

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO FLORES, ALEX KING CRUZ, SERVILLANO PARINAS AND ERNESTO SARSOZA, DEFENDANTS-APPELLANTS.

G.R. No. 71980, March 18, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Quietly traversing the barrio road on her way home, unaware of the danger that lurked in the night, the victim, a registered nurse, did not have the slightest idea that she would fall into the abyss of death on that fateful night of September 21, 1984. She was mercilessly raped and killed by four men.

The morning after, her naked body with a branch of ipil-ipil inserted into her private part, was found lying prostrate with several hack and stab wounds. She was identified as Mercedes M. Dulay.

Having received a report on the killing, the police at Manaoag, Pangasinan immediately went to the irrigation canal where the body of Mercedes was found. A few hours later, Leonardo Flores was apprehended. He was taken to the Manaoag police station where he was investigated. He revealed his companions in the commission of the crime as Ernesto Sarsoza alias Ramon, Alex King Cruz alias Boy and Servillano Parinas alias Anong. The four were later charged with rape with homicide and robbery in the Regional Trial Court at Lingayen, Pangasinan in an information which reads:

"That on or about September 21, 1984, in the evening, in barangay Inamotan, municipality of Manaoag, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating, mutually helping one another, with abuse of superior strength and taking advantage of nighttime, did then and there, wilfully, unlawfully, feloniously and with lewd designs, forcibly took turns in having sexual intercourse with Mercedes Dulay against her will, after which, and by reason of such rape accused with intent to kill, did then and there, wilfully, unlawfully and feloniously strike and stab Mercedes Dulay on different parts of her body inflicting mortal wounds which caused her death and, thereafter, accused got a piece of ipil-ipil wood about 1 1/4 centimeter in diameter and inserted it in her vaginal canal, and on the occasion thereof accused with intent to gain, did then and there wilfully, unlawfully and feloniously take and carry away a gold graduation ring valued at One Thousand (P1,000.00) Pesos, lady Seiko wrist watch valued at Eight Hundred (P800.00) Pesos and cash money amounting to One Hundred (P100.00) Pesos all belonging to said Mercedes Dulay, to the damage and prejudice of her heirs.

"That the commission of this offense was attended by the aggravating circumstances of evident premeditation, use of superior strength, nighttime which was purposely sought by the accused to facilitate and insure its commission and circumstances brought about which added ignominy to the natural effects of the crime.

"Contrary to Article 335 of the Revised Penal Code as amended by Rep. Act No. 2632 & Rep. Act No. 4111."^[1]

At the arraignment, Alex King Cruz, Servillano Parinas and Ernesto Sarsoza, assisted by counsel, pleaded not guilty to the charge. Leonardo Flores initially pleaded guilty but the court prudently deemed it wise to defer action on his plea to give him time to engage the services of a counsel of his choice. The court forthwith recorded a plea of not guilty for Leonardo Flores.[2]

On December 19, 1984, Leonardo Flores was rearraigned. He reiterated his plea of guilty. Hence, the court admonished him once more of the meaning, extent and effect of his plea. Since Flores insisted on entering a plea of guilty, the court ordered the withdrawal of his recorded plea of not guilty and entered that of guilty. The court, however, deferred its judgment until such time when the prosecution had fully presented its evidence.[3] Before the presentation of such evidence, Flores volunteered to testify for the government "to tell all the truth about the case." [4] According to Flores the following transpired:

At about 6:00 o'clock in the evening of September 21, 1984, Flores was in the house of a friend named Jose Cacayan. He was with Cruz, Parinas and Sarsoza. They drank one bottle of White Castle. They also had five sticks of marijuana and each one smoked a stick. They passed around the fifth stick.[5]

About an hour later, the group parted ways. Flores went home to take his supper. All four of them, however, returned to the house of Jose Cacayan at around 7:30 p.m.[6] Cruz told them to proceed to the east to wait for Mercedes "to get her money, kill her and rape her." The three of them agreed to Cruz's proposal and Sarsoza even said, "I am going to rape and kill her." [7]

The group proceeded to the Samiley irrigation site which was around fifty meters from the house of Cacayan. It took them five minutes to reach the place. Along the way, Flores heard the three remarked that "something (was) already wrong" with their minds.[8]

They waited for Mercedes for around thirty minutes in a forested area about five electric posts away from the national road.[9] As proposed by the three, when Mercedes was some five meters from them, Flores caught her by placing his left arm around her neck. Cruz pulled her dress by her neckline and Pariñas struck her head twice with a stone. Sarsoza held her by her legs. Then they forced her to lie down on the barrio road. Mercedes cried, "Take everything you want (from) me but please do not kill me." [10]

Cruz insisted that they should kill her. Out of pity, Flores asked them not to kill her but Pariñas retorted that they better kill her so that she could not report the incident to the authorities. Sarsoza also believed that they should kill her.

Mercedes was lying down when Cruz tore her dress from the neckline to the hemline with a one-foot long bayonet and in the process also tore her bra and half-slip. Flores was holding her hands while the two others were holding her legs when Cruz ripped apart her panty also with his bayonet.[11] Cruz then lowered his pants and briefs to his knees, went on top of Mercedes, mashed her breast and nipples and then "took her womanhood." Mercedes once more pleaded, "Please get everything from me but please do not kill me." [12]

While Cruz was on top of Mercedes, Flores was holding her hands, Pariñas her left leg and Sarsoza her right leg. After about a minute, Pariñas took his turn in having sexual intercourse with Mercedes. Flores still held her hands while Cruz took Pariñas' place in holding her left leg. About a minute later, Sarsoza took his turn in ravishing Mercedes while Pariñas grabbed and held her leg. Flores was the last to have intercourse with Mercedes while Sarsoza held her hands and the two others her legs.[13]

Thereafter, Sarsoza stabbed her breast with his own bayonet as Mercedes begged, "Have mercy on me. Do not kill me." But Cruz slashed her neck nonetheless and she was forever silenced.[14]

Flores and Sarsoza dumped her in a canal about a meter away from the road where they raped and killed her so that nobody could see her right away while Cruz and Pariñas watched. Sarsoza took a branch of a nearby ipil-ipil tree with his bolo, gave the 14-inch long branch to Flores and ordered him to insert it into the vagina of Mercedes with a warning that should he fail to do so, he would kill Flores.[15]

After accomplishing the dastardly act, Flores accidentally touched Mercedes' college ring with "Baguio General Hospital" engraved on it. He got the ring which also bore Mercedes' name. From the canal, Flores saw the shoulder bag of Mercedes, got it, took the money amounting to one hundred pesos and threw away the bag in the nearby forested area. Cruz also took the wrist watch from Mercedes' arm. Thereafter, they went their separate ways - Flores proceeded to the east while the three went towards the west.[16]

At home, Flores went to bed and awoke around 6:00 o'clock the following morning. He took Mercedes' ring and erased her engraved name on it. He went to the field to plant rice and stayed there until noontime when he went home for lunch.

In the afternoon, he changed clothes to go to town to watch a movie. On the way, he met motorcycle-riding policemen who invited him for investigation. Having learned that the investigation was about the crimes committed against Mercedes, Flores fled. The policemen fired a warning shot but still Flores ran thereby attracting the barrio people who also pursued him. When they saw him crawling on the ricefield, the people stoned Flores hitting him on the left leg. As they mauled him, Flores revealed the identity of his companions.[17] A police officer retrieved a blood-stained bayonet from Flores' waist and Mercedes' graduation ring from his pocket.[18]

At the Manaoag police station, Flores executed a sworn statement. Asked if he needed the assistance of counsel, Flores replied that with or without counsel, he wanted to give a state-ment voluntarily and freely. He declared in the statement that they were drinking because it was his birthday, named Pariñas, Cruz and Sarsoza as his companions, and related how they perpetrated the crime which they had been planning for four days.[19]

Meanwhile, pictures were taken of the body of Mercedes at the crime scene.[20] She was autopsied by the rural health unit physician in Manaoag at 9:30 a.m. of September 22, 1984. The postmortem report reveals that Mercedes, who was 29 years old when she died, sustained the following injuries:

"Lacerated wound and hematoma, right posterior parietal region of the head - 1 cm. in length

Post auricular right side - 1 in. incised wound

Left side of the neck - zigzag, hacking wound, longest 4 in. shortest 3/4 in.

Anterior part of the neck, near the vocal chord -- stab wound, 1 in. in width, depth 1 1/4 in.

Stab wound on the chest right side - 2 inches above right nipple, 1 1/2 in width with 6 in depth

Lateral right part at the back posteriorly near the axila, 7 1/4 in. deep, with 1 1 1/2 in. stab wound

Right hand - incised wound between right thumb and index finger, 1 in. posterior, anterior 1/4 in.

Hacking wound on index finger, right hand

Hacking wound between index and middle finger

Hacking wound on the center of middle finger

2 hacking wounds on left right finger (center)

hacking wound on palm - near the root of left small finger, 1 1/2 in. in length."

The examining physician also found, after an internal examination, that the "introitus" admitted 1 1/2 fingers easily, that there was about 3 cc. of clear fluid coming out of the vaginal opening and that there were abrasions on the mucosa of the vaginal canal. She also indicated in the postmortem report that a piece of ipil-ipil wood, 1 1/4 inches in diameter was found inserted in the victim's vaginal canal. She attributed the cause of death to "massive hemorrhage due to multiple stab wounds and hacking wounds." [21] The death certificate also shows that Mercedes died between 8:00 and 9:00 p.m. of September 21, 1984. [22]

Upon the request of Carmen Molintas Dulay, the victim's mother, [23] the National Bureau of Investigation, through Dr. Arturo G. Llavore, performed another autopsy on the victim on September 30, 1984. Dr. Llavore indicated in Autopsy Report No. NO-84-33-P that Mercedes died because of "hemorrhage, severe, secondary to multiple stabbed and hacked wounds." He also arrived at the conclusion that the genital findings on the victim were "compatible with sexual intercourse with man and consistent with alleged date of commission." [24] He also presented in court photographs of the victim taken during the autopsy. [25]

Carolyn Custodio, a supervising chemist at the NBI, testified that the tests for blood on the bayonet yielded negative results but she found human blood belonging to group B on the panty. [26] She found no spermatozoa and seminal stains on the ipil-ipil branch [27] but a comparative examination of the head and pubic hair specimens taken from the crime scene revealed that they were not similar as they varied in color, length, presence of medulla tips, diameter, medullary index and hair characteristics. [28] Custodio concluded that the hair samples belonged to several persons. [29]

Emilio Dulay, the victim's father, testified that Mercedes was a registered nurse who worked at the Villaflores Clinic in Dagupan City. Her monthly earnings therein consisted of P1,000 as salary and P500 as assistant's fee. [30] She shared one-half of her earnings with the family. For her 13-day wake, the family spent P400 for food. They also spent P10,000 for the coffin and funeral services [31] and a total of P300 for the traditional commemoration of the 9th and 40th day from her death. [32] While Mercedes was lying in state, the family received a telegram dated September 24, 1984 addressed to her directing her to report for a final interview for a job at the King Fahd Armed Forces Hospital at Jeddah, Saudi Arabia. [33]

According to Emilio Dulay, in reporting for work, his daughter used to walk a kilometer from their home to the irrigation site where she would take a tricycle to Urdaneta. From there, Mercedes would take a bus for Dagupan City. She usually goes home between 6:00 and 8:00 o'clock in the evening. [34] He used to send someone to fetch her at the irrigation site but on that fateful night Mercedes was alone. [35]

Defendants Cruz, Sarsoza and Pariñas denied having anything to do with the crimes. They interposed alibi as a defense and related in court that between 6:00 and 7:30 o'clock in the evening of September 21, 1984, the three of them, together with Flores, Jose Cacayan and five other persons were drinking Tanduay Rhum near the irrigation canal opposite the house of Cacayan it being the birthday of Flores. [36] At around 7:15 p.m., their companions, Wilfredo Lacambra, Alfonso Cruz and Salvador Sarsoza left for home. Fifteen minutes later, the rest of the group broke up - Flores went east heading for his residence at barangay Lelemaan while Jose Cacayan, Bernabe Cacayan, Henry Sarsoza, Cruz, Sarsoza and Pariñas went west. [37]

Sarsoza went home to have supper. Immediately thereafter, he went to the house of his uncle Maximo Sarsoza to watch the television program "Bagong Kampeon." He joined therein Cruz and Pariñas. When the program was over, Sarsoza, Cruz and Pariñas transferred to the house of Ernesto Uy for another television program, "Beast Master." They watched the program through a wide window of the Uy residence together with Brigida Sabado and her son, Dante. Before the program was over, Sarsoza and Dante Sabado left for home to sleep while Cruz, Pariñas and Brigida stayed to finish the show at around 10:30 p.m. Thereafter, they all went home. [38]

In its 62-page decision of July 30, 1985, the lower court[39] held that Flores' detailed recital of facts at the trial together with his extrajudicial confession pointed to no other conclusion than that the four accused "carried their plot to rape, kill and rob the victim in concert and pursuant to their previous agreement." [40] It appreciated the aggravating circumstances of evident premeditation, treachery, nighttime, uninhabited place, abuse of superior strength and ignominy. It noted "other wrongs committed" which were not necessary for the commission of the crimes like the insertion of the ipil-ipil branch on the victim's vagina, the fact that the accused acted under the influence of dangerous drugs and the asportation of Mercedes' belongings after she had been raped and killed.

Taking into consideration, however, the provision of Article 63 of the Revised Penal Code that "in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating circumstances that may have attended the commission of the deed;" the provision of Article 335 of the same Code which imposes the death penalty when by reason or on the occasion of the rape, a homicide is committed, and the fact that conspiracy had been established beyond reasonable doubt, the lower court imposed four death penalties on each of the four accused. The dispositive portion of the decision states:

"WHEREFORE, judgment is hereby rendered finding all the accused Leonardo Flores alias "Leony", Alex King Cruz alias "Boy", Servillano Pariñas alias "Anong" and Ernesto Sarsoza alias "Ramon" guilty beyond reasonable doubt, of the special complex crime of MULTIPLE RAPE WITH HOMICIDE, on four (4) counts and as consequence thereof, each of them is hereby sentenced to suffer four (4) death penalties in view of the existence of conspiracy among the accused and the nature and number of crimes committed without appreciating the presence of aggravating circumstances, by electrocution, in the manner prescribed by law, with the accessories of the law, and each to pay one-fourth (1/4) of the costs. They should, jointly and severally, pay the heirs of the victim, Mercedes Dulay, the amount of P30,000 by way of indemnification and the amount of P120,000.00 by way of moral damage pursuant to the provisions of Article 2219 of the New Civil Code without subsidiary imprisonment in case of insolvency and to pay the amount of P11,250.00 representing the expenses for coffin, funeral, church, burial, 11-day vigil, 9th day prayer, 40th day death celebration including operating room and Doctor's assistance fees; the fair and reasonable value of the lady seiko wrist watch (P800.00); and cash money of P100.00 taken from the bag of the victim. The amount of P1,000.00 is excluded from the actual damage claimed since the gold graduation ring was recovered.

"The Court further directs all the accused, jointly and severally, to pay the heirs of the victim Mercedes Dulay in the amount of P612,000.00 pursuant to the legal formula: $\frac{2}{3}$ (80-29) equals 51 years, the normal life expectancy of victim at the age of 29. Hence, $\frac{2}{3}$ of 51 is 34 years x P18,000.00 yearly salary of victim gives a total loss of earning capacity in the amount of P612,000.00, without subsidiary imprisonment in case of insolvency (People vs. Daniel, L-66551, 25 April 1985, Gutierrez, J.)

"Let the records of this case be forwarded to the Honorable Supreme Court for automatic review. All the accused who are presently under detention in the Provincial Jail of Lingayen, Pangasinan, are immediately ordered to be transferred to the National Penitentiary and shall, in the meantime, remain in confinement thereat pending review by the Supreme Court. They should remain in the National Penitentiary until further order from this Court.

"Regarding the recommendation of the Provincial Fiscal in his manifestation dated July 10, 1985 to the effect that accused Leonardo Flores be extended commutation of the death penalty imposed upon him to life imprisonment (reclusion perpetua) premised on the ground that said accused did not only enter a voluntary plea of guilty but also voluntarily testified against his co-accused in favor of the state to the extent of incriminating himself and finding the same founded on legal and meritorious grounds, this Court has deemed it wise to indorse said recommendation for the consideration by the Honorable members of the Supreme Court, subject of course, upon the outcome of the automatic review.

"SO ORDERED."

The case was thus elevated to this Court for automatic review. During its pendency, the 1987 Constitution took effect. In view of the abolition of the death penalty and the consequent elimination of automatic review by the Court of decisions imposing the death penalty, we required the appellants to file a personally signed written statement, with the assistance of counsel or in the presence of prison authorities, on whether they wished to continue with the appeal.[41]

Leonardo Flores informed the Court that he was willing to accept reclusion perpetua as his penalty.[42] In compliance with the Court's order, his counsel de oficio[43] conferred with Flores and confirmed his voluntary withdrawal of appeal.[44] Accordingly, the Court resolved to dismiss the appeal of Flores[45] and entry of judgment was made on June 15, 1989.[46]

On the other hand, appellants Cruz, Pariñas and Sarsoza, the presence of prison authorities, expressed their desire to pursue their appeal.[47] In their brief, said appellants contend that the lower court erred in: (a) basing its decision of conviction solely on the confession of Flores; (b) attributing conspiracy in the commission of the crime; (c) disbelieving their testimonies which were corroborated by other witnesses, and (d) convicting them "inspite of clear and convincing evidence" that Flores was "the only one guilty of the crime."

Appellants' principal objection to the judgment of conviction is that it is based primarily on the confession of their co-defendant, Flores, who was the prosecution's sole eye-witness to the crimes. Their apprehension is understandable because, as is usual with human nature, a culprit who confesses to a crime is likely to put the blame as far as possible on others rather than on himself.[48] On the other hand, confessions, both extrajudicial and judicial, cannot be taken lightly as they are usually not self-serving declarations but admissions against interest.[49]

Thus, extreme caution should be exercised by the courts in dealing with the confession of an accused which implicates his co-defendants. A distinction, however, should be made between extrajudicial and judicial confessions. The former deprives the other accused of the opportunity to cross-examine the confessant while in the latter, his confession is thrown wide open for cross-examination and rebuttal. In *People vs. Encipido*,[50] the Court held:

"The general rule that the confession of an accused may be given in evidence against him but that it is not competent evidence against his co-accused, admits of exceptions. Thus, this Court has held that where several accused are tried together for the same complaint, the testimony lawfully given by one during the trial implicating the others is competent evidence against the latter (*People vs. Gumaling*, 61 Phil. 165 [1935]; *U.S. vs. Macamay*, 36 Phil. 893 [1917]; *People vs. Borromeo*, 60 Phil. 691 [1934]). 'The extrajudicial admission or confession of a co-conspirator out of court is different from the testimony given by a co-accused during trial. The first is admissible against the declarant alone, but the second is perfectly admissible against his co-accused' (*People vs. Mabassa*, 65 Phil. 538 [1938]) who had the right and opportunity to cross-examine the declarant."

In this case, the extrajudicial confession of Flores is inadmissible because he was not assisted by counsel.[51] Moreover, his extrajudicial confession may not even be accorded probative value in view of his admission of the crime in open court.[52] That being the case, only his judicial confession should be weighed and considered.

We hold that inspite of minor inaccuracies like the number of persons who participated in the drinking party prior to the commission of the crime, Flores' testimonial confession, although uncorroborated, suffices to support the conviction of the herein appellants because it is positive and credible.[53] The matter of his credibility, which is basically addressed to the sound discretion of the lower court, has been settled by its observation that Flores was "frank, candid and straightforward" on the witness stand. The court noted, on the other hand, that the appellants herein were "nervous, quivering and hesitant." [54]

Conspiracy, which was established through the judicial confession of Flores, has been proven beyond reasonable doubt. It should be remembered that the rule that the statement of a conspirator relating to the conspiracy is not admissible in evidence unless the conspiracy is first shown by other independent evidence, applies only to an admission in an extrajudicial confession or declaration. It does not apply to a testimony given directly in court where the defendants have the opportunity to cross-examine the declarant.[55] Provided it is sincere in itself, given unhesitatingly and in a straightforward manner, and full of details which by their nature could not have been the result of deliberate afterthought, the testimony of a co-conspirator, even if uncorroborated, is sufficient.[56]

Furthermore, the manner by which the appellants acted in concert pursuant to the same objective indicates a conspiracy among them.[57] They performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose and design.[58] Thus, while Flores grabbed Mercedes by her neck, two others held her limbs while another tore her garments with a bayonet. The same manner of cooperation was demonstrated when they took turns in raping her.

In this connection, the Court notes that the manner by which the crimes were committed rules out the probability that they were perpetrated by one person. Flores, who, like his co-accused, was in his early twenties when the incident happened, could not have committed by himself the atrocities on the person of the hapless victim without the assistance of other persons. The same conclusion may be arrived at even in the absence of the physical evidence consisting of the different kinds of human hair found on the body of Mercedes. Indeed, only the pervert and, in this case, the drugged mind, could conceive of the heinousness done on the victim.

The defense of alibi cannot save the appellants from conviction. They have not established by clear and convincing evidence that they were at some other place and for such a period of time as to negate their presence at the time when and the place where the crimes were committed.[59] It was not physically impossible for them to have gone to the Samiley irrigation area at the time of the commission of the crime because it was a mere 500 meters away from the house of Ernesto Uy where they were allegedly watching a television show.[60] The house of Maximo Sarsoza where they watched an earlier television show was only 25 meters from Ernesto Uy's house.[61] It therefore does not defy one's imagination to believe that the appellants were at the scene of the crimes when they occurred. As to the matter of time, the lower court aptly observed that as furnished by the appellants, time was based on calculations and hence, unreliable.

The appellants attempted to solidify their defense by presenting corroborative witnesses on their whereabouts. Unfortunately, however, said witnesses were all related to the appellants: Maximo Sarsoza is the second cousin of appellant Sarsoza's father;[62] Brigida Sabado is an aunt of all three appellants;[63] Dante Sabado, Brigida's son, is a cousin of the appellants,[64] and Leoncio King Cruz is the brother of appellant Cruz.[65] Although the appellants claimed that there were several other persons who saw them watch the television shows, no one of these alleged viewers was presented in court to shore up the apparently biased testimonies of the appellants' relatives. The defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives and not by credible persons.[66]

The lower court correctly considered the crime committed in this case as the special complex crime of rape with homicide. The information, which is captioned "rape with homicide and robbery" and which alleges the elements of said crimes, charges the accused of having violated specifically the last paragraph of Article 335 of the Revised Penal Code as amended by Republic Act Nos. 2632 and 4111. It should be noted that the defense did not object to the information in spite of its imperfection.

The evidence presented and proved at the trial point to the fact that although robbery was also charged against the accused, the manner by which the crimes were committed shows that the appellants were primordially impelled

by an intent to commit a crime against chastity rather than against property. Thus, while Flores testified that Cruz broached the plan "to get (Mercedes') money, kill her and rape her," evidence on the actual execution of the crime reveal that all thoughts of depriving Mercedes of her valuables were relegated to the background when the appellants' prurient desires surfaced and were satisfied.

Hence, the accused did not take any interest on Mercedes' belongings notwithstanding her pleas for the appellants to take them in exchange for her life. They persisted in satisfying their lust and even helped each other in their bestial acts. If not for the accidental touching of Mercedes' ring, the accused's intent to rob would have been totally forgotten as the culprits had dumped her body to hide their crime from immediate discovery. Indeed, the taking of Mercedes' ring, watch and money turned out to be an afterthought. The force employed on her having no bearing on such illegal taking, the crime committed is the separate one of theft.[67]

For the rape with homicide, the lower court correctly imposed the single indivisible penalty of death, which, under Article 63 of the Revised Penal Code, may be imposed regardless of any mitigating or aggravating circumstances which may have attended the commission of the crime. However, by reason of the constitutional prohibition on the imposition of the death penalty, instead of four death penalties, the appellants shall suffer four penalties of reclusion perpetua. The four penalties for each of the appellants is ordained by the fact that conspiracy has been established beyond reasonable doubt.[68]

For the theft of Mercedes' belongings, the total value of the wrist watch (P800) and the money (P100) determines the penalty imposable on the appellants the ring having been recovered. Under Article 309(3) of the Revised Penal Code, the penalty should be prision correccional in its minimum and medium periods. Taking into account that no mitigating or aggravating circumstances have been proven, the penalty should be the medium period of said penalty. Applying the Indeterminate Sentence Law[69] appellants should be meted the indeterminate penalty of four (4) months and one (1) day of arresto mayor maximum to two (2) years and ten (10) months of prision correccional medium.

The prosecution evidence on the expected income of Mercedes had her life not been snuffed out needlessly by the appellants as well as the expenses appertaining to her wake and funeral not having been rebutted by the defense, the Court upholds the lower court's order that appellants should pay them.

WHEREFORE, the decision of the lower court is hereby affirmed subject to the modifications that four penalties of reclusion perpetua instead of four death penalties shall be imposed on appellants Alex King Cruz, Servillano Pariñas and Ernesto Sarsoza for the crime of rape with homicide, and, in addition thereto, they shall suffer the indeterminate penalty of four (4) months and one (1) day of arresto mayor maximum as minimum to two (2) years and ten (10) months of prision correccional medium as maximum. Instead of the P30,000 imposed on appellants as indemnity to the heirs of Mercedes Dulay, they shall pay jointly and severally the amount of P50,000. These penalties shall be served in accordance with the provisions of the Revised Penal Code.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Original Records, pp. 97-98.

[2] Record, p. 99.

[3] Ibid, p. 109.

[4] TSN, December 19, 1984, p. 11.

- [5] Ibid, pp. 21 & 25.
- [6] Ibid, pp. 76-78.
- [7] Ibid, p. 24.
- [8] Ibid, p. 27.
- [9] Ibid, pp. 28-29.
- [10] Ibid, p. 29-32.
- [11] Ibid, pp. 32-35.
- [12] Ibid, pp. 39-40.
- [13] Ibid, pp. 40-43.
- [14] Ibid, pp. 43-45.
- [15] Ibid, pp. 45-47.
- [16] Ibid, pp. 47-51.
- [17] Ibid, pp. 56-61.
- [18] TSN, February 6, 1985, p. 8.
- [19] Exhibit H.
- [20] Exhibits D to G-2.
- [21] Exhibit 1.
- [22] Exhibit N-5.
- [23] Exhibit L.
- [24] Exhibit N.
- [25] Exhibits O to X-1.
- [26] Exhibit Z.
- [27] Exhibit Y.
- [28] Exhibit JJ to OO.
- [29] TSN, March 27, 1985, p. 8.
- [30] Exhibit K.
- [31] Exhibit J.
- [32] TSN, January 23, 1985, pp. 8-9.
- [33] Exhibit M.
- [34] TSN, *supra*. pp. 5-6.
- [35] Ibid, p. 11.

[36] TSN, April 29, 1985, p. 3.

[37] Ibid, p. 4.

[38] Ibid, p. 5; TSN, April 30, 1985, pp. 4-5. TSN, May 28, 1985, pp. 4-6.

[39] Judge Cornelio W. Wasan, Sr., presiding.

[40] Decision, p. 51.

[41] Rollo, p. 294.

[42] In his brief, which was prepared by counsel de oficio Francisco I. Chavez (the present Solicitor General), Flores appealed for leniency on account of his "incalculable contribution" in the early resolution of the case in the lower court. He prayed that his penalty be reduced to reclusion perpetua and/or that he be recommended to the President for executive clemency.

[43] Wellington B. Lachica replaced Francisco I. Chavez as Flores' counsel de oficio after Chavez's appointment as Solicitor General.

[44] Ibid, p. 313.

[45] Ibid, p. 316.

[46] Ibid, p. 320.

[47] Ibid, p. 303.

[48] *People v. Sarmiento*, 69 Phil. 740.

[49] *People v. Tuazon*, G.R. No. 74799, March 28, 1988, 159 SCRA 315.

[50] G.R. No. 70091, December 29, 1986, 146 SCRA 478, 494.

[51] *People vs. Tunday*, G.R. No. 67813, January 29, 1988, 157 SCRA 529; *People v. Escobar*, G.R. No. 69564, January 29, 1988, 157 SCRA 541.

[52] *People v. Ochavido*, G.R. No. 68858, May 30, 1986, 142 SCRA 193.

[53] *People v. Gutierrez, Jr.*, L-39383, March 14, 1988, 158 SCRA 614; *People vs. Salufrania*, G.R. No. 50884, March 30, 1988, 159 SCRA 401.

[54] Decision, p. 52.

[55] *People v. Bazar*, L-41829, June 27, 1988, 162 SCRA 609.

[56] *People v. Cuya, Jr.*, L-33046, February 18, 1986, 141 SCRA citing *People v. Sarmiento*, *supra*.

[57] *People v. Sazon*, G.R. No. 89684, September 18, 1990.

[58] *People v. Petenia*, G.R. No. 51256, August 12, 1986, 143 SCRA 361.

[59] *People vs. Riego*, G.R. No. 90256, September 12, 1990.

[60] TSN, May 22, 1985, p. 13.

[61] Exhibit XX; TSN, *supra* at p. 12.

[62] TSN, May 29, 1985, p. 6.

[63] Ibid, pp. 10-11.

[64] TSN, June 4, 1985, p. 7.

[65] TSN, June 19, 1985, p. 6.

[66] People v. Somera, G.R. No. 65589, May 31, 1989, 173 SCRA 684.

[67] People vs. Gulinao, G.R. Nos. 82264-66, December 4, 1989, 179 SCRA 774.

[68] People vs. Dino, L-41462, April 15, 1988, 160 SCRA 197; People vs. Jose, L-28232, February 6, 1971, 37 SCRA 450.

[69] People vs. Manalang, G.R. No. 67622, February 9, 1989, 170 SCRA 149. The accused in this case was charged with robbery with homicide. On appeal, this Court affirmed the decision of the lower court finding the accused-guilty of four separate crimes of murder and the distinct crime of theft for which latter crime the accused was imposed the indeterminate sentence of from 4 years 2 months and 1 day of prision correccional to 9 years, 4 months and 1 day of prision mayor. Instead of affirming the four death penalties meted on the accused, this Court imposed four penalties of reclusion perpetua.

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