

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS BATION Y ALAMAG, ACCUSED-APPELLANT.

G.R. No. 123160. March 25, 1999

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PER CURIAM:

This is another despicable case of incestuous rape where the supreme penalty of death is imposed in accordance with Republic Act 7659. Considering that this means taking the life of a person, it is rather incumbent upon this Court to make sure that an, error-free judgment is rendered. Thus, for automatic review by this Court is the decision of the Regional Trial Court, 10th Judicial Region, Branch 14, Oroquieta City, rendered on October 23, 1993, the dispositive portion of which reads:

WHEREFORE, premises considered, this court finds accused Carlos Bation y Alamag guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the revised penal code, as amended, particularly by Republic Act 7659, and without considering any mitigating and/or aggravating circumstances, it being a statutory provision, accused Carlos Bation y Alamag is hereby sentenced to DEATH. He is further ordered to indemnify the victim, Rosemarie Bation, the sum of P50,000.00 and to pay the costs.

The information charging Carlos Bation y Alamag for raping his 13-year old daughter reads as follows:

That on or about August 18, 1994, at about 10:00 o'clock in the evening, more or less in barangay Corrales, municipality of Jimenez, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his own daughter Rosemarie Bation, 13 years of age against her will.

CONTRARY TO LAW, with the presence of attendant circumstance of age of the private offended party Rosemarie L. Bation, being 13 years old and below 18 and relationship of the said private offended party with the accused Carlos Bation y Alamag, the latter being the father of the former.

Oroquieta City, Philippines, December 2, 1994.

Upon arraignment, accused-appellant pleaded not guilty.

Rosemarie Bation is the eldest of three children of Carlos Bation and Claudia Lapinig. Her parents lived in Carmen, Jimenez, Misamis Occidental, while she stayed with her grandmother Maria Lapinig at Taraka, Jimenez, Misamis Occidental where she was attending school, She was a second year high school student at St. John the Baptist.

In the evening of August 18, 1994, her father went to visit her. They talked about her examinations which she was having during that time in school.

At about 10:00 p.m., Carlos Bation invited her to go with him to the house of one Lourdes Cabalog residing in Barangay Corrales, Jimenez, Misamis Occidental which was just about one (1) kilometer away to get some clothes. Rosemarie wanted to bring along her sister to accompany her but Carlos objected.[1]

Upon reaching the house of Lourdes Cabalog, only Carlos entered the house while Rosemarie waited outside. After Carlos finished with his alleged errand, they both headed back for home. While walking, Carlos suddenly stopped by at a Marang tree and called Rosemarie to come near him. His father was acting so strangely that she suddenly got scared, So instead of obeying, Rosemarie ran away from him. Carlos Bation ran after her and overtook her. Carlos held her tightly and brought her to a banana hill. Rosemarie struggled to free herself but to no avail. Her father who was definitely bigger than her threatened to kill her. At the banana hill, Carlos Bation forced Rosemarie to lie down on a pile of palay husk. Carlos Bation raised her skirt, opened the buttons of her blouse and removed his short pants. After pulling down Rosemarie's panties to her knees, Carlos Bation spread the thighs of her daughter and placed himself on top of her. Then he did a push and pull movement. Rosemarie felt pain in her vagina. The push and pull movements of Carlos Bation lasted for about 5 minutes but he stayed on top of her for about 10 to 20 minutes. After the act, Carlos Bation stood up. Rosemarie Bation put on her dress. Thereafter, both of them walked back to the house of Rosemarie's grandmother at Taraka, Jimenez, Misamis Occidental, where Carlos Bation also slept for the night.[2]

The next morning, August 19, 1996, Rosemarie Bation attended her classes and took the examinations, She was, however, so disturbed about the incident that she was not able to concentrate on her examinations.

On August 20, 1994, at about 7:00 p.m. Rosemarie's mother came to visit her. Rosemarie did not say anything about what happened to her but only mentioned that she was brought by her father to Corrales, Jimenez in the evening of August 18, 1994.

It was only the next morning that Rosemarie mustered enough courage to tell her mother that she was molested by her father. Enraged, Claudia with Rosemarie tagging along, followed her husband in Taboo, Jimenez where he was working and told him to go home at that instance. To avoid being confronted by his wife, Carlos went to Palilan, Jimenez, Misamis Occidental, instead.

Rosemarie and her mother then proceeded to Taraka and asked for the help of her grandfather, Guillermo Bation. They all went to the municipal hall where Rosemarie and Claudia filed a complaint against Carlos Bation,[3] Carlos Bation was eventually arrested and indicted for the crime of rape.

The evidence for the prosecution, in the main, consisted in the testimonies of Rosemarie Bation, Claudia Lapinig and Dra. Carolyn Q. Galleros, the medical officer who examined Rosemarie Bation.

For the defense, only the accused-appellant testified on his own behalf. He vehemently denied having raped her daughter. He asserted that ill the evening of August 18, 1994, he was in Mialen, Jimenez, Misamis Occidental in the house of Dario Becoy. The house of Dario Becoy where he stayed on the night of August 18, 1994 is about 12 kilometers away from where his daughter was staying. He and Dario Becoy reached the latter's house at about 4:00 in the afternoon after they towed bamboos in the river. He slept at 8:00 that evening and woke up at 3:00 a.m. He did not wake up at 10:00 p.m. and had not been to the house of Rosemarie.[4] He could not possibly rape Rosemarie Bation since she is his own blood. He loved his wife and daughter very much.[5]

Carlos Bation further testified that his wife left their residence in 1990 because she was jealous of his sister, auntie and even their daughter. They reconciled in 1991 and since then, they had lived together in Carmen, Jimenez, Misamis Occidental. He would just visit his daughter in Jimenez to give her money.[6] He added that his daughter has a boyfriend in Jimenez, Misamis Occidental but could not remember his name.[7]

No other witness or evidence was presented to corroborate the testimony of the accused.

On October 23, 1995, the trial court rendered the assailed decision.

The Public Attorney's Office (PAO) submitted with this Court the appellant's brief on behalf of the accused.

The Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force, in collaboration with the PAO, also filed a supplemental brief[8] in behalf of accused-appellant.

The lone assignment of error hinges on whether or not the accused-appellant is guilty beyond reasonable doubt of raping his own daughter.

The crime of rape is peculiar in that it is difficult to prove since usually there are no witnesses. It is only the two people involved - the accused and the complainant - who can testify as to the commission of the crime. It is the word of one against the other. While such accusation, though easily made, is hard to prove. it is even harder for the accused to defend himself. Thus, it is imperative to scrutinize the testimonies and the evidence altogether and see if the conviction of appellant can be sustained.

As always, it is the credibility of the witnesses that is put to test.

In the instant case, we find that the trial court did not commit any error in giving credence to the testimony of the victim which was direct and positive.

x x x

Q From the house of Lourdes Cabalog going to Taraka to the house of your grandmother Maria Lipinig, was there unusual incident that happened between your father and yourself?

A When we return?

Q Meaning to say from the house of Lourdes Cabalog when you were already going back to Taraka, was there unusual incident that happened?

A Yes.

Q Please tell us what transpired if any while you were going from the house of Lourdes Cabalog to the house of your grandmother in Taraka?

A When he stopped near the marang tree he told me to go near to him.

Q That marang tree, you are referring to a tree that bear fruit?

A Yes.

Q Why, have you seen a Marang fruit that evening?

A I cannot see but it bears fruit,

Q In other words, you are referring to that Marang tree that bears fruit?

A Yes.

Q Now, you stated that your father told you that you have to go near to him, after that, what happened next?

A When I went near to him I was scared because of his actuation which is quite different.

Q Now, did you actually go near to him as requested by him?

A I did not go near to him because I was afraid so, I ran away towards home.

Q Now, when you ran away towards home leaving your father, what happened next if any'?

A He ran after me.

Q Did he overtook (sic) you considering that he run after you?

A Yes.

Q What did he do upon overtaking you?

A He hold (sic) me tightly,

Q What- part of your body being held by your father Carlos Bation?

RECORD

The witness demonstrating by touching her shoulder demonstrating further that the right hand of her father was placed upon her shoulder while the left hand was placed on her waistline below, her arm.

Q While he was holding you, was he in front of you?

A He was at my side.

Q While your father was holding you, what was your reaction if any?

A I struggled to free from his hold.

Q Having struggled were you able to release yourself from the hold of your father?

A No, because he hold (sic) me strongly and tightly.

Q Who is bigger, your father or yourself?

A My father.

PROS. SARIGUMBA

We would like to make some observation that the accused is very much bigger that (sic) the daughter.

COURT

Noted.

Q Considering that you were not able to release from the hold of your father, what happened next if any?

A While he was holding me strongly and tightly he brought me to a banana hill.

Q Were you able to reach that banana hill?

A Yes.

Q When you reach (sic) to that banana hill what happened next, please tell us?

A He was still holding me and he forced me to lie, down.

x x x

Q What happened after that despite the fact that you struggled very hard to release from the hold of your father?

A I cannot release from her hold and he told me that he will kill me.

Q When your father told you that he was going to kill you, what was your reaction if any?

A Then I cried because he would kill me.

x x x

Q After that what happened if any?

A He brought me to the palay husk.

Q By what way did he brought (sic) you to the palay husk?

A He was holding me tightly with his arm between my shoulder and he slumped me down to the ground.

Q You mean to say that you were made to lye (sic) down to the palay husk?

A Yes.

x x x

Q What happened next if any after you were pushed on the palay husk according to you?

A He kneeled between my two thigh.

Q Who was kneeling you?

A My father.

Q While in this position wherein your father was kneeling between your two thighs, what happened next.'

A He raised up my skirt,

Q Now, after your skirt was raised up by the accused your very own father Carlos Bation, what did he do next if any please tell us?

A He opened the buttons of my blouse.

Q Then after the buttons of your blouse was opened by the accused in this case, what happened next?

A He removed his short pants.

Q Now, what have you seen when he removed his short pant, was he totally naked?

A Yes.

Q How about you, after your father removed his pant what happened next?

A He removed my panty.

Q How did your father remove your panty?

A He removed it until my knees.

Q So, when your panty was already on your knees, which according to you removed by your father the accused in this case, what happened next?

A He placed on top of me.

Q Meaning to say your father, the accused in this case?

A Yes.

Q While your father was on top of you according to you, what did your father do next when he was already on top of you?

A He spread (sic) my two thigh.

Q When your father the accused in this case spreaded your two thigh, your panty was still on your knees or no more?

A It was already removed.

Q Now, after your panty was removed by the accused what did he do next if any?

A He was doing a push and pull movement.

Q Did you feel anything when he was in the act of doing a push and pull movement particularly your vagina?

A Yes.

Q What did you notice?

A That I felt pain on my vagina.

Q Now, what did you think while you feel pain while your father was in the act of doing a push and pull movement on top of you?

A I imagine (sic) that I was not her own daughter.

Q Was the pain you feel mild or more or less painful?

A It was very painful.

Q Now, from the moment that your father the accused in this case Carlos Bation was making the act of push and pull movement being a student in high school, can you estimate how many minutes was that?

A That was about four to five minutes.

Q Did your father actually left (sic) you after having performed the act of push and pull movement on top of you?

A, No.

Q Where did he go?

A He was still there.

Q My question is from the time that your father was on top of you for the first time until the time your father left you or came down from on top of you, how many minutes was that?

A About 10 to 20 minutes.

Q Did your father finish his act of push and pull movement on top of you?

A Yes.

Q After finishing his act of push and pull movement on top of you, what happened next if any?

A He stood up.

Q How about you when your father stood up, what did you do if any?

A I also stood up.

Q Now, after standing up, where did you go next if any?

A I put on my dress and we went to the house of my grandmother in Taraka.[9]

x x x

For his defense, the accused-appellant invokes alibi, He denies having seen his daughter that evening of August 18, 1994 claiming that he was there in the house of Dario Becoy where he stayed during the night. He urges us not to look with disfavor this defense since it was allegedly physically impossible for him to be at the crime scene when the incident happened.

It is true that alibi is not always false and without merit. It could serve as basis for an acquittal if it could really be shown by clear and convincing evidence that it was indeed physically impossible for him to be at the crime scene at that time.[10] To put it in another way, the accused must prove not only that he was not at the scene of the crime when it happened but also that it was impossible for him to be there at the time of the commission of the offense.[11] However, alibi is a defense that can easily be fabricated and for it to prosper, the requisites of time and place must be strictly met.[12] In this regard, accused-appellant failed to show or prove that he was in Mialen at that time. Apart from barefaced testimony, no other proofs or witnesses were presented to support such claim. It was easy to give just a semblance of truth to his assertion as all what was needed was to present Dario Becoy to corroborate his testimony. Unfortunately, appellant could not even get Becoy to testify in his favor. In the face of a positive identification of the accused, the defense of alibi must fail.

The accused-appellant would also want us to believe that his daughter has a boyfriend who would have likely engaged her- into committing the sexual act which could have caused the lacerations in the hymen. This is allegedly buttressed by the testimony of the medical officer who upon cross-examination averred that lacerations in the victim's hymen could have possibly been three days old or even a week old.

x x x

ATTY. MAGSAYAO (cross)

With the kind permission of this Honorable Court.

COURT

Proceed.

Q Doctor, is it true that you examine (sic) the hymen of the victim?

A Yes, sir.

Q Did you actually conduct the examination?

A Yes, sir.

Q Now your finding is complete hymenal laceration. Was this new laceration or previous laceration'?

A It lapse (sic) 3 days, Held laceration.

ATTY. MAGSAYO

Q Is this laceration committed 1 week ago?

A Possibly.

Q After the hymenal laceration, did you find any injury?

A No injury.

No more question.[13]

x x x

Again, this defense is unavailing as this is merely a possibility or conjecture that was never substantiated. Aside from the fact that no evidence or testimony was ever, presented to support such claim, any prior sexual intercourse which could have resulted in hymenal laceration is irrelevant, for virginity is not an element of rape,[14] The absence of fresh lacerations in the complainant's hymen does not preclude the finding of rape.[15] Neither does the lack of injuries to complainant other than those found by the examining physician belie the finding of rape.

The defense talks of the possibility that Rosemarie's boyfriend could have a sexual relationship with her. This is entirely absurd. It was not even established that she had a boyfriend except accused-appellant's sweeping allegations:

x x x

Q Do you know if, our daughter has also a boyfriend in Jimenez?

A Yes.

x x x

Q Do you know personally her boyfriend?

A I forgot the name.[16]

x x x

Accused-appellant should have elaborated a little more about her alleged boyfriend to convince the trial court that she had one whose name he could not, strangely, even remember. Moreover, we find no motive why the victim should testify falsely against her father or falsely implicate him in the commission of such a dastardly act. Accused-appellant himself admitted that prior to the incident, on August 18, 1994, he had good relations with both her wife and daughter.[17] The logical conclusion is that no such improper motive exists and so the complainant's testimony should be given full faith and credence.[18]

The direct testimony of the victim leaves us no doubt that her father, raped her. And in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitute for force and intimidation required in rape.[19]

In a vain attempt to escape liability, counsel for the accused-appellant puts forth the assertion that the accused-appellant only made a push and pull movement while staying on top of the victim. There was no sufficient proof of penetration of the vagina, accused-appellant argues, thus, there was no consummation of rape; he should, therefore, be charged for acts of lasciviousness only and not rape.

We have ruled in the past that complete penetration or rupture of the hymen or even the absence of spermatozoa does not negate the commission of rape.[20] What is essential is that there be penetration of the female organ no matter how slight.[21] Complete penetration of the female organ is not necessary to constitute rape.[22] The mere penetration of the penis or by entry thereof into the labia meiora of the female organ, is sufficient to warrant a conviction of rape.[23] Nonetheless, the testimony of the victim categorically reveals that there was penetration.

x x x

Q Now the fact that your father had expressed his carnal desire, you acceded to his desire?

A No.

Q And you did not struggle (sic) physically to protect your virginity and dignity as a woman?

A I tried but he is much stronger than me.

Q At the time that he inserted his organ to your vagina, how many minutes was it was it 10 minutes of (sic) 5 minutes?

A That around 10 minutes or 20 minutes.

Q How long did he let his organ penetrate into your vagina?

A Around five minutes.

Q What happened when your father had successfully penetrated his organ into your vagina?

A I felt pain.

Q That was the only thing that you felt at that time?

A Yes, I felt pain.[24][2]

x x x

The fact of penetration is corroborated by the medical examination which revealed that there were complete hymenal lacerations at 8:00, 4:00 and 6:00 positions. What is also clear is that accused-appellant after overpowering the victim, brought her to a pile of rice husks undressed himself and then the victim as well, pulled down the victim's panties, placed himself on top of her, and made a push and pull movement. The victim later experienced pain in her vagina. Accused-appellant's counsel rationalizes that the pain experienced by the victim was caused by the "impact of the pubic symphysis (bone above the sex organ) of the appellant against the pubic symphysis of the private complainant or by the friction caused by the push and pull movement" and not by the penetration of the penis into the vagina.[25] This argument is strained. When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[26]

When a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[27] It is rather inconceivable that the woman should concoct a story that she was raped by her father when family honor is at stake, not to mention that this would mean sending her father to jail. It is also hard to believe that a mother would sacrifice her own daughter's honor to tell a story of defloration, allow the examination of her- private parts, and thereafter present her to be the subject of public trial, if she was not motivated by an honest desire to have the culprit punished.[28]

We take note of the valiant efforts of counsels in their attempt to save accused-appellant from the harsh application of Republic Act 7659. But we have no alternative but to apply the law. Section 11 of Republic Act No. 7659 provides that the death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances. It reads:

SEC. 11. Article 335 of the same Code (Revised Penal Code, as amended) is hereby amended to read 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:

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.

"Whenever the crime of rape is committed with the use of 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:

"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 the parent of the victim.

"2. When the victim is under the custody of the police or military authorities.

"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.

"4. When the victim is a religious or a child below seven (7) years old,

"5. When the offender know that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation." (underscoring supplied).

Finally, in line with recent jurisprudence where the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the civil indemnity to be awarded to the victim is increased to P75,000.00.[29] We also find it proper to award P50,000.00 as moral damages although proof of such entitlement was not presented.[30] The records, nevertheless, disclose that the victim suffered wounded feelings, mental anguish, serious anxiety and social humiliation.[31]

Four members of the Court maintain their position that Republic Act 7659, insofar as it prescribes the death penalty, is unconstitutional; but they submit to the ruling of the Court by a majority vote that the law is constitutional and that the death penalty should be imposed accordingly.

WHEREFORE, the Judgment of the trial court in Criminal Case No. 533 imposing the death penalty on accused-appellant Carlos Bation y Alamag is hereby AFFIRMED, with the MODIFICATION that accused-appellant should indemnify the victim in the amount of P75,000.00 and P50,000.00 as moral damages.

In accordance with Section 25 of Republic Act No. 7659 amending Article 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Vitug, and Panganiban, JJ., On leave when case was deliberated upon..

[1] TSN, January 18, 1995, p. 5; Records, p. 44.

[2] TSN, January 18, 1995, pp. 7-13.

[3] TSN, January 19, 1995, pp. 14-17.

[4] TSN, June 20, 1995, p. 3.

[5] Id., at p. 4.

[6] TSN, June 20, 1995, p. 4.

[7] Id., at 5.

[8] Rollo, pp. 63-72, 82.

[9] Tsn, January 18, 1995, pp. 7-13.

[10] People v. Villapando, 178 SCRA 341 (1989); People v. Manzanares, 177 SCRA 427 (1989).

[11] People v. Castaneda, 252 SCRA 341 (1996).

[12] People v. Abaya, 170 SCRA 691 (1989).

[13] TSN, January 17, 1995, pp. 17-18.

[14] People v. Delovino, 247 SCRA 637 (1995).

[15] People v. Tabago, 167 SCRA 65 (1988).

[16] TSN, June 20, 1995, pp. 4-5.

[17] Id., at 4.

[18] People v. Sotto, 275 SCRA 191 (1997).

[19] People v. Casil, 241 SCRA 285 (1995).

[20] People v. Gabris, 258 SCRA 663 (1996).

[21] People v. Andan, 269 SCRA 95 (1997); People v. Felix, 130 SCRA 456 (1984).

[22] People v. Soan, 243 SCRA 627 (1995).

[23] People v. Sanchez, 250 SCRA 14 (1995).

[24] SN, January 19, 1995, pp. 9-10.

[25] Rollo, p. 198.

[26] People v. Oarga, 254 SCRA 90 (1996).

[27] People v. Tismo, 204 SCRA 535 (1991).

[28] *People v. Erardo*, 127 SCRA 250 (1984); *People v. Tabao*, 240 SCRA 758 (1995).

[29] *People v. Esteban Victor y Penis*, G.R. No. 127903, July 9, 1998.

[30] *People v. Prades*, G.R. NO. 127569, July 30, 1998; *People v. Ilao*, G.R. No. 129529, September 29, 1998.

[31] See TSN, January 18, 1995, p. 14.

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