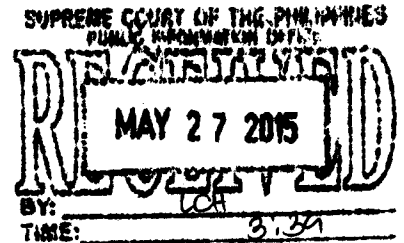




Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 20, 2015, which reads as follows:

***“G.R. No. 211681 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ERNESTO OROLFO y NACIONAL, Accused-Appellant.*”**

In an Information dated December 18, 2002, filed before the Regional Trial Court (RTC), Branch 13,¹ Ligao City, Albay, and docketed as Criminal Case No. FC-07-0125, accused-appellant Ernesto N. Orolfo (Orolfo) was charged with the crime of Rape defined and punished under the Revised Penal Code in relation to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*), allegedly committed as follows:

That on or about 1:00 o'clock in the morning of August 25, 2002, at x x x, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his niece, [AAA²], 13 years old, against her will and consent, to her damage and prejudice.³

¹ Pursuant to A.M. No. 88-6-1537-RTC dated September 20, 1988, entitled “*Re: Redefinition of the Territorial Jurisdiction of the Regional Trial Court of Legazpi City and Ligao City, Albay,*” Criminal Case No. FC-07-0125 was transferred to RTC, Branch 8, Legazpi City.

² Pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006), the “Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her x x x the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.”

³ Records, p. 22.

When arraigned on January 16, 2008, accused-appellant Orolfo (represented by the Public Attorney's Office) pleaded "*not guilty*" to the crime charge. Thereafter, trial ensued.

As summarized by the RTC, the facts of the case are as follows:

EVIDENCE FOR THE PROSECUTION

The evidence for the prosecution shows that at around 1:00 o'clock midnight on 25 August 2002, while complainant, 13-year old [AAA], was sleeping together with her siblings, namely: [BBB], [CCC], [DDD] and [EEE] at their house at x x x, accused, who is her maternal uncle, entered their house. After gaining entry, accused put-off the kerosene lamp, embraced complainant and placed himself on top of her. He unzipped his pants, removed complainant's shorts and panty and inserted his penis into her vagina. She did not shout out of fear because she was threatened not to make noise otherwise accused would kill her parents. The following day, complainant related the incident to her neighborhood friend, Marlon, who in turn informed complainant's father. And so, her father reported the incident to Barangay Kagawad Marilou Naz, who accompanied them to the Department of Social Welfare and Development Office and then to the Police Station of x x x, to file a complaint. Thereafter, she was brought to Dr. Joana Manatlaolimos for medical examination.

EVIDENCE FOR THE DEFENSE

Accused interposed alibi-denial defense. He denied having raped [his] niece, [AAA]. He narrated that on 24 August 2002, at around 4:00 o'clock in the afternoon, he was invited by his friend, Eddie Nestanza, for a drink after working at his kitchen. He got drunk at around 6:00 o'clock in the evening and so his nephew, Claro Cana, and Eddie Nestanza accompanied accused back home. Upon reaching home, his nephew, Claro Cana, asked him to sleep. Accused fell in deep slumber and woke up in the morning of 25 August 2002 only to find out that his nephew, Claro, slept beside him. Accused asserted that it was impossible for him to rape his niece, [AAA], as he was very much asleep then in his house, which was six (6) to seven (7) meters away. He wondered why [his] niece filed a case against him, and could only surmise that she was probably induced by her father, to whom accused was not in speaking terms because of complainant father's frequent drunkenness.⁴

After trial and upon evaluation of the evidence on record, the RTC found accused-appellant Orolfo guilty of the crime charged. The dispositive of the *Decision* dated September 27, 2010 reads:

⁴ CA rollo, pp. 16-17.

WHEREFORE, accused is hereby found guilty beyond reasonable doubt of rape defined and penalized under Article 266-A(1)(a) of the Revised Penal Code and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. He is further ordered to pay AAA the sum of Php50,000.00 as civil indemnity *ex-delicto* and Php50,000.00 as moral damages.⁵

Aggrieved, accused-appellant Orolfo appealed the aforequoted decision to the Court of Appeals. Said appeal was docketed as CA-G.R. CR.-H.C. No. 04750.

In a Decision⁶ promulgated on October 30, 2013, the Court of Appeals affirmed the ruling of the RTC, albeit with modification, the *fallo* of which states:

WHEREFORE, the foregoing premises considered, the instant appeal is **DENIED** and the assailed Decision dated September 27, 2010 of the Regional Trial Court, Branch 8 of Legazpi City in Criminal Case No. FC-07-0125 is **AFFIRMED with MODIFICATION** as to the amounts awarded by the trial court in that accused-appellant Ernesto Nacional Orolfo is further ordered to pay ₱30,000.00 as exemplary damages and all monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.⁷

Undaunted, accused-appellant Orolfo filed a Notice of Appeal dated November 20, 2013. In a Resolution dated December 6, 2013, the Court of Appeals resolved to give due course to the Notice of Appeal. And in view thereof, the original records of the case were then elevated to the Court on April 2, 2014.

While perusing the records of the instant appeal, however, it appears that accused-appellant Orolfo already passed away on April 26, 2013.⁸ In a letter dated December 2, 2013, P/Supt. IV Venancio J. Tesoro, *Superintendent*, New Bilibid Prison, informed the Court of Appeals of the death of accused-appellant Orolfo due to *Cardio Pulmonary Arrest* (immediate cause) and *Congestive Heart Failure* (antecedent cause). Attached to the letter was a certified true copy of the decedent's Certificate of Death issued by the National Bilibid Prison Hospital.

⁵ Id. at 19.

⁶ *Rollo*, pp. 2-11; penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

⁷ Id. at 10.

⁸ Id. at 16.

Therefore, the criminal case against him, which includes the instant appeal, is hereby dismissed.

Under Paragraph 1, Article 89 of the Revised Penal Code, the consequences of accused-appellant Orolfo's death are as follows:

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[.]

To elucidate fully, in *People v. Bayotas*,⁹ this Court summed up the effects of the death of an accused pending appeal on his liabilities, to wit:

From this lengthy disquisition, we summarize our ruling herein:

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 *sensu 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 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

⁹ G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

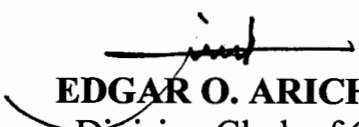
during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.

In this case, accused-appellant Orolfo's death during the pendency of his appeal and before the finality of the judgment against him extinguished not only his criminal liability, but his civil liability arising from the commission of the crime or *delict* as well. But, as stated in *Bayotas*, his civil liability may be based on other sources of obligation other than *ex delicto*, in which case, AAA may file a separate civil action against the estate of accused-appellant Orolfo, as may be warranted by law and procedural rules.¹⁰

WHEREFORE, the Court **RESOLVES** to (a) **SET ASIDE** the appealed Decision dated October 30, 2013 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04750; (b) **DISMISS** Criminal Case No. FC-07-0125 before the Regional Trial Court, Branch 8, Legazpi City, by reason of the death of accused-appellant Ernesto Orolfo y Nacional; and (c) **DECLARE** the instant case **CLOSED and TERMINATED**. No costs.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{4/20/15}
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The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 04750)

The Hon. Presiding Judge
Regional Trial Court, Br. 8
Legaspi City 4500 Albay
(Crim. Case No. F-07-125)

¹⁰ *People v. Abungan*, 395 Phil. 456, 462 (2000).

PUBLIC ATTORNEY'S OFFICE
Counsel for Accused-Appellant
DOJ Agencies Bldg.
Diliman 1128 Quezon City

Mr. Ernesto N. Orolfo
Accused-Appellant
(Deceased)

The Director
Bureau of Corrections
1770 Muntinlupa City

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