

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMEDIO CAJARA, ACCUSED-APPELLANT.

G.R. No. 122498. September 27, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ELMEDIO CAJARA alias Elming is before us on automatic review after having been found guilty by the trial court of Qualified Rape and sentenced to death.

The Information alleged that on 30 May 1994 in Barangay Serum, Basey, Samar, the accused Elmedio Cajara, a brother-in-law of Marita B. Cajote and husband of her older sister, by means of force and intimidation, willfully and feloniously had carnal knowledge of her against her will and consent.[1]

On 16 March 1995 the trial court found the accused guilty of rape as defined in Art. 335 of The Revised Penal Code in relation to Sec. 11 of RA 7659, and sentenced him to death.[2]

On 18 May 1994 16-year old Marita Cajote, a resident of Manila, arrived in Basey, Samar, and stayed with her sister Marie. The following day, Marita was fetched by another sister, Merly Tagana also known as Meling, and by the latter's husband, accused Elmedio Cajara also known as Elming. Upon being told by Meling that they would be going to Sulod to get copra, Marita went with Meling and Elming to the couple's house in Sitio Catuhaan in Barangay Serum. Since then until 30 May 1994 Marita stayed with Meling and Elming together with their two (2) small children in a house consisting of only one room without any partition.

In the evening of 30 May 1994 complaining witness Marita Cajote slept at one end of the room with the two (2) children, with Meling and Elming at the other end. At about two o'clock the following morning Marita was awakened by the weight of accused who was already on top of her. The accused who was holding a bolo told her to keep quiet or he would kill her. He then placed his bolo aside and held Marita's hands with his right hand. With his left hand accused lowered Marita's pants as well as her panty down to her knees. Marita shouted for help but her sister Meling just wrapped her head with their mosquito net and pretended to be asleep. Marita struggled continuously against the advances of the accused but he was much stronger, while she was getting weak. The accused first inserted his fingers into Marita's private part and later succeeded in inserting his penis into her vagina. Meling then pulled Elming away from Marita and hit Elming in the eye. Elming boxed Meling on the mouth and kicked her when she fell on the floor. Elming went back to Marita and continued with his beastly acts. By this time, Marita was already too weak to resist. Elming inserted his fingers first and then his penis into her private organ. The older of the two (2) children of Meling cried. Meling who was holding her youngest child helplessly watched the accused rape her younger sister.

After satisfying his lust, the accused asked Marita to go away with him. Marita cried and dressed herself. When accused went to the door, she jumped out of the window and ran away, but the accused chased her and after overtaking her threatened to kill her if she would return to their house. So Marita pretended to submit to his wishes. Fortunately she found an opportunity to hide herself from the accused. Then she dashed for safety to the

house of her sister Marie and then to another sister Lilia. Marita revealed to both of them what the accused had done to her. But her sisters advised her not to file a criminal case against their brother-in-law for fear that he might kill all of them. But Marita went to the chief of the "barangay tanod" whom she called Mano Henry, who accompanied her to the barangay captain. The barangay captain, Rolando Jaingue, also made the same advice against filing a criminal charge against the accused as the latter might attack and kill them. The accused was known in the community to have killed six (6) people. Finally, barangay captain Jaingue issued an indorsement of the case to the Philippine National Police stationed in Basey, Samar.[3]

When physically examined by Dr. Danilo Fami, Municipal Health Officer of Basey, Samar, Marita was found to have a healed laceration of her hymen at 4 o'clock position.

In his defense, the accused Elmedio Cajara denied the charge against him. He alleged that Marita was the maternal half-sister of Meling, his common-law wife; that at around 6 o'clock in the evening of 30 May 1994 he was in his house with Meling and their two (2) children when Marita arrived and invited them for a drink; that since he was then busy gathering tuba he was able to join them only at around 8 o'clock until 11 o'clock that evening after which he went to sleep. However, at around 2 o'clock in the morning he was awakened by the quarrel of his wife and Marita; that when his wife asked Marita why the latter placed her leg over him, Marita answered that she did not know; and, that Meling ordered her to get out of their house, but before she left Marita said that she would file a case against him who was on parole.[4]

Merly Tagana alias Meling, common-law wife of the accused, corroborated his testimony. When asked on direct examination why her sister Marita would file a rape charge against her husband, Meling denied that her husband raped Marita, saying that "it was not the mistake of (her) husband because he is a man and that she is a girl." [5]

Persuaded beyond reasonable doubt that Elmedio Cajara did rape 16-year old Marita Cajote on 30 May 1994 in front of his common-law wife and his two small children, the trial court convicted him as charged and sentenced him to death.

In his Brief the accused faults the trial court for giving credence to the testimony of the rape victim, Marita Cajote, despite its failure to meet the test of moral certainty; that the testimony of Merly Tagana, his common-law wife, that there was no rape should have been given more weight than the testimony of Marita Cajote because Meling being a half-sister of Marita would have sympathized with her if the rape incident was true; and, that Marita's claim that she was a virgin before she was raped was belied by the testimony of the medico-legal officer that there was a laceration which could have healed even before the rape incident.

The Office of the Solicitor General, in its brief, belittles the accused for failing to show any compelling or justifiable reason to set aside his conviction for rape and his penalty of death, citing Art. 335 of The Revised Penal Code, as amended by RA 7659, the relevant portion of which states:

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: x x x 3. when rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

The Solicitor General is correct in finding the accused guilty of rape. The bare denial of the accused and his common-law wife cannot overcome the categorical testimony of the victim. Denial when unsubstantiated by clear and convincing evidence is a negative and self-serving evidence which deserves no greater evidentiary value than the testimony of a credible witness on affirmative matters.[6] No woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.[7] A complainant's act in immediately reporting the commission of the rape has been considered by this Court as a

factor strengthening her credibility. The immediate decision of Marita to report the crime to her sisters and the barangay officials as well as to face police authorities and submit to a medical examination are a mute but eloquent testimony of the truth of her charge against accused.

We agree with the finding of the trial court that Marita's positive identification of the accused as the person who raped her was given in a categorical, straightforward and spontaneous manner which rendered it worthy of faith and belief -

Q:

While you were asleep on May 30, 1994, at 2:00 in the morning, can you still recall if you were awakened and why?

A:

I was awakened because I was surprised.

Q:

Why were you surprised?

A:

Because he was on top of me.

Q:

Who was the person on top of you?

A:

Elming Cajara.

Q:

How do you know that it was Elming?

A:

Because there was light for the whole morning.

Q:

Where was this light being placed?

A:

On the altar.

Q:

How far was the light to the place where you were lying down?

A:

About two meters.

Q:

Did Elming say anything to you when he was on top of you?

A:

Yes, ma'am x x x x He said keep quiet x x x x If you will make a noise I will kill you.

Q:

What else?

A:

I shouted x x x x Help, help Manding.

Q:

Who is this Manding you are referring to?

A:

Meling.

Q:

Your elder sister?

A:

Yes, ma'am.

Q:

And when Elming Cajara warned you not to make any noise did you observe if he has (sic) any weapon with him?

A:

Yes he has x x x x Sundang.

Q:

Where was the bolo?

A:

Near the head x x x Elming Cajara at the time he slept he has a bolo with him.

Q:

Where is this bolo you are referring to?

A:

Near the head he was holding.

Q:

He was holding the bolo with what hand?

A:

Right hand.

Q:

About you when you shouted, what else did you do while he was on top of you.

A:

I kept on asking for help because he was holding my two hands over my head.

Q:

With what hand he was holding your hands as he was holding the bolo?

A:

When he told me not to make any noise he was holding my two hands.

Q:

With what hand and how did he hold your two hands?

A:

His right hand.

Q:

How about his left hand?

A:

Undressing me.

Q:

What was being undressed? (sic)

A:

My maong pants x x x x Garterized.

Q:

Do (sic) you have panty at that time?

A:

Yes, ma'am.

Q:

How about your panty, was it undressed?

A:

Yes, ma'am.

Q:

Up to what portion of your body were you undressed?

A:

Middle part of my legs.

Q:

As you were shouting for your Manding to help you, what did your Manding do?

A:

After I was shouting for help for a long time, Manding grabbed Elming from me and Meling punched Elming hitting his eye.

Q:

When Meling grabbed and punched Elming, what was Elming doing at that time?

A:

He inserted his finger into my vagina after which he inserted his penis into my vagina.

Q:

What did you do when Elming inserted his finger into your vagina?

A:

I was trying to resist (from) him but I could not as he was holding my hands.

Q:

While he was inserting his penis to your vagina, what did you do?

A:

I was trying to resist and shouting and I was weak x x x x

Q:

After Meling pulled her husband, what happened next?

A:

Meling fell because she was punched by Elming x x x x She was hit on her mouth and she was kicked x x x x

Q:

After kicking Meling what did Elming do?

A:

After Elming kicked Meling and I was able to put on my panty Elming came back.

Q:

When Elming went back to you, what did Elming do to you?

A:

x x x x he undressed me again x x x x he abused me again x x x x he was inserting his finger and penis into my vagina.

Q:

Was he able to insert again his penis into your vagina?

A:

Yes, ma'am x x x x

Q:

For how many times have (sic) he inserted his penis?

A:

Twice.[8]

The argument of the accused is untenable that the testimony of his common-law wife that there was no rape should have been believed by the trial court because she was Marita's half-sister who would naturally protect Marita's honor if she was indeed raped. Not every witness to a crime can be expected to act reasonably and conformably to the expectation of mankind.[9] We have noted that in some instances it was but natural for witnesses not to come to the victim's rescue for fear of their lives, especially when threatened with harm should they do so. Self preservation is still recognized as the most fundamental human instinct.[10]

In the case of Merly Tagana, although she is half-sister to Marita, she is also the common-law wife of the accused. While relationship between the accused and his witness is not necessarily detrimental to the former's line of defense, this relationship taken together with the want of logic in the declarations of the witness, yields to the conclusion that her testimony is not credible.[11] The trial court found evident discrepancies in Merly Tagana's testimony which cannot but raise well-founded and overriding doubts on her testimony. Merly Tagana contradicted the testimony of the accused and herself twice when she stated that Marita slept in the house with her and the accused on 29 May 1994, the night before the rape.[12] Although she testified that the accused did not rape her sister, she complained on the witness stand that it was not the mistake of the accused to have done what he did because he was a man and Marita was a girl. The opinion of the trial court as to who of the witnesses should be believed is entitled to great respect on the oft-repeated rationale born of judicial experience that the trial judge who heard the witnesses testify and had the occasion to observe their demeanor on the stand was in a vantage position to determine who of the witnesses deserve credence.[13]

The assertion of the accused that Marita was no longer a virgin when she was raped will not exculpate him from criminal liability. The records show that Marita was sexually abused twice. After inserting his fingers, the accused inserted his organ into her private part, and after awhile, accused repeated the sexual abuse. Clearly, when Marita was raped for the second time, she was no longer a virgin; she could have already lost her virginity during the first rape. Further, well-settled is the rule that prior sexual intercourse which could have resulted in hymenal laceration is not necessary in rape cases for virginity is not an element of rape.[14] It should be emphasized however that since the Information charged only one offense, even if the evidence showed a second act of forcible intercourse, conviction for one rape was proper.[15]

The trial court in the case at bar imposed the penalty of death upon the accused after taking into account the following circumstances, i.e., the minority of Marita Cajote who was only 16- years old at the time of the rape; relationship by affinity where the victim was said to be the sister of the common-law wife of the accused; and, finally, the fact that the rape was committed by the accused in the full view of his wife and children. The relevant portions of Sec. 11 of RA 7659 amending Art. 335 of The Revised Penal Code, which took effect 31 December 1993, state:

When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and, 3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua x x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. 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 parent of the victim x x x x

3. 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 x x x x

Contrary to the ruling of the trial court and the stand of the Solicitor General, the accused can only be convicted of simple rape punishable by reclusion perpetua. It was error for the trial court to impose the penalty of death. Although the circumstance of relationship by affinity within the third civil degree was alleged in the Information, evidence for the prosecution clearly showed the lack or absence of such circumstance to qualify the rape because the accused and Merly Tagana, sister of the victim Marita Cajote, were mere common-law husband and wife and were not legally married at the time of the rape. The accused and the victim cannot be said to be related by affinity within the third civil degree at the time of the commission of the crime.

Neither can the accused be convicted of qualified rape on the basis of the circumstance that the rape was committed in full view of the relatives of the victim within the third degree of consanguinity because this qualifying circumstance was not pleaded in the Information or in the Complaint against the accused.

The Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of the accusation against him. Thus, it is fundamental that every element of the offense must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense.[16]

In *People v. Morena*[17] this Court explained that it would be a denial of the accused of his right to be informed of the charges against him and, consequently, a denial of due process if he is convicted of an offense other than that charged in the complaint or information. Hence, when the information alleges rape by force and intimidation under par. 1, Art. 335, of The Revised Penal Code, the accused cannot be convicted of rape under pars. 2 or 3 of the same Article.[18] In this case, since the accused was charged with rape qualified by minority and relationship under the first attendant circumstance where the death penalty is imposable, he cannot be convicted of rape qualified by the third attendant circumstance of commission of rape within the full view of the relatives of the victim, since this was not alleged in the Information.

The records show that the crime was aggravated by reiteracion under Art. 14, par. 10, of The Revised Penal Code, the accused having been convicted of frustrated murder in 1975 and of homicide, frustrated homicide, trespass to dwelling, illegal possession of firearms and murder sometime in 1989 where his sentences were later commuted to imprisonment for 23 years and a fine of P200,000.00. He was granted conditional pardon by the President of the Philippines on 8 November 1991.[19] Reiteracion or habituality under Art. 14, par. 10, herein cited, is present when the accused has been previously punished for an offense to which the law attaches an equal or greater penalty than that attached by law to the second offense or for two or more offenses to which it attaches a lighter penalty. As already discussed, herein accused can be convicted only of simple rape and the imposable penalty therefor is reclusion perpetua. Where the law prescribes a single indivisible penalty, it shall be applied regardless of the mitigating or aggravating circumstances attendant to the crime, such as in the instant case.

We note that the trial court did not award any civil indemnity. Pursuant to current jurisprudence and without need of further proof, we award the victim Marita Cajote an indemnity of P50,000.00 and moral damages of P50,000.00. In *People v. Prades*[20] the Court resolved that moral damages may additionally be awarded to the victim in the criminal proceeding in such amount as the Court may deem just without the need for pleading or proof of the basis therefor.

WHEREFORE, the Decision of the trial court convicting the accused ELMEDIO CAJARA alias Elming of Qualified Rape is MODIFIED to the effect that he is convicted instead only of Simple Rape and is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the victim Marita B. Cajote civil indemnity

of P50,000.00 and moral damages of another P50,000.00. Costs de oficio.

SO ORDERED.

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

- [1] Rollo, p. 4.
- [2] Decision penned by Judge Godofredo P. Quimsing, RTC-Br. 30, Basey, Samar; Rollo, p. 13.
- [3] TSN, 12 October 1994, pp. 6-18.
- [4] TSN, 11 January 1995, pp. 18-22.
- [5] Id., p. 8.
- [6] People v. Lustre, G.R. No. 134562, 6 April 2000.
- [7] People v. Taneo, G.R. No. 112683, 16 January 1998, 284 SCRA 251.
- [8] See Note 3.
- [9] People v. Bergante, G.R. Nos. 120369-70, 27 February 1998, 286 SCRA 629.
- [10] People v. Polangco, G.R. No. 108175, 26 December 1995, 251 SCRA 503.
- [11] People v. Decena, G.R. No. 107874, 4 August 1994, 235 SCRA 67.
- [12] TSN, 11 January 1995, pp. 15-17.
- [13] People v. Alhambra, G.R. No. 103272, 4 July 1994, 233 SCRA 604.
- [14] People v. Cabiles, G.R. No. 112035, 16 January 1998, 284 SCRA 199.
- [15] People v. Venerable, G.R. No. 110110, 13 May 1998, 290 SCRA 15.
- [16] People v. Perez, G.R. No. 122764, 24 September 1998, 296 SCRA 17.
- [17] G.R. No. 126921, 28 August 1998, 294 SCRA 728.
- [18] Ibid.
- [19] Rollo, p. 6.
- [20] G.R. No. 127569, 30 July 1998, 293 SCRA 411.

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