

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SABINO GEMENTIZA, ACCUSED-APPELLANT.

G.R. No. 123151. January 29, 1998

Ponente: REGALADO, J.

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REGALADO, J.:

In a criminal complaint dated March 5, 1993 and filed with the trial court on March 12, 1993, accused-appellant Sabino Gementiza was charged with raping Rosalyn Hinampas. The complaint, subscribed by the victim's father, was docketed as Criminal Case No. 29,026-93 before Branch 12 of the Regional Trial Court of Davao City presided over by Judge Paul T. Arcangel. The felony was allegedly committed as follows:

That on or about November 13, 1992 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused by means of force and intimidation wilfully, unlawfully and feloniously raped and had carnal knowledge upon my daughter Rosalyn Hinampas, a 15-year old retardate, against her will.[1]

With the assistance of his counsel de parte, appellant pleaded not guilty during his arraignment.[2] After a full-blown trial, the court a quo, this time under Judge Maximino Magno Libre,[3] convicted appellant as charged in its Judgment[4] dated January 11, 1995 and sentenced him to suffer the penalty of reclusion perpetua, as well as to indemnify the victim in the amount of P30,000.00.

From the evidence presented by the prosecution, the facts of this case were duly established to be as follows:

On November 13, 1992 at about 12 o'clock noon, Rosalyn Hinampas[5] went to the banana plantation of Lapanday Agricultural Development Corporation (LADECO) located at Buhangin, Davao City to gather discarded banana fruits to be used as feed for their pigs. These fruits are given away free by LADECO wherein appellant works as a packer of bananas.

While Rosalyn was putting some fruits into the sack she brought with her, appellant suddenly appeared and grabbed her. Rosalyn was then dragged towards a nearby makeshift hut. Inside the unenclosed hut, appellant quickly undressed her and fondled her breasts. Faced with the threat of death from appellant, Rosalyn resisted but decided not to shout for help. Despite Rosalyn's silent struggle, appellant was able to overcome her and penetrate her womanhood.

After the incident, Rosalyn acted as normally as she could and did not reveal her misfortune until November 15, 1992 when she confided to her brother, Aniceto,[6] what happened to her on November 13. Aniceto then brought Rosalyn to their parents' house.

Upon hearing her daughter's lamentable story on November 16, 1992, her mother, Gregoria Hinampas,[7] brought Rosalyn to the police of Buhangin and, from there, to Dr. Danilo Ledesma for examination. The genital examination conducted by the doctor on November 17, 1992 revealed a healing deep laceration on Rosalyn's hymen at a 9 o'clock position.[8]

Since Rosalyn remained in shock even after a couple of months from the incident, she was brought to Dr. Bihildis

Castillones on January 25, 1993 for psychiatric evaluation. The psychiatrist found out after examination that Rosalyn was suffering from moderate mental retardation.[9]

When his turn at the trial came, appellant interposed the defense of alibi and presented himself, Orlino Ocasio and Restituto Gementiza as witnesses for the defense.

Appellant[10] admitted during his testimony in court that he was at the packing house of LADECO on November 13, 1992, having arrived in the morning at 7:00 o'clock. At exactly 11:00 A.M., he and his co-employees stopped working to take their lunch. While some workers ate their lunch inside the packing house, appellant and 15 other employees ate at the makeshift hut located about 40 meters away. After eating, appellant cut the hair of a supervisor in LADECO, one Orlino Ocasio, who in turn cut appellant's hair. Appellant returned to his work at 1:00 P.M. He claimed that he did not see Rosalyn in the premises of LADECO from 12:00 noon to 1:00 o'clock in the afternoon of that day.

In support of appellant's story, Ocasio[11] testified that appellant cut his hair inside a farmhouse of LADECO at around 12:00 noon on November 13, 1992. Thereafter, he trimmed appellant's hair at the sides. It was already 12:30 P.M. when they separated in order to go to their respective work assignments.

Restituto Gementiza,[12] a son of appellant and a laborer at LADECO, declared that he saw Rosalyn taking her lunch at the same table with the workers and himself inside the packing house of LADECO from 11:00 A.M. to 12:00 noon. He explained that the company prohibits the employees from eating their lunch outside of the packing house because of the presence of chemicals there. After eating, this witness played dama and saw appellant having a haircut in the makeshift hut outside. Contrary, however, to the testimonies of the earlier defense witnesses, Restituto said that it was Ocasio who first clipped appellant's hair and not the other way around.

In this appeal, appellant assigns two errors of the trial court in his brief.[13] Firstly, appellant blames the lower court for convicting him notwithstanding the inadequacy of the prosecution's evidence linking him to the crime. Secondly, he contends that the lower court miserably failed to appreciate the delay in the filing of the complaint, as well as the place and time of the commission of the crime, against the People's position.

On his first assignment of error, appellant insists that Rosalyn should not have been believed by the trial court because her testimony was uncorroborated. The testimonies provided by her brother and mother in court are hearsay evidence which cannot competently support her story of forcible defilement. Not having witnessed the commission of the rape, Aniceto and Gregoria are in no position to competently testify on the facts of the crime. Their declarations on the particulars of the offense charged are, therefore, hearsay and inadmissible.

However, the inadmissibility of their statements as to the circumstances surrounding the rape will not in any way cleanse appellant of culpability. Nothing in the assailed judgment shows that the lower court relied upon the testimonies of the two witnesses in its conclusion on the perpetration of rape against Rosalyn. A perusal of the decision discloses that the trial court utilized the testimonies of Aniceto and Gregoria merely to arrive at the fact that Rosalyn indeed reported the rape to these two prosecution witnesses.

Indeed, even disregarding the testimonies of Aniceto and Gregoria, ample proof exists to prove beyond reasonable doubt the criminal liability of appellant. The first-hand account of Rosalyn, standing on its own, is more than sufficient to convict appellant.

It is firmly settled that, in rape cases, the lone testimony of the victim, if credible and free from serious and material contradictions, can be made the basis of accused's prosecution and conviction.[14] This is so because of the fact that usually only the participants can testify to its occurrence.[15] Also, except when expressly mandated, the law does not require that the testimony of a lone witness must be corroborated. If credible and positive, such

testimony is sufficient to convict.[16]

Since the issue in rape cases usually boils down to the credibility of the victim,[17] we now examine the credibility of Rosalyn as determined and favorably appreciated by the court below. From the transcript of stenographic notes, we can readily see that the trial court did not err, since Rosalyn gave a candid, plain and straightforward account of her harrowing experience in a manner reflective of honest and unrehearsed testimony.

The fact that Rosalyn inadvertently stated that November 13, 1992 was a Tuesday, when in truth it was a Friday, will not destroy her credibility as appellant would posit. As we have repeatedly held, minor errors in the testimony of the rape victim tend to buttress, rather than weaken, her credibility since thereby one could hardly doubt that her testimony was not contrived. A rape victim cannot be expected to mechanically keep in mind and then give an accurate account of the traumatic and horrifying experience she had undergone.[18] Minor lapses in a witness's testimony should be expected when a person recounts details of an experience so humiliating and so painful to recall as rape.[19] Besides, the precise day when the rape happened is not an essential element of the offense.

Appellant also adverts to the supposed inconsistent declarations of Rosalyn in court that the rape happened at the banana plantation, whereas she stated in her affidavit that the crime was committed in the makeshift hut. Parenthetically, said document was never offered in evidence by either party. Withal, we see no incompatibility in such statements. The makeshift hut is within the banana plantation of LADECO as can be gleaned from the further questioning of Rosalyn in court.[20] Rosalyn was dwelling on the specifics when she stated in her affidavit that the rape took place in the hut.

In the course of our review of the records, we could not help but notice the surprise of appellant over the filing of the case against him. Since appellant did not know the family of the victim prior to the institution of the case and did not have any discordant relationship with the parents of Rosalyn, he could not give any reason in court why he was being accused by the family of Rosalyn.[21] These facts persuade us all the more to believe the uncorroborated testimony of Rosalyn.

It is elemental that where there is no showing that complainant was impelled by any improper motive in making the accusation against the accused, her complaint is entitled to full faith and credit.[22] Hence, when appellant could not proffer any explanation as to why complainant had accused him, such fact logically proves that no improper motive impelled the latter to charge the former of such a serious offense as rape.[23]

Appellant also puts in issue in his brief the failure of the prosecution to prove the allegation in the complaint that Rosalyn is a retardate. Whether or not Rosalyn was confirmed to be a retardate, however, appellant's liability for rape under Article 335 of the Revised Penal Code has been clearly established by the prosecution.

Having carnal knowledge of a woman by using force or intimidation is among the three principal modes of commission of the crime. Since the elements of force and intimidation were also alleged in the complaint, the conviction of appellant under the first circumstance of Article 335 becomes a matter of course after these elements were duly proved during trial. The conclusive substantiation of Rosalyn's mental retardation, therefore, is no longer necessary and cannot in any way affect the liability of appellant as already ascertained.

The trial court, appellant alleges, also erred in ignoring the fact that he did not take flight as proof of his innocence, arguing that he could have easily gone into hiding in the mountains. However, although it is settled that the flight of an accused is competent evidence against him as tending to establish his guilt, there is no law or principle holding that non-flight per se is proof, let alone conclusive proof, of innocence. Much like the defense of alibi, the defense of non-flight cannot prevail against the weight of positive identification of the accused.[24]

After the trial court had rejected appellant's claim that the tardy report of Rosalyn to her family regarding the

rape is a sign of a fabricated charge, appellant now wants us to consider the proposition that the belated filing of the complaint on March 5, 1993* indicates that no rape was committed. The late filing of the complaint does not and cannot yield the conclusion that Rosalyn was not sexually molested and that the charge against appellant is untrue and baseless.

Firstly, this argument of appellant does not have any foundation in law or principle. Secondly, only four months had elapsed from the day of the sexual assault up to the filing of the criminal complaint of March 12, 1993. Counsel for appellant should know that parties in a litigation usually build up their case before they go to court for redress. The family of the offended party must have marshalled their documentary evidence and sought the commitments of witnesses prior to the filing of the complaint. Then, there is the preliminary investigation required under the Rules of Court. All of these readily explain the seeming delay in the filing of the complaint in court.

We dismiss as being unmeritorious the assertion of appellant that, in tempore et loco, it was impossible for him to commit the crime as presented by the prosecution. For, through the numerous rape cases brought before it, this Court has been persuaded to safely conclude that lust is no respecter of time and place.[25]

It has been emphasized that rape can be committed in many different places, including places which to many would appear to be unlikely and high-risk venues for sexual advances.[26] Thus, rape has been committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[27]

The fact, therefore, that the rape was committed in a compound where there were 35 other employees who could easily see any event transpiring inside the makeshift hut from the packing house does not in any way refute the lower court's conclusion. We can only infer from such circumstance that no employee noticed the rape at the time of its commission or if someone did, he did not care or dare to intervene. Whatever may be the reason why appellant's wanton act went unhampered, the commission of the crime in such place and time definitely showed appellant's bestial lechery as he did not bother to wait and release his sexual urge in a more secluded place.

In addition to his assignment of errors, appellant questions the validity of Judge Libre's judgment on the ground that the judge was in no position to render a judicious decision, he not having personally heard the testimonies of the witnesses.

The circumstance alone that the judge who wrote the decision had not heard the evidence in chief of both prosecution and defense will not taint his decision. After all, he had the full record before him, including the transcript of stenographic notes which he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is a clear showing of a grave abuse of discretion in the factual findings reached by him.[28]

A reading of the decision penned by Judge Libre shows that it was correctly based on and drawn from the evidence presented during the trial. The evidence for both parties were carefully studied, objectively analyzed, and thereafter completely considered in their entirety and significance in order to reach the indubitable conclusion of appellant's culpability. This Court, on an overall review of the evidence on record, is satisfied with the circumspection of the trial judge and the merits of his findings and conclusions.

Appellee, through the Solicitor General, avers that since the offended party in the present case was only 15 years of age at the time of the rape, the award of damages in her favor must be increased to P50,000.00 in accordance with our ruling in *People vs. Joya, et al.*[29] We see no reason why this prayer should not be granted.

As we declared in the aforesaid case --

Under prevailing jurisprudential policy, the accused in rape cases is normally ordered to indemnify the offended party in the amount of P30,000.00 for moral damages. Under certain circumstances, however, this court has awarded moral damages of P50,000.00, such as in rape of young girls with ages ranging from thirteen to nineteen years, rape of a mental retardate, forcible abduction with rape, and statutory rape. Accordingly, considering the age of herein complainant at the time of the commission of what actually were multiple rapes, and the grave consequences of such heinous offenses on her present plight and future prospects, the Court deems it necessary to increase the award of damages to P50,000.00.

However, we find it opportune to clarify in this opinion the kind or nature of damages to which that amount of P50,000.00 pertains.

It will be observed that the Court in *Joya* made the award of P50,000.00 as and for moral damages. Other cases also proclaim that moral damages should be awarded in the amount of P50,000.00. In *People vs. Sabellina*,^[30] it was held: "But under certain circumstances, this Court has awarded moral damages of P50,000.00 such as in rape of young girls with ages ranging from thirteen (13) to nineteen (19) years." Then, in *People vs. Laray*,^[31] the Court ruled: "Latest jurisprudence awards to the victim in a rape case the minimum amount of P50,000.00 as moral damages."

A scrutiny of the three decisions above reveals that no injuries or sufferings listed in Article 2217 of the Civil Code, which would authorize the award of moral damages, were proven and found by either the trial court or this Court when the aforestated awards of moral damages were made or increased therein.

On this point, we find more accurate the categorization in the recent ruling of this Court in *People vs. Caballes, et al.*^[32] The decision there clarified existing jurisprudence on the grant of various damages in the crime of rape, which the Court held to be likewise applicable to the crimes of murder, homicide and parricide, thus:

Civil indemnity in the amount of P50,000.00 (consistent with prevailing jurisprudence) is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of any of the aforementioned crimes. Moral and exemplary damages may be separately granted in addition to indemnity. Moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Article 2217 of the Civil Code, while exemplary damages can be awarded if the crime was committed with one or more aggravating circumstances duly proven. The amounts thereof shall be at the discretion of the courts.

Obviously, then, the Court in the three decisions earlier cited actually intended the sum of P50,000.00 awarded there as a civil indemnity. Otherwise, the Court should have made an award for civil indemnity in addition to the moral damages referred to therein. Furthermore, to give a definitive figure for the amount of moral damages to be awarded could be so construed as to deny the courts the discretion to determine for themselves in other or subsequent cases the amount of moral damages justly due. Such a dictum would then do away with the discretion accorded by the Civil Code to the courts to assess the amount of moral damages to be granted.^[33]

There is then some danger of misinterpretation in the declaration that jurisprudence awards an amount of P50,000.00 as moral damages to rape victims. Such pronouncement implies that an award of civil indemnity can be discarded as long as an award of P50,000.00 for moral damages is made. But, this cannot be so since under present case law, the award of P50,000.00 for civil indemnity is mandatory upon the finding of the fact of rape. Moral damages, vis-a-vis compensatory damages or civil indemnity, are different from each other and should thus be awarded separately from each other.

On another aspect, we reject the People's submission that a modification of the penalty imposed by the lower court is in order. While citing a resolution of this Court^[34] declaring that the penalty of reclusion perpetua under Republic Act No. 7659 is still indivisible, the Solicitor General asks at the same time that the penalty of reclusion

perpetua meted to appellant be changed to 25 years of reclusion perpetua.

Whatever caused this confusion in the stand of appellee, we reiterate that the passage of Republic Act No. 7659 did not transform the indivisible nature of reclusion perpetua into a divisible one because of its “defined duration.” Although Section 17 of Republic Act No. 7659 has fixed the duration of reclusion perpetua from 20 years and 1 day to 40 years, there was no clear legislative intent to alter its original classification as an indivisible penalty. As has heretofore been the nature of this penalty, reclusion perpetua remains as an indivisible penalty without any minimum, medium or maximum period.[35] Republic Act No. 7659 simply restated existing jurisprudence when it specified the duration of reclusion perpetua at 20 years and 1 day to 40 years.[36]

WHEREFORE, on all the foregoing premises, the challenged decision of the court a quo is hereby AFFIRMED, with the MODIFICATION that the indemnity awarded to Rosalyn Hinampas in the concept of compensatory damages is increased to P50,000.00.

SO ORDERED.

Puno, Mendoza, and Martinez, JJ., concur.

[1] Original Record, 1.

[2] Ibid., 19.

[3] Judge Arcangel was transferred to Makati and last presided at the hearing of this case on August 10, 1993.

[4] Original Record, 102-116.

[5] TSN, June 14, 1993, 8-25.

[6] Ibid., June 14, 1993, 2-7.

[7] Ibid., August 10, 1993, 3-22.

[8] Ibid., June 11, 1993, 1-7; Exhibit A, Original Record, 5.

[9] Ibid., June 17, 1993, 3-12; Exhibit B, Original Record, 46.

[10] Ibid., February 28, 1994, 2-23.

[11] Ibid., April 18, 1994, 2-7.

[12] Ibid., July 12, 1994, 1-19.

[13] Rollo, 40-49.

[14] *People vs. Rivera, et al.*, G.R. Nos. 88298-99, March 1, 1995, 242 SCRA 26; *People vs. Plaza*, G.R. No. 87235, March 27, 1995, 242 SCRA 724; *People vs. Gapasan*, G.R. No. 110812, March 29, 1995, 243 SCRA 53; *People vs. Dado, et al.*, G.R. No. 87775, June 1, 1995, 244 SCRA 655.

[15] *People vs. Ching*, G.R. No. 103800, January 19, 1995, 240 SCRA 267.

[16] *People vs. Panganiban, et al.*, G.R. No. 97969, February 6, 1995, 241 SCRA 91.

[17] *People vs. Jaca*, G.R. No. 104628, January 18, 1994, 229 SCRA 332.

[18] *People vs. Ching*, *supra*, Fn. 15.

- [19] People vs. Dado, *supra*, Fn. 14.
- [20] TSN, June 14, 1993, 16-18.
- [21] *Ibid.*, February 29, 1994, 13, 15, 19, 21.
- [22] People vs. Ramos, G.R. No. 115656, June 27, 1995, 245 SCRA 405.
- [23] People vs. Saguban, G.R. No. 96287, April 25, 1994, 231 SCRA 744.
- [24] People vs. Parica, et al., G.R. No. 80611, April 21, 1995, 243 SCRA 557.
- [*] Actually, it is March 12, 1993.
- [25] People vs. Cura, G.R. No. 112529, January 18, 1995, 240 SCRA 234.
- [26] People vs. Quinevista, G.R. No. 110808, May 31, 1995, 244 SCRA 586; People vs. Dado, *supra*, Fn. 14.
- [27] People vs. Cura, *ante*.
- [28] People vs. Fulinaria, et al., G.R. No. 88326, August 3, 1995, 247 SCRA 28.
- [29] G.R. No. 79090, October 1, 1993, 227 SCRA 9.
- [30] G.R. Nos. 93514-15, December 1, 1994, 238 SCRA 492.
- [31] G.R. No. 101809, February 20, 1996, 253 SCRA 654.
- [32] G.R. Nos. 102723-24, June 19, 1997.
- [33] Article 2216.
- [34] People vs. Cua, G.R. No. 82292, March 1, 1995; Appellee's Brief, 15-16; Rollo, 93-94.
- [35] People vs. Magallano, et al., G.R. No. 114872, January 16, 1997.
- [36] People vs. Gatward, et al., G.R. Nos. 119772-73, February 7, 1997.

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