

EN BANC

**[G.R. NO. 174056 [Formerly G.R. No. 138257],
February 27, 2007]**

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO
GUMIMBA Y MORADANTE ALIAS ROWING AND RONTE ABABO
(ACQUITTED), APPELLANTS,**

TINGA, J.:

For review before the Court is the Decision^[1] of the Court of Appeals (CA) dated 26 April 2006, affirming with modification the Decision^[2] of the Regional Trial Court (RTC), Ozamiz City, Branch 15,^[3] dated 10 March 1999, finding appellant guilty beyond reasonable doubt of the crime of rape with homicide.

In an Information^[4] dated 17 April 1997, appellant Rogelio Gumimba y Morandante alias Rowing and co-accused Ronie Abapo (Abapo) were charged before the RTC, with the crime of rape with homicide of an eight (8)-year old child, thus:

That on or about April 8, 1997, in Barangay Pantaon, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation, to wit: by then and there pinning down one [AAA] ,^[5] a minor, 8 years of age, and succeeded in having carnal knowledge with her and as a result thereof she suffered 6-12 o'clock lacerated wounds of [sic] the vagina as well as fatal stab wounds on the different parts of her body and which were the direct cause of her death thereafter.

CONTRARY to Article 335 in relation with Article 249 of the Revised Penal Code.

On 16 May 1997, appellant and Abapo both entered a plea of not guilty on arraignment.^[6] Thereafter, the case proceeded to trial with the prosecution first presenting two witnesses: (1) Emelio Magallano, President of Purok I, Barangay Pantaon, Ozamiz City; and (2) Sofronio Arañas, a Civilian Volunteer Officer (CVO) of the same barangay.

Magallano and Arañas testified that at around 9 o'clock in the evening of 10 April 1997, appellant went to Magallano's home and confessed to him that he alone and by himself raped and killed his (appellant's) niece, AAA, in Purok Pantaon, Ozamiz City. Subsequently, Magallano accompanied appellant to the residence of Arañas where he reiterated his confession. That same night, Magallano, Arañas, appellant and family members of the witnesses proceeded to the home of Barangay Captain Santiago Acapulco, Jr. who conducted an investigation. Appellant repeated his narration and confessed to the barangay captain that he had raped and killed the

victim, and that he was alone when he committed the crime. As a result thereof, Acapulco, Jr., in the company of the others, brought appellant to the Ozamiz City Hall and turned him over to the police authorities.^[7]

However, appellant manifested through counsel (before the court) at the following hearing on 22 May 1997 that he would like to change his earlier plea of not guilty to a plea of guilty.^[8] The RTC ordered appellant's re-arraignment and the latter accordingly entered a plea of guilty.^[9] The court conducted an inquiry to ascertain the voluntariness of appellant's plea and his full comprehension of the consequences thereof. Prosecution was likewise charged to establish the guilt and degree of culpability of appellant.^[10]

In accordance with the court's directive, the prosecution continued with the presentation of its evidence in chief. It presented Dr. Pedrita Rosauro, the physician who conducted the autopsy on the body of the victim, and who testified that the victim was raped before she was killed. The examination by Dr. Rosauro revealed that AAA sustained four (4) stab wounds in front, two (2) stab wounds in her back and one (1) lacerated wound each on her neck and on her middle upper extremity. Furthermore, she found 6 and 12 o'clock laceration wounds on the external genital organ of the victim.^[11]

Before resting its case, the prosecution presented appellant as witness against his co-accused Abapo. Appellant testified that he and Abapo raped and killed the victim. He likewise explained that he had previously confessed to Magallano, Arañas and Acapulco that he alone committed the crime in the hope that the parents of the victim, who were relatives of his, might take pity on him.^[12]

In his defense, Abapo testified that at the time the crime was allegedly committed, he was with his mother and three (3) siblings at the Labo River, about two (2) kilometers away from Barangay Pantaon, washing their clothes.^[13] In support thereof, Abapo presented his mother Virgencita Abapo, Elisa Carreon and Raymundo Orot, all of whom corroborated his alibi.^[14] The defense also presented witness Arañas who reiterated his earlier testimony that appellant confessed to him that he alone was responsible for the raping and killing of the victim.^[15] Finally, Eugenio Bucog, a teacher at Capucan Elementary School, was presented to demonstrate Abapo's good character when he was his student.^[16]

On 10 March 1999, the RTC promulgated its Decision. On the basis of appellant's plea of guilty, the RTC found him guilty beyond reasonable doubt of the crime as charged. Appellant was sentenced to suffer the death penalty and ordered to indemnify the heirs of the victim in the amounts of P50,000.00 as indemnity for the life of the victim, P30,000.00 as moral damages, and costs.^[17] On the other hand, the trial court acquitted Abapo on the ground that his guilt was not established beyond reasonable doubt. Except for the lone testimony of appellant, the RTC held that no other evidence was adduced to prove the participation of Abapo. Moreover, the court *a quo* found that appellant's testimony implicating Abapo was not worthy of credence coming as it did from a polluted source.^[18]

With the death penalty imposed on appellant, the case was elevated to this Court on

automatic review. Pursuant to this Court's decision in *People v. Mateo*,^[19] the case was transferred to the Court of Appeals.

On 26 April 2006, the appellate court rendered its Decision^[20] affirming the appellant's conviction, but with modification as to damages awarded to the heirs of the victim. The dispositive portion of the said Decision states:

"WHEREFORE, premises considered, the instant Appeal is **DISMISSED** for lack of merit. The **Decision dated March 10, 1999** of the Regional Trial Court, Branch 15, of Ozami[s] City, is hereby **AFFIRMED with the MODIFICATION** that the amount of civil indemnity *ex delicto* is hereby increased from P50,000.00 to P100,000.00, including the award of moral damages from P30,000.00 to P50,000.00. Conformably with the ruling of the Supreme Court in *People of the Philippines v. Efren Mateo*, We refrain from entering judgment, and the Division Clerk of Court is hereby directed to elevate the entire records of the case to the Honorable Supreme Court for its final disposition.

SO ORDERED."^[21]

On 3 October 2006, the Court issued an order requiring the parties to simultaneously submit supplemental briefs within thirty (30) days from notice should they so desire.^[22] On 21 November and 24 November 2006, appellant and appellee filed similar manifestations that they are adopting the briefs they filed before the Court of Appeals.^[23]

Thus, appellant raises the following errors in this petition for review:

I

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF HIS IMPROVIDENT PLEA OF GUILTY AND HIS ALLEGED SEPARATE CONFESSIONS TO ONE EM[L] LIO MAGALLANO, AND ONE SOFRONIO ARAÑAS, THE LATTER BEING HEARSAY AND WITHOUT PROBATIVE VALUE WHATSOEVER.

II

THE COURT A QUO LIKEWISE ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE LATTER'S GUILT BEYOND REASONABLE DOUBT, AND THE ACCUSED-APPELLANT OWNING UP ONLY TO THE CRIME OF SIMPLE RAPE.^[24]

The ultimate issue is whether appellant's guilt was established by evidence beyond reasonable doubt.

It must be conceded at the outset that the trial court failed in its duty to conduct the prescribed "searching inquiry" into the voluntariness of appellant's plea of guilty and full comprehension thereof. Consequently, appellant's plea of guilty was made improvidently and it is rendered inefficacious.^[25] Nevertheless, the Court must rule against appellant as the evidence on record is ample to sustain the judgment of

conviction independent from his plea of guilty.

The crime of rape with homicide is punishable with death under Article 335 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, which provides:

Article 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age or is demented.

The crime of rape is punishable by *reclusion perpetua*.

x x x x

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

x x x x

The Information, to which appellant pleaded guilty, alleged that homicide was committed by reason or on the occasion of the rape of AAA. This, if proven, would warrant the penalty of death at that time.^[26] Accordingly, a plea of guilty to such charges calls into play the provisions of Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, thus -

Sec. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Based on this rule, when a plea of guilty to a capital offense is entered, there are three (3) conditions that the trial court must observe to obviate an improvident plea of guilty by the accused: (1) it must conduct a searching inquiry into the voluntariness and full comprehension by the accused of the consequences of his plea; (2) it must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) it must ask the accused whether he desires to present evidence on his behalf, and allow him to do so if he so desires. ^[27]

There is no hard and fast rule as to how a judge may conduct a "searching inquiry," or as to the number and character of questions he may ask the accused, or as to the earnestness with which he may conduct it, since each case must be measured according to its individual merit.^[28] However, the logic behind the rule is that courts must proceed with caution where the imposable penalty is death for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.^[29] An improvident plea of guilty on the part of the accused when capital crimes are involved should be

avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.^[30] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.^[31]

In the instant case, when the accused entered a plea of guilty at his re-arraignment, it is evident that the RTC did not strictly observe the requirements under Section 3, Rule 116 above. A mere warning

that the accused faces the supreme penalty of death is insufficient.^[32] Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry," as follows:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.