

EN BANC

[G.R. No. 121176, July 08, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON PARAZO Y FRANCISCO, ACCUSED-APPELLANT.**

R E S O L U T I O N

PURISIMA, J.:

This case was docketed on November 27, 1995, upon the elevation for automatic review of Criminal Case Nos. 6167 and 6168, for rape and frustrated homicide, from Branch 27, Regional Trial Court, Cabanatuan City, which imposed on accused-appellant Marlon Parazo y Francisco the supreme penalty of death.

On May 14, 1997, this Court handed down a Decision,^[1] affirming with modification subject Joint Decision of Branch 27 of the Regional Trial Court of Nueva Ecija, in Criminal Case Nos. 6167 and 6168, disposing as follows:

"**WHEREFORE**, the joint decision appealed from dated March 24, 1995, is hereby **AFFIRMED** with respect to Crim. Case No. 6167, and accused Marlon Parazo y Francisco is found guilty of the crime of rape under Section 11 of Republic Act No. 7659 amending Article 335 of the Revised Penal Code, with the aggravating circumstance of dwelling, and is sentenced to the penalty of **death**, with two (2) members of the Court, however, voting to impose reclusion perpetua.

The decision appealed from with respect to Crim. Case No. 6168, for frustrated homicide is **MODIFIED** in that the accused is sentenced to suffer the indeterminate penalty of six (6) years of prision correccional as minimum penalty to twelve (12) years of prision mayor maximum, as maximum penalty.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED."

On May 29, 1997, appellant interposed the Motion for Reconsideration under consideration, bringing to the attention of the Court facts and circumstances, such as the absence of a sign language expert, which if true would warrant the setting aside of his judgment of conviction.

On February 10, 1998, the Court resolved^[2] to grant appellant's Urgent Omnibus Motion: (1) to hold in abeyance consideration of his motion for reconsideration

pending his medical examination; (2) to allow a supplemental motion for reconsideration after his medical examination; and (3) to submit him (*appellant*) for examination by a physician of the Supreme Court. Subsequently, or on January 19, 1999, to be precise, appellant was allowed to be brought to the UP-PGH Medical Center, with appropriate escorts, to undergo the necessary neurologic and otolaryngologic evaluation and work-up.^[3]

In compliance with the said resolution of the Court, Dr. Rosa Mendoza, Senior Chief Staff Officer of the Supreme Court Clinic Services, submitted two (2) Memorandum Reports, dated July 29, 1998 and March 5, 1999, respectively, on the mental, neurologic and otolaryngologic examination and evaluation of appellant.

On July 20, 1998, the appellant was examined, on the basis of which examination SC Medical Services Psychologist III Beatriz O. Cruz came out with the following findings and general observation, to wit:

"GENERAL OBSERVATION AND TEST BEHAVIOR:

x x x

An encounter with this person revealed him to have an average physique and height, with fair complexion and somewhat curly hair. Throughout the testing session he was in a pensive mood. Doubt and an agitated appearance was written all over his face particularly when he struggled to say something, but which ideas could not get across. One security officer, Mr. Gutierrez, came to our aid and communicated to Mr. Parazo through sign language to comprehend and answer the question being asked [what he was guilty of]. When he could not understand it, we wrote the question in tagalog in the paper and to our surprise he could not even read. However thru some efforts made he was able to utter `rep' [rape].

Another inmate whom they call `mayor' [he is the leader of the group] and another close friend of Mr. Parazo where (sic) called in to provide help to the examiner. And with difficulties being experienced by the undersigned in giving instructions in gestures, he was able to draw the geometric figures and a person, respectively. Hand tremor was noticeable [Mr. Parazo is left handed]. With the help of mayor, an attempt was further made by the examiner to show him the ink blot test, counting on the idea that the examiner might get something out of his responses to the task just like in the previous paper and pencil test. But our efforts proved futile at this time. No amount of gestures could make him comprehend the instructions given. It was during this time that he was able to verbalize `dilam' in high pitched, cracking voice which the undersigned took for `di alam' [I don't know]. The examiner did not go further from this point hence, the termination of test administration.

TESTS ADMINISTERED:

Bender Visual Motor Gestalt Test

Good enough Figure Drawing Test

TESTS RESULT & DISCUSSION:

The results of the paper and pencil test reveal that Mr. Parazo's intelligence function based on the Goodenough is gauged on the Mild to Moderate degree of Mental Retardation with an estimated IQ of 60. *His mental age on the other hand, is equivalent to 7 years and 9 months.*

Further, signs of regressive features and distortion of the gestalt figures are manifested with strong indication of impulsive behavior. His inability to reproduce from memory the same figures was noteworthy. His writing output is unsteady that gives an inkling of difficulty in the motor area.

The above clinical findings are typical reproduction of a person with history of neurological dysfunction as maybe true in the case of Mr. Parazo who is deaf. It cannot be discounted also that his intellectual and psychological deficiencies are not only based on organic brain pathology but primarily on the basis of mental retardation which impedes the effective use of whatever abilities he does have and which renders him psychologically incompetent to comprehend fully the significance of the acts he commits."^[4] (italics ours)

In connection therewith, there was presented the Memorandum Report of July 29, 1998, stating thus:

"Based on the foregoing, it appears that the problem of appellant Marlon Parazo is the severe hearing defect or deafness. The presence of an organic disorder cannot be determined because of the latter's inability to communicate. However, some degree of mental retardation was gathered with the use of `Paper and Pencil Test.'" *His mental age is seven (7) years and nine (9) months.* His Intelligence Quotient (IQ) is 60.

This mental retardation could be secondary to an inherent defect in the brain or secondary to the sensory deprivation [deafness], which connotes a substantial limitation in intellectual and adaptive functioning." (italics ours)

Appellant was then examined at the UP-PGH Medical Center, and the Memorandum Report of Dr. Rosa Mendoza, dated March 5, 1999, summarized the findings of the UP-PGH Medical Center as follows:

"Quoted hereunder are the report on the test conducted:

Ma. Luz S. Casimiro-Querubin, MD, DPBP, Psychiatrist, Department of Psychiatry and Behavioral Medicine, College of Medicine and Philippine General Hospital, Manila in her Psychiatric Assessment Report, stated that:

`On the day of assessment, Mr. Parazo was seen sitting on the examining table. His hands were cuffed in front of him. He was feeding himself a sandwich. He was appropriately groomed. He wore the orange bilibid prison uniform with denim jeans and rubber shoes. He appeared tired and fearful. His mood was generally anxious and his affect was appropriate

to the situation. When approached, Mr. Parazo would look down but would glance at the examiner after a few seconds. He was unable to follow simple instructions initially and was able to do so only after much coaxing from those around him and repeated demonstrations of the task he was being asked to do. He was unable to read. The only thing he could write is his name. Mr. Parazo was able to copy simple patters (sic) but could not participate in any verbal assessment procedure. **His thought content, thought process and flow of ideas could not be determined because of his inability to speak.** (Underscoring supplied). He was able to maintain good eye contact. The client remained calm during the assessment procedure. It was evident that he felt insecure with the manipulative tasks he was presented with. Initially, Mr. Parazo appeared resistant to the examiner but he eventually warmed.

Throughout the examination, Mr. Parazo sought for encouragement by looking at the examiner after each and every task. He worked quietly, exerted obvious efforts to perform well and was visibly careful in trying not to commit mistakes. It was only when he was signaled that he could use both hands that Mr. Parazo did so. His behavior was consistent throughout the period of the examination.

The above behavioral description strongly supports the fact that Mr. Marlon Parazo is indeed **hearing impaired and suffers from mental retardation.** He is unable to understand both written and spoken language, needs repetitive sign language instructions and demonstration to understand the task he was being asked to do.'

Meredith F. Castro, MA, Psychologist, PGH, Manila, on the other hand, supported the assessment findings of Dra. Ma. Luz C. Querubin and reported as follows:

` Psychological Evaluation Report Summary

XXX

Measure

Wechsler Intelligence Scale for Children-Rev. (WISC-R), Performance Scale. (This is a comprehensive test of intelligence that measures both verbal and non-verbal aspects and is intended for children aged 6-16 years old and for adults suspected of mental deficiency. It is composed of two scales that can be administered separately. Given the examinee's sensory impairment and absence of speech, this present assessment used only the performance scale, which taps the non-verbal intelligence).