death of the victim was hemorrhagic shock as result of stab wounds [in] the head and trunk.[13]

The prosecution and the defense also stipulated on the testimony of Elizabeth Patawaran, Jennifer's mother, as to the civil aspect of Criminal Case No. 2162-M-2000. It was stipulated that she spent P25,000 for Jennifer's funeral and burial.[14]

Appellant, on the other hand, denied the charges against him. Appellant testified that he was at home cooking dinner around the time the crimes were committed. With him were his children, Ronnie, Jay, Oliver and Conrado, Jr. and his nephew, Rey Laog. At around seven o'clock, he was arrested by the police officers of San Rafael, Bulacan. He learned that his wife had reported him to the police after he "went wild" that same night and struck

with a lead pipe a man whom he saw talking to his wife inside their house. When he was already incarcerated, he learned that he was being charged with murder and rape.[15]

Appellant further testified that AAA and Jennifer frequently went to his nipa hut whenever they would ask for rice or money. He claimed that in the evening of June 5, 2000, AAA and Jennifer slept in his nipa hut but they left the following morning at around seven o'clock. An hour later, he left his house to have his scythe repaired. However, he was not able to do so because that was the time when he "went wild" after seeing his wife with another man. He admitted that his nipa hut is more or less only 100 meters away from the scene of the crime.[16]

The defense also presented appellant's nephew, Rey Laog, who testified that he went to appellant's house on June 5, 2000, at around three o'clock in the afternoon, and saw AAA and Jennifer there. He recalled seeing AAA and Jennifer before at his uncle's house about seven times because AAA and his uncle had an illicit affair. He further testified that appellant arrived before midnight on June 5, 2000 and slept with AAA. The following morning, at around six o'clock, AAA and Jennifer went home. He and appellant meanwhile left the house together. Appellant was going to San Rafael to have his scythe repaired while he proceeded to his house in Pinakpinakan, San Rafael, Bulacan.[17]

After trial, the RTC rendered a Joint Decision[18] on June 30, 2003 finding appellant guilty beyond reasonable doubt of both crimes. The dispositive portion of the RTC decision reads:

WHEREFORE, in Crim. Case No. 2162-M-2000, this court finds the accused Conrado Laog GUILTY beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of Jennifer Patawaran, the following sums of money:

- a. P60,000.00 as civil indemnity;
- b. P50,000.00 as moral damages;
- c. P30,000.00 as exemplary damages.

WHEREFORE, in Crim. Case No. 2308-M-2000, this Court hereby finds the accused Conrado Laog GUILTY beyond reasonable doubt of Rape under Art. 266-A par. (a) of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant the following sums of money.

- a. P50,000.00 as civil indemnity;
- b. P50,000.00 as moral damages;
- c. P30,000.00 as exemplary damages.

SO ORDERED.[19]

Appellant appealed his conviction to this Court. But conformably with our pronouncement in *People v. Mateo*,[20] the case was referred to the CA for appropriate action and disposition.

In a Decision dated March 21, 2007, the CA affirmed with modification the trial court's judgment. The dispositive portion of the CA decision reads:

WHEREFORE, the instant Appeal is DISMISSED. The assailed Joint Decision, dated June 30, 2003, of the Regional Trial Court of Malolos, Bulacan, Branch 11, in Criminal Case Nos. 2162-M-2000 & 2308-M-2000, is hereby AFFIRMED with MODIFICATION. In Criminal Case [No.] 2162-M-2000, Accused-Appellant is further ordered to pay the heirs of Jennifer Patawaran [an] additional P25,000.00 as actual damages. The exemplary damages awarded by the Trial Court in 2162-M-2000 & 2308-M-2000 are hereby reduced to P25,000.00 each.

SO ORDERED.[21]

Appellant is now before this Court assailing the CA's affirmance of his conviction for both crimes of rape and murder. In a Resolution[22] dated August 22, 2007, we required the parties to submit their respective Supplemental Briefs, if they so desire. However, the parties submitted separate Manifestations in lieu of Supplemental Briefs, adopting the arguments in their respective briefs filed in the CA. Appellant had raised the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONY OF PROSECUTION WITNESS [AAA].

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[23]

Appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt for the killing of Jennifer Patawaran-Rosal and the rape of AAA. He assails AAA's credibility, the prosecution's main witness, and points out alleged inconsistencies in her testimony. Appellant also contends that the prosecution failed to establish that he carefully planned the execution of the crimes charged. According to him, AAA's narration that he waylaid them while walking along the rice paddies on their way to apply for work negates evident premeditation since there was no evidence that the said path was their usual route.

Appellant further contends that the trial court and CA erred in appreciating the qualifying circumstance of abuse of superior strength. He argues that for abuse of superior strength to be appreciated in the killing of Jennifer, the physical attributes of both the accused and the victim should have been shown in order to determine whether the accused had the capacity to overcome the victim physically or whether the victim was substantially weak and unable to put up a defense. Additionally, he attempts to cast doubt upon AAA's testimony, arguing that it lacked some details on how, after she was raped and stabbed by appellant, she was still able to put on her clothes and crawl to her grandfather's farm.

The appeal lacks merit.

Appellant principally attacks the credibility of prosecution witness AAA. Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts"[24] and "absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." [25] This rule is even more stringently applied if the appellate court concurred with the trial court.[26]

Here, both the trial and appellate courts gave credence and full probative weight to the testimony of AAA, the lone eyewitness to Jennifer's killing and was herself brutally attacked by appellant who also raped her. Appellant had not shown any sufficiently weighty reasons for us to disturb the trial court's evaluation of the prosecution eyewitness' credibility. In particular, we defer to the trial court's firsthand observations on AAA's deportment while testifying and its veritable assessment of her credibility, to wit:

From the moment [AAA] took the stand, this Court has come to discern in her the trepidations of a woman outraged who is about to recount the ordeal she had gone through. She took her oath with trembling hands, her voice low and soft, hardly audible. Face down, her eyes were constantly fixed on the floor as if avoiding an eye contact with the man she was about to testify against. After a few questions in direct, the emotion building up inside her came to the fore and she burst into tears, badly shaken, unfit to continue any further with her testimony. Thus, in deference to her agitated situation, this Court has to defer her direct-examination. When she came back, however, to continue with her aborted questioning, this time, composed and collected, direct and straightforward in her narration, all vestiges of doubt on her credibility vanished.[27]

Indeed, records bear out that AAA became so tense and nervous when she took the witness stand for the first time that the trial court had to cut short her initial direct examination. However, during the next hearing she was able to narrate her harrowing ordeal in a clear and straightforward manner, describing in detail how appellant waylaid them and mercilessly hit and attacked her and Jennifer with a lead pipe and ice pick before raping her. We quote the pertinent portions of her testimony:

Q:

During your previous testimony, Madam Witness, you said that you're not able to reach your place of work on June 6, 2000, what is the reason why you did not reach your place of work?

A: We were waylaid (hinarang) by Conrado Laog, sir.

Q: In what manner were you waylaid by Conrado Laog?

A: Conrado Laog hit me with the pipe on my head, sir.

x x x x

Q: Where were you when you were hit?

A: We were walking along the rice puddies (sic), Your Honor.

Fiscal:

Q: And what happened to you when you were hit with the lead pipe by Conrado Laog?

A: I fell down (nabuwal) because I felt dizzy, sir.

Q: Now, what happened next, if any?

A: I heard Jennifer crying, sir.

Q: And you heard Jennifer but did you see her?

A: Yes, sir.

Q: Where was Conrado Laog when you heard Jennifer crying?

A: He was beside me, sir.

Court:

Q: How about Jennifer, where was she when you heard her crying?

A: She was standing on the rice puddies, (sic), Your Honor.

Fiscal:

Q: And what was Conrado Laog doing?

A: He approached Jennifer, sir.

Q: Then, what happened next?

A: He hit Jennifer with the pipe, sir.

Q: And what happened to Jennifer?

A: She fell down, sir.

Q: What did Conrado Laog do next?

A: He stabbed Jennifer, sir.

Q: After Conrado Laog stabbed Jennifer, what happened next?

A: He covered Jennifer with grasses, sir.

Q: And after that, what did Conrado Laog do?

A: He came back to me, sir.

Q: When Conrado Laog came back to you, what did you do, if any?

A: He hit me with the pipe several times, sir.

Q: And what happened to you?

A: And he stabbed me on my face, sir.

Q: Then, what happened to you?

A: After that, he pulled down my jogging pants, sir. He removed my panty and my blouse and my bra.

Q: After that, what did he do next?

A: And then, he went on top of me, sir.

Q: Then, what happened?

A: He sucked my breast, sir.

Q: And after that?

A: He was forcing his penis into my vagina, sir.

Q: Did he suc[c]eed in putting his penis into your vagina?

A: Yes, sir.

Q: For how long did the accused Conrado Laog insert his penis into your vagina?

A: For quite sometime, sir.

Q: After that, what happened?

A: After that, he stood up, sir.

Q: And where did he go?

A: After that, he covered me with grasses, sir.

Q: And after that, what did you do?

A: I fell unconscious, sir.

Q: Now, if Conrado Laog is inside the courtroom, will you be able to point to him?

Interpreter:

Witness is pointing to a man wearing an inmate's uniform and when asked his name, answered: Conrado Laog.

x x x x[28]

On the other hand, appellant merely interposed the defense of denial and alibi. He claimed that at the time of the incident, he was at his house with his children and nephew cooking dinner. His defense, however, cannot prevail over the straightforward and credible testimony of AAA who positively identified him as the perpetrator of the murder and rape. Time and again, we have held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[29]AAA was firm and unrelenting in pointing to appellant as the one who attacked her and Jennifer, stabbing the latter to death before raping AAA. It should be noted that AAA knew appellant well since they were relatives by affinity. As correctly held by the CA, with AAA's familiarity and proximity with the appellant during the commission of the crime, her identification of appellant could not be doubted or mistaken. In fact, AAA, upon encountering appellant, did not run away as she never thought her own uncle would harm her and her friend. Moreover, the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.[30]There is no evidence to show any improper motive on the part of AAA to testify falsely against appellant or to falsely implicate him in the commission of a crime. Thus, the logical conclusion is that the testimony is worthy of full faith and credence.[31]

In *People v. Nieto*,[32]we reiterated that --

It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of alibi is likewise unavailing. Firstly, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Secondly, alibi is unacceptable when there is a positive identification of the accused by a credible witness. Lastly, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.

Appellant does not dispute that he was near the vicinity of the crime on the evening of June 6, 2000. In fact, during his cross-examination, appellant admitted that his house was more or less only 100 meters from the crime scene. Thus, his defense of alibi is not worthy of any credit for the added reason that he has not shown that it was physically impossible for him to be at the scene of the crime at the time of its commission.

In view of the credible testimony of AAA, appellant's defenses of denial and alibi deserve no consideration. We stress that these weak defenses cannot stand against the positive identification and categorical testimony of a rape victim.[33]

Appellant attempts to discredit AAA's accusation of rape by pointing out that while she testified on being very weak that she even passed out after she was raped by appellant, she nevertheless stated that when she crawled her way to her grandfather's farm she was wearing her clothes. Appellant also contends that the prosecution should

have presented the physician who examined AAA to prove her allegations that she was beaten and raped by appellant.

We are not persuaded.

Based on AAA's account, appellant did not undress her completely -- her blouse and bra were merely lifted up ("nililis") while her undergarments were just pulled down, which therefore explains why she still had her clothes on when she crawled to her grandfather's farm. Nonetheless, this matter raised by appellant is a minor detail which had nothing to do with the elements of the crime of rape. Discrepancies referring only to minor details and collateral matters -- not to the central fact of the crime -- do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole.[34] For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[35] It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[36]

As to the fact that the physician who examined AAA at the hospital did not testify during the trial, we find this not fatal to the prosecution's case.

It must be underscored that the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[37] Thus we have ruled that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible,[38] as what we find in this case.

While we concur with the trial court's conclusion that appellant indeed was the one who raped AAA and killed Jennifer, we find that appellant should not have been convicted of the separate crimes of murder and rape. An appeal in a criminal case opens the entire case for review on any question, including one not raised by the parties.[39] The facts alleged and proven clearly show that the crime committed by appellant is rape with homicide, a special complex crime provided under Article 266-B, paragraph 5 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.[40]

In *People v. Larrañaga*,[41] this Court explained the concept of a special complex crime, as follows:

A discussion on the nature of special complex crime is imperative. Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime. Some of the special complex crimes under the Revised Penal Code are (1) robbery with homicide, (2) robbery with rape, (3) kidnapping with serious physical injuries, (4) kidnapping with murder or homicide, and (5) rape with homicide. In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: "When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed;["] and that this provision gives rise to a special complex crime. In the cases at bar, particularly Criminal Case No. CBU-45303, the Information specifically alleges that the victim Marijoy was raped "on the occasion and in connection" with her detention and was killed "subsequent thereto and on the occasion thereof." Considering that the prosecution was able to prove each of the component offenses, appellants should be convicted of the special complex crime of kidnapping and serious illegal detention with homicide and rape. x x x[42] (Emphasis supplied.)

A special complex crime, or more properly, a composite crime, has its own definition and special penalty in the

Revised Penal Code, as amended. Justice Regalado, in his Separate Opinion in the case of *People v. Barros*,^[43] explained that composite crimes are "neither of the same legal basis as nor subject to the rules on complex crimes in Article 48 [of the Revised Penal Code], since they do not consist of a single act giving rise to two or more grave or less grave felonies [compound crimes] nor do they involve an offense being a necessary means to commit another [complex crime proper]. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses."^[44]

Article 266-B of the Revised Penal Code, as amended, provides only a single penalty for the composite acts of rape and the killing committed by reason or on the occasion of the rape.

ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

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

x x x x (Emphasis supplied.)

Considering that the prosecution in this case was able to prove both the rape of AAA and the killing of Jennifer both perpetrated by appellant, he is liable for rape with homicide under the above provision. There is no doubt that appellant killed Jennifer to prevent her from aiding AAA or calling for help once she is able to run away, and also to silence her completely so she may not witness the rape of AAA, the original intent of appellant. His carnal desire having been satiated, appellant purposely covered AAA's body with grass, as he did earlier with Jennifer's body, so that it may not be easily noticed or seen by passersby. Appellant indeed thought that the savage blows he had inflicted on AAA were enough to cause her death as with Jennifer. But AAA survived and appellant's barbaric deeds were soon enough discovered.

The facts established showed that the constitutive elements of rape with homicide were consummated, and it is immaterial that the person killed in this case is someone other than the woman victim of the rape. An analogy may be drawn from our rulings in cases of robbery with homicide, where the component acts of homicide, physical injuries and other offenses have been committed by reason or on the occasion of robbery. In *People v. De Leon*,^[45] we expounded on the special complex crime of robbery with homicide, as follows:

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed, or that aside from the homicide, rape, intentional

mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.[46] (Emphasis supplied.)

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.[47] Hence, even if any or all of the circumstances (treachery, abuse of superior strength and evident premeditation) alleged in the information have been duly established by the prosecution, the same would not qualify the killing to murder and the crime committed by appellant is still rape with homicide. As in the case of robbery with homicide, the aggravating circumstance of treachery is to be considered as a generic aggravating circumstance only. Thus we ruled in *People v. Macabales*[48]

Finally, appellants contend that the trial court erred in concluding that the aggravating circumstance of treachery is present. They aver that treachery applies to crimes against persons and not to crimes against property. However, we find that the trial court in this case correctly characterized treachery as a generic aggravating, rather than qualifying, circumstance. Miguel was rendered helpless by appellants in defending himself when his arms were held by two of the attackers before he was stabbed with a knife by appellant Macabales, as their other companions surrounded them. In *People v. Salvatierra*, we ruled that when alevosia (treachery) obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance. Robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. There is no special complex crime of robbery with murder under the Revised Penal Code. Here, treachery forms part of the circumstances proven concerning the actual commission of the complex crime. Logically it could not qualify the homicide to murder but, as generic aggravating circumstance, it helps determine the penalty to be imposed.[49] (Emphasis supplied.)

The aggravating circumstance of abuse of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime.[50] It is taken into account whenever the aggressor purposely used excessive force that is out of proportion to the means of defense available to the person attacked.[51]

In this case, as personally witnessed by AAA, appellant struck Jennifer in the head with a lead pipe then stabbed her repeatedly until she was dead. Clearly, the manner by which appellant had brutally slain Jennifer with a lethal weapon, by first hitting her in the head with a lead pipe to render her defenseless and vulnerable before stabbing her repeatedly, unmistakably showed that appellant intentionally used excessive force out of proportion to the means of defense available to his unarmed victim. As aptly observed by the appellate court:

It has long been established that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. Unlike in treachery, where the victim is not given the opportunity to defend himself or repel the aggression, taking advantage of superior strength does not mean that the victim was completely defenseless. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, although not annulling it. By deliberately employing deadly weapons, an ice pick and a lead pipe, [a]ccused-[a]ppellant clearly took advantage of the superiority which his strength, sex and weapon gave him over his unarmed victim. The accused-appellant's sudden attack caught the victim off-guard rendering her defenseless.[52]

Abuse of superior strength in this case therefore is merely a generic aggravating circumstance to be considered in the imposition of the penalty. The penalty provided in Article 266-B of the Revised Penal Code, as amended, is death. However, in view of the passage on June 24, 2006 of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" the Court is mandated to impose on the appellant the penalty of reclusion perpetua without eligibility for parole.[53]

The aggravating/qualifying circumstances of abuse of superior strength and use of deadly weapon have greater relevance insofar as the civil aspect of this case is concerned. While the trial court and CA were correct in holding that both the victim of the killing (Jennifer) and the rape victim (AAA) are entitled to the award of exemplary damages, the basis for such award needs further clarification.

Articles 2229 and 2230 of the Civil Code provide:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

In view of the presence of abuse of superior strength in the killing of Jennifer, her heirs are entitled to exemplary damages pursuant to Article 2230. With respect to the rape committed against AAA, Article 266-B of the Revised Penal Code, as amended, provides that a man who shall have carnal knowledge of a woman through force, threat or intimidation under Article 266-A (a), whenever such rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. Since the use of a deadly weapon raises the penalty for the rape, this circumstance would justify the award of exemplary damages to the offended party (AAA) also in accordance with Article 2230.

Article 266-B likewise provides for the imposition of death penalty if the crime of rape is committed with any of the aggravating/qualifying circumstances enumerated therein. Among these circumstances is minority of the victim and her relationship to the offender:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. (Emphasis supplied.)

AAA's relationship to appellant, who is his uncle by affinity, was not alleged in the information but admitted by appellant when he testified in court:

DIRECT EXAMINATION OF
CONRADO LAOG By:
Atty. Roque:

x x x x

Q

Do you know a person by the name of [AAA]?

A

Yes, sir.

Q

Why do you know her?

A

Because she is our neighbor. Her house is just adjacent to ours, sir.

Q

How are you related to [AAA]?

A

Her mother and my wife are sisters.

Q

So she is your niece-in-law?

A

Yes, sir.

x x x x[54](Emphasis supplied.)

The failure of the prosecution to allege in the information AAA's relationship to appellant will not bar the consideration of the said circumstance in the determination of his civil liability. In any case, even without the attendance of aggravating circumstances, exemplary damages may still be awarded where the circumstances of the case show the "highly reprehensible or outrageous conduct of the offender." Citing our earlier ruling in the case of *People v. Catubig*,^[55] this Court clarified in *People v. Dalisay*^[56]:

Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. Pertinent are the following sections of Rule 110:

x x x x

Nevertheless, *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*, *People v. Victor*, *People v. Orilla*, *People v. Calongui*, *People v. Magbanua*, *People of the Philippines v. Heracleo Abello y Fortada*, *People of the Philippines v. Jaime Cadag Jimenez*, and *People of the Philippines v. Julio Manalili*. And in the second set are *People v. Llave*, *People of the Philippines v. Dante Gragasín y Par*, and *People of the Philippines v. Edwin Mejia*. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

x x x x

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages--taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus--

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant--associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud--that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasín y Par*, "[t]he application of Article 2230 of the Civil Code strictissimi juris in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages--to set a public example or correction for the public good." [57] (Emphasis supplied.)

In this case, the brutal manner by which appellant carried out his lustful design against his niece-in-law who never had an inkling that her own uncle would do any harm to her and her friend, justified the award of exemplary damages. Appellant's sudden and fierce attack on AAA -- hitting her several times on the head with a lead pipe before stabbing her face until she fell down, hurriedly lifting her bra and blouse and pulling down her undergarments, raping her while she was in such a defenseless position, covering her body with grasses and abandoning her to die in a grassy field -- was truly despicable and outrageous. Such vicious assault was made even more reprehensible as it also victimized Jennifer, who sustained more stab wounds and beatings, causing her violent death. Article 2229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society. [58] In line with current jurisprudence, the amount of P30,000 each for AAA and the heirs of Jennifer as exemplary damages was correctly awarded by the trial court.

We also affirm the trial court and CA in ordering appellant to pay the heirs of Jennifer Patawaran-Rosal the amounts of P50,000 as moral damages. In cases of murder and homicide, the award of moral damages is

mandatory, without need of allegation and proof other than the death of the victim.[59] Anent the award of civil indemnity, the same is increased to P75,000 to conform with recent jurisprudence.[60] As to expenses incurred for the funeral and burial of Jennifer, the CA correctly awarded her heirs the amount of P25,000 as actual damages, said amount having been stipulated by the parties during the trial.

Lastly, we affirm the award of P50,000 to AAA as civil indemnity for the crime of rape, as well as the award of P50,000 as moral damages. Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[61]

WHEREFORE, the appeal is DISMISSED for lack of merit. The March 21, 2007 Decision of the Court of Appeals in CA-G.R. CR HC No. 00234 is AFFIRMED with MODIFICATIONS. Accused-appellant Conrado Laog y Ramin is hereby found GUILTY beyond reasonable doubt of Rape With Homicide under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and is accordingly sentenced to suffer the penalty of reclusion perpetua without eligibility for parole.

Accused-appellant is hereby ordered to pay the heirs of Jennifer Patawaran-Rosal P75,000 as civil indemnity *ex delicto*, P50,000 as moral damages, P25,000 as actual damages and P30,000 as exemplary damages. He is further ordered to pay to the victim AAA the sums of P50,000 as civil indemnity *ex delicto*, P50,000 as moral damages and P30,000 as exemplary damages.

With costs against the accused-appellant.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 3-16. Penned by Associate Justice Noel G. Tijam with Associate Justices Vicente S.E. Veloso and Sesinando E. Villon concurring.

[2] Records, Vol. I, p. 1.

[3] Consistent with our decision in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

[4] Records, Vol. II, p. 1.

[5] TSN, June 20, 2001, pp. 3-4; TSN, December 12, 2001, pp. 3-7.

[6] *Id.* at 4-5.

[7] *Id.* at 6; TSN, December 12, 2001, pp. 12-13.

[8] *Id.* at 6-7.

[9] TSN, December 12, 2001, p. 7.

[10] TSN, January 16, 2002, pp. 5-7.

[11] *Id.* at 8.

- [12] TSN, May 22, 2002, pp. 4-7.
- [13] TSN, February 27, 2002, p. 5.
- [14] CA rollo, p. 31.
- [15] TSN, December 4, 2002, pp. 3-5.
- [16] Id. at 4-7.
- [17] TSN, March 26, 2003, pp. 3-5.
- [18] CA rollo, pp. 29-33.
- [19] Id. at 32-33.
- [20] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [21] Rollo, p. 15.
- [22] Id. at 20.
- [23] CA rollo, p. 70.
- [24] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.
- [25] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.
- [26] Id.
- [27] CA rollo, pp. 31-32.
- [28] TSN, June 20, 2001, pp. 3-5.
- [29] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 393.
- [30] *People v. Honra, Jr.*, G.R. Nos. 136012-16, September 26, 2000, 341 SCRA 110, 127, citing *People v. Pulusan*, G.R. No. 110037, May 21, 1998, 290 SCRA 353, 372.
- [31] See *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 827.
- [32] *Supra* note 24 at 527-528.
- [33] *People v. Orande*, G.R. Nos. 141724-27, November 12, 2003, 415 SCRA 699, 708.
- [34] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.
- [35] *People v. Villarino*, G.R. No. 185012, March 5, 2010, 614 SCRA 372, 387, citing *People v. Masapol*, G.R. No. 121997, December 10, 2003, 417 SCRA 371, 377.
- [36] *People v. Wasit*, G.R. No. 182454, July 23, 2009, 593 SCRA 721, 729.
- [37] *People v. Cadap*, G.R. No. 190633, July 5, 2010, 623 SCRA 655, 663, citing *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 700-701.
- [38] *People v. Tamano*, G.R. No. 188855, December 8, 2010, 637 SCRA 672, 688, citing *People v. Arivan*, G.R. No. 176065, April 22, 2008, 552 SCRA 448, 468-469.
- [39] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 613-614, citing *Esqueda v. People*,

G.R. No. 170222, June 18, 2009, 589 SCRA 489, 506.

[40] The Anti-Rape Law of 1997, which took effect on October 22, 1997.

[41] G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530.

[42] *Id.* at 580.

[43] G.R. Nos. 101107-08, June 27, 1995, 245 SCRA 312, 323-332.

[44] *Id.* at 328-329.

[45] G.R. No. 179943, June 26, 2009, 591 SCRA 178.

[46] *Id.* at 192-193, citing *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67; *People v. Abuyen*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582; *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639; and *People v. Mangulabnan, et al.*, 99 Phil. 992, 999 (1956).

[47] *People v. Nanas*, G.R. No. 137299, August 21, 2001, 363 SCRA 452, 469-470, citing *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 564 and *People v. Sequiño*, G.R. No. 117397, November 13, 1996, 264 SCRA 79, 101.

[48] G.R. No. 111102, December 8, 2000, 347 SCRA 429.

[49] *Id.* at 442, citing *People v. Salvatierra*, G.R. No. 111124, June 20, 1996, 257 SCRA 489, 507 and *People v. Vivas*, G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242.

[50] See *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 284.

[51] *Id.*

[52] Rollo, pp. 13-14.

[53] *People v. Villarino*, *supra* note 35 at 389.

[54] TSN, December 4, 2002, p. 3.

[55] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[56] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

[57] *Id.* at 817-821.

[58] *People v. Villarino*, *supra* note 35 at 390.

[59] *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 457.

[60] *People v. Nazareno*, G.R. No. 180915, August 9, 2010, 627 SCRA 383, 393.

[61] *Supra* note 38 at 475.

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