

FIRST DIVISION

[G.R. No. 133025, February 17, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RADEL GALLARDE, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE JR., C.J.:

This is an appeal from the judgment of the Regional Trial Court of Tayug, Pangasinan, Branch 51, finding accused-appellant Radel Gallarde^[1] (hereafter GALLARDE) guilty beyond reasonable doubt of the crime of murder in Criminal Case No. T-1978 and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Editha Talan (hereafter EDITHA) the amount of P70,000 as actual damages.^[2]

On 24 June 1997, GALLARDE was charged with the special complex crime of rape with homicide in an information whose accusatory portion reads as follows:

That on or about the 6th day of May 1997, in the evening, amidst the field located at Brgy. Trenchera, [M]unicipality of Tayug, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one EDITHA TALAN, a minor-10 years of age, against her will and consent, and thereafter, with intent to kill, cover the nose and mouth of the said minor resulting to her death and then bury her in the field, to the damage and prejudice of the heirs of said EDITHA TALAN.^[3]

During the arraignment on 1 September 1997, GALLARDE, with the assistance of counsel, entered a plea of not guilty.^[4] Trial of the case immediately ensued as the defense waived the holding of the pre-trial conference.

The witnesses presented by the prosecution were Mario Fernandez, Jaime Cabinta, Rosy Clemente, Felicisimo Mendoza, Alfredo Cortez, Renato Fernandez, SPO4 Oscar B. Lopez, and Dr. Perfecto Tebangan. The relevant and material facts established by their testimonies are faithfully summarized in the Appellee's Brief as follows:

In the evening of May 26, 1997, at the house of spouses Eduardo and Elena Talan in Brgy. Trenchera, Tayug, Pangasinan, their neighbors converged. Among them were appellant Radel Gallarde, Francisco, Renato, Edwin, all surnamed Fernandez, Romel Hernandez, Jaime Cabinta, Rosy Clemente, Jon Talen, Noel Arellaga and Ramil Bargon. Idling by was Editha, 10 year old daughter of spouses Talan. A fluorescent lamp illuminated them as they partook beer (TSN dated

October 13, 1997, pp. 3-4).

After a while, Roger stood up and invited Jaime and appellant to dine in the kitchen. As they partook of the meal, appellant suddenly left. Jaime, too, stepped out of the kitchen to urinate. Outside the house, he chanced upon appellant and Editha talking to each other. Jaime whistled at appellant but instead of minding him, the latter sprinted towards the road leading to his house (*Id.*, pp. 4-6).

Thereafter, Editha entered the kitchen and took hold of a kerosene lamp. Jaime followed her and asked where she was going. Editha answered that she would look for appellant. Soon Editha left enroute to where appellant fled (*Id.*, pp. 7-8).

By 10:00 o'clock that evening, the drinking buddies had dispersed but Jaime, Francisco, Edwin and Rose regrouped at Renato's place where they talked and relaxed. Moments later, Roger arrived and informed them that Editha was missing. Roger asked the group to help look for her (*Id.*, p. 10).

Elena Talan informed his uncle, Barangay Ex-kagawad Mario Fernandez, about her daughter's disappearance. The latter, together with his son Edwin, wife Virginia and nephew Freddie Cortez wasted no time in joining their neighbors search the houses, dikes and fields to look for the missing child. The searchers used a lighted rubber tire (TSN dated Sept. 24, 1997, pp. 8-10 and 24).

When Jaime mentioned that appellant was the last person he saw talking to Editha, the searchers went back to the house of appellant. About 7 meters away from appellant's house, one of the searchers, Alfredo Cortez, found Editha's left foot slipper (TSN dated October 22, 1997, pp. 4-6). Suddenly, Edwin Fernandez announced: "*Tata*, Radel is here!" pointing to the toilet about 6 meters away from appellant's house. The searchers found appellant squatting with his short pants. His hands and knees were covered with soil. When confronted by ex-kagawad Hernandez why he was there, appellant answered he was relieving himself (*Id.*, pp. 11-16).

Asked where Editha was, appellant replied: "I do not know, I did not do anything to her." When told - "according to Jimmy, you were with Editha," appellant responded "I let her go and brought her back to the dike and let her go home." To the next question, "where did you come from since a while ago you were not yet in this toilet?" appellant answered "I was with Kiko, I was asleep in their house. One of the searchers Mario Bado, got angry and countered that appellant's statement was impossible because Kiko was with him drinking (*Id.*, pp. 16-20).

After the confrontation at the toilet, Ex-kagawad Fernandez brought appellant to Brgy. Captain Felicisimo Mendoza, informing the latter that appellant was the last person seen talking with the missing child. Fernandez then rejoined the searchers (*Id.*, pp. 21-22).

Back in the field, Virginia Fernandez tripped on a wet ground. As she reached for her slipper, she saw Editha's right foot slipper (the other one was earlier found near the house of appellant) (*Id.*, pp. 23-24).

Around 3 meters farther from Editha's right foot slipper; another slipper was found. It was old, 8 to 9 inches in length and appellant was seen wearing it in the morning of that day (TSN dated Sept. 25, 1997, pp. 25).

The searchers, thereafter, noticed disheveled grasses. Along the way, they saw a wide hole among the disheveled grass. Ex-kagawad Fernandez accidentally dropped the lighted rubber tire and as his nephew Freddie picked it up, the latter exclaimed: "Uncle, look at this loose soil!" Ex-kagawad Fernandez forthwith scratched some earth aside and then Editha's hand pitted out. The Fernandez screamed in terror (*Id.*, pp. 5-6).

Meantime, Barangay Captain Mendoza heard shouts saying: "She is here, she is now here already dead!" Mindful of appellant's safety, Brgy. Captain Mendoza decided to bring appellant to the municipal building. On their way though, they met policemen on board a vehicle. He flagged them down and turned over the person of appellant, saying: "Here is the suspect in the disappearance of the little girl. Since you are already here, I am giving him to you" (TSN dated Oct. 21, 1997, pp. 4-5).

The policemen together with appellant proceeded to where the people found Editha. One of the policemen shoved more soil aside. The lifeless Editha was completely naked when she was recovered. (*Id.*, pp. 9-10).

The cause of Editha's death as revealed in the post-mortem examination showed "suffocation of the lungs as a result from powerful covering of the nose and mouth, associated with laceration of the vagina and ruptured hymen (Exh. "T", TSN dated Oct. 23, 1997, pp. 22-23)."^[5]

On the other hand, GALLARDE was the lone witness for the defense. He interposed a denial and the alibi that he was at home with his mother and brothers at the time the crime occurred. He declared that he is 18 years old, single, a former construction worker. He knew EDITHA, a neighbor whom he considered as a sister because she used to come to his house. They never had a quarrel or misunderstanding. He neither raped not killed Editha.^[6]

On cross-examination by the prosecutor and to questions propounded by the court, GALLARDE admitted that he saw Editha on the night of 6 May 1997 in her parent's house, particularly in the kitchen. He was there because he joined a group drinking Colt 45 beer, as he was called by Rudio Fernandez. He drank and had dinner in the kitchen. After dinner he returned to the drinking place and eventually went home because he was then a little drunk. He knows Kgd. Mario Fernandez, but after he left the Talan residence he did not see Kgd. Fernandez anymore. Kgd. Fernandez saw him inside his (Gallarde's) toilet on the night of May 6; thereafter Fernandez took him to the barangay captain and later he was turned over to the PNP at Camp Narciso Ramos. The police informed him that he was a suspect in the rape and killing of Editha Talan, and he told them that he did not commit the crime. At the Talan residence he was wearing short pants and rubber slippers. Fernandez asked

him at the police headquarters to pull down his shorts and he complied. He was then wearing briefs with a hemline that was a little loose. He was informed that a cadaver was recovered near his house. When he was asked questions while in police custody, he was not represented by any lawyer.

GALLARDE further declared on cross-examination and on questions by the court that he considered Editha Talan as a sister and her parents also treated him in a friendly manner. When he came to know that Editha's parents suspected him of the crime, he was still on friendly terms with them. However, he did not go to them to tell them he was innocent because they brandished a bolo in anger.

Finally, he testified that in the evening of May 6 he came to know that Editha died. She was still alive when he was drinking at the back of the Talan house and left for home. From the time he arrived, he never left again that night, and his mother and brothers knew it for a fact.^[7]

On 12 February 1998, the trial court rendered a decision convicting GALLARDE of the crime of murder only, not of the complex crime of rape with homicide because of the lack of proof of carnal knowledge. It observed:

Exh. "T" and Dr. Tebangan's testimony thereon show that the late Editha Talan sustained slit wounds inflicted as a means of suffocating her to death, a laceration of the lower portion of her vagina, and a ruptured hymen. What allegedly oozed from her vagina was blood, coupled with dirt. Had there been observed the presence of even just a drop of seminal fluid in or around her vagina, the Court would readily conclude that the laceration and rupture resulted from phallic intrusion. Without such observation, however, "carnal knowledge" as element of rape would be an open question.

The trial court did not appreciate the alternative circumstance of intoxication either as a mitigating or aggravating circumstance pursuant to Article 15 of the Revised Penal Code because GALLARDE's alleged inebriation on the night of 6 May 1997, was not satisfactorily proven.

As to the civil aspect of the case, the trial court considered the stipulation of the parties on 27 October 1997 fixing a liquidated amount of P70,000 as actual damages, and leaving the matter of moral damages to the discretion of the court. The trial court was not inclined to award moral damages because the "evidence before it tends to disclose that on the night of 6 May 1997, before she died, Editha was a much-neglected child."

Accordingly, in its decision^[8] of 12 February 1998, the trial court decreed:

WHEREFORE, his guilt having been established beyond a reasonable doubt, the Court hereby convicts the accused RADEL GALLARDE Y HERMOSA of the crime of MURDER, and sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the late Editha Talan in the negotiated sum of P70,000.00.^[9]

His motion for reconsideration,^[10] having been denied by the trial court in its Resolution^[11] of 28 February 1998, GALLARDE seasonably appealed to us.

We accepted the appeal on 9 September 1998.

In his Appellant's Brief filed on 16 March 1999, GALLARDE alleges that the trial court committed the following errors:

1. In convicting [him] of the crime of murder in an information for rape with homicide.
2. In concluding that the prosecution has proven beyond reasonable doubt that [he] was responsible for the death of Editha Talan.
3. In not acquitting [him] on the ground of notches of proof beyond reasonable doubt.^[12]

We sustain GALLARDE's contention that the trial court erred in convicting him of murder in an information charging him of rape with homicide. A reading of the accusatory portion of the information shows that there was no allegation of any qualifying circumstance. Although it is true that the term "homicide" as used in special complex crime of rape with homicide is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on the occasion of rape,^[13] it is settled in this jurisdiction that where a complex crime is charged and the evidence fails to support the charge as to one of the component offense, the accused can be convicted of the other.^[14] In rape with homicide, in order to be convicted of murder in case the evidence fails to support the charge of rape, the qualifying circumstance must be sufficiently alleged and proved. Otherwise, it would be a denial of the right of the accused to be informed of the nature of the offense with which he is charged.^[15] It is fundamental that every element of the offense must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.^[16]

In the absence then in the information of an allegation of any qualifying circumstance, GALLARDE cannot be convicted of murder. An accused cannot be convicted of an offense higher than that with which he is charged in the complaint or information under which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, but an accused cannot be convicted of any offense, unless it is charged in the complaint or information for which he is tried, or is necessarily included in that which is charged. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial. To convict an accused of a higher offense than that charged in the complaint or information under which he is tried would be an unauthorized denial of that right.^[17]

Nevertheless, we agree with the trial court that the evidence for the prosecution, although circumstantial, was sufficient to establish beyond reasonable doubt the guilt of GALLARDE for the death of EDITHA.

Direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.^[18] The prosecution is not always tasked to present direct evidence to sustain a judgment of conviction; the