

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ILDEFONSO PUERTOLLANO Y DELA CRUZ, ACCUSED-APPELLANT.

G.R. No. 122423. June 17, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Appellant Ildefonso Puertollano was found guilty beyond reasonable doubt by the Regional Trial Court of Laguna of the crime of rape against his ten-year old daughter, Mary Joy, in consequence of which, he was sentenced to death. He now seeks reversal of his conviction.

The information dated August 19, 1994 charged appellant with rape committed as follows:

"That on or about July 19, 1994 at Brgy. Mayapa, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named, thru force, violence and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Mary Joy Puertollano @ Mary July Puertollano, his daughter, a minor, against the latter's will and consent."

The facts as presented by the prosecution are as follows:

On July 19, 1994, at about one o'clock in the afternoon in Mayapa, Calamba, Laguna, Mary Joy Puertollano, who was then ten years of age, was ordered by her father, appellant Ildefonso Puertollano, who was drunk at the time, to stay at home and forego her afternoon classes. Obediently, she went upstairs to put her brother and sisters to sleep.

Later, appellant instructed Mary Joy to come down and wash the dishes. After she had washed the dishes, appellant ordered her to close the doors and the windows of their house. Thereupon, appellant told Mary Joy to remove her skirt. Mary Joy refused and instead left to go to the house of her uncle, Jose Fernandez, which was located nearby. When asked by her uncle why she was crying, Mary Joy replied that her father did not allow her to go to school. Shortly thereafter, she heard her father calling for her, "Mary Joy, halika na, pumasok ka na." Meekly, she obeyed and went back to their house. Once inside, she was not allowed to leave.

Appellant removed his pants and underwear. Then he forced Mary Joy to take off her clothes. When Mary Joy refused, appellant took them off. He then lifted Mary Joy and touched her body. Attempting to insert his penis into her vagina, he encountered extreme difficulty so he placed the girl on a bench, laid himself on top of her and held her thighs. Five times, he attempted to have sexual intercourse with vigorous motions, all of which inflicted excruciating pain on Mary Joy. As she could not take it any more, she moved her buttocks aside.[1]

Jose Fernandez, Mary Joy's uncle, witnessed through a hole in the wall of appellant's house how the latter sexually assaulted his daughter. While appellant was performing his dastardly act, he shouted, "Walanghiya ka, pati anak mo, kinakain mo, dugo mo iyan, kinakain mo pa." Upon hearing this, appellant arose and let go of Mary Joy. Forthwith, Jose Fernandez summoned his neighbors and instructed his wife to call the barangay tanods. The tanods came, took appellant with them and called the police.

Dr. Danilo Ramirez examined Mary Joy and found the presence of abrasion and hyperemia at the vulva. He explained that these could have been caused by constant friction on a blunt object. While her hymen was still intact, its edges were blunted. He opined that the edges could have been damaged by insertion of a finger or penis of a man. The other parts of her body had no signs of physical injury like contusions and others.[2]

On October 9, 1995, the trial court rendered judgment as follows:

"WHEREFORE, the foregoing considered, accused Ildefonso Puertollano is hereby found guilty beyond reasonable doubt of the crime of Rape against his daughter, Mary Joy Puertollano, a 10 year old girl at the time of commission, and as such, he is hereby sentenced to suffer the penalty of Death as provided for under Republic Act No. 7659. Ildefonso Puertollano is likewise ordered to indemnify Mary Joy Puertollano the amount of P50,000.00 and to pay the costs.

The OIC-Clerk of Court is directed to forward the records of the case to the Honorable Supreme Court of the Philippines for automatic review and judgment by the Honorable Supreme Court en banc, within twenty (20) days but not earlier than fifteen (15) days after this promulgation, if no new pleading for reconsideration or new trial is filed by the accused.

The transcript of stenographic notes shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

SO ORDERED."

As the death penalty is involved, the case is now before the Court for automatic review.[3]

Appellant contends that the trial court erred in giving undue weight and credence to the "unreliable and unworthy" testimony of Mary Joy and of her supporting witnesses. Further, appellant claims that even supposing that he was guilty, the trial court erred in convicting him of consummated rape for the crime committed is only attempted rape. His brief states:

"x x x. Complainant testified in substance that appellant lifted her and placed her on the bench. While seated on the bench, appellant moved back and forth his buttocks towards her (TSN, December 12, 1994, pp. 33-34). Because of such awkward position of complainant and that of appellant as described to by the former, it is highly impossible for appellant to have consummated the crime imputed against him. This is made more glaring by complainant's own admission during trial that appellant was not able to insert his penis into her private part (TSN, December 12, 1994, p. 36). Worse, complainant did not feel the penis of appellant during the sexual attack which belies penetration even the slightest one (Ibid, p. 52). Withal, complainant admitted that she was lifted by appellant while the latter was in a standing position thereby making it even more difficult to consummate the alleged sexual assault. (Ibid, p. 51)

The testimony of Jose Fernandez anent the assailed incident should not have been taken hook, line and sinker. Peeping through a hole about one (1) centimeter, he allegedly saw appellant 'as if in a sitting position' moving his buttocks with a push and pull motions (TSN, December 12, 1994, p. 10). Even so, his testimony remains suspect and does not establish whether or not appellant was able to consummate the sexual act. The reason is that he admitted in open court that without an eyeglass he could not read (Ibid, p. 13). With such defect, how could he accurately described what he allegedly saw, with his eyes focusing on a distant object and the hole is only one (1) centimeter? During trial it was not shown that he was wearing an eyeglass during the incident in question. Not only that. A certain Leonila @ Bilog who allegedly called the attention of Jose Fernandez about the incident was not presented as witness to corroborate the latter's testimony thereby weakening the prosecution's cause. Whatever Jose Fernandez allegedly saw in that small opening in the wall is mere hazy recollections which could not be denominated as clear, positive and convincing.

Hence, the crime committed is only Attempted Rape in view of the timely arrival of Jose Fernandez who

shouted at the appellant thereby preventing him from consummating the sexual act."[4]

After a meticulous perusal of the records of this case, we believe that the crime of rape against the minor Mary Joy has been proved beyond reasonable doubt.

The testimony of Jose Fernandez and the victim herself point to the inexorable conclusion that the act complained of occurred.

The narration of Mary Joy of the rape committed against her is clear, convincing and straightforward:

"FISCAL AGOSILA:

When you said that he was trying to insert his penis to your vagina what was he actually doing?

A (Witness making a motion forward and backward) moving his buttocks `inuuga po niya.'

Q When your father was moving his buttocks in push and pull motions, what was he doing to your buttocks?

A He was holding my buttocks, Sir.

FISCAL AGOSILA:

Now, was your father able to insert his penis to your vagina?

ATTY. HERNANDEZ:

Leading, Your Honor.

COURT:

Witness may answer.

A No, Sir.

Q Why?

A I removed it because it is very painful.

Q For how many times did your father tried to insert his penis to your vagina?

A Around five (5) times, Sir.

Q Now, you said that you removed your buttocks because it is very painful, on what part of your body it is painful?

A (Witness pointing to her thigh).

FISCAL AGOSILA:

What else?

A My vagina, Sir.

FISCAL AGOSILA:

Now, after that Ms. Witness that he was trying to insert his penis to your vagina, what happened if any?

A None, Sir, then my Tito Libreng arrived and shouted, Sir.

Q Now, you said that your father was trying to insert his penis to your vagina, which part of your vagina was touched to the penis of your father?

A `yun pong nilalabasan ng ihi.'

Q Now, Ms. Witness, when your Tito Libreng shouted what did your father do?

A He put me down, Sir.

x x x x x x x x

FISCAL AGOSILA:

What happened after that, if any?

A My father told me, 'Mary Joy, tulungan mo ako sabihin mo sa kanila wala akong ginagawa sa iyo.'

Q And what did you tell to your father?

A None, Sir.

Q After that what happened next?

A He told me that he will be incarcerated, Sir.

Q Was your Tito Libreng able to get inside your house?

A No, Sir.

Q And what happened after that?

A Tito Libreng instructed me to open the door, Sir.

Q Did you follow?

A Yes, Sir.

Q And what happened after that?

A Nothing, Sir, and the brgy. tanod apprehended my father, Sir."

As the trial court observed:

"The Court found Mary Joy Puertollano to be sincere. She attended the whole trial processes. To the Court, the demeanor exhibited by Mary Joy and that of her mother during the proceedings is obviously a (sic) displayed of an ardent desire to see to it that justice is obtained. Mary Joy Puertollano's narrations of event was characterized by candor and lack of guile, without any inconsistencies pointed out by the defense."

The testimony of Mary Joy's uncle, Jose "Libreng" Fernandez, only serves to further corroborate the veracity of her version of the events:

"FISCAL AGOSILA:

And what did you see upon peeping at the wall . . . through the wall?

A I saw Ildefonso Puertollano.

COURT INTERPRETER:

Witness demonstrating how he peeped through the wall.

A I saw my niece Mary Joy without an underwear and I also saw Ildefonso Puertollano without an underwear, Sir.

Q What did you do after that?

A Could I demonstrate, Sir.

FISCAL AGOSILA:

Please demonstrate.

COURT INTERPRETER:

Witness demonstrating by holding his daughter with a motion of push and pull and moving his buttocks.

FISCAL AGOSILA:

When Ildefonso Puertollano was doing push and pull motion when he was using buttocks was he sitting or standing?

A He was as if sitting while he was moving his buttocks.

COURT:

You said that Mary Joy has no underwear, what do you mean by that?

A She was naked, Your Honor.

COURT:

How about Ildefonso Puertollano, you said that he does not have any underwear?

A Because I saw his buttocks, Sir.

COURT:

Proceed.

FISCAL AGOSILA:

Now, what was the actual position of Mary Joy at the time Ildefonso Puertollano was moving his buttocks with pull and push motions?

A Mary Joy putting his hands over her face as if she was crying without her voice.

FISCAL AGOSILA:

How about the legs of Mary Joy did you see where was the legs positioned?

A Her legs was spread on the thigh of Ildefonso Puertollano.

Q Now upon seeing the way you demonstrated Ildefonso Puertollano and Mary Joy Puertollano at that time, what did you do?

A I shouted at Ponching and I said, `walanghiya ka pati anak mo kinakain mo, dugo mo na iyan kinakain mo pa.'

Q Did you hear any answer from Ildefonso Puertollano?

A None, Sir.

Q If you know, did Ildefonso Puertollano heard you when you shouted at him, `Ponching, walanghiya ka dugo mo kinakain mo, anak mo kinakain mo pa.'

A Probably he heard me because he let go the child and he covered himself.

Q Now, when you saw Ildefonso Puertollano left the place, what did you do next?

A What I did I call some of my neighbors and I instructed my wife to call some barangay tanod."

Appellant's other contention that, at worst, he is guilty only of the crime of attempted rape deserves scant consideration.

The mere touching by the male's organ or instrument of sex of the labia of the pudendum of the woman's private parts is sufficient to consummate rape. As we have said in unnumbered cases, full or deep penetration of the victim's vagina is not necessary to consummate sexual intercourse; it is enough that there be even the slightest penetration of the male organ into the female sex organ.[5]

Under Art. 335 of the Revised Penal Code as amended by Section 11 of R.A. No. 7659, rape is defined as follows:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- By using force or intimidation;

- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated 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 the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
- When the victim is under the custody of the police or military authorities.
- When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
- When the victim is a religious or a child below seven (7) years old.
- When the offender knows that he is inflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

The Court, however, believes that the trial court erred in applying paragraph 1 of the foregoing provision for cases where the death penalty is imposable, i.e. "the victim is under eighteen years of age and the offender is a parent . . . of the victim."

In order to warrant the imposition of the death penalty, the special qualifying circumstances of the victim's minority and her relationship to the offender should be both alleged[6] and proved.[7]

A close scrutiny of the information filed in this case shows that all that is stated therein is that Mary Joy is a minor. No mention was made of her exact age.

We reiterate that due process requires that the acts or omission constitutive of the offense be stated in the Information to fully apprise the accused of the charge against him.[8] The nature and the cause of the accusation must be reasonably stated therein.[9]

Consequently, the death penalty imposed by the trial court should be reduced to reclusion perpetua as provided for in the second paragraph of Art. 335 of the Revised Penal Code, as amended.

WHEREFORE, the appealed decision of the trial court convicting appellant of the crime of rape is **AFFIRMED** with the **MODIFICATION** that his sentence is **REDUCED** to reclusion perpetua and that moral damages of P50,000.00 be imposed on him.

Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.
Panganiban, J., on leave.

[1] TSN, December 12, 1994, pp. 26-36.

[2] TSN, December 13, 1994, pp. 2-9.

[3] Art. 41, Revised Penal Code, as amended by R.A. No. 7659, Sections 3(c) and 10 of Rule 122, Rules of Court.

[4] Appellant's Brief, Rollo, pp. 60-61.

[5] *People v. Mohinay*, G.R. No. 122485, February 1, 1996; *People v. Ligatan*, 332 Phil. 98; *People v. Lazaro*, 249 SCRA 234.

[6] *People v. Cantos*, G.R. No. 129298, April 14, 1999.

[7] *People v. Manggasin*, G.R. Nos. 130599-600, April 21, 1997.

[8] *People v. Garcia*, 281 SCRA 463 (1997); *People v. Bolatete*, G.R. No. 127570, February 25, 1999; *People v. Barrientos*, 285 SCRA 221 (1998); *Dans v. People*, 285 SCRA 504; *Lao v. CA*, G.R. No. 119178, June 20, 1997.

[9] *People v. Garcia*, G.R. No. 129459, September 25, 1998; *People v. Ambray*, G.R. No. 127177, February 25, 1999.

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