

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OPERIANO OPEÑA, ACCUSED-APPELLANT.

G.R. No. L-34954. February 20, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In a decision dated March 8, 1971, the Court of First Instance of Palawan rendered judgment in Criminal Case No. 3953 as follows:

"In view of all the foregoing, the Court finds the accused Operiano Opeña guilty beyond reasonable doubt of the crime of rape. Article 335 of the Revised Penal Code provides for the penalty of from reclusion perpetua to death in cases of rape committed with the use of a deadly weapon or when the same was committed by two or more persons. There is no mitigating circumstance attendant to the crime so that much to the desire of this Court to impose the minimum penalty prescribed by law which is reclusion perpetua, the presence of the aggravating circumstance of abuse of parental authority and relationship and the fact that the act was committed not once but thrice, make it obligatory upon the Court to impose the maximum. The law gives the Court no other alternative and therefore sentences the accused, to suffer the penalty of death and to pay the costs."

The foregoing judgment was the result of the evidence adduced to prove the allegations in the following information:

"The undersigned accuses Operiano Opeña of the crime of Rape, committed as follows:

That on or about the 1st day of May, 1968, in barrio Magsaysay, municipality of Aborlan, province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the said accused Operiano Opeña by means of force, threats, and intimidation and violence, said accused having a drawn knife on hand, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Ansonia Madarcos, a minor 15 years of age and against her will.

Contrary to law and with the aggravating circumstances of use of superior strength and abuse of parental authority, said accused being the step-father of the victim Ansonia Madarcos, and penalized under Article 335 of the Revised Penal Code."

The testimonial and documentary evidence for the prosecution elicited the following:

Maura Hiponia was first married to Vicente Madarcos with whom she had two children, namely Noni and

Ansonia Madarcos. In 1954, Maura married Operiano Opeña, the appellant, and bore him six children, namely: Gella, Dionisio, Wilfredo, Leopoldo, Rodolfo, and Operiano, Jr.

Operiano had been previously convicted by the Court of First Instance of Manila in Criminal Case No. 7164 of the crime of frustrated homicide and sentenced to an indeterminate penalty of imprisonment for six months and one day, as minimum, to six years and one day, as maximum. He was received at the Iwahig Penal Colony on July 2, 1948, and was released on June 6, 1953.

It was after Operiano was released that he married Maura and they settled in barrio Magsaysay, Aborlan, Palawan, where they begot, as aforesaid, six children. The spouses, their children, and Maura's children by her first marriage (Noni and Ansonia Madarcos) lived in a small one-room hut where they cooked, ate and slept under a common mosquito net.

On May 1, 1968, Ansonia who was then 15 years old went to sleep beside one wall of the house near her half-brother Dionisio, aged 11. The spouses, on the other hand, slept at the other end of the house. What happened thereafter is narrated succinctly in the decision of the trial court as follows:

"About eleven o'clock in the evening of May 1, 1968, while Ansonia was asleep beside her brother, half-brothers and half-sister in their one-room hut in Barrio Magsaysay, Aborlan, Palawan, Ansonia woke up to find the accused sitting beside her and fondling her breasts. Prompted by instinct, Ansonia tried to push away her intruder only to find out the futility of this act when she felt a knife pressed on her neck as the accused commanded her not to stir or shout. With this knife drawn towards his victim, the accused succeeded in removing Ansonia's underwear, parted her thighs and consummated his desire. In the meantime, Maura Hiponia, who was then asleep on the other side of the room was awakened by the cries of Ansonia. She sat up and upon realizing the situation before her, she cried helplessly, unable, as she was, to do anything about it. Thereafter, the accused went back to his place beside his wife and youngest son and slept. But before Ansonia could get some sleep, the accused came back to her with his knife and with the same maneuver, he succeeded in having carnal relations with Ansonia for the second time while Maura, her mother, was seated in one corner, crying in anguish and fear of her husband who commanded her not to make any move. She could not do anything to prevent her husband, it being too well known to her that the latter was an ex-convict of frustrated homicide and she knew too well that whatever he says he does. Around three o'clock at early dawn, the accused again went back to his victim and had another intercourse with her under the same circumstances. He refused to listen to the pleadings of Maura Hiponia, who as usual was commanded not to make any false move.

The following morning, the accused Warned Ansonia and his wife not to tell anyone about last night's incident otherwise, he will kill all of them. Then he got their two pigs in the backyard, placed them in a sack and brought them to Puerto Princesa, the capital, leaving instructions to Maura to follow him to the capital. Maura, however, went instead to town of Aborlan to report to the Chief of Police and to seek protection bringing along all the children except Noni Madarcos who volunteered to stay to look after the plants and their animals."

When Operiano returned to the house to find that only Noni Madarcos was there, he killed Noni with a knife. Explaining why he killed Noni, Operiano said:

"I asked him where his mother went and he answered me that he didn't know. Then I brought him to the house of a certain Ricardo Bacosa. I wanted to borrow the pick-up truck but Mr. Bacosa did not lend me his pick-up truck. Because I was already mad that time and I remembered that my wife said that she is going to separate from me, I told Mr. Bacosa that I am going to kill this boy so that my wife will know the truth that we are

really separating from each other." (p. 17, tsn. Feb. 17, 1971.)

As a result Operiano was accused of homicide in Criminal Case No. 3952 of the CFI of Palawan to which he pleaded guilty and was accordingly sentenced in a decision dated February 19, 1969.

On May 4, 1968 after the burial of Noni, Maura took Ansonia to Dr. Alberto H. Lim, Rural Health Physician of Aborlan who came out with the following:

"FINDINGS

EXTERNAL EXAMINATION: Fairly developed fairly nourished female, Filipina, about 4 ft. 11 inches in height; Breast hemispherical, moderately developed, firm consistency; nipple moderately protruding with pinkish areolae.

INTERNAL EXAMINATION: Pubic hair moderate to scanty in growth; Labia majora and minora coaptated, Hymen lacerated at 3:00, 7:00 and 9:00 at the face of the clock; vaginal canal admits two fingers with but moderate resistance.

CONCLUSION: Physical virginity lost." (Exh. A)

On May 8, 1968, Ansonia filed a verified complaint for rape against Operiano in the Municipal Court of Aborlan. The case was subsequently elevated to the Court of First Instance under the information quoted above.

Operiano's defense consisted of a flat denial that he had raped Ansonia. He claimed that the rape charge against him was merely concocted by Maura who wanted him to suffer longer in jail for the death of Noni.

It is axiomatic that the evidence for the prosecution must stand on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. So the basic question in this case is whether or not, the prosecution has been able to prove the offense even as the defendant denied having committed it. In the ultimate analysis, the resolution of the issue depends on the credibility of the witnesses.

Appellant argues that the fact of rape was not established by the testimony of Dr. Alberto H. Lim. Appellant makes capital of the fact that according to Dr. Lim, Ansonia could have lost her virginity by causes other than sexual intercourse. Appellant's error lies in the fact that the prosecution presented Dr. Lim, not to prove that Ansonia had been raped for surely Dr. Lim who was not an eyewitness to the rape could not testify to such a fact, but to show only that Ansonia had lost her virginity. The evidence on the rape was supplied by Ansonia and her mother, not by the medical examination of Dr. Lim which was merely corroborative. In fact, "medical examination is not an indispensable element in the prosecution for the crime of rape, because it all depends upon the evidence offered and as long as such evidence convinces the court, a conviction therefor is proper." (People vs. Orteza, G.R. No. L-16033, Sept. 29, 1962, 6 SCRA 109, 113 and cases cited therein.)

Appellant also tried to capitalize on the fact that no physical evidence, such as a torn panty or a blood-stained dress was presented to corroborate the story of Ansonia and her mother. Suffice it to say, while it may have been desirable, it was not necessary to present such evidence which, like medical examination, is merely corroborative.

Appellant also contends that under the facts narrated, the rape was incredible and highly improbable if not

altogether impossible. But it is not incredible for a man to rape his stepdaughter as it is not incredible for a man to rape his own flesh and blood daughter. Many are the decisions of this Court convicting perverted men who raped their daughters. Neither was it impossible to commit rape in a small space which was then occupied by other persons also. True, only Maura was awakened that night. But it must be recalled that the other persons in the room were all children who must have been heavy sleepers or who must have gotten used to sleep through the night even when the accused made love to his wife. At any rate, whether or not the children were awakened would not have made any difference for as Maura testified:

"Q - Did it not occur to your mind to wake up the other persons in your house at that time?

A - How could we wake them up when we couldn't even move or talk because he warned us that once we move, he will kill us all."

(pp. 40-41, tsn, Jan. 29, 1969.)

Appellant also argues that it was physically impossible for him to have held a knife, removed Ansonia's panty, mashed her breasts, inserted his penis into her vagina and held her shoulders all at the same time unless he had "four arms or hands." Appellant exaggerates, of course, for Ansonia never said that her stepfather did all of those things at the same time. They were executed one at a time.

Appellant also points to inconsistencies in the testimony of some prosecution witnesses which in our mind do not merit discussion for they relate to minor details only and do not impair the integrity of the testimony of Ansonia and Maura on the commission of the rape.

Appellant claims that the use of a knife was not proved beyond reasonable doubt. And how does he argue this point? By saying that the knife presented in evidence in the rape case was the same knife concededly used in the killing of Noni Madarcos. Frankly, we fail to understand the argument. For how could the presentation of only one knife in the two cases, prove that no knife was used in the rape case. There appears to be present here a perfect example of non sequitur.

Finally, the appellant assigns as error the finding by the trial court that there was abuse of parental authority. He claims that he was not legally married to Maura; that theirs was only a common law relationship. We find no merit in this contention for several reasons.

The appellant and Maura had represented themselves as husband and wife since 1954. Accordingly, it must be presumed that "a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage." (Rule 131, Sec. 5 (bb), Rules of Court; *Sison vs. Amblada*, 30 Phil. 118 [1915].) A mere denial of marriage by the appellant is utterly insufficient to overcome the presumption. (In re *Mallare*, 23 SCRA 292, 295 [April 29, 1968].) Moreover, when the appellant testified he described himself as married and he could have been married only to Maura for he referred to her as his wife in the course of his testimony. He also acknowledged Noni Madarcos to be his stepson several times during his direct examination.

WHEREFORE, the decision of the court a quo convicting the accused is hereby affirmed. However, for lack of the required number of votes to impose the death penalty, the appellant is hereby sentenced instead to suffer the penalty of reclusion perpetua. Costs de officio.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., is not persuaded that the special circumstances of the use of a deadly weapon had been proved beyond reasonable doubt and therefore joins the concurrence of Justice Teehankee, his vote being likewise for the imposition of reclusion perpetua.

Teehankee, J., filed a brief concurrence.

CONCURRING OPINION**TEEHANKEE, J.:**

I vote for the imposition of the lesser penalty of reclusion perpetua. Under the circumstances recited in the decision, I am not convinced of the presence of the special circumstance of use of deadly weapon under Article 335 of the Revised Penal Code, as amended, which would warrant the imposition of the supreme penalty of death and I therefore grant the accused the benefit of the doubt. The crime committed is therefore simply rape for which is imposed the single and indivisible penalty of reclusion perpetua and the aggravating circumstances cited by the trial court cannot be appreciated.

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