



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **08 June 2020** which reads as follows:*

“**G.R. No. 239333** (*People of the Philippines v. Demosthenes Arances Mirasol*). – The Court **NOTES** the letter dated November 29, 2019 of Csupt. Danilo C. Dador, Superintendent, Leyte Regional Prison, Abuyog, Leyte, confirming the confinement of accused-appellant Demosthenes Arances Mirasol at the said institution since July 28, 2015.

Before the Court is an appeal¹ filed by Demosthenes Arances Mirasol (accused-appellant), assailing the Decision² dated February 7, 2018 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02071, which affirmed *in toto* the Decision³ of Branch 62, Regional Trial Court (RTC) of Oslob, Cebu, in Criminal Case No. OS-08-526. Accused-appellant was found guilty beyond reasonable doubt of the crime of murder despite being charged with the special complex crime of rape with homicide.

After a judicious review of the record of the case, the Court resolved to dismiss the appeal from the Decision in CA-G.R. CEB CR-HC No. 02071 for utter lack of merit.

Version of the Prosecution

On June 15, 2008, 15-year old AAA* a fourth year high school

¹ CA Rollo, p. 97-98.

² Rollo, pp. 4-16; penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

³ CA Rollo, pp. 39-46; penned by Presiding Judge James Stewart Ramon E. Himalalaoan.

* The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND

student, left her house around 2:30 p.m. to collect a school project from her classmate's house. When she failed to return home, her mother, BBB sought help from their relatives. Following the path towards the house of her classmate, they passed by a ravine and there they saw AAA's motionless body, with her shorts pulled down and her blouse barely covering the upper portion of her body. They rushed her to the DDD District Hospital. There at the hospital, the doctors pronounced her dead.⁴

During the wake, CCC, their deaf-mute neighbor, approached and informed the family that he witnessed the incident surrounding AAA's death. Soon after, CCC together with the members of the Philippine National Police, went to the house of the accused-appellant. CCC identified the accused-appellant as the person responsible for the death of AAA.⁵

Assisted by deaf-mute interpreters, CCC executed an Affidavit narrating the incident.⁶

CCC recalled that in the afternoon of June 15, 2008, he was in the mountain cutting wood when he saw accused-appellant with AAA. Suddenly, accused-appellant dragged AAA's body by the neck, choked her and forced her to lie down. When she resisted, accused-appellant hit her head with a stone. He then removed AAA's clothes and inserted his fingers inside her vagina. AAA tried to struggle, but accused-appellant covered her mouth with his hand and punched her stomach. Accused-appellant then spread her legs and inserted his penis into her vagina. After he was through, he pushed AAA off a cliff and moments later, accused-appellant left.⁷ However, CCC acknowledged that in his affidavit it only narrated about the insertion of accused-appellant's fingers and it did not include penile penetration.⁸

SPO4 Dominador Ferrolino testified that during the conduct of their investigation, a deaf-mute named CCC, informed them through

FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (See *People v. Ejercito*, G.R. No. 229861, July 2, 2018).

⁴ *Rollo*, pp. 5-6.

⁵ *Id.* at 6.

⁶ *CA rollo*, pp. 27-28.

⁷ *Rollo*, p. 7.

⁸ *Id.*

sign language that the suspect was living in the upper mountain of MMM, Barangay III. CCC then accompanied them to accused-appellant's residence. CCC identified accused-appellant as the perpetrator. They then brought accused-appellant to the police station where CCC again identified him.⁹

Version of the Defense

Accused-appellant denied the charge against him and alleged that when the crime took place, he was making charcoal in a property owned by a certain XXX. He further alleged that he was with his two sons making charcoal for three days. He recalled *Barangay* Councilor YYY passed by and the two of them had a small talk. After that three policemen came to their house and arrested him for a crime which he knew nothing of.¹⁰

ZZZ, accused-appellant's eldest son, testified in his father's defense. He stated that he and the accused-appellant started the process of making charcoal at around 7:00 a.m. of June 15, 2008 and that they went home at around 5:00 p.m.¹¹

On the other hand, YYY declared in court that in the afternoon of June 15, 2008, he was on his way home from the market when he saw accused-appellant and his two sons making charcoal. Allegedly, he and accused-appellant talked for a while about the process of making charcoal. They went home at around 4:00 p.m. of the same day. YYY further stated that he knew the witness CCC as a drunkard.¹²

Ruling of the RTC

In its Decision,¹³ the RTC found accused-appellant guilty beyond reasonable doubt of the crime of Murder despite the fact that accused-appellant was charged with the special complex crime of rape with homicide. It held that the CCC's testimony before the court *vis-a-vis* the averments in his affidavit, failed to establish the mode by which rape was committed and as such, the accusation was not duly proven. Nevertheless, the RTC found his testimony sufficient to prove that accused-appellant killed AAA. It ruled further that while the manner of attack was not shown, treachery should be appreciated in the

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 8-9.

¹³ CA *rollo*, pp. 39-46; penned by Presiding Judge James Stewart Ramon E. Himalalooan.

commission of the crime considering that the victim was a minor.

Aggrieved, accused-appellant filed an appeal before the CA.

Ruling of the CA

In the assailed Decision,¹⁴ the CA affirmed *in toto* the May 26, 2015 Decision¹⁵ of the RTC. While the CA concurred with the conclusion of the RTC that accused-appellant cannot be held liable for the complex crime of Rape with Homicide, it differed with the rationale that the witness's failure to mention in the affidavit that there was penile penetration renders doubtful his account of the rape incident. In this regard, the CA ratiocinated that inconsistencies between the affidavit and the testimony of a witness do not necessarily discredit him. It is of judicial knowledge that sworn statements are almost incomplete and often inaccurate and are generally inferior to the testimony of a witness in open court.

This notwithstanding, the CA ruled that accused-appellant cannot be held liable for the special complex crime of Rape with Homicide for the reason that the Information failed to allege that accused-appellant had carnal knowledge of the victim against her will.¹⁶

The dispositive portion of the CA decision reads:

WHEREFORE, in view of the foregoing, the Court AFFIRMS *in toto* the 26 May 2015 Decision of the Regional Trial Court, 7th Judicial Region, Branch 62, Oslob, Cebu, in Criminal Case No. OS-08-526, finding accused-appellant Demosthenes Arances Mirasol guilty beyond reasonable doubt of Murder, for which he was sentenced to suffer the penalty of reclusion perpetua and ordered to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.

SO ORDERED.¹⁷

Hence, this appeal.

Issue

¹⁴ *Rollo*, pp. 4-16; penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robenio! concurring.

¹⁵ CA rollo, pp. 39-46; penned by Presiding Judge James Stewart Ramon E. Himalalooan.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 16.

Whether the accused-appellant can be convicted of the crime of Murder despite having been charged of Rape with Homicide in the Information.

Ruling

The Court dismisses the appeal.

Rape with Homicide is a special complex crime or “two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.”¹⁸ It is well-settled that in a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.¹⁹

The elements of the special complex crime of rape with homicide are as follows: “(1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.”²⁰

In this case, the CA correctly ruled that accused-appellant cannot be held liable for the special complex crime of Rape with Homicide considering that the Information²¹ failed to allege that accused-appellant had carnal knowledge of the victim against her will, which is an essential element of the special complex crime of Rape with Homicide.

No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.²² Thus, every element of the offense must be stated in the information so as to inform the accused of the nature of the accusation against him and to enable him to prepare his defense.²³

Notably, the Information²⁴ upon which the accused-appellant was arraigned failed to inform him that he was being accused of having

¹⁸ *People v. Villegas, Jr.*, G.R. No. 218210, October 9, 2019, citing *People v. Balisong*, 792 Phil. 837, 847 (2016).

¹⁹ *People v. Larrañaga*, 466 Phil. 324, 387 (2004).

²⁰ *People v. Villegas, Jr.*, *supra* note 18.

²¹ CA rollo, p. 26.

²² *People v. Dimaano*, 506 Phil. 630, 650 (2005).

²³ *Id.* at 649-650.

²⁴ CA rollo, p. 26.

sexual intercourse with the victim against her will and that by reason or on occasion thereof, the latter was killed. Consequently, the special complex crime of Rape with Homicide cannot stand. Otherwise, the right of accused-appellant to be informed of the nature of the accusation against him would be violated.

In this regard, both the RTC and CA correctly found accused-appellant guilty of the crime of Murder.

In the complex crime of rape with homicide, it is well-settled that the term "homicide" is used in its generic meaning.²⁵ Homicide, thus, includes murder and slight physical injuries committed by reason or on occasion of the rape.²⁶

Parenthetically, where a complex crime is charged and the evidence fails to support the charge as to one of the component offenses, the accused can be convicted only of the offense proved.²⁷

Applying the foregoing principles to the case at bar, the trial court correctly characterized treachery as a qualifying circumstance, to wit:

However, the accused cannot get off the hook for the death of AAA since CCC is categorical and consistent in his testimony on it. But granting *arguendo* that the manner of the attack made by the accused on AAA is not conclusive, nevertheless the crime is still murder.

The killing of a child is still murder even if the manner of attack was not shown. The qualifying circumstance of treachery or "*alevosia*" exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death."²⁸

In this case, there is no dispute that AAA is a minor. Jurisprudence abounds with the rule that the qualifying circumstance of treachery exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death.²⁹

In the early case of *United States v. Lansañgan*,³⁰ the Court

²⁵ *People v. Yu*, 110 Phil. 793, 796 (1961).

²⁶ *People v. Laog*, 674 Phil. 444, 467 (2011).

²⁷ *People v. Taboga*, 426 Phil. 908, 928 (2002); *People v. Rama*, 425 Phil. 284, 297 (2002).

²⁸ *CA Rollo*, pp. 45-46.

²⁹ *People v. Retubado*, 245 Phil. 251, 261 (1988).

³⁰ 27 Phil. 474-477 (1914).

stressed that even if the manner of assault is not shown, the killing of a child is characterized by treachery since whatever method the accused-appellant employed, in causing the death of the victim, the same was done without any possibility of danger resulting to himself from the child, to wit:

The defendant, at the time of the trial, was a man of forty years of age. The deceased was a child of seven years of age. The supreme court of Spain has held in numerous decisions, and those decisions have been followed by this court, *that the qualifying circumstance of treachery exists whenever one person employs means, methods and forms which insure the execution or commission of the crime without any danger arising or resulting to himself from the acts of the person attacked.*

The Supreme Court of Spain has also held (and this court has followed said decisions) *in considering alevosia as a qualifying circumstance of the crime of assassination, that when an adult person illegally attacks a child of tender years and causes its death, that he runs no risk whatever of personal injury to himself from such attack and that therefore in such a case alevosia should be considered as a qualifying circumstance of the crime, and the same should be qualified as assassination. x x x.*³¹ (Emphasis supplied.)

The reason for this is simple: the weakness of the victim due to his tender years results in the absence of any danger to the accused.³²

In a lame attempt to secure an acquittal, the accused-appellant argues that while the AAA is a minor, she cannot be considered as a child of tender years since she is already fifteen (15) years old. Accused-appellant cited *People v. Salufrania*,³³ wherein this Court held that a thirteen-year -old child is no longer considered a child of tender age at the time of his testimony.

The Court is not persuaded.

The ruling in *People v. Salufrania*³⁴ have no bearing to the case at bar for the reason that it merely involves the competence of a child witness to testify under oath, and has nothing to do with the killing of a child.

³¹ *United States v. Lansañan*, *id.* at 476.

³² *People v. Sanchez*, 636 Phil. 560, 576 (2010).

³³ 242 Phil. 882-902 (1988).

³⁴ *People v. Salufrania*, *id.*

In *Salufrania*,³⁵ it was held that the thirteen- year- old child was no longer a child of tender years at the time of his testimony since the trial court found him to be intelligent, competent, and responsive to the questions propounded to him; and that he fully appreciated the meaning of an oath.

While in this case, it involves an adult person who illegally attacked a child which resulted to the latter's death and the inherent weakness of the child due to her minority that results in the absence of any danger on the part of the accused-appellant in order for the latter to accomplish his evil designs.

In fact, in *People v. Umawid*,³⁶ even if the minor was found to be capable of mounting a defense against his attacker, it was held that treachery may still be appreciated on account of his or her minority, considering that he was just 15 years of age when he was attacked.

Considering that the information alleged that AAA, was a minor at the time of the commission of the crime and that the evidence presented supported the qualifying circumstance of treachery due to her minority, the constitutional right of accused-appellant to be informed of the nature and cause of accusation against him was not violated.

In fine, the Court finds no reason to disturb the judgment of the Court of Appeals convicting accused-appellant of Murder.

In line with *People v. Jugueta*,³⁷ the Court increases the amount of exemplary damages to ₱75,000.00 and imposes the amount of ₱50,000.00 as temperate damages. Temperate damages is in order if evidence of burial or funeral expenses is presented in the trial court.³⁸ In this case, the RTC made the determination of the burial or funeral expenses. It is uncertain whether the documents presented by the prosecution were eventually admitted as evidence. Hence, the Court deems it proper to award temperate damages to the heirs of the victim, AAA.

WHEREFORE, the appeal is **DISMISSED** and the Decision dated February 7, 2018 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02071 is **AFFIRMED** with **MODIFICATIONS** by increasing the

³⁵ *People v. Salufrania*, *supra*, note 33.

³⁶ 735 Phil. 737, 747 (2014).


³⁷ 783 Phil. 806-856 (2016).

³⁸ *Id.*

award of exemplary damages to ₱75,000.00 and imposing temperate damages amounting to ₱50,000.00. In addition, interest at the rate of 6% per *annum* shall be imposed on all monetary awards from the date of finality of this Resolution until fully paid.

SO ORDERED.” (GAERLAN, *J.*, designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,


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*with copy of CA Decision dated 7 Feb. 2018
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