

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULDARICO HONRA, JR., ACCUSED-APPELLANT.

G.R. Nos. 136012-16. September 26, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision,[1] dated January 18, 1998, of the Regional Trial Court, Branch 52, of Sorsogon, finding accused-appellant Uldarico Honra, Jr. guilty of two counts of murder and three counts of rape with frustrated homicide and sentencing him as follows:

“WHEREFORE, in the light of the foregoing, the Court finds Uldarico Honra, Jr. guilty beyond reasonable doubt in Criminal Cases Nos. 3333, 3338, 3341, 3342, and 3343 and hereby sentences him to two (2) counts of Reclusion Temporal in the maximum period of twenty years for the murders of Pacita and Rustico Jerao and three (3) counts of Reclusion Perpetua for the Rape with Frustrated Homicide of Jocelyn Jerao and to indemnify in solidum the heirs of Pacita and Rustico Jerao in the amount of P50,000.00 as indemnity for each case or total of P250,000.00 without subsidiary imprisonment in case of insolvency and to pay` the cost. In the service of his imprisonment his detention at the Sorsogon Provincial Jail shall be fully credited.

SO ORDERED.”

Two informations for murder were filed against accused-appellant Uldarico Honra, Jr. along with three others, namely, Ronnie Gipaya, Cristobal Jintalan and Jose Jintalan for the deaths of Pacita Jerao and Rustico Jerao in the Regional Trial Court of Sorsogon, where the cases were docketed as Criminal Case Nos. 93-3333 and 93-3338. Except for the names of the victims, the informations uniformly alleged:

Criminal Case No. 93-3333 -

“That on or about the 9th of May, 1993 at barangay Guinlajon, municipality of Sorsogon, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns and bolos, conspiring, confederating and mutually helping each other, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Pacita Jerao,[2] thereby inflicting upon the latter mortal wound which directly caused the death of said Pacita Jerao, to the damage and prejudice of her legal heirs.”

Contrary to law.”[3]

The three informations for rape with frustrated homicide filed against the above-named accused before the same court were docketed as Criminal Case Nos. 93-3341, 93-3342 and 93-3343. The informations uniformly alleged:

“That on or about the 9[th] day of May, 1993, at sitio Lantik, barangay Guinlajon, municipality of Sorsogon, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with guns and bolos, conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously, by means of force, violence and/or intimidation have carnal knowledge of one Jocelyn Jerao, a fifteen year old girl against her will and consent and immediately thereafter,

with intent to kill, attack, assault, and stab said Jocelyn Jerao, thereby inflicting upon her several serious injuries which could have caused her death, thus, accused performed all the acts of execution which would have produced the crime of Homicide, as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, because of the timely and able medical attendance rendered to said Jocelyn Jerao which prevented her death, to her damage and prejudice.

Contrary to law.”[4]

Upon arraignment on July 19, 1993, the four (4) accused, with the assistance of a counsel de oficio, entered pleas of not guilty in Criminal Case Nos. 93-3333[5] and 93-3343.[6] On July 21, 1993, with the assistance of a counsel de oficio, the four (4) accused entered pleas of not guilty in Criminal Case Nos. 93-3338[7] and 93-3341.[8] On August 25, 1993, accused-appellant Uldarico Honra, Jr., together with accused Cristobal Jintalan and Jose Jintalan, each pleaded not guilty to Criminal Case No.93-3342.[9] On September 7, 1993, the trial court entered a plea of not guilty in favor of accused Ronnie Gipaya in Criminal Case No. 93-3342[10] on account of the fact that after entering a plea of guilty, he refused to sign the certificate of arraignment provided for the purpose. Joint trial of the cases thus ensued.

However, on May 5, 1997, accused Ronnie Gipaya, with the assistance of Atty. Manuel Fortes, Jr., withdrew his plea of not guilty and upon rearraignment pleaded guilty to all the crimes charged against him.[11] On September 26, 1997, accused Cristobal Jintalan, likewise withdrew his previous plea and entered pleas of guilty to all charges.[12] The trial court then conducted a searching inquiry into the voluntariness and full comprehension of the consequences of their pleas. Meantime, all the charges against Jose Jintalan were dismissed after the trial court granted his demurrer to evidence.[13] Eventually, on October 8, 1997, the trial court rendered its judgment against accused Ronnie Gipaya and Cristobal Jintalan, finding them guilty beyond reasonable doubt in all the five (5) criminal cases.[14]

Trial proceeded as to herein accused-appellant Uldarico Honra, Jr.

Jocelyn Jerao, Dr. Marlon Gapayao and Dr. Liduvina Dorion testified for the prosecution.

Jocelyn Jerao , a sixteen-year old third year high school student, testified that on May 9, 1993, while she was asleep with her parents, Pacita and Rustico Jerao in their house in the northern portion of Guinlajon, municipality of Sorsogon, somebody called for them at around 2 a.m. asking for water to drink but they did not open the door. Then she heard somebody fire a shot from a gun. Her parents opened the door and her mother gave the person outside the door water to drink. The person told her mother to drink first as he was afraid that the water was poisoned. So her mother drank the water. The person outside the door introduced himself as Eric and assured her mother that she will not be harmed then asked permission to leave. But according to Jocelyn, he did not leave, but only went around the house because “they” returned. Thereupon they knocked on the door and told them that somebody wanted to see her father in the northern portion of their place. Her parents opened the door and she saw three people whom she did not yet recognize as they were wearing masks. She described their masks as t-shirts covering their faces. Her mother, father and herself went out of the house and the three of them stood side by side each other. The person who introduced himself as Eric told her father to go to the northern portion of the place but the latter refused. She stated that only Eric was wearing a mask while the two other companions were not. Then, Eric pointed the barrel of his gun to her father and squeezed the trigger but the gun did not go off. Eric then commented , “Jesus Christ, it’s good that it did not go off,” and then laughed together with his two other companions. Eric took hold of the gun and squeezed it a second time and this time it went off hitting her father in the forehead. She shouted and tried to grab the gun from Eric but the latter boxed her twice. She then covered her father with her body. She heard another gun shot and saw her mother's body slumped on her father’s body. Before she heard the gunshot, she saw Eric still holding the gun which was pointed towards her mother. She testified

further that the two companions helped Eric as when she started shouting the two tried to cover her mouth with their hands and to lift her up. The person who introduced himself as Eric removed his mask then raped her. She narrated that Eric removed his pants and removed her clothes including her panty and performed sexual intercourse on her. He lay on top of her then inserted his penis in her vagina and moved his buttocks up and down. She felt pain and pretended to be unconscious. The other two companions were standing guard by her side. After Eric performed the sexual act on her, the other companion removed his clothes and did the same thing to her. She identified the second person as the one who had a tattoo on his forehead and goes by the name Cristobal Jintalan. He also placed himself on top of her and performed the sexual act. After he finished, the third companion took his turn. He also removed his pants and placed himself on top of her and did the same thing that Honra and Jintalan did. After this third companion was through with her, he took a very long “machite”, but Eric shouted that he use a “luknit”. Eric handed the luknit or bladed weapon to the third companion whom she later identified as Ronnie Gipaya. After Eric handed the latter the luknit, Ronnie Gipaya stabbed her on the stomach once. She turned to her side and she was stabbed three more times at her back. All this time, Eric and Cristobal Jintalan did not leave. After Gipaya delivered the third blow he said, “Let’s go she is already dead.” Then they left.

Dr. Marlon Gapayao, a resident physician of the Sorsogon Provincial Hospital, testified that he examined Jocelyn Jerao and her mother Pacita Jerao. Dr. Gapayao confirmed the findings he made on the injuries of Jocelyn in a medical report. His findings revealed the following:

“_

Stab wound peri umbilical area penetrating abdominal cavity with moderate intra-abdominal bleeding;

-

Stab wound right chest penetrating thoracic cavity with intra thoracic bleeding moderate;

-

Multiple stab wounds back.

-

Alleged rape; positive for spermatozoa.

-

Healing time barring complications - Three (3) weeks.”[15]

Dr. Gapayao likewise confirmed the findings he made in his medical report on Pacita Jerao. The medical report stated as follows:

“_

Gun shot wound right supra clavicular (point of entry) with bullet lodged at the right thoracic cavity;

-

Stab wound left lumbar area non penetrating;

-

Stab wound supra umbilical area left penetrating abdominal cavity non perforating with moderate intra abdominal hemorrhage.

Cause of death:

-Hypovolemic shock scc. To multiple stab wounds and gun shot wound.”[16]

Dr. Liduvina Dorion conducted the post mortem examination on Rustico Jerao. She testified that she found a single gunshot wound on the forehead of the victim.[17] In the death certificate issued by the Office of the Civil Registrar, the cause of death was stated as intracranial hemorrhage caused by a gunshot wound.[18]

On the other hand, herein accused-appellant and his brother Jose Honra testified for the defense.

Accused-appellant Uldarico Honra, Jr., a twenty-eight year old security guard denied participation in the crimes charged and offered an alibi as his defense. He testified that on May 9, 1993, at about 2 a.m., he was in the house of the barangay captain in barangay Casini, Irosin, Sorsogon. He testified that he was there to attend the birthday celebration of the barangay captain. He was there at 8 p.m. and stayed overnight in that place. He stated that this was on May 9, 1993 as this was the birthday of the barangay captain. He slept at one o'clock in the morning of May 9, 1993 on a bench because he was very drunk that night. The barangay captain was in the house with his family and the visitors already left. He woke up at 7 a.m. of the following day and returned home. He arrived home fifteen minutes later and ate his breakfast and took a bath. His brothers, nephews and nieces were home when he arrived. On May 10, 1993, at about 3 p.m., he heard on the radio that he was involved in a case and he went to the municipal building of Sorsogon to verify the matter. However, he found nothing there. The next day, on May 11, 1993 he went to the police station and was dumbfounded by the news relayed to him by a certain Major Uy that there was already a warrant for his arrest and a shoot to kill order against him. He also narrated that he was present when Jocelyn Jerao testified against him and that she did so only because she followed the statement of Gipaya. According to him, Ronnie Gipaya killed his mother and the former's brother raped her sister. He stated further that this Ronnie Gipaya is the same co-accused in the criminal cases. According to him, Ronnie Gipaya implicated him in his statement as a means of avenging his mother's death and his sister's rape. He does not remember the date the statement was made but he was able to read the same which among others implicated him in the commission of the crimes.

Jose Honra, 17 years old, brother of accused-appellant recalled that on May 9, 1993, at about 2 a.m., his brother was sleeping in their home in Casini, Irosin, Sorsogon. They were then together with their sisters Soledad, Rosalina and her husband and the accused. According to him, no member of their family went out from the time they went to sleep at 9 p.m. up to early morning. He said that his brother, herein accused-appellant was still sleeping when he woke up at about 7 a.m. the following day.

The trial court convicted accused-appellant of two counts of murder and three counts of rape with frustrated homicide. In upholding complainant's testimony and rejecting accused-appellant's alibi, the trial court ruled:

“There is no doubt in the mind of the Court that Uldarico Honra Jr. did the crimes as charged against him. The victim, Jocelyn Jerao, positively identified “Eric” whom she later identified as Uldarico Honra Jr. as the one who pulled the trigger that killed her parents, Pacita Jerao and Rustico Jerao. She was also able to recognize Ronnie Gipaya and Cristobal Jintalan as among those present during the killing of her father and mother. The victim recognized accused Uldarico Honra Jr. when the latter took off his mask when the latter raped her. With respect to the two others, Gipaya and Jintalan, the accused was able to recognize them thru their tattoo marks. The victim cannot be mistaken as it was then a bright night. The Court likewise finds that all the aforesaid accused, including Uldarico Honra Jr. thru force and without Jocelyn Jerao's consent had carnal knowledge with her. The victim of these acts could not have imagined it as no young Filipina woman of decent repute could publicly admit that she had been criminally assaulted unless that it is the truth (People vs. Sambangan 125 SCRA 726). Conspiracy of accused Honra Jr. with the other accused in committing all the crimes charged against them was likewise shown in the prosecution's witness testimony. Jocelyn Jerao testified that when Uldarico Honra Jr. was shooting her parents the two companions of Honra Jr., Ronnie Gipaya and Cristobal Jintalan covered her mouth to prevent her from shouting and likewise tried to lift her. That later on when she

was about to be stabbed by Gipaya, Uldarico Honra Jr. advised Gipaya to use a luknit instead of a machete, who then stabbed her once in the stomach and thrice at her back. These acts show that there was unity of purpose and unity of the execution among the accused of their unlawful objectives which are the murders of the parents of Jocelyn and the rape with frustrated homicide of the latter.

Anent Uldarico Honra Jr.'s defense of alibi, it cannot be sustained in the face of clear and positive identification of the accused (People vs. Gonzaga 77 SCRA 140). Likewise for alibi to be given merit the defense must prove it with probable evidence which would reasonably satisfy the Court of the truth of such defense (ibid). In the instant case, the Court finds the positive and clear identification by the victim herself of the three accused including Honra Jr. to be credible. The Court cannot believe the tale of accused that he was not present at the crime scene as his brother's testimony that he (Honra Jr.) was sleeping at their sister's house in Casini, Irosin, Sorsogon when the crimes occurred is materially inconsistent with the testimony of the accused himself that he slept at the house of their barangay captain in Casini, Irosin, Sorsogon after a drinking session celebrating the natal day of the said barangay captain. He could have presented the barangay captain to corroborate his testimony but was not able to."

Hence, this appeal where accused-appellant ascribes the following sole error to the trial court:

"THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT ULDARICO HONRA, JR. FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT." [19]

The appeal is without merit.

Accused-appellant's argument that prosecution witness Jocelyn Jerao could have been mistaken as to the identity of her assailants and that she failed to establish his identity is not well-taken. According to accused-appellant, Jocelyn's testimony is totally devoid of any narration as to when accused-appellant removed his mask during the rape; that it was not possible for Jocelyn to recognize accused-appellant as she testified that she pretended to be unconscious during the rape; and that the crime took place at 2 a.m. in an isolated place where there is no electricity making it impossible for her to recognize accused-appellant who was a total stranger to her. To support this stance, accused-appellant quotes the following portions of Jocelyn's testimony as follows:

"Q

And when they returned, Madam Witness, what happened?

A

They knocked at the door and informed us that somebody wanted to see my father in the northern portion of our place.

Q

Did your parents open the door when they knocked at your door?

A

Yes, sir.

Q

You said "they", how many persons were you referring to who returned to your house the second time around?

A

Three (3).

Q

And were you able to recognize these 3 persons who returned to your house for the second time?

A

I did not yet recognize them because they were wearing mask.

Q

What kind of covering did they use as masks for covering their faces?

A:

Their t-shirts.”

(TSN, August 25, 1993, pp. 7-8; emphasis ours)

xxx xxx xxx.

“Q

A moment. When Eric fired the first shot hitting your father, did you notice what (sic) were the two other companions?

A

They were also helping because at that time when I was already shouting they tried to cover my mouth with their hands.

Q

When you said “they”, you were referring to the other two companions of Eric who were trying to cover your mouth?

A

They were trying to lift me up.

Q

And one or both of them also tried to cover your mouth to prevent you from shouting?

A

Yes, your Honor.

Q

Were you able to identify who was that particular companion who tried to cover your mouth to prevent you from shouting?

A

I did not recognize.

Q

What about the other companion of Eric who tried to lift you up or who helped in lifting you up, were you able to recognize him also?

A

I did not recognize his face.”

(Ibid, pp. 12-13; emphasis supplied)

“Prosecutor:

Q

How did Eric rape you?

A

Eric removed my clothes and after removing my clothes, Eric performed the act of intercourse.

Q

How did Eric perform the act of intercourse?”

xxx xxx xxx

“Q

Please answer.

A

He inserted his penis on my vagina and performed the act of sexual intercourse by moving up and down his buttocks.

Court:

Q

You testified that the accused Uldarico Honra, Jr. removed your clothes. What about your panty, assuming that you have one, was it also removed by the said accused?

A

Yes, Your Honor. They also removed my panty and he also removed his pants.

(to the prosecutor)

Proceed.

Prosecutor:

Q

After he removed his pants and your clothes as well as your panty, what else did he do?

A

He placed his body on top of me.

Q

And when his body was on top of you, what was he doing?

A

He was performing the act of sexual intercourse by moving his buttocks up and down.

Q

What else did you feel at that time when he was moving his buttocks up and down?

A

I felt pain.

Q

Did you try to react. . .

Atty. Armes:

Leading.

Court:

Sustained.

Prosecutor:

Q

What did you do when you felt the pain?

A

I suffered the pain because they were thinking that I was unconscious.

Q

You pretended to be unconscious?

Atty. Armes:

Leading.

Court:

May answer.

A

Yes, sir.

Prosecutor:

Q

During that time that Eric was having a sexual intercourse with you, what were his two other companions doing?

A

They were guarding me by my side.

Q

By the way, why did you pretend to be unconscious during that time?

A

I was acting unconscious during that time because I know that they already killed my mother and father and if I tried to resist them, I am sure they kill me.

Q

For how long did this Eric lay on top of you, in your estimate?

A

About 30 minutes.

Q

Then after Eric completed his sexual intercourse or act on you, what happened next?

A

He asked me this way; "Do you know me?" and I answered him back: "No" and he said: "I'm Alberto Jasmin."

Q

What was your condition during that time when you were answering him?

A

I was feeling weak.

Q

After that, Madam Witness, I mean after Eric performed his sexual act on you, what happened next?

A

The other one who followed also removed his clothes and pants."

(Id., pp. 20-23; emphasis supplied).”[20]

It is a legal truism that in criminal prosecutions, the State has the burden of proving the guilt of the accused beyond reasonable doubt. It has to prove the identity of the accused as the malefactor, as well as the fact of the commission of the crime for which he is alleged to be responsible.[21] However, we find that contrary to the assertions of accused-appellant, the prosecution did not fail to establish the onus on his identity.

First. It is not true that Jocelyn’s testimony is devoid of any narration as to when accused-appellant took off his mask. On the witness stand, Jocelyn explained that while she did not initially recognize accused-appellant as he was wearing a mask, she recounted how she subsequently recognized accused-appellant when he removed his mask while he was raping her. Accused-appellant overlooked the following portions of Jocelyn’s testimony, to wit:

Prosecutor:

Q

This Eric whom you said was the one responsible for shooting your father and mother, if you happen to see him again, will you be able to recognize him?

A

I know him.

Q

Will you kindly look around and tell us if this Eric is now here inside the courtroom?

A

He is here.

Q

Please point to him.

(The one at the center, witness pointed to the man who identified himself as Uldarico Honra, Jr.)

xxx xxx xxx.

Court:

Q

This person whom you pointed and who answered that his name is Uldarico, Jr., was he the same person whom you saw and heard introducing himself to your mother when he asked water as Eric?

A

Yes, Your Honor.

Q

And the very same person whom you personally saw pointing a gun to your mother and father and shooting each of them, (I am referring to Eric)?

A

Yes, your Honor.

Q

The same Uldarico Honra, Jr. whom you identified as the very Eric who introduced himself that night?

A

Yes, Your Honor.”[22]

xxx xxx xxx.

Court:

A moment.

Q

You testified a while ago that while Eric whom you identified in Court as Uldarico Honra, Jr. was conversing with your mother and later pointing a gun at your mother and father, he was wearing mask and associate him with the accused in this case who answered to the name of Uldarico Honra, Jr.?

A

I recognized him when he was already raping me because he removed his mask.

Q

Are you in fact telling the Court that the killing of your mother and your being subjected to rape by said Eric took place on that same occasion and same night?

A

Yes, Your Honor.

Q

Which took place first, the act of killing your parents or your being raped?

A

The killing of my parents took place first.

Q

And seconds after the killing of your parents, you saw Eric removing his mask while raping you.

A

Yes, Your Honor.

(to Prosecutor)

Proceed.

Prosecutor

Q

Madam Witness, ...

Court

Q

And you are very certain that the person who was raping you and removed his mask and who identified himself before as Eric is the very person you pointed to in court is Uldarico Honra, Jr.?

A

Yes, Your Honor.”[23]

Second. We likewise reject as purely speculative accused-appellant’s contention that Jocelyn could not have recognized her assailant as she pretended to be unconscious at the time. The truth of the matter of is, she only pretended to be unconscious out of fear for her life having already witnessed the brutal killing of her parents, and was in fact conscious and got a good look at the physical features of her assailant during the rape. At that point, Jocelyn as the victim, was as close to the accused as is physically possible, for a man and woman cannot be physically closer to each other than during sexual act.[24] Thus, it cannot be doubted that she could easily see and recognize the face of the man who was ravaging her. 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.[25]

Third. While it may be true that the crime took place in a dark area, this does not prevent the identification of accused-appellant. As testified to by Jocelyn, she could not have been mistaken in the identification of accused-appellant as the night was illuminated by a bright moonlight. This Court has ruled that the light of the moon is sufficient for a person to identify another.[26]

All told, we see no reason to reject or doubt the identification made by Jocelyn of accused-appellant.

Finally, the reliance being made by accused-appellant on the affidavit of Jocelyn in order to discredit her is likewise futile. According to accused-appellant, Jocelyn did not mention his name but only that of accused Ronnie Gipaya in her sworn statement taken on May 11, 1993. The Court has consistently ruled that discrepancies between the statement of an affiant in an affidavit and those made on the witness stand do not necessarily downgrade testimonial evidence. Ex parte affidavits are usually incomplete and frequently prepared by an administering officer and cast in the latter’s language and understanding of what the affiant has said. Quite frequently, the affiant would simply sign the affidavit after it has been read to him or to her.[27]

After a thorough review of the records in the instant case, we see no reason to reverse the trial court’s factual finding and conclusion on the credibility of Jocelyn Jerao’s testimony; we are likewise unpersuaded by accused-appellant’s alibi. “Well-settled is the rule that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.”[28]

The testimony of Jocelyn on how she saw her parents brutally murdered and how she was defiled by three men one after the other was clear, direct and honest and could only inspire belief. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[29] Jocelyn’s credibility is enhanced considering that she has no motive to testify against accused-appellant and there is absolutely no evidence on record which can even remotely suggest that she could have been actuated by any motive.[30]

On the contrary, we note that accused-appellant's alibi is uncorroborated by the only other defense witness, accused-appellant's brother. It was not clearly established where he actually was at the time of the commission of the crimes at 2 a.m. of May 9, 1993. He said he was at the barangay captain's house sleeping, as he was drunk the night before celebrating the barangay captain's birthday. However, his brother testified that accused-appellant was in their home sleeping on the night in question. Alibi is inherently weak and certainly insufficient to outweigh Jocelyn's positive and categorical assertions on the commission of the crimes. The contradictory statements of accused-appellant and his brother further add to the dubiety and weakness of his defense. Moreover, whether he spent the night at the barangay captain's home or in their own home, accused-appellant has not shown the physical impossibility of his presence at the place and time of the commission of the crime. "The proffered defense of alibi cannot be sustained where it is not only without credible corroboration but it also does not on its face demonstrate the physical impossibility of the accused's presence at the place of the crime or in its immediate vicinity at the time of its commission." [31] In the instant case, accused-appellant could not offer a corroborated and coherent alibi; and he has not shown that it was not possible for him to go to Jocelyn's house from the barangay captain's house.

We now review the other aspects of accused-appellant's conviction in keeping with the Court's duty, as an appellate tribunal, to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not. [32]

In Criminal Case Nos. 93-33333 and 93-33338, accused-appellant was convicted of the murders of Pacita Jerao and Rustico Jerao. The killings were properly classified as murder upon the existence of treachery [33] as alleged in the information. There is treachery where the attack upon the unarmed victim, who had not committed the slightest provocation, and who were totally unaware of the murderous designs of the accused, was swift and unexpected. [34] Pacita and Rustico were unarmed, defenseless and helpless, and had absolutely no opportunity to defend themselves from accused-appellant's sudden and unexpected assault with the use of a gun. Evident premeditation which was also alleged in the information cannot be appreciated in the absence of direct evidence of the planning and preparation to kill when the plan was conceived. [35] Under Article 64 of the Revised Penal Code, when the penalties prescribed by law contain three periods, the penalty in its medium period shall be imposed when there are neither aggravating nor mitigating circumstances present. Under Article 248 of the Revised Penal Code [36], the penalty for murder is reclusion temporal in its maximum period to death, the medium period of which is reclusion perpetua. [37] Hence, accused-appellant should suffer the penalty of reclusion perpetua for each count of murder. We affirm the award of P50,000.00 for each count as indemnity for death to the heirs of the two victims in conformity with prevailing jurisprudence. [38] We cannot award actual damages absent proof of actual losses suffered. However, the award of P50,000.00 as moral damages is in order considering that Jocelyn Jerao testified on her own anguish suffered as a result of the death of her parents. [39] Absent any aggravating circumstance attending the murders committed, we cannot award exemplary damages pursuant to Article 2230 of the New Civil Code.

In Criminal Case Nos. 93-3341, 93-3342 and 93-3343, the prosecution charged accused-appellant with "rape with frustrated homicide" and the trial court convicted him of three counts thereof. The case is wrongly denominated as there is no complex crime of "rape with frustrated homicide". Article 48 of the Revised Penal Code [40] requires the commission of at least two crimes, but the two or more grave or less grave felonies must be the result of a single act, or an offense must be a necessary means for committing the other. [41] Negatively put, when two or more crimes are committed but (1) not by a single act or (2) one is not a necessary means for committing the others, there is no complex crime. In the instant case, accused-appellant committed separate crimes of rape and frustrated homicide. They do not constitute a complex crime of "rape with frustrated homicide." Neither does this case fall under Article 335 of The Revised Penal Code which provides for a special complex crime of rape with

homicide. Pertinent portion of Article 335 reads:

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“When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall likewise be death.

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

Clearly, the law does not contemplate consummated rape with frustrated homicide as in the instant case.

Nevertheless, while the three informations were captioned “rape with frustrated homicide” and alleged the elements of said crimes, it should be noted that the defense did not object to the information despite its imperfection. The defect of charging two offenses in one information, that is, rape and frustrated homicide, was deemed waived by accused-appellant’s failure to raise it in a motion to quash before he pleaded to the information.[42] Hence, conviction for three separate counts of rape and three counts of frustrated homicide may lie.

Conviction for rape must be sustained considering that all the elements of rape under Article 335(1) of the Revised Penal Code were established beyond reasonable doubt. The accused had carnal knowledge of Jocelyn; and that coitus was done through the use of force and intimidation.[43] Failure to shout or offer resistance did not make voluntary Jocelyn’s submission to the criminal acts of the accused.[44] Jocelyn pretended to be unconscious during the rape as she was subdued and cowed to submit in fear, having just witnessed the killing of her parents in the hands of her assailants. The use of deadly weapons (guns and bolos) as alleged in the information could not be appreciated as a qualifying circumstance absent evidence that the same were used to realize the crime of rape against Jocelyn. Conviction for frustrated homicide must likewise be sustained considering that the accused intended to kill the victim as shown by the weapon used and the parts of the victim’s body at which the weapon was aimed, as shown by the wounds inflicted. In fact, there is testimony to the effect that the accused left Jocelyn for dead. In fine, the accused performed all the acts of execution which could have produced the felony as a consequence, but did not on account of timely and adequate medical intervention.

Accused-appellant is liable for three counts of rape and three counts of frustrated homicide on account of a clear conspiracy among the three accused shown by their obvious concerted efforts to perpetrate, one after the other the crime of rape, and then the crime of homicide. Conspiracy was properly appreciated by the trial court because the individual acts of the accused when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective.[45] While accused-appellant was shooting Jocelyn’s parents, his co-accused were covering the latter’s mouth and lifting her up. While they took turns defiling her, the others stood guard. It has been held that in multiple rape, each of the defendants is responsible not only for the rape committed by him but also for those committed by the others.[46] Accused-appellant, therefore, is responsible not only for the rape committed personally by him but also for the rape committed by the others as well.[47]

In the same vein, he is liable for three counts of frustrated homicide. In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim.[48] Accused-appellant ordered which weapon to use and handed the same to a co-accused who delivered the stab wounds on Jocelyn which could have resulted in her death if not for immediate medical intervention. This is a clear manifestation of a common purpose or design as well as concerted action on their part to kill.

Finding accused-appellant guilty beyond reasonable doubt of three counts of rape, this Court imposes upon him the penalty of reclusion perpetua for each count. Latest jurisprudence awards the victim in a rape case the minimum amount of P50,000.00 as moral damages. Moral damages may be awarded to the victim without need

for pleading or proof of the basis thereof.[49] Accused-appellant is also ordered to pay Jocelyn the amount of P50,000.00 as civil indemnity for each count of rape. Civil indemnity is mandatory upon a finding of the fact of rape.[50]

Finding accused-appellant guilty beyond reasonable doubt of three counts of frustrated homicide, this Court imposes upon him the indeterminate penalty of 4 years and 2 months of prision correccional as minimum up to 10 years of prision mayor as maximum.

WHEREFORE, in the light of the foregoing, accused-appellant Uldarico Honra, Jr. is found guilty of two counts of murder in Criminal Case Nos. 93-3333 and 93-3338 and is correspondingly sentenced to suffer the penalty of reclusion perpetua for each count; in Criminal Case Nos. 93-3341, 93-3342 and 93-3343, accused-appellant is found guilty of three counts of rape and is sentenced to suffer the penalty of reclusion perpetua for each count; accused-appellant is also found guilty of three counts of frustrated homicide and sentenced to suffer the indeterminate penalty of 4 years and 2 months of prision correccional as minimum up to 10 years of prision mayor as maximum for each count.

In addition, accused-appellant Uldarico Honra, Jr. is ordered to PAY the following sums:

- (a) P100,000.00 to the heirs of Pacita and Rustico Jerao, as death indemnity;
- (b) P100,000.00 to the heirs of Pacita and Rustico Jerao as moral damages;
- (c) P150,000.00 to Jocelyn Jerao as civil indemnity;
- (d) P150,000.00 to Jocelyn Jerao as moral damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Per Judge Honesto A. Villamor; Rollo, pp. 45-51.

[2] In Criminal Case No. 93-3338, the information alleged Rustico Jerao as the victim; Original Records, pp. 16-17.

[3] Original Records, pp. 17-18.

[4] O.R. of Crim. Case No. 93-3341, pp. 6-7; O.R. of Crim. Case No. 93-3342, pp. 7-8; O.R. of Crim. Case No. 93-3343, pp. 16-17.

[5] O.R., p. 22.

[6] O.R., p. 22.

[7] O.R., p. 26.

[8] O.R., p. 12.

[9] O.R., p. 22.

[10] O.R., p. 39.

[11] O.R. of Crim. Case No. 93-3342, p. 136.

[12] O.R. of Crim. Case No. 93-3333, p. 242

- [13] O.R. of Crim. Case No.93-3333, p. 239.
- [14] Rollo, pp. 40-44.
- [15] O.R. of Crim. Case No. 93-3333, p. 207.
- [16] Ibid., p. 208.
- [17] TSN dated October 16, 1996, p. 3.
- [18] O.R. Crim. Case No. 93-3333, p. 211.
- [19] Rollo, p. 76.
- [20] Appellant's Brief, pp. 9-13; Rollo, pp. 84-88.
- [21] People vs. Ibay, 312 SCRA 153 (1999).
- [22] TSN dated August 25, 1993, pp. 13-14.
- [23] TSN dated August 25, 1993, pp. 15-16.
- [24] People vs. Castañeda, 22 SCRA 247 (1996).
- [25] People vs. Pulusan, 290 SCRA 353 (1998).
- [26] People vs. Gamboa, 145 SCRA 289 (1986); People vs. Pueblos, 127 SCRA 746 (1984).
- [27] People vs. Banguis, 291 SCRA 279 (1998).
- [28] People vs. Pontilar, Jr., G.R. No. 104865, July 11, 1997.
- [29] People vs. Clopino, 290 SCRA 432 (1998).
- [30] People vs. Belo, G.R. No. 109148, December 4, 1998.
- [31] People vs. Aliposa, 263 SCRA 471 (1996).
- [32] People vs. Sison, 312 SCRA 792 (1999).
- [33] People vs. De Leon, 245 SCRA 538 (1995).
- [34] People vs. Abrenica, 252 SCRA 54 (1996).
- [35] People vs. Ganzagan, Jr., 247 SCRA 220 (1995).
- [36] The killings were committed on May 9, 1993, prior to the enactment of RA 7659, effective December 31, 1993.
- [37] People vs. Bitoon, et al., G.R. No. 112451, June 28, 1999.
- [38] People vs. Cañete, G.R. No. 125311, March 17, 1999.
- [39] TSN dated August 25, 1993, pp. 36-37.
- [40] Art. 48. Penalty for complex crimes. -- When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.
- [41] Luis B. Reyes, The Revised Penal Code, Criminal Law, 12[th] Ed., 1981.

[42] *Reodica vs. Court of Appeals*, 292 SCRA 87 (1998).

[43] *People vs. Fabro*, 239 SCRA 146 (1994).

[44] *People vs. Dupali*, 230 SCRA 62 (1994).

[45] *People vs. Layno*, 264 SCRA 558 (1996).

[46] *People vs. Laray*, 253 SCRA 654 (1996).

[47] *People vs. Quiñanola*, 306 SCRA 710 (1999).

[48] *People vs. Francisco*, 249 SCRA 526 (1995).

[49] *People vs. Prades*, G. R. No. 127569, July 30, 1998.

[50] *Ibid.*

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