

FIRST DIVISION

[G.R. No. 126280, March 30, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGER GULPE AND RICARDO VIGAS, APPELLANTS.

DECISION

AZCUNA, J.:

Appellants Roger Gulpe (Gulpe) and Ricardo Vigos (Vigos) were convicted of the crime of Rape with Homicide by the Regional Trial Court of Iriga City (RTC).^[1] Appellants do not assail their conviction, but have filed the present petition to reverse the portion of the Court of Appeals' ruling which increased the penalty imposed upon them.

Based on eyewitness accounts,^[2] in the afternoon of June 30, 1990, in Sitio Iraya, San Pedro, Iriga City, at about 4:00 o'clock, Gulpe was seen having sexual intercourse with the seven-year-old victim Lenly Ranola (Lenly). While this was happening, Vigos was holding down Lenly's right shoulder with his right hand, pinning her left shoulder on the ground with his left elbow and covering her mouth with his left hand. Thereafter, Gulpe exchanged positions with Vigos and the latter was then seen having sexual intercourse with Lenly while the other appellant was holding her down. When Vigos finished having sex with Lenly, they called for Villaruel, Jr., a co-accused who was acquitted. Villaruel, Jr., however, left. Vigos then got a piece of bamboo and stabbed the victim with it, causing her death.

The crime of Rape with Homicide carried with it the penalty of *reclusion perpetua* to death under Article 335 of the Revised Penal Code.^[3] However, considering that at the time the crime was committed, on June 30, 1992, the death penalty had been reduced to *reclusion perpetua* by Section 19(1) of Article III of the Constitution and that Gulpe and Vigos were then 17 years old and 16 years old, respectively, the RTC appreciated the privileged mitigating circumstance of minority in their favor and reduced appellants' penalty by one degree lower from *reclusion perpetua*. Consequently, appellants were sentenced each to suffer an indeterminate penalty of 8 years and 1 day of *prision mayor*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal*, as maximum.

On appeal, the Court of Appeals modified the penalty imposed. It opined that, even before the effectivity of Republic Act No. 7659,^[4] the penalty prescribed for the special complex crime of Rape with Homicide was already death but death could not be imposed only because the Constitution had proscribed its imposition. Therefore, the Court of Appeals did not consider the death penalty abolished but as, in a sense, "in a state of hibernation."^[5]

Since the death penalty was not abolished, the Court of Appeals concluded that in