

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FAUSTINO MARTINEZ Y LALONGISIP ALIAS FAUSTO, ACCUSED
WHOSE DEATH SENTENCE IS UNDER REVIEW.**

G.R. No. 64499, March 06, 1984

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PER CURIAM:

This is a review en consulta of the decision of the Regional Trial Court of Oriental Mindoro, Calapan Branch 40, convicting Faustino Martinez y Lalongisip of rape with homicide, sentencing him to death and ordering him to indemnify the heirs of the minor, Merle Aquino, in the sum of twelve thousand pesos (Criminal Case No. C-1917).

Faustino Martinez, 24, single, a sawer and a resident of Barangay Dulangan, Baco, Oriental Mindoro, was convicted of homicide in 1981 by Judge Aguila in Criminal Case No. 547 of the Court of First Instance at Calapan, Oriental Mindoro. He was sentenced to two years, four months and one day of prision correccional to eight years of prision mayor. He was confined in the provincial jail. The anomaly was that for more than two years he was awaiting transfer to the New Bilibid Prison.

On May 1, 1983, Oliva, a provincial guard stationed at Pinamalayan, with the consent of Benjamin M. Cueto, Sr., the provincial warden, brought Martinez to Victoria to gather firewood to be used at his wedding and left him there. Oliva intended to fetch Martinez on his return to Calapan. (Nos. 14-15, Exh. E.)

In the evening of May 18, 1983 there was a dance at Barangay Merit, Victoria. It was the climax of the Flores de Mayo. At that dance, Martinez (the convict who should be languishing in the provincial jail at Calapan) met an acquaintance, Merle Aquino, 18, single. Their parents were compadres. Martinez used to be a hired hand of Merle's father, Rodolfo Aquino, and lived for a long time in his house (No. 18, Exh. I-1).

The dance ended at about one o'clock in the morning of May 19. Merle was to be escorted to her home at Barangay Bambanin by Martinez. Orlando Perez, 14, offered to accompany them but Martinez threatened to box him if he did so (No. 6, Exh. H). So, only Merle and Martinez proceeded to Bambanin.

On reaching a coconut grove in Bambanin, Martinez suddenly held Merle. He said: "Hinawakan ko po siya sa kamay at pinilit kong itinumba sa lupa at hinila kong pababa ang kanyang panty hanggang sa hita at pinagsamantalahan ko siya." (No. 21, Exh. D.)

Asked why he killed Merle since he had already sexual congress with her, Martinez said that she threatened to report the matter to her father. "Kaya siya ay sinaksak ko hanggang siya ay mamatay." (No. 22, Exh. D.)

The body was found the following day in a malodorous state with plenty of maggots (Exh. C). The autopsy disclosed that her hymen and vulvar orifice were lacerated at the six o'clock position. As an indication of the beastliness of the sexual assault, the laceration extended to the anal opening. Merle sustained nineteen (19) stab wounds on different parts of the body. The first listed stab wound was on the chest, four inches deep. It penetrated the heart and was evidently fatal (Exh. A and A-1).

The provincial fiscal charged him with rape with homicide. At his arraignment, the information was read to him in Tagalog. The trial judge asked him: "Ipinahihiwatig ng inyong manananggol na itinalaga ng Hukumang ito na ikaw, Faustino Martinez y Lalongisip, ay kusang loob at handang umamin sa kasalanang panggagahasa at pagpatay, ito ba ay totoo?" He unhesitatingly answered in the affirmative.

The trial judge apprised him that a plea of guilty would mean the imposition of the death penalty upon him. He answered spontaneously that he was aware of the consequences of that plea. He pleaded guilty. He was assisted by counsel. The trial court required the pro-prosecution to present its evidence.

After the prosecution had finished the presentation of its evidence, Martinez took the witness stand. He was interrogated by his counsel. He testified that the charge of rape with homicide against him was "the truth" (4 tsn June 22, 1983). He admitted that at the arraignment, lawyer Turano of the Citizens Legal Assistance Office advised him that if he pleaded guilty he would be sentenced to death and that in spite of that advice he entered a plea of guilty (8). He ratified his confession, Exhibits D and E (8-10).

For the rape with homicide, a capital offense par excellence, the penalty under article 335, in relation to articles 160 and 63 of the Revised Penal Code, is death which is imposable regardless of the generic mitigating and aggravating circumstances attending that special complex offense. (People vs. Pascual, Jr., G. R. No. 53403, November 12, 1981, 109 SCRA 197; People vs. Saligan, L-39712, November 21, 1980, 101 SCRA 264; People vs. Laspardas, L-46146, October 23, 1979, 93 SCRA 638; People vs. Yutila, L-32791, January 27, 1981, 102 SCRA 264; People vs. Vizcarra, L-38859 July 30, 1982, 115 SCRA 743 and People vs. Umali, L-35705, August 21, 1982, 116 SCRA 23.)

Counsel de oficio for Martinez, in his manifestation in lieu of a brief, regretfully confessed that after a conscientious study he could not make any assignment of errors. However, he submitted that reclusion perpetua would be the appropriate penalty. The Solicitor General manifested that it was unnecessary to file an appellee's brief.

Finding no error in the imposition of the death penalty, the trial court's judgment is affirmed with costs de oficio.

A copy of this decision should be furnished the Minister of Justice for such action as he may deem necessary to take against the provincial warden and guard mentioned in the decision.

SO ORDERED.

Makasiar, Acting C.J., Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin and Gutierrez, Jr., JJ., concur.

Relova, J., votes for reclusion perpetua.

Fernando, C.J., and Teehankee, JJ., on leave.

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