

## EN BANC

[ G.R. No. 132059, June 29, 2001 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WENEFREDO DIMSON ASOY, ACCUSED-APPELLANT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.**

For having allegedly raped and killed his very own sister, accused Wenefredo D. Asoy was convicted and sentenced to suffer the penalty of death by the Regional Trial Court of Cariaga, Leyte, Branch 13, in Criminal Case No. 2631.

This case is now before us on automatic review.<sup>[1]</sup>

On January 21, 1997, Prosecutor Cesar Merin filed with the trial court an Information for "Rape with Homicide" against the accused. It reads:

"That on or about the 22nd day of December, 1996, in the Municipality of Tuñga, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long bolo (*sundang*), with the deliberate intent and with lewd designs, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously had carnal knowledge with one ESTER DIMSON ASOY against her will; that by reason and on the occasion of said rape, the accused with deliberate intent and with intent to kill, hacked and wounded said Ester Dimson Asoy on the different parts of the body, thereby inflicting upon her the following wounds, to wit:

- Incised wound, at the anterior portion of the neck, 12 cms in length, involving the inner structure of the neck, including the neck vessels, bilateral. There is partial fracture of the 3rd cervical vertebra.
- There are areas of contusion at the antero lateral portions of the arm, right.
- On opening of the chest, there is fracture at the 4th rib, anterior right.

which wounds caused the death of said Ester Dimson Asoy.

"CONTRARY TO LAW."<sup>[2]</sup>

Upon arraignment on March 4, 1997, the accused, assisted by his counsel, Public Attorney Fidelina Q. Grapilon, pleaded "**guilty**"<sup>[3]</sup> to the crime charged.

Realizing that "this is a very serious offense which is included under the new Heinous Crime Law," the court *a quo* "reset...the sentencing of the accused" and ordered the appearance of prosecution witnesses listed in the Information to testify on the case "for the purpose of determining his culpability...."[4]

Accordingly, on April 7 and 28, 1997, the prosecution presented its witnesses whose testimonies may be summarized as follows:

1. Anecita Dimson-Asoy, a farmer, testified that she is the mother of both the accused, her eldest son among her ten children, and the victim, Ester Dimson Asoy. Around 7:00 o'clock in the evening of December 22, 1996, Ester left their house in Barangay Astorga, Tunga, Leyte to buy bread in the store located one (1) kilometer away.[5] Ester, however, failed to come home that evening.[6] Anecita learned later that Ester was found dead along a brook at Brgy. Astorga. Her son, the accused, confessed to her in their house that "he was the one who **killed** my daughter Ester." [7] Anecita did not inquire, though, from the accused why he killed Ester.[8] After having learned of this, Anecita said, "I did nothing." [9] She did not even report the matter to the police.[10] Anecita ended her testimony by declaring, when asked by the trial court, that the accused "did not tell me that he **raped** my daughter", [11] and that what he only told her was that he was the one who **killed** Ester.[12]

2. It was Ronelo Tañola, a nephew of the accused, [13] who first saw a lifeless body lying face down on a brook in Brgy. Astorga while he was up the coconut tree gathering *tuba* at about 6:00 o'clock in the early morning of December 24, 1996. [14] He immediately reported what he saw to Rodolfo Asoy, a *Brgy. Tanod*. [15] Then they went to verify the dead body. It was that of Ester. [16]

3. SPO4 Melecio Davocol conducted the investigation on December 24, 1996. [17] The following day, he went to the house of the accused and brought him to the police station for investigation upon being informed by "one of the bystanders...that a certain woman by the name of Ruperta Arcon found the T-shirt and the headgear cap" [18] "along the road near the brook" [19] which she allegedly saw the accused wore before the incident happened. [20] When SPO4 Davocol fetched the accused from his house, he confiscated the bladed weapon in his possession. [21] According to a certain person who was the companion of the accused in a drinking spree, the same weapon was tucked on his waist prior to the incident. [22] This certain person and Ruperta Arcon, however, did not go to the police station to report what they knew. [23]

4. Police Superintendent Angel A. Cordero, the Chief Medico-Legal Officer and Forensic Pathologist of the Philippine National Police (PNP), Region VIII, conducted the autopsy on the cadaver of Ester Asoy and identified his Medico-Legal Necropsy Report dated December 24, 1996 (Exhibits "A" and "A-1"), [24] which reads:

"POST MORTEM FINDINGS:

### GENERAL:

A fairly nourished, fairly developed female cadaver in beginning stage of decomposition.

### HEAD, NECK AND CHEST:

- incised wound, at the anterior portion of the neck, 12 cms. in length, involving the inner structure of the neck, including the neck vessels, bilateral. There is partial fracture of the 3rd cervical vertebra.
- there are areas of contusion at the antero lateral portions of the arm, right.
- on opening of the chest, there is fracture at the 4th rib, anterior, right.

### GENITAL EXAMINATION:

Pubic hair moderately abundant. Labia majora and minora are coaptated. Hymen showed a deep and in complete laceration corresponding to 3:00, 6:00 and 9:00 o'clock positions in the face of a watch. Vaginal rugosities are present but almost obliterated. Vaginal canal and the cervix showed presence of gelatinous whitish substance, which on subsequent microscopic examination revealed presence of a non-motile spermatozoa."

### CONCLUSION:

1. Cause of death is shock and hemorrhage massive, due to incised wound of the neck anterior portion with the involvement of the deep vital structures underneath.
2. Physical virginity lost."

The prosecution then rested its case and offered its evidence "to prove the extent of the guilt of the accused."<sup>[25]</sup>

Thereupon, the accused's counsel manifested that "we have no evidence to contradict (the prosecution evidence)" and that "we submit the same for decision."<sup>[26]</sup>

The trial court found the accused guilty as charged. The dispositive portion of its decision declares:

"WHEREFORE, in view of the foregoing considerations, the accused having pleaded guilty to the crime charged under the Information, and as proven by the evidence on hand, the court finds the accused GUILTY of the crime of RAPE with HOMICIDE and sentences him to suffer the penalty of DEATH."<sup>[27]</sup>