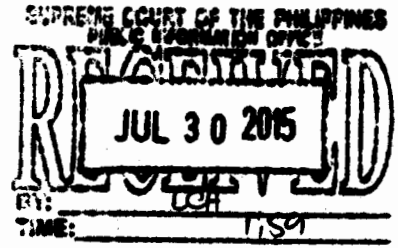




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 22 July 2015 which reads as follows:

"G.R. No. 203045 - People of the Philippines, plaintiff-appellee v. Eddie Ytim y Pamaylaon, accused-appellant.

Two Informations were filed against appellant Eddie Ytim y Pamaylaon. The first Information charged him with the crime of **Rape**. The second Information accused him of **Frustrated Homicide**.

The Information for **Rape** reads as follows:

Crim. Case No. MC-07-1904-FC-H:

That on or about the 15th day of April 2007, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously by means of force and intimidation have carnal knowledge [of] x x x ["AAA"], a minor, seventeen (17) years of age, by placing his private part into the victim's vagina, all against the latter's will, which acts [debase], [degrade] or [demean] the intrinsic worth and dignity of the victim (a child) as a human being.

Contrary to law.¹

The Information for **Frustrated Homicide** reads as follows:

Crim. Case No. MC-07-1905-FC:

That on or about the 15th day of April 2007, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one ["AAA"], a minor, 17 [years] of age, with the said knife, thereby inflicting upon her stab wounds, which would ordinarily cause her death, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of cause or causes independent of the will of the accused, that is, due to the timely and able medical attendance rendered to said ["AAA"] which acts [debase], [degrade] or [demean] the intrinsic worth and dignity of the victim (a child) as a human being.

Contrary to law.²

¹ Records, Vol. II, p. 1.

² Id., Vol. I, p. 1.

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When arraigned, appellant pleaded not guilty to the **two** charges. The cases were eventually consolidated and jointly tried. Trial on the merits ensued.

The facts show that appellant and "AAA" were co-workers at Julie's Bakeshop in Mandaluyong City. On April 15, 2007, at around 3:00 o'clock in the morning, both were at their workplace. However, the versions of the prosecution and the defense differ as to what happened thereat.

According to "AAA," when appellant arrived at their workplace at around 3:00 o'clock in the morning of April 15, 2007, he approached her with a knife in hand and threatened to kill her. In her testimony, "AAA" narrated thus:

- Q. Now when he entered the bake shop x x x what did he do to you?
A. He held my hand[,] ma'am and [poked] a knife [at] me and he told me that he will kill me.

x x x x

- Q. When he did that to you, after he held your hands, poked a knife at you while uttering the word, "AAA, papatayin kita," what transpired next?
A. He pushed me.

- Q. What happened when he pushed you?
A. I fell on the floor.

x x x x

- Q. While you were at that position what did the accused do to you?
A. First[,] ma'am he turned off the light.

x x x x

- Q. And when he turned off the light, what did you do?
A. I stood up to [turn] on the light, ma'am.

- Q. And then what happened when you [stood] up to [turn] on the light?
A. He stabbed me, ma'am.

- Q. Where were you hit?
A. [On] my back, ma'am.

- Q. How many times?
A. Two times, ma'am.

x x x x

- Q. After he stabbed you [on] the back, what was your reaction when he stabbed you?

A. I was hurt, ma'am.

Q. What happened next [after] he stabbed you?

A. He undressed himself, ma'am.

x x x x

Q. And then after he undressed himself, what happened next?

A. He raped me.

Q. How did he rape you?

A. He undressed my lower garment, ma'am.

x x x x

A. He held my feet and he pulled apart my legs and then he inserted his sex organ [into] my private part.³

Moreover, "AAA" testified that she tried to resist appellant's advances to no avail; appellant succeeded in having carnal knowledge of her. Undaunted, "AAA" shouted for help which caught the attention of a passerby who in turn sought the help of a *barangay tanod*. The duo then went inside the bakeshop where they saw appellant naked except for his shirt; "AAA" on the other hand was bloodied and also without undergarments. Appellant was arrested.

Appellant presented a different version. He claimed that it was "AAA" who was the aggressor. Appellant alleged that "AAA" badmouthed him and then tried to stab him. They grappled for possession of the knife during which he accidentally stabbed "AAA" on the back. He was about to help "AAA" when two male persons arrived and arrested him. He denied that he raped "AAA."

In a Judgment⁴ dated June 7, 2010, the Regional Trial Court (RTC) of Mandaluyong City, Branch 213, found appellant guilty of two crimes – one of **Rape** and another of **Frustrated Homicide**, as charged in the two Informations. The trial court entertained no doubt as to appellant's culpability for Frustrated Homicide considering that during his testimony in court, appellant admitted having stabbed the victim. Anent the crime of rape, the trial court found "AAA's" testimony that appellant forced himself on her and inserted his penis into her vagina, with threats and force upon her person, to be candid, credible, straightforward, and corroborated by the medico-legal report. On the other hand, appellant's denial was self-serving and unsubstantiated. Besides, "AAA" positively identified him as her rapist. The trial court also disregarded appellant's "sweetheart defense" for lack of substantiation; in fact, "AAA" vehemently denied

³ TSN, August 2, 2007, pp. 4-6.

⁴ Records, Vol. I, pp. 161-198; penned by Judge Carlos A. Valenzuela.

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having an amorous relationship with appellant.

The dispositive portion of the RTC Judgment reads:

WHEREFORE, based on the foregoing, this court hereby finds accused, EDDIE YTIM y PAMAYLAON, GUILTY beyond reasonable doubt for the crimes of frustrated homicide and rape of complainant "AAA."

In view thereof, judgment is hereby rendered as follows:

1. In Criminal Case No. MC-07-1904-FC-H for Rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8393 in relation to Republic Act No. 7610, accused EDDIE YTIM y PAMAYLAON, is hereby sentenced to suffer the imprisonment of RECLUSION PERPETUA and to pay the victim "AAA" the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and another FIFTY THOUSAND PESOS (₱50,000.00) as moral damages; and
2. In Criminal Case No. MC-07-1905-FC for Frustrated Homicide under Arts. 249 and 250 of the Revised Penal Code in relation to Republic Act No. 7610, accused EDDIE YTIM y PAMAYLAON, is hereby sentenced to suffer the imprisonment of EIGHT (8) YEARS and ONE (1) DAY to TEN (10) YEARS, medium period of PRISION MAYOR and to pay the victim "AAA" the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and another THIRTY THOUSAND PESOS (₱30,000.00) as exemplary damages.

SO ORDERED.⁵

Undeterred, appellant appealed to the Court of Appeals (CA).

In his Brief,⁶ appellant asserted that he could not be held liable for the crime of Frustrated Homicide. He claimed that aside from the allegation that he uttered the words "*papatayin kita*," no other evidence was presented to show that he intended to kill "AAA." Moreover, the wounds suffered by "AAA" were not serious or fatal but only minor stab wounds. Also, the stabbing was due to accident as they were grappling for possession of the knife. Anent the charge of Rape, appellant insisted that he did not commit the same. He pointed out that in "AAA's" narration before the police, she only stated that she was "*hinubaran*;" she did not mention that she was raped.

⁵ Id. at 197-198.

⁶ CA rollo, pp. 77-94.

The CA was not persuaded by appellant's protestations; consequently, it affirmed the trial court's ruling with modifications. It affirmed the findings of the lower court that appellant was guilty of the crime of Rape. However, as regards the charge for Frustrated Homicide, the appellate court downgraded the same to **Attempted Homicide**. The appellate court noted that appellant had homicidal intent when he uttered the words "*papatayin kita*." However, considering that the wounds inflicted were not serious or fatal, it held that the crime committed was only attempted homicide.

The dispositive portion of the appellate court's Decision⁷ reads, viz.:

WHEREFORE, the appealed judgment is AFFIRMED with the following MODIFICATIONS:

- (1) In Criminal Case MC07-1904-FC[-H] for rape, in addition to the civil indemnity and moral damages awarded by the trial court in the total amount of ₱100,000.00, appellant is ORDERED to pay ["AAA"], the victim, exemplary damages in the amount of THIRTY-THOUSAND PESOS (₱30,000.00); and
- (2) In Criminal Case No. MC-07-1905-FC, appellant is found GUILTY of the lesser offense of attempted homicide, and accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. The award of exemplary damages is DELETED for lack of basis, and the amount of moral damages is REDUCED to TEN THOUSAND PESOS (₱10,000.00).

Appellant shall serve the terms of imprisonment successively in the order of their severity. He shall also pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from date of finality of this judgment.

SO ORDERED.⁸

Hence, this appeal. In a Resolution⁹ dated October 10, 2012, we required both parties to file their Supplemental Briefs. However, they opted not to file the same.

⁷ Id. at 152-172; docketed as CA-G.R. CR-H.C. No. 04546; promulgated on December 15, 2011; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Normandie B. Pizarro and Rodil V. Zalameda.

⁸ Id. at 170-171.

⁹ *Rollo*, pp. 29-30.

Our Ruling

At the outset, we wish to stress that appellant was charged in **two separate Informations** with two separate crimes – one for Rape and another for Frustrated Homicide. **He was *not* charged in a *single* Information with a complex crime.**

In any event, we hold that under the prevailing circumstances of the case, it is not possible to convict appellant for a **complex crime** pursuant to Article 48 of the Revised Penal Code (RPC); neither could he be validly convicted of the **special complex crime** of Rape with Homicide under Article 266-B of the same Code.

Discussion on why appellant could not be convicted of a complex crime under Article 48 of the RPC:

Article 48 of the RPC reads:

Art. 48. *Penalty for complex crimes.* – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

There are two kinds of complex crimes:

- 1) When a **single act** constitutes two or more grave or less grave felonies;
and
- 2) When an offense is a **necessary means** for committing the other.¹⁰

The instant case does not fall under either category. First, it cannot be validly argued that in this case, there is only one single act; at the very least, there are two acts involved – the stabbing and the carnal knowledge. Second, it cannot be validly stated that rape is a necessary means for committing homicide, or vice versa.

More importantly, “Art. 48 applies only when a complex crime is not punished with a specific penalty.”¹¹ Under the RPC, the crime of Rape with

¹⁰ *Reyes, Luis, B.*, The Revised Penal Code, Thirteenth Edition (Revised 1993), Book One, p. 654.

¹¹ *Reyes, Luis, B.*, The Revised Penal Code, Twelfth Edition (1981), Book Two, p. 603.

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Homicide, which is considered as a *special* complex crime, is already punished under Article 266-B (previously, under Article 335).

Discussion on why appellant could not be convicted of a special complex crime of rape with homicide under Article 266-B of the RPC:

Article 266-B of the RPC provides in part:

When the rape is **attempted** and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of rape, **homicide** is committed, the penalty shall be death. (Emphasis supplied)

The first quoted paragraph speaks of **attempted rape with homicide**. The instant case would not fall under this category because the rape here was not attempted, but **consummated**.

The instant case would likewise not fall under the second quoted paragraph which specifically pertains to rape with **homicide**. In this case, appellant was charged not with **homicide**, but only with **frustrated homicide** (although downgraded by the CA to **attempted homicide** only). Here, the special complex crime of rape with homicide, never contemplated attempted as frustrated homicide. The accompanying offense that is committed by reason or on the occasion of rape, must be homicide – not only attempted or frustrated homicide.

A case in point is *People v. Honra, Jr.*¹²

In *Honra*, the accused was charged with three counts of **rape with frustrated homicide**, among others. The RTC found him guilty of such crime. However, on appeal, this Court pronounced that accused could not be convicted of **rape with frustrated homicide** as there is **no such crime**. The Court thus convicted the accused of three counts of **rape** and three counts of **frustrated homicide**. The Court explained that:

In Criminal Case Nos. 93-3341, 93-3342 and 93-3343, the prosecution charged accused-appellant with “rape with frustrated homicide” and the trial court convicted him of three counts thereof. **The case is wrongly denominated**

¹² 395 Phil. 299 (2000).

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as there is no complex crime of “rape with frustrated homicide.” Article 48 of the Revised Penal Code requires the commission of at least two crimes, but the two or more grave or less grave felonies must be the result of a single act, or an offense must be a necessary means for committing the other. Negatively put, when two or more crimes are committed but (1) not by a single act or (2) one is not a necessary means for committing the others, there is no complex crime. In the instant case, accused-appellant committed separate crimes of rape and frustrated homicide. They do not constitute a complex crime of ‘rape with frustrated homicide.’ **Neither does this case fall under Article 335 of The Revised Penal Code** which provides for a special complex crime of rape with homicide. Pertinent portion of Article 335 reads:

x x x x x x x x x

‘When the **rape is attempted or frustrated** and a homicide is committed by reason or on the occasion thereof, the penalty shall likewise be death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.’

Clearly, the law does not contemplate consummated rape with frustrated homicide as in the instant case.

Nevertheless, while the three informations were captioned ‘rape with frustrated homicide’ and alleged the elements of said crimes, it should be noted that the defense did not object to the information despite its imperfection. The defect of charging two offenses in **one information**, that is, rape and frustrated homicide, was deemed waived by accused-appellant’s failure to raise it in a motion to quash before he pleaded to the information. **Hence, conviction for three separate counts of rape and three counts of frustrated [homicide] may lie.**¹³

In addition to the foregoing grounds, there is still another compelling reason why appellant could not be validly convicted of the special complex crime of rape with homicide (or “rape with frustrated homicide”). To do so would contravene and violate appellant’s constitutionally protected and guaranteed right to be informed of the nature and the cause of the accusation against him. To recall, two separate Informations were filed against him. The recitals in the first information were limited only to the crime of rape; similarly, the recitals in the second information were limited to the crime of frustrated homicide. In fine, the recitals of the rape charge did not contain allegations that homicide was committed by reason or on the occasion thereof. The same was true with the frustrated homicide charge; it did not contain allegations regarding the rape. As such, the intimate and direct connection between the crimes of rape and frustrated homicide could not be easily deduced; it was not apparent at all.

¹³ Id. at 321-322; emphases supplied.

The Constitution guarantees that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. To give substance to this constitutional guarantee, Section 8 of Rule 110 of the Rules of Court requires that the acts or omissions complained of as constituting the offense must be stated in an ordinary and concise language so as (a) to enable a person of common understanding to know what offense is intended to be charged; and (b) to enable the court to pronounce the proper judgment. The rule states that the statement need not necessarily be in the language of the statute. What is important is that the crime [is] described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. In other words, the crime is stated in such a way that a person of ordinary intelligence may immediately know what is meant, and the court can decide the matter according to law. Inasmuch as 'not only liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against them, and thus avoid all and any possible surprises which may be detrimental to their rights and interests.' The main purpose of this requirement is to enable the accused to suitably prepare for his defense. He is presumed innocent and has, therefore, no independent knowledge of the facts that constitute the offense with which he is charged. x x x

x x x x

Concomitant with the foregoing is the rule 'that an accused person cannot be convicted of a higher offense than that with which he is charged in the complaint or information [for] which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, an accused person cannot be convicted in the Court of these Islands of any offense, unless it is charged in the complaint or information [for] which he is tried, or necessarily included therein. He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial, and to convict him of a higher offense than that charged in the complaint or information [for] which he is tried would be an authorized denial of that right.'¹⁴

In view of the foregoing, we hold that appellant was thus properly charged with two separate crimes in two separate Informations – one for Rape and another for Frustrated Homicide. We also find that both the RTC and the CA properly found appellant guilty beyond reasonable doubt of the crime of Rape. The prosecution satisfactorily established that appellant had carnal knowledge of "AAA" against her will and through force and intimidation. In addition, the CA properly found appellant likewise guilty beyond reasonable doubt of the crime of Attempted Homicide. Aside from the fact that appellant admitted to stabbing "AAA," the latter testified on appellant's homicidal intent when he declared "*Papatayin kita.*" Moreover, the wounds suffered by "AAA" were not serious or fatal.

Hence, both courts properly imposed the penalty of *reclusion perpetua* on

¹⁴ *Matilde, Jr. v. Judge Jabson*, 160-A Phil. 1098, 1103-1105 (1975).

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appellant for the crime of rape. Moreover, it must be stated that appellant is without eligibility for parole. With regard to the awards of damages, the award of exemplary damages in the amount of ₱30,000.00 is proper. However, the awards of civil indemnity and moral damages must be increased to ₱75,000.00 each in line with prevailing jurisprudence. The CA properly found appellant guilty only of attempted homicide considering that the wounds inflicted upon "AAA" were not serious or fatal. Appellant was also properly sentenced to the indeterminate penalty of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* pursuant to our ruling in *Serrano v. People*.¹⁵ However, the award of moral damages must be increased to ₱20,000.00 in line with our ruling in *Colinares v. People*.¹⁶ Finally, the CA correctly imposed interest on all monetary awards at the rate of 6% *per annum* from date of finality of this Resolution until fully paid.


WHEREFORE, the assailed December 15, 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04546 finding appellant Eddie Ytim y Pamaylaon guilty beyond reasonable doubt of the crime of rape in Crim. Case No. MC-07-1904-FC-H and attempted homicide in Crim. Case No. MC-07-1905-FC is **AFFIRMED** with **MODIFICATIONS** that for the crime of rape, appellant is without eligibility for parole and the awards of civil indemnity and moral damages are increased to ₱75,000.00 each; while for the crime of attempted homicide, the award of moral damages is increased to ₱20,000.00.

SO ORDERED."

¹⁵ 637 Phil. 319 (2010).

¹⁶ 678 Phil. 482 (2011).

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court *by 7/28*

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