



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 229856

Present:

- versus -

SERENO, *CJ.*,
 Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, *JJ.*

RUBEN CALOMIA,
 Accused-Appellant.

Promulgated:
NOV 20 2017

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RESOLUTION

LEONARDO-DE CASTRO, J.:

In Criminal Case Nos. 1317 and 1318, accused-appellant Ruben Calomia was charged before the Regional Trial Court (RTC) of Loay, Bohol, Branch 50, with two counts of qualified rape of his minor daughter, AAA,¹ which he allegedly committed sometime in August 2007 and April 2008.²

After trial on the merits, the RTC promulgated its Decision on March 11, 2015 finding accused-appellant guilty beyond reasonable doubt of both counts of qualified rape and sentencing him as follows:

WHEREFORE, in the light of the foregoing evidence, the court finds the accused guilty beyond reasonable doubt of (Qualified) Incestuous Rape in Crim. Case No. 1317 and Statutory Incestuous Rape in Crim. Case No. 1318.

Accordingly, in both cases, the court has no recourse but to impose on the accused the penalties mandated by law. Although the crimes of

¹ The real names of the private complainant and those of her immediate family members are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act); Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004); and A.M. No. 04-10-11-SC effective November 15, 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

² It was alleged that AAA was 11 years old during the first rape incident, and was already 12 years old during the second rape incident.

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Qualified Incestuous Rape and Statutory Incestuous Rape would have been punishable by death, in view of the passage of R.A. [No.] 9346 (which prohibits the imposition of the death penalty), the penalty imposable for each of the two offenses is only *reclusion perpetua*.

Because of the qualifying or aggravating circumstance of relationship, the victim is entitled to civil indemnity in each case of ₱75,000 *ex delicto*, ₱75,000 in moral damages (*People v. Lauga*, G.R. No. 186228, Mar. 15, 2010), and ₱30,000 in exemplary damages (*ibid.*).³

Accused-appellant's appeal before the Court of Appeals was docketed as CA-G.R. CEB-CR-HC No. 02040. In its Decision dated August 26, 2016, the appellate court upheld accused-appellant's conviction, but modified the award of damages to AAA. The Court of Appeals decreed:

WHEREFORE, in view of the foregoing, We find no error committed by the Trial Court and, hence, **DENY** the appeal. The Decision dated 11 March 2015 rendered by the Regional Trial Court of Loay, Bohol 7th Judicial Region, Branch 50, in Criminal Case Nos. 1317 and 1318, is **AFFIRMED** with **MODIFICATION**.

As modified, [accused-]appellant Ruben Calomia is ordered to pay the victim AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Interest is imposed on all damages awarded at the rate of 6% per annum from date of finality of this Decision until fully paid.⁴

On September 21, 2016, accused-appellant filed his Notice of Appeal expressing his intention to appeal the foregoing Decision before this Court.

The Court issued a Resolution dated April 25, 2017 requiring the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice; ordering the Provincial Jail Warden, Bohol Detention and Rehabilitation Center, Tagbilaran City, to transfer accused-appellant to the Bureau of Corrections, Muntinlupa City and to submit a report of such transfer; and ordering the Director General of the Bureau of Corrections to confirm the confinement of accused-appellant to said prison and submit a report thereon.

However, the Court received on September 4, 2017 a letter dated August 2, 2017 from Jail Chief Inspector (J/CINSP) Felipe A. Montejo (Montejo), DDM, Bohol District Jail Warden, stating thus:

Please be informed that the said appellant [has] died while in the confinement of Bohol District Jail last Sept. 29, 2015 due to Asphyxia due to Strangulation, Self Inflicted, Hanging and declared dead by Dr. Calvelo, Medical Officer III, City Health Office, Tagbilaran City, Bohol per Certificate of Death from Local Civil Registrar.

³ CA rollo, pp. 56-57.

⁴ Id. at 98.

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Accused Ruben Calomia was due for transfer at BUCOR Muntinlupa City at that time pending the approval of budget but unfortunately he died with the aforementioned cause of death before the scheduled date and time to transfer.⁵

Attached to J/CINSP Montejo's letter is a copy of accused-appellant's Death Certificate issued by the Office of the Civil Registrar General indicating that accused-appellant died on September 29, 2015 in Cabawan District, Tagbilaran City, Bohol, of "Asphyxia due to Strangulation, Self Inflicted, Hanging."

Paragraph 1 of Article 89 of the Revised Penal Code, as amended, provides that the death of an accused pending his appeal extinguishes both his criminal and civil liability *ex delicto*, thus:

Art. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Bayotas*,⁶ the Court construed the above provision and pronounced these guidelines:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. **As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto in senso strictiore*."**

2. **Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict.** Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) x x x
- e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985

⁵ Rollo, p. 40.

⁶ 306 Phil. 266, 282-284 (1994).

Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription. (Emphases supplied.)

The death of an accused pending the appeal of his conviction extinguishes the criminal action, as there is no longer a defendant to stand as the accused; and the civil action instituted therein for the recovery of civil liability *ex delicto* is likewise *ipso facto* extinguished, as it is grounded on the criminal action.⁷

In the instant case, accused-appellant's death occurred prior to the finality of the judgment of conviction rendered against him. In fact, accused-appellant died way back on September 29, 2015, during the pendency of his appeal before the Court of Appeals. Unfortunately, the appellate court was not timely informed of accused-appellant's death prior to the promulgation of its Decision in CA-G.R. CEB-CR-HC No. 02040 on August 26, 2016.

Irrefragably, accused-appellant's death extinguished his criminal liability and his civil liabilities directly arising from and based solely on the crime/s he committed. Accused-appellant's conviction by the RTC, as affirmed by the Court of Appeals, must therefore be set aside as the same had already been rendered ineffectual.

WHEREFORE, the Court **RESOLVES** to **SET ASIDE** the Decision dated August 26, 2016 of the Court of Appeals in CA-G.R. CEB-CR-HC No. 02040 and to **DISMISS** Criminal Case Nos. 1317 and 1318 before the Regional Trial Court of Loay, Bohol, Branch 50, by reason of the death of the sole accused therein, Ruben Calomia, on September 29, 2015.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

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Id. at 278.

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



MARIANO C. DEL CASTILLO

Associate Justice



FRANCIS H. JARDELEZA

Associate Justice



NOEL GIMENEZ TIJAM

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice