435 Phil. 417

EN BANC

[G.R. Nos. 144340-42, August 06, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODELIO AQUINO Y RODA, ACCUSED-APPELLANT.

R E S O L U T I O N

PER CURIAM:

Appellant Rodelio Aquino y Roda filed this Motion for Reconsideration asking the Court to reconsider its Decision of April 17, 2002, which held him guilty of qualified rape. The relevant portion of the Decision reads:

> "To warrant the imposition of the supreme penalty of death in qualified rape under Article 266-B (1) of the Revised Penal Code, the concurrence of the minority of the victim and her relationship to the offender must be specifically alleged and proved with equal certainty as the crime itself.
>
> In the instant case, the Information alleges that the child-victim was a five-year old minor and appellant was the child-victim's uncle. The prosecution presented Charlaine's birth certificate to prove her age. This undisputed circumstance standing alone, qualifies the rape. Under Article 266-B (5) of the Revised Penal Code, the death penalty is mandated in rape cases "when the victim is a child below seven (7) years old." The qualifying circumstance of relationship was also undisputedly proven by the prosecution. The child-victim's mother, Winnie Bautista, testified in court that appellant is her brother, making appellant a blood relative of the victim within the third civil degree. Moreover, appellant categorically admitted during trial that the child-victim is his niece." (Decision, pp. 19-20)

Appellant argues that he should only be convicted of simple rape because "while the age of the complainant(s) as well as their relationship to the accused-appellant were (sic) stated in the Information(s), the same were not alleged particularly to qualify the offense charged."[1] Appellant contends that this failure to charge him specifically with the qualified offense "bars the imposition of the death penalty upon him."

We deny the Motion for Reconsideration.

Appellant anchors his Motion for Reconsideration on two recent cases -*People v. Manlansing*[2] and People v. Alba.[3] In People v. Manlansing, the Court, citing People v. Alba, disregarded the qualifying circumstance of treachery, ruling that -

> "We noted in Gario Alba, that *although the circumstance of treachery was stated in the Information, it was not alleged with specificity as qualifying the killing to murder.* Since the Information in Gario Alba failed to specify treachery as a circumstance qualifying the killing to murder, treachery

was considered only a generic aggravating circumstance, hence, we said that the crime committed in Gario Alba was homicide and not murder."[4] (Emphasis supplied)

However, the Court has repeatedly held,[5] even after the recent amendments to the Rules of Criminal Procedure, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. The Court has repeatedly qualified cases of rape[6] where the twin circumstances of minority and relationship have been specifically alleged in the Information even without the use of the descriptive words "qualifying" or "qualified by."

In the recent case of *People v. Lab-eo,*[7] the appellant there questioned the decision of the lower court raising the killing to murder. The appellant there argued that he could only be convicted of homicide since the Information merely stated "that the aggravating circumstances of evident premeditation, treachery, abuse of superior strength and craft attended the commission of the offense." The appellant also asserted that since the circumstances were merely described as aggravating and not qualifying, he should only be convicted of the lesser crime of homicide. On this score, the Court ruled that -

"The fact that the circumstances were described as "aggravating" instead of "qualifying" does not take the Information out of the purview of Article 248 of the Revised Penal Code. Article 248 does not use the word "qualifying" or "aggravating" in enumerating the circumstances that raise a killing to the category of murder. Article 248 merely refers to the enumerated circumstances as the "attendant circumstances." [8]

Article 266-B of the Revised Penal Code, as amended by RA No. 8353,[9] states that the death penalty shall be imposed in the crime of rape if any of the "aggravating/qualifying circumstances" mentioned in Article 266-B is present. Prior to RA No. 8353, Article 335 of the Revised Penal Code, as amended by RA No. 7659, [10] penalized qualified rape with the death penalty when any of the "attendant circumstances" mentioned in Article 335 was present. The present law uses the words "aggravating/qualifying circumstances" in referring to the attendant circumstances that qualify rape to a heinous crime punishable by death. The old law referred to these circumstances as the "attendant circumstances."

The change in the wording did not make the use of the words "aggravating/qualifying circumstances" an essential element in specifying the crime in the Information. As in the old law, the essential element that raises rape to a heinous crime is the attendance of a circumstance mentioned in Article 266-B. As an essential element of the heinous crime, such attendant circumstance must be specifically alleged in the Information to satisfy the constitutional requirement that the accused must be informed of the nature of the charge against him.

The use of the words "aggravating/qualifying circumstances" will not add any essential element to the crime. Neither will the use of such words further apprise the accused of the nature of the charge. The specific allegation of the attendant circumstance in the Information, coupled with the designation of the offense and a statement of the acts constituting the offense as required in Sections 8 and 9 of