

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NOEL DARILAY, APPELLANT.*G.R. Nos. 139751-52. January 26, 2004*

Ponente: CALLEJO, SR., J.

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The Spouses Pascual and Gemma Arganda were the parents of five children, the eldest of whom was Marilyn who was born on October 24, 1988.[1] The second child, Ailyn, was born on September 14, 1990.[2] The couple and their children resided in Sitio Magrimpong, Sta. Cruz, Tinambac, Camarines Sur.[3] The couple knew the appellant, Noel Darilay, their 15-year-old barriomate because he and his friends frequented their house.

At 7:30 a.m. on April 19, 1997, Hercules Bon was in the house of his uncle at Magrimpong, Sta. Cruz, Tinambac, Camarines Sur. At about 8:00 a.m., his cousin, the appellant, arrived. Their friend, Jose Delfino, also arrived. They had a drinking spree and consumed two bottles of gin. After about thirty minutes, the appellant left because his father had arrived and was looking for him.[4]

At about 9:00 a.m., Marilyn and Ailyn were asked by their parents to buy tinapa (dried fish) from a store about half a kilometer away from their residence. They used a foot path to get to the store. After buying the dried fish, they walked back home. Momentarily, they saw the appellant emerge from a catmon tree.[5] He struck Ailyn twice with a piece of wood on her back and boxed her on the left side of her face. She felt excruciating pain on her back and face, and all over her body. She fell unconscious.[6] The appellant then struck Marilyn twice on the back with the piece of wood. He then carried Ailyn to a grassy area and left her there. When Ailyn regained her bearings, she looked for Marilyn but the appellant and her sister were nowhere to be found.[7]

Ailyn then rushed back home and told her mother what happened to her and Marilyn.[8] Their neighbor, Allan Candelaria, then rushed to the farm where Pascual worked as a laborer and informed him of what happened to his daughters.[9] Pascual hurried home and looked for Marilyn in Sitio Magrimpong and within the vicinity of the river, to no avail. He rushed back home and after a while left again to resume his search for Marilyn. Again, he failed to find her.[10] He searched anew for his daughter with the help of neighbors at around 1:00 p.m., again to no avail.

At 11:00 a.m. earlier that day, Andres Arganda, the victim's uncle reported the incident to the police station. SPO1 Teresito Porteza, SPO1 Ernesto Ablaza and PO3 Antonio Pacardo rushed to the scene.[11] With the help of tanods, they searched for Marilyn in the place where the appellant attacked the girls. About 15 meters away, they found a yellow-and-white-colored dress,[12] white panties,[13] and a slipper bearing the name of Marilyn. The dress was torn.[14] In the meantime, Bon went back home and was informed that the appellant was wanted for the injuries of Ailyn and Marilyn. He looked for the appellant and found him in the house of Jose Delfino.[15]

While the policemen were conducting their investigation, the appellant arrived accompanied by PO3 Antonio Pacardo. When asked where Marilyn was, he told the police that she was about 30 meters away. Upon the policemen's failure to find the girl, the appellant finally told them where Marilyn was and volunteered to

accompany them to the place. The policemen, the appellant and Pascual Arganda then left and proceeded to Palinao River, at Sitio Palinao, Binalay, Tinambac. They found Marilyn's body in a grassy area near bushes and trees along the Palinao River.[16] She was lying face down, her legs spread apart and was completely naked. There was blood on her nose, her mouth, and her vagina. Her hair was disheveled. Photographer John Francis Madrigal took pictures of Marilyn at the place where she was found.[17] The policemen arrested the appellant and had him detained in jail.

Municipal Health Officer Dr. Salvador V. Betito, Jr., performed an autopsy of the cadaver and prepared a report thereon which contained the following findings:

Post-mortem examination findings:

- Abrasions, multiple, face.
- Avulsion, 1 cm. x 3 cms., chin.
- Abrasions, multiple, left and right shoulder and anterior chest wall.
- Depressed fractures, occipital bone of the head.
- Abrasions, multiple, posterior chest wall.

Vaginal Examination:

- Labia majora – blood-stained, slightly prominent and distinctly gaping.
- Lacerations – big, at six o'clock position.
- Vaginal canal – reddened, presence of oozing blood.

Conclusions: She had sexual intercourse with a man.

Cause of Death: Internal hemorrhage secondary to depressed fractures of the skull.[18]

The doctor testified that the most fatal wound inflicted on Marilyn was wound no. 4. He also examined Ailyn and signed a report stating that the victim sustained the following injuries:

Medical Certificate of Ailyn Arganda

Pertinent Physical Examination Findings:

- Contusion, occipital aspect of the head.
- Abrasions, multiple, posterior aspect of the chest.
- Contusion, left zygomatic aspect of the face.[19]

The appellant was charged of attempted murder under an Amended Information filed with the Regional Trial Court of Camarines Sur, Branch 63, docketed as Criminal Case No. RTC'97-202, the accusatory portion of which reads:

That on or about the 19[th] day of April 1997, at Sitio Magrimpong, Barangay Sta. Cruz, Municipality of Tinambac, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, willfully, unlawfully and feloniously commences the commission of a felony directly by overt acts by then and there with treachery and abuse of superior strength assaulting and hitting with a piece of wood one AILYN ARGANDA, a seven (7) year old child, who as a consequence thereof, lost consciousness but the accused was not able to perform all the acts of execution which should have produced the felony intended by reason of some cause or accident other than his own

spontaneous desistance, that is, due to her tenacity to live and the fact that she was not fatally hit when she was struck with the said piece of wood, to the damage and prejudice of said offended party.

ACTS CONTRARY TO LAW.[20]

The appellant was, likewise, charged with rape with homicide in an Amended Information filed in the same court, docketed as Criminal Case No. RTC'97-201, the accusatory portion of which reads:

That on or about the 19[th] day of April 1997, at Sitio Magrimpong, Barangay Sta. Cruz, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design did then and there willfully, unlawfully and feloniously strike with a piece of wood one Marilyn Arganda, an eight (8) year old child as a consequence thereof she lost consciousness and when said child victim was thus unconscious or while hovering between life and death, accused Noel Darilay did then and there willfully, unlawfully and feloniously in order to satisfy his lust, had carnal knowledge with said child victim by means of force as a result of which Marilyn Arganda suffered an untimely and cruel death, to the damage and prejudice of the private offended party.

ACTS CONTRARY TO LAW.[21]

A joint trial of the two cases thereafter ensued.

On September 5, 1997, the appellant was arraigned, assisted by counsel, and entered a plea of not guilty to the crimes charged.

The Case for the Appellant

The appellant denied killing and raping Marilyn and attempting to kill Ailyn. He claimed that Hercules Bon and Jose Delfino hit Ailyn and Marilyn and that it was also them who raped and killed Marilyn. Although he was present when Bon and Delfino committed the crimes, he could do nothing to prevent them.

The appellant testified that he was 15 years old. He was inveigled by Hercules Bon to indulge and use rugby in the evening of April 18, 1997. At 7:30 a.m. the next day, April 19, 1997, he was in their house at Tinambac, Sta. Cruz, Camarines Sur, with his family: his parents, the Spouses Manuel and Julieta Darilay; and his siblings Christopher, Zarina, Midel, Francia and Shirley. When Bon fetched him, they proceeded to the house of Jose Delfino, also in Sitio Tinambac, Sta. Cruz, Magrimpong, where they had a drinking spree. Not content, they went to the riverbank and continued drinking. They were already inebriated.[22] They saw Marilyn and Ailyn pass by on their way to the store of Salvacion San Andres. Bon ordered him and Delfino to follow the girls. They did as they were told. Ailyn, who was walking ahead of her sister, was grabbed by Delfino and the appellant, while Bon overtook Marilyn. Delfino then hit Ailyn. The latter fell to the ground, face down. Delfino and the appellant left Ailyn and went back to where Bon was. The latter proposed that they bring Marilyn to the other side of the riverbank. The appellant and Delfino agreed. Bon and Delfino carried Marilyn, while the appellant followed. When they reached their destination, Bon and Delfino took turns in raping Marilyn.

The appellant testified that he wanted to prevent his companions from assaulting the victim but he was afraid because Bon and Delfino were armed with bladed weapons.[23] Besides, he was already drunk and much weaker than his companions who had taken illicit drugs.[24] He then left the place and went home, leaving Bon, Delfino and Marilyn behind. Policemen later arrived at their house and arrested and handcuffed him. He was told that Ailyn had pointed to him as the one who abducted Marilyn. The appellant insisted that Bon and Delfino were the culprits.[25] He was brought to the municipal hall where policemen forced him to admit raping and killing Marilyn. He denied raping and killing the girl and told the policemen that Bon and Delfino were the ones who raped and killed her.[26] It was he who pointed to the policemen and also accompanied them to where Marilyn's

body was found.[27]

After trial, the court rendered judgment convicting the appellant of rape with homicide in Criminal Case No. RTC'97-201, and attempted murder in Criminal Case No. RTC'97-202. The court appreciated in favor of the appellant the privileged mitigating circumstance of minority, but sentenced him to reclusion perpetua for rape with homicide. The decretal portion of the decision reads:

WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt, accused Noel Darilay is found guilty of the offense of Rape with Homicide in Crim. Case No. RTC'97-201 and guilty of the offense of Attempted Murder in Crim. Case No. RTC'97-202. He is ordered to suffer the following penalties:

- In Crim. Case No. RTC'97-201, Rape with Homicide, he is sentenced to suffer the penalty of Reclusion Perpetua;
- To pay the heirs of Marilyn Arganda the following:
 - P75,000.00 for her death;
 - P30,000.00 for moral damages;
 - P10,000.00 for exemplary damages;
 - P20,000.00 for actual damages;
- In Crim. Case No. RTC'97-202, accused is hereby sentenced to suffer the following penalties:
 - To suffer the penalty of imprisonment of TWO (2) MONTHS and ONE (1) DAY to FOUR (4) MONTHS of arresto mayor in its medium period;
 - To pay the heirs of Ailyn Arganda the amount of P20,000.00 as moral damages and to pay the costs.

The accused being a minor, his father Manuel Darilay is hereby ordered to pay the heirs of Marilyn Arganda and Ailyn Arganda the foregoing civil liabilities under Article 201, P.D. No. 603 as amended (Child and Youth Welfare Code).

SO ORDERED.[28]

On appeal, the appellant assails the decision of the trial court contending that:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIMES OF ATTEMPTED MURDER AND RAPE WITH HOMICIDE WHEN THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN NOT APPLYING THE PRIVILEGE[D] MITIGATING CIRCUMSTANCE OF MINORITY UNDER ARTICLE 68, PAR. 1, OF THE REVISED PENAL CODE IN CRIMINAL CASE NO. RTC'97-201.

III

THE TRIAL COURT ERRED IN NOT APPLYING THE PROVISIONS OF ARTICLE 192 OF PRESIDENTIAL DECREE NO. 603.[29]

The appellant avers that it was physically impossible for him to have raped and killed Marilyn in the vicinity of the Palinao River. As testified to by SPO1 Teresito Porteza, one has to cross the river, then three-feet deep and

strewn with big stones, to reach the place where Marilyn's body was found. The appellant reasoned that since he was only 15 years old at the time, it is inconceivable that he could single-handedly carry a girl who weighed 18 kilos to a distance of one kilometer, even crossing the three-feet deep river in the process.

The appellant asserts that all things considered, his testimony that Bon and Delfino carried Marilyn across the Palinao River and brought her to the other side is believable. He also claims that Ailyn failed to see Bon and Delfino because they were covered by grasses, the tallest of which were two feet high. Ailyn's testimony, that the appellant hit her at the back, is highly improbable considering that the evidence shows that the appellant approached her head on. The appellant insists that the prosecutor failed to prove that he raped and killed Marilyn as Ailyn herself admitted that she did not see the appellant rape and kill her sister. As such, it was a travesty for the trial court to convict him of rape with homicide, relying solely on Ailyn's testimony that he struck Marilyn on the back twice with a piece of wood.

The contentions of the appellant do not hold water.

First. SPO1 Porteza declared that the portion of the Palinao river which he and his companions crossed to reach the place where Marilyn was found "is the ordinary place where people use to pass in going to the other side of the river." [30] If ordinary people cross the river through that portion, there is no reason why the appellant could not have done the same. In fact, the appellant and the policemen were able to cross the river without much ado when they went to the place where Marilyn was found.

Second. The appellant testified that he himself crossed the river when Bon and Delfino carried Marilyn, although he claimed that he merely accompanied them.

Third. The appellant was a young man in the prime of his life while Marilyn was a girl under 12 years old, only 4 feet tall. It was, thus, not impossible for him to have carried her across the river to the other side and dump her nearby, under the cover of bushes and trees to prevent her body from being discovered.

Fourth. The trial court gave credence and full probative weight to the testimony of Ailyn. The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions, based on its findings are accorded by the appellate court high respect, if not conclusive effect. The appellant failed to convince the court that the trial court ignored, misunderstood or misinterpreted cogent facts and circumstances of substance which if considered will change the outcome of the case. Ailyn testified how the appellant mercilessly waylaid her and Marilyn as they were on their way home, and that she immediately told her mother that the appellant had attacked them, and that her sister was nowhere to be found:

Q

How is Marilyn related to you?

A

She is my sister.

Q

Who is older?

A

Marilyn.

Q

Where were you and your Ate Marilyn when you were asked by your mother to buy tinapa?

A

We were still inside the house.

Q

Where do you reside?

A

Magrimpong.

Q

What barrio?

A

Tinambac.

Q

Did you go with your sister to buy tinapa?

A

Yes, sir.

ATTY. TAYER:

Q

Objection Your Honor.

PROS. CU:

This is a follow-up question, Your Honor.

COURT:

Already answered.

PROS. CU:

Q

Where did you buy tinapa or smoked fish?

A

Ate Arlyn (sic).

Q

Were you able to buy tinapa?

A

Yes, sir.

Q

So, after you bought smoked fish, what if anything, did you do next with your Ate Marilyn?

A

We went home.

Q

While on your way home with your Ate Marilyn, what, if anything, happened?

A

Something happened, sir.

ATTY. TAYER:

We will object to that, no basis.

PROS. CU:

What, if anything, happened.

COURT:

What if anything happened when on the way going home? The witness has already answered, anyway. Proceed.

PROS. CU:

Q

You said that while on your way home, something happened. What was this event that happened?

A

Suddenly, Noel Darilay came out from he were (sic).

Q

Where did he come from?

A

From a catmon tree.

Q

When you saw Noel Darilay suddenly came out from a catmon tree, what if anything transpired next?

A

He struck us.

Q

What if anything was Noel Darilay holding?

A

A wood.

Q

Who was the person whom Noel Darilay struck first?

...

COURT:

Witness may answer. Who is the first one?

A

I was the one, sir.

PROS. CU:

Q

In what portion of your body were you struck at?

A

At my back.

Q

How many times?

A

Two (2) times.

Q

Now, after you were struck by Noel Darilay with that piece of wood which he was holding, what if anything did he do next to you?

A

He punched me at my left cheekbone (sic).

Q

After you were punched by Noel Darilay, what if anything did he do to Marilyn?

A

He also struck Marilyn at her back.

Q

And how many times did Noel Darilay strike your Ate Marilyn?

A

Twice also, sir.

Q

What, if anything, did you feel when you were struck by Noel Darilay with that piece of wood?

A

I felt pain all over my body.

Q

What about when you were punched by Noel Darilay on your left cheek, what, if anything, did you feel?

A

My face was very painful.

Q

After Noel Darilay struck your Ate Marilyn twice also at her back with that piece of wood, what if anything happened next?

A

He threw us on the grassy portion.

Q

Who first was carried by Noel Darilay to be thrown in a grassy portion then?

A

I was the one, sir.

Q

Why were you not able to escape, Ailyn?

A

Because my body was very painful.

Q

For how long did you find yourself on that state or condition in the place where you were thrown at?

A

Half an hour, sir.

Q

Were you able to go back to your house, Ailyn?

A

Yes, sir.

Q

What time did you go back to your house?

A

Around 9:00 o'clock in the morning.

Q

Was your Ate Marilyn with you when you went back to your house?

ATTY. TAYER:

Objection, leading.

COURT:

Sustained.

PROS. CU:

Q

Were you alone when you went back?

ATTY. TAYER:

Objection, leading.

COURT:

Reform your question.

PROS. CU:

Q

Who was with you when you went home?

A

I have no companion, sir.

Q

Why, where was, if you know, your Ate Marilyn?

A

She was gone and I did not anymore find her.

Q

When you arrived at your residence or house, who was the person inside the house?

A

My mother, sir.

Q

So, what, if anything, did you tell to your mother?

A

I told my mother that Noel struck us.

Q

Do you know the person of Noel Darilay?

A

Yes, sir.[31]

Despite intense and grueling cross-examination by the appellant's counsel, Ailyn remained steadfast and unrelenting.

Fifth. The appellant was merely clutching at straws when he attempted to pin the criminal liability on Bon and Delfino for the injuries sustained by Ailyn and the rape and death of Marilyn. If, indeed, Bon and Delfino were involved, Ailyn would have said so when she testified. Moreover, Ailyn identified the appellant as the only

culprit. There is no evidence on record that Ailyn harbored any ill or devious motive to point to the appellant as the sole perpetrator of the crime, for which the latter could be meted the capital penalty, if convicted. Hence, Ailyn's testimony is entitled to full probative weight. We agree with the disquisitions of the trial court, thus:

These foregoing circumstantial evidence pieced together, points to the accused as the rapist-murderer of 8-year-old Marilyn Arganda. The testimony of Ailyn Arganda identifying the accused having struck her and her sister on the very day of April 19, 1997 between 8:30 and 9:00 o'clock in the morning at Magrimpong, Tinambac, Camarines Sur is consistent with truth considering that it was even admitted by the accused that about that time, they were following the two (2) sisters. However, the defense of the accused was that it was Hercules Bon who had struck Marilyn Arganda while Ailyn Arganda was walking ahead of Marilyn was struck by Jose Delfino. This statement of the accused is quite unbelievable over the statement of Ailyn Arganda even [if] she testified that she was so definite that it was accused Noel Darilay who was alone at that time who struck her and her sister. Ailyn Arganda although she was only 8 years old is a very much qualified witness despite her tender age because as observed by the court, she was narrating the incident in a straightforward manner. Because of her tender age, she was asked by the prosecution whether she knows that she has to tell the truth and nothing but the truth in giving her testimony in court and she answered, yes, and she even testified that telling a lie is bad. Her testimony was likewise corroborated by the findings of Dr. Betito who conducted an autopsy examination on the cadaver of Marilyn Arganda and conducted a medical examination on the injuries of Ailyn Arganda. The findings of Dr. Betito was that Marilyn Arganda suffered injuries on her head which were fatal and would cause internal hemorrhage that caused her death while in the physical examination that he conducted on Ailyn Arganda. Dr. Betito testified that he had found contusion and abrasion on the back of the head of Ailyn Arganda and also contusion on the left face of Ailyn Arganda. Ailyn Arganda had testified clearly that she was hit twice by the accused and hit the back of her head and she was punched hitting her cheek and this was corroborated then by the findings of Dr. Betito. Likewise, she testified that her sister was also struck hitting her on the head and the findings of Dr. Betito on the cadaver of Marilyn Arganda was that she had injuries on her head which may be caused by a hard object. His alibi that he was not the one who had struck Marilyn and Ailyn Arganda and pointing to Hercules Bon and Jose Delfino is unbelievable considering that Ailyn Arganda positively identified him to be the one who both (sic) struck her and her sister Marilyn on April 19, 1997.[32]...

...[T]he testimony of Ailyn Arganda was made in a straightforward manner and all the facts that she has narrated jibed with the findings of the doctor who conducted the autopsy on the cadaver of Marilyn and conducted the medical examination on her. Her testimonies even remained the same and she remained unshaken during the cross-examination. The witness who is of tender age such as Ailyn Arganda is a credible witness because usually children of tender age cannot be coached and had to tell the truth of what she had experienced. The court has no doubt as to the truthfulness of the testimony of Ailyn Arganda which is consistent with common experience in the natural course of things coupled with the fact that it was corroborated by an expert witness who conducted [an] examination both on Ailyn Arganda herself and on the cadaver of Marilyn Arganda.

"The testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have fully understood the character and nature of an oath, their testimony should be given full credence." (Julio Marco vs. CA and People of the Philippines, G.R. No. 117561, June 11, 1997).[33]

The Crime Committed by the
Appellant in Criminal
Case No. RTC'97-202

We agree with the ruling of the trial court that the appellant is guilty of attempted murder for the injuries sustained by Ailyn. Under Article 6 of the Revised Penal Code, there is an attempt to commit a felony when the offender commences the commission of a felony by direct acts, and does not perform all the acts of execution by reason of

some causes or accident other than his own spontaneous desistance. In *People v. Lizada*,^[34] we held:

...The Supreme Court of Spain, in its decision of March 21, 1892, declared that for overt acts to constitute an attempted offense, it is necessary that their objective be known and established or such that acts be of such nature that they themselves should obviously disclose the criminal objective necessarily intended, said objective and finality to serve as ground for designation of the offense.^[35]

For one to be criminally liable for a consummated, frustrated or attempted homicide or murder, there must be, on the part of the accused, an intent to kill the victim. Intent to kill is an internal act but may be proved by evidence, inter alia, that the accused used a lethal weapon; the nature, location and number of wounds sustained by the victim; and by the words uttered by the malefactor before, at the time or immediately after the infliction of the injuries on the victim.^[36] In this case, the prosecution proved that the appellant intended to kill the victim Ailyn because (a) he used a piece of wood; (b) he struck Ailyn twice on the back and boxed her on the face; (c) he threw her to the ground and dragged her to a grassy area; (d) he left Ailyn all by herself. There is evidence on record that the injuries sustained by Ailyn were mortal and could have caused her death. She recovered from her injuries in less than 5 days but not more than 9 days. Furthermore, the crime was qualified by treachery because Ailyn, who was only 7 years old at the time, could not defend herself against the appellant's physical assault. Hence, the appellant is guilty of attempted murder.

The Crime Committed by the
Appellant in Criminal Case
No. RTC'97-201

The appellant asserts that there was no eyewitness to the rape and killing of Marilyn. He contends that the prosecution failed to prove that the appellant raped the victim and killed her on the occasion or by reason of the said rape. He should thus be acquitted of the said crime. For its part, the Office of the Solicitor General avers that as gleaned from the evidence on record and the findings of the trial court in its decision, the prosecution adduced circumstantial evidence to prove that the appellant raped the victim and killed her on the occasion or by reason of said crime. Hence, it asserts, the trial court did not err in convicting the appellant of the special complex crime of rape with homicide.

We agree with the appellant that the prosecution failed to adduce direct evidence to prove that he raped and killed Marilyn on the occasion or by reason of the said crime. However, direct evidence is not indispensable to prove the guilt of the accused for the crime charged; it may be proved by circumstantial evidence. In *People v. Delim*,^[37] we held, thus:

...Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. What was once a rule of ancient practicability is now entombed in Section 4, Rule 133 of the Revised Rules of Evidence which states that circumstantial evidence, sometimes referred to as indirect or presumptive evidence, is sufficient as anchor for a judgment of conviction if the following requisites concur:

"x x x if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt."

The prosecution is burdened to prove the essential events which constitute a compact mass of circumstantial evidence, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion: the guilt of the accused for the offense charged. For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that

he is innocent, and with every other rational hypothesis except that of guilt. If the prosecution adduced the requisite circumstantial evidence to prove the guilt of accused beyond reasonable doubt, the burden of evidence shifts to the accused to controvert the evidence of the prosecution.[38]

We are convinced that, based on the evidence on record and as declared by the trial court in its decision, the prosecution adduced circumstantial evidence to prove beyond cavil that it was the appellant who raped and killed Marilyn on the occasion or by reason of the rape. Hence, he is guilty beyond reasonable doubt of rape with homicide, a special complex crime.

First. The appellant alone waylaid Ailyn and Marilyn while the two were walking home after buying tinapa. The appellant hit Ailyn twice with a piece of wood on her back and boxed the left side of her face, rendering her unconscious. The appellant also struck Marilyn with a piece of wood on the back. After dragging Ailyn to a grassy area, he left her there.

Second. When Ailyn regained consciousness, Marilyn and the appellant were nowhere to be found.

Third. The torn dress, the pair of panties, and a slipper were found about 15 meters away from where the two young girls were waylaid by the appellant.

Fourth. The appellant testified that he himself accompanied the policemen and pointed to the place where Marilyn's body was dumped, completely naked, with blood oozing from her nose and vagina.

We are convinced that the appellant raped Marilyn about 15 meters from where he had earlier waylaid Ailyn. He then carried Marilyn across the river where he killed her to prevent her from revealing to the authorities that she was raped. The appellant hid her body under the bushes and trees to thus prevent police authorities from discovering that he killed Marilyn. Irrefragably, Marilyn was killed by reason of the rape. The killing of a child, barely 9 years old, is murder. Nonetheless, the appellant is guilty of rape with homicide because the latter crime is used in its generic sense.

The Proper Penalties Against the Appellant

As found by the trial court, the appellant was over 9 years but under 15 years old when he committed the crime. The appellant acted with discernment when he committed the same. Article 6 of the Revised Penal Code provides that the impossible penalty should be reduced by two degrees. Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, rape with homicide is punishable by death. Reducing the penalty by two degrees, the impossible penalty is reclusion temporal, from which the maximum of the indeterminate penalty should be taken. To determine the minimum of the penalty, it should be reduced by one degree, which is prision mayor. Applying the indeterminate sentence law and taking into account how the ghastly crime was committed, the appellant should be sentenced to suffer an indeterminate penalty of from 6 years and one day of prision mayor in its medium period, as minimum, to 17 years and 4 months of reclusion temporal in its medium period, as maximum.

For attempted murder, the trial court sentenced the appellant to an indeterminate penalty, from 2 months and one day to 4 months of arresto mayor. The penalty imposed by the trial court is erroneous. The penalty of consummated murder under Article 248 of the Revised Penal Code, as amended, is reclusion perpetua to death. The impossible penalty should be reduced by two degrees under Article 68 of the Revised Penal Code because the appellant is a minor. As reduced, the penalty is reclusion temporal.[39] Reclusion temporal should be reduced by two degrees lower, conformably to Article 51 of the Revised Penal Code which is prision correccional. This penalty should be reduced by one degree, which is arresto mayor, to determine the minimum of the indeterminate penalty. Accordingly, the appellant should be sentenced to a straight penalty of four (4) months. It goes without

saying that if the trial court decides to impose on the accused a penalty of imprisonment of one year or less, it should impose a straight penalty and not an indeterminate penalty.

Civil Liability for the Crimes

Considering that at the time of the commission of the crime, the appellant was a minor under the parental authority of his parents, the Spouses Manuel and Julieta Darilay are primarily and directly liable for the damages sustained by the heirs of the victims Marilyn and Ailyn Arganda.[40] Consequently, the Spouses Manuel and Julieta Darilay are hereby ordered, jointly and severally, in Criminal Case No. RTC'97-201, to pay to the heirs of the victim Marilyn Arganda, the amount of P100,000.00 as civil indemnity;[41] P50,000.00 as moral damages;[42] and P28,000.00 as exemplary -damages.[43] The prosecution failed to adduce evidence in support of actual damages; hence, the heirs of the victim are not entitled thereto. They are, however, entitled to temperate damages in the amount of P25,000.00.[44]

In Criminal Case No. RTC'97-202, the Spouses Manuel and Julieta Darilay are hereby ordered to pay, jointly and severally, to Ailyn Arganda, the amount of P25,000.00 as moral damages and P25,000.00 as exemplary damages.

IN LIGHT OF ALL THE FOREGOING, the appealed decision of the Regional Trial Court of Camarines Sur, Branch 63, is AFFIRMED WITH MODIFICATION. In Criminal Case No. RTC'97-201, the appellant is found guilty of rape with homicide under Article 335 of the Revised Penal Code, as amended, and is hereby sentenced to suffer an indeterminate penalty from six (6) years of prision mayor in its medium period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. The Spouses Manuel and Julieta Darilay, are hereby ordered to pay, jointly and severally, to the heirs of the victim Marilyn Arganda P100,000.00 as civil indemnity; P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P25,000.00 as temperate damages.

In Criminal Case No. RTC'97-202, the appellant is found guilty beyond reasonable doubt of attempted murder under Article 248 in relation to Article 6 of the Revised Penal Code, and is hereby sentenced to suffer imprisonment of four (4) months. The Spouses Manuel and Julieta Darilay, are ordered to pay, jointly and severally, to Ailyn Arganda the amount of P25,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] TSN, 10 December 1997, p. 36.

[2] Exhibit "B," Records, Vol. II, p. 47.

[3] TSN, 10 December 1997, p. 36.

[4] TSN, 1 April 1998, pp. 3-4.

[5] TSN, 10 December 1997, pp. 6-8.

[6] Exhibit "2," Records, p. 11.

[7] TSN, 10 December 1977, pp. 9-11.

[8] Id. at 11.

[9] Id. at 39.

- [10] Id. at 40-41.
- [11] TSN, 24 March 1998, pp. 3-4.
- [12] Exhibit “G.”
- [13] Exhibit “H.”
- [14] Exhibits “G” to “F.”
- [15] TSN, 1 April 1998, p. 6.
- [16] TSN, 24 March 1998, pp. 16-18.
- [17] Exhibits “E,” “E-1,” & “E-2,” Records, p. 67.
- [18] Exhibit “A;” Records, p. 62.
- [19] Records, Vol. II, p. 45.
- [20] Records, Vol. II, p. 29.
- [21] Records, Vol. I, pp. 137-138.
- [22] TSN, 24 June 1998, pp. 3-4.
- [23] Id. at 6.
- [24] Id. at 7.
- [25] Id. at 7-8.
- [26] Id. at 8.
- [27] TSN, 1 July 1998, p. 3.
- [28] Records, p. 158.
- [29] Rollo, pp. 97-98.
- [30] TSN, 24 March 1998, p. 14.
- [31] TSN, 10 December 1997, pp. 6-11.
- [32] Records, pp. 150-151.
- [33] Id. at 152-153.
- [34] G.R. Nos. 143468-71, January 24, 2003.
- [35] Id. at 33, citing *People v. Lamahang*, 62 Phil. 703 (1935).
- [36] *People v. Delim*, G.R. No. 142773, January 28, 2003.
- [37] Ibid.
- [38] Id. at 19-20.
- [39] Article 61, Paragraph 2, New Civil Code.
- [40] *Libi v. Court of Appeals*, 214 SCRA 16 (1992).

[41] People v. Felixminia, G.R. No. 125233, March 20, 2002.

[42] People v. Magallanes, G.R. No. 136299, August 29, 2003.

[43] Article 2230, New Civil Code.

[44] People v. Manguera, G.R. No. 139906, March 5, 2003.

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