

EN BANC

[G.R. No. 131804, February 26, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO OSTIA @ "ROBERT", ACCUSED-APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

The Spouses [REDACTED] and [REDACTED] resided with their four-year old daughter,^[1] AAA, in Sitio Mactang, Barangay Ilo, Sto. Niño, Samar. [REDACTED] was a fisherman and a farmer but was employed by Tito Soria in his buy-and-sell of fish business. Roberto Ostia, a co-worker of [REDACTED], resided in the poblacion of Sto. Niño. Rufo Legaspi, a carpenter and a Barangay Tanod, was a neighbor of [REDACTED].

On May 13, 1995, a Saturday, at about 7:00 p.m., Rufo was seated near his house and resting before retiring for the evening. Momentarily, Rufo saw Roberto, with AAA perched on his right shoulder, walking towards the direction of the poblacion. Roberto's left hand was holding the right hand of Mary Donoso, a nine-year old playmate of AAA. The trio were in animated conversation on their way towards the poblacion.

After the lapse of an hour or so, [REDACTED] noticed that AAA had not yet returned to their house. She went out of the house to look for her daughter. Rufo told [REDACTED] that earlier he saw AAA perched on the shoulder of Roberto on their way towards the direction of the poblacion. Thereafter, Roberto sauntered by. However, AAA was no longer with him. Puzzled, [REDACTED] inquired from Roberto where AAA was. Instead of responding, Roberto fled. [REDACTED] was flustered. Rufo, who witnessed the incident, advised [REDACTED] to report the incident to the police authorities. [REDACTED] rushed back home and woke up [REDACTED]. She told her husband that AAA had been taken by Roberto and that AAA had not yet returned home. The couple rushed from their house and reported the incident to the police authorities. With the help of their neighbors and police officers Manuel Toribio and Dodong Espino, the couple looked for AAA but failed to locate her. They resumed their search the next day, May 14, 1995, and, at 3:00 p.m., they found AAA sprawled in a grassy portion below a copra kiln about 120 meters away from the house of the [REDACTED] couple and about 15 meters from the nearest house. AAA was already dead. Pictures of AAA were taken where her body was found.^[2] [REDACTED] and the policemen then looked for Dr. Renato Ortiz, the Municipal Health Officer, to conduct an autopsy on the cadaver of AAA but the doctor was in Calbayog City. Lorenzo Bernabe, the Municipal Sanitary Inspector who had been trained by the District Hospital to perform autopsies in the absence of the Municipal District Officer, performed the autopsy on the cadaver of AAA. Bernabe drew a sketch depicting the human body indicating the number and locations of the injuries sustained by AAA.^[3] Bernabe then prepared the autopsy report.

Dr. Renato Ortiz validated the report of Bernabe and signed a Medico-Legal Necropsy Report on May 24, 1995 showing the injuries sustained by AAA and the cause of her death:

F I N D I N G S

1. Wound, lacerated, 3.5 cm. long, running downward from posterior vaginal wall to the anus.
2. Wound, lacerated, 2 cm. long, running upward from the vagina to mons pubis.
3. Contusion, purplish in color, 5.0 cm. in diameter lateral side of lumbar area, left, below the costal margin.
4. Presence of blood clots, left ear.

USE OF DEATH:

Cardio-Respiratory Arrest

2ndary to severe hemorrhage^[4]

According to Dr. Ortiz, the lacerated wounds sustained by AAA from the posterior wall of her vagina to her anus and from her vagina to the *mons pubis* were caused by a blunt instrument shoved violently into her vagina.^[5] Such an instrument could be a penis. The doctor also signed the Certificate of Death of AAA.^[6]

Earlier on May 18, 1995, a criminal complaint for rape with homicide was filed by ██████ against Roberto with the Municipal Circuit Trial Court^[7] and after the requisite preliminary investigation, an Information charging Roberto with Rape with Homicide was filed on December 7, 1995 with Branch 32 of the Regional Trial Court of Calbayog City which reads:

That on or about the 13th day of May, 1995, at about 7:00 o'clock in the evening, at Sitio Mactang, Barangay Ilo, Municipality of Sto. Niño, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge against a minor four (4) years old girl, AAA, without the latter's consent and against her will, and thereafter, with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously inflict upon the said AAA fatal wounds on the different parts of her body, which caused her untimely death.

CONTRARY TO LAW.^[8]

On the date set for his arraignment, Roberto appeared without counsel. The court issued an order appointing Atty. Artemio Apostol as counsel *de oficio* of Roberto.^[9] Said counsel prayed for the resetting of the arraignment to January 30, 1996 to enable him to secure a copy of the necropsy report and study the case intelligently. The court granted the motion.

During the arraignment of Roberto on January 30, 1996, he, through his counsel *de*

oficio, manifested to the court that he was willing to plead guilty to the lesser offense of murder. However, the public prosecutor prayed for a continuance so that he could consult the provincial prosecutor and the father of the victim, [REDACTED], on the offer of Roberto.

The arraignment of Roberto was reset to February 29, 1996, on which date, he, through his counsel *de oficio*, moved that a reinvestigation be conducted by the public prosecutor. The motion was granted by the trial court.^[10] However, despite notice from the office of the public prosecutor, Roberto failed to adduce controverting evidence. On motion of the prosecution, the arraignment of Roberto was set on August 9, 1996. When arraigned on said date, Roberto, with the assistance of his counsel *de oficio*, entered a plea of Not Guilty to the charge of rape with homicide.^[11]

Trial ensued. The prosecution presented Dr. Renato Ortiz as its first witness. Before the trial resumed on February 24, 1997, the counsel *de oficio* of Roberto manifested that the latter was intending to plead guilty to murder and prayed for the deferment of the trial. The public prosecutor manifested to the court that he had no objection to Roberto's pleading guilty to murder as he did not have sufficient evidence to prove that the latter raped AAA but that he had sufficient evidence to prove that he killed her.

During the trial set on May 6, 1997, Roberto, through counsel, moved that he be allowed to withdraw his plea of not guilty to rape with homicide and to enter a plea of guilty to murder. [REDACTED], the father of AAA, and the public prosecutor agreed to Roberto's pleading guilty to murder. On May 19, 1997, Roberto, per Certificate of Re-arraignment signed by the Branch Clerk of Court,^[12] was re-arraigned for the lesser offense of murder and pleaded guilty thereto.^[13] The court then informed Roberto that the penalty for murder was *reclusion perpetua* to death, two indivisible penalties, and that the court may impose the death penalty on him depending on the circumstances found by the trial court.

When trial resumed on May 22, 1997, for the prosecution to continue presenting its evidence, Roberto took the witness stand to answer more questions from the court. He testified that he killed AAA by smashing a piece of rock bigger than the size of his fist, about seven inches in diameter, on her head and chest and on the other parts of her body because, in the meantime, he lost control of himself. He further stated that he was not forced or coerced in so testifying before the court. He admitted that he caused the death of the victim.

During the trial on May 26, 1997, the prosecution formally offered its documentary evidence. The court admitted all the prosecution's documentary evidence without any objection from Roberto. The latter did not anymore adduce any testimonial and documentary evidence in his behalf and on said date, the court issued an order declaring that the case was submitted for its decision.^[14]

On August 25, 1997, the trial court rendered judgment^[15] finding Roberto guilty beyond reasonable doubt of murder with the qualifying circumstance of evident premeditation and with the generic aggravating circumstances of (a) abuse of confidence considering that Roberto and [REDACTED] were co-workers, (b) nighttime considering that AAA was killed in the evening and (c) *despoblado* considering that

the nearest house to the *situs criminis* was fourteen meters. The decretal portion of the decision reads:

WHEREFORE, the Court, accepting the plea of guilt of the accused ROBERTO OSTIA alias ROBERT to the crime of Murder, and likewise considering that the evidence has sufficiently proved that the crime has been committed, finds and declares the said accused guilty of Murder beyond reasonable doubt[s], as principal, and considering three aggravating circumstances which are not offset by any mitigating circumstances, hereby sentences the accused to suffer the penalty of DEATH, to be carried out in accordance with law, and to pay the costs.

Likewise, the Court hereby condemns the accused to indemnify the heirs of the victim AAA in the amount of P50,000.00.

Let the entire records of the case, together with the stenographic transcripts and exhibits be forwarded to the honorable Supreme Court for automatic review of this decision.

SO ORDERED.^[16]

The case was brought to the Court on automatic appeal the death penalty having been imposed on Roberto by the trial court.

Accused-appellant Roberto assails the decision of the trial court with the following assignments of error:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE HIS IMPROVIDENT PLEA OF GUILTY.

II

THE COURT A QUO ERRED IN RULING THAT EVIDENT PREMEDITATION QUALIFIED THE KILLING TO MURDER.

III

ON THE ASSUMPTION THAT ACCUSED-APPELLANT COMMITTED THE CRIME MURDER (SIC) THE COURT A QUO ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON HIM.^[17]

On the first assignment of error, accused-appellant avers that the trial court failed to comply with its mandatory duties when he pleaded guilty to murder, a capital offense, the imposable penalty for which is *reclusion perpetua* to death. More specifically, the trial court allegedly failed to comply with Section 3, Rule 116 of the Rules of Court when it failed to conduct a searching inquiry into the voluntariness and full comprehension of accused-appellant of the consequences of his plea of guilty to murder and to inquire from him if he wished to adduce evidence on his behalf and allow him to do so if he wished. Accused-appellant contends that his plea of guilty to murder was improvidently made and prays that his arraignment for

murder and all proceedings as well as the decision of the trial court convicting him of said crime and imposing on him the supreme penalty of death be nullified. He further prays for the remand of the case to the trial court for appropriate proceedings. For its part, the Office of the Solicitor General asserts that as gleaned from the decision of the trial court, it complied with fealty with the mandatory requirements of Section 3, Rule 116 of the 1985 Rules of Criminal Procedure, as amended. The OSG quotes the following portion of the trial court's decision:

x x x On May 19, 1997, the accused was re-arraigned upon the information. He was assisted by his counsel and the information was read and translated to him in the waray dialect which he claims he understands and speaks. After thus reading and translating the information to him in the waray dialect, the accused entered a plea of guilt to murder.

The Public Prosecutor, Hon. Feliciano Aguilar, gave his consent to this plea of guilt of the accused to murder, manifesting again to the Court that he has no direct evidence to establish rape. The complainant, [REDACTED] who is the father of the victim AAA, after conferring with the Public Prosecutor, also gave his consent to this plea of the accused to the lesser offense of murder. The Court conducted searching and clarificatory questions to the accused to determine whether the latter understood his plea of guilt as well as realized the consequences thereof. He was informed by the Court that as a result of his plea of guilt, he admitted all the facts alleged in the information which were already read and translated to him in the waray dialect during the re-arraignment; that the Court will no longer conduct any trial but would just impose upon him the penalty that is proper under the law; that the penalty provided for murder, a heinous crime under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 is Reclusion Perpetua to death, and that either of these two indivisible penalties may be imposed upon him depending upon the circumstances which may ultimately be appreciated by the Court (see TSN dated May 19, 1997, pages 1-3; 4-5).

He was asked whether he was earnest and sincere in his plea of guilt to murder, and he answered the Court in the affirmative. Furthermore, the Court asked him whether he was threatened, forced, coerced by anybody or somebody suggested to him to plea guilty to murder but he answered that he was not, and that his plea was all his own free will and volition. (see TSN dated May 22, 1997, pages 1-4).

The accused was asked by the Court how he killed the victim and he stated that he used a piece of rock about the size of his fist which was measured to have an approximate diameter of four inches and elongated in shape about seven inches long which he smashed on the victim, whereby he hit the victim on the chest, on the head, as well as other parts of her body.