

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO GABIANA Y CARUBAS, ACCUSED-APPELLANT.

G.R. No. 123543. August 23, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

For automatic review is the Decision[1] of Branch 33, Regional Trial Court of Laguna, in Criminal Case No. S-1797, which imposed the supreme penalty of death on appellant Pedro Gabiana y Carubas for the crime of rape; disposing thus:

"WHEREFORE, premises considered, judgment is hereby rendered, finding accused PEDRO GABIANA y CARUBAS Guilty beyond reasonable doubt of the crime of 'RAPE' as charged, and hereby sentences accused to suffer the extreme penalty of 'DEATH'. To pay the offended party the sum of P50,000.00 for moral damages, and to pay the cost.

SO ORDERED."[2]

Filed on October 18, 1994 by Assistant Provincial Prosecutor Rodrigo B. Zayenis, the information indicting appellant, alleges:

"That on or about 7:00 o'clock in the evening of September 12, 1994 at Sitio Quinale, Barangay Burgos, Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Rosemarie C. Argosino a ten (10) year old girl, against her will and consent and to her damage and prejudice.

CONTRARY TO LAW."[3]

With the appellant assisted by Atty. Benjamin G. Golla, pleading not guilty upon arraignment on November 28, 1994,[4] trial ensued with the prosecution presenting Dra. Eleanor V. Mane, Jocelyn R. Reformado, Isagani Argosina, Isabel Argosino and the private complainant herself, as witnesses.

Roy Gabiana, Edger Artula and the appellant testified for the defense.

Synthesized by the Solicitor General in the Appellee's Brief, the facts and circumstances complained of are as follows:

"Appellant Pedro Gabiana and Rosalia dela Cruz are live-in partners. Rosemarie Argosino is the eldest of the three (3) children Rosalia dela Cruz has with her previous live-in partner, Isagani Argosino.

On September 12, 1994, about 7 o'clock in the evening, in Sitio Quinale, Barangay Burgos, Siniloan, Laguna, appellant carried Rosemarie, then 10 years of age, up their 2-storey house and brought her to a corner. There, he undressed her, after which, he removed his pants. He then forced her to lie on the floor, placed himself on top of her and inserted his penis into her vagina. She felt pain in her vagina and wanted to cry for help but

appellant covered her mouth with his hand (TSN , April 19, 1995, pp. 3-5; 9 and 13).

After about 3 to 5 minutes, appellant stood up and warned Rosemarie not to report the incident to her mother as he would kill her. He then left and went to sleep (TSN, April 19, 1995, p. 5).

Rosemarie who saw blood in her vagina went downstairs and washed herself, after which, she too went to sleep (TSN, April 15, 1995, p. 6).

The following day, September 13, 1994, Rosemarie went to school. However, after class, instead of going home, she and her younger sister, Isabel Argosino, then 9 years old, proceeded to their aunt Jocelyn Reformado at the latter's house in Barangay Taft, Pakil, Laguna. There, Isabel reported to their aunt Jocelyn Reformado what appellant did to Rosemarie (TSN, April 19, 1995, pp. 6-7).

In the morning of September 14, 1994, Jocelyn Reformado brought Rosemarie to the General Cailles Memorial Hospital where Rosemarie was examined by Dra. Eleanor V. Mane who found a sort of a swelling in the labia minora and complete and incomplete laceration of the hymen (Exhibit 'A').[5]

In the afternoon of the same day, Jocelyn Reformado accompanied Rosemarie to the police station of Siniloan, Laguna and there reported the matter. The police took the respective sworn statements of Jocelyn Reformado and Rosemarie Agrosino (Exhibits 'B' and 'D'), after which, Rosemarie, assisted by Jocelyn Reformado, affixed her signature on the complaint for rape against appellant. The complaint was eventually filed in court on September 15, 1994 (TSN, December 19, 1994, pp. 23-28)."[6]

Appellant interposed the defense of denial and alibi. He theorized that at around 7:00 o'clock in the evening of September 12, 1994, his children, including the complainant, his cousin Roy Gabiana, and himself had supper. Thereafter, he and his cousin went outside the house and conversed with his (appellant's) neighbor, Edgar Artula, until 10:00 p.m. when he (appellant) and Roy went home to sleep.[7]

Appellant further asseverated that the charge hurled against him is nothing but a malicious fabrication of the complainant's aunt, Jocelyn R. Reformado, whose ulterior motive is to take custody of the complainant and the latter's sister Isabel.[8]

On November 7, 1995, after finding the version of the prosecution credible, the trial court of origin handed down the judgment of conviction under review.

Appellant contends that:

I.

THE TRIAL COURT ERRED IN NOT CONSIDERING THE IRRECONCILABLE AND UNEXPLAINED CONTRADICTIONS BETWEEN THE PRIVATE COMPLAINANT'S STATEMENTS IN HER SWORN STATEMENT TO THE POLICE AND THOSE MADE SUBSEQUENTLY.

II.

THE TRIAL COURT FAILED TO CONSIDER THE IRRECONCILABLE AND UNEXPLAINED CONTRADICTIONS BETWEEN THE SWORN STATEMENT TO THE POLICE AND THE SUBSEQUENT TESTIMONY OF PRIVATE COMPLAINANT'S AUNT WHO CAUSED AND ASSISTED HER IN FILING THE COMPLAINT.

III.

THE LOWER COURT ERRED IN IGNORING THE MOTIVE OF PRIVATE COMPLAINANT'S AUNT IN CAUSING AND ASSISTING THE PRIVATE COMPLAINANT TO FILE THE RAPE CHARGE AGAINST ACCUSED-APPELLANT.

IV.

THE TRIAL COURT ERRED IN NOT IN GIVING CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF ALIBI.

V.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT AND FOR DISREGARDING SOME CRUCIAL DETAILS.

VI.

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON ACCUSED-APPELLANT AS A CONSEQUENCE OF THE ANTI-POOR, ANTI-UNINFLUENTIAL AND ANTI-SMALL FRY R.A. NO. 7659. THE PENALTY SHOULD BE SUSPENDED PENDING FURTHER EMPIRICAL STUDIES ON WHETHER ONLY THE WRETCHED AND THE POOR ARE SENT TO DEATH ROW IN AN IMPERMISSIBLE UNCONSTITUTIONAL MANNER.[9]

It has been held that:

"Countless of times, this Court has said that it will be guided in reviewing rape cases by the settled realities that an accusation for rape can be made with facility, and while the commission of the crime may not be easy to prove, it becomes even more difficult, however, for the person accused, although innocent, to disprove; that in view of the intrinsic nature of the crime of rape where only two persons normally are involved, the testimony of the complainant must always be scrutinized with great caution; and that the evidence for the prosecution must stand or fall on its own merits and should not be allowed to draw strength from the weakness of the evidence for the defense. In an appeal from a judgment of conviction in these rape cases, the issue boils down, almost invariably, to the credibility and story of the victim and just as often the Court is constrained to rely on the observations given by the trial court, with its vantage, not equally enjoyed by the appellate court, in the reception of testimony. It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect precisely for its chance to observe first hand the demeanor on the stand of the witness, a matter which is important in determining whether what has been said should be taken to be truth or falsehood." [10]

In the case under consideration, the trial court gave full faith and credit to the testimony of the private complainant, Rosemarie C. Argosino, ratiocinating thus:

"In the witness stand, private complainant, when narrating what accused had done to her, was in tears. Sometimes she could hardly answer questions asked on her. Seen on her face and deportant (sic) while testifying, the impact on herself of what accused had done to her. The trauma of rape still lingers in her mind. Her narration of the incident was straight forward and clear. She was telling the truth. Motive of private complainant in testifying against accused was not established." [11]

Verily, a meticulous scrutiny of the testimony of the private complainant indicates that the same could only come from a person who truly suffered the ordeal sued upon. It is simply improbable that private complainant, a girl of tender age, innocent and guileless, would brazenly impute a crime too serious as rape to a man she considered her father, if it was not really perpetrated.[12] Her disclosure that she has been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of the assault against her dignity, cannot be easily dismissed as mere concoction.[13]

The Court discerns no tenability in supposed ulterior motive on the part of private complainant's aunt. It is hard to believe that Jocelyn Reformado would accuse the appellant of a crime so grave, and in the process, put their

family, particularly her niece, to a lifetime stigma and humiliation just because of a desire to gain custody of the private complainant and the sister.[14]

So also, the alleged inconsistency theorized upon by appellant is barren of any sustainable basis. Whether it was the private complainant herself or her sister who first divulged subject rape to Jocelyn C. Reformado, does not discount the possibility that the other might have subsequently confided the same incident to Reformado. In fact, it was established during the trial that both the private complainant and her sister told the unfortunate happening to their aunt. As convincingly put by the Solicitor General, the discrepancies alluded to by appellant refer to minor and peripheral details; they strengthen rather than weaken the credibility of witnesses as they are badges of truth and indicia that the witnesses are unrehearsed.[15]

Then too, the Court agrees with the submission of the Solicitor General that the fact that private complainant stated in her affidavit[16] that her sister Isabel saw appellant kissing her, while on the witness stand she (complainant) declared that Isabel did not see appellant raping her, does not necessarily discredit the credibility of private complainant. Settled is the rule that affidavits are generally subordinated in importance to open Court declarations because they are oftentimes executed when an affiant's mental facilities are not in such a state as to afford her a fair opportunity of narrating in full the incident which transpired.[17] "Moreover, errorless testimonies cannot be expected, especially when a witness is recounting details of a harrowing experience and as long as the agglomeration of testimonies concurs on material points, the slight clashing statements dilute neither the witnesses' credibility nor the veracity of their testimonies. The test is whether the testimonies agree on essential facts and substantially corroborate a consistent and coherent whole." [18]

With respect to the alibi relied upon by appellant, the Court believes, and so holds, that the same cannot hold against the positive identification by the private complainant of the appellant as the culprit. Basic is the rule that alibi which is easy to concoct, cannot prevail over the positive identification by the witnesses. What is more, appellant utterly failed to prove that it was physically impossible for him to be at the scene of the crime at the approximate time of its commission. Consequently, his defense of alibi cannot prosper.[19]

Section 11 of Republic Act No. 7659, amending Art. 335 of the Revised Penal Code, 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.

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 the parent of the victim.

X.....X..... X"

In this case, although it was shown that the appellant is the common-law husband of the complainant's mother, the first special qualifying circumstance within the contemplation of paragraph 1, above quoted, was not alleged in the Information under which appellant was arraigned. In *People vs. Ambray*,^[20] the Court held that the failure to allege the fact of relationship between the appellant and the victim in the information for rape is fatal and consequently, bars conviction of its qualified form which is punishable by death. Qualifying circumstances must be properly pleaded in the indictment in order not to violate the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him. Accordingly, the death penalty imposed below on appellant should be reduced to reclusion perpetua.

Following prevailing jurisprudence, private complainant is entitled to civil indemnity ex delicto of Fifty Thousand (P50,000.00) Pesos, in addition to the moral damages awarded by the trial court.^[21]

WHEREFORE, the judgment rendered by Branch 33, Regional Trial Court of Laguna in Criminal Case No. S-1797 is AFFIRMED but with the modifications that appellant Pedro Gabiana y Carubas is hereby sentenced to suffer the penalty of reclusion perpetua and to pay private complainant Rosemarie C. Argosino civil indemnity of P50,000.00, and the additional sum of P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

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

[1] Penned by Judge Venancio M. Tarriela.

[2] Rollo, p. 149.

[3] Original Records (O.R.), p. 16.

[4] O.R. pp. 26-27.

[5] Exhibit "A", O.R. p. 4:

" xxx...xxx...xxx

- No external physical injuries

- Labia Minora - Hypemic, Edematous

- Hymen - Hyperemic Edematous, admits 1 finger with ease with laceration - Incomplete at 3 o' clock

- Complete at 6 o'clock

Positive - Tenderness on Internal Examination"

[6] Brief for the Appellee, Rollo, pp. 2-4.

[7] Direct examination of Pedro Gabiana, June 13, 1995, TSN, pp. 3-6.

[8] Ibid., p. 6.

[9] Rollo, pp. 100-101.

[10] *People vs. Lopez*, 302 SCRA 669, 675 citing: *People vs. Gabris*, 258 SCRA 663; *People vs. Atuel*, 261 SCRA 339.

[11] Rollo, p. 145.

[12] *People vs. Molas*, 286 SCRA 684, 691; citing: *People vs. Sagaral* 267 SCRA 671(1997)

[13] *Ibid.*, p. 690 citing: *People vs. Cabillan* 267 SCRA 258; *People vs. Gaban*, 262 SCRA 593; and *People vs. Derpo*, 168 SCRA 447.

[14] *People vs. Bersabe*, 289 SCRA 685, p. 697; citing: *People vs. Dela Cruz*, 251 SCRA 77; *People vs. Padre-e*, 249 SCRA 422; *People vs. Tabao*, 240 SCRA 758; *People vs. Ching*, 240 SCRA 267.

[15] Brief for the Appellee, p. 7; citing: *People vs. De las Pinas, et. al.*, 141 SCRA 379; and *People vs. Padilla*, 242 SCRA 734.

[16] O.R. p. 6.

[17] *Ibid.*, pp. 7-8; citing: *People vs. Soan*, 243 SCRA 627.

[18] *People vs. Gaspar et al.*, G.R. NO. 131479, November 19, 1999; citing: *Antonio vs. Court of Appeals*, 273 SCRA 328, 342-343; and *People vs. Realin*, G.R. No. 126051, January 21, 1999.

[19] *People vs. Enrique Cabingas and Reynaldo Dante Ellevera*, G.R. No. 79679, March 28, 2000; citing: *People vs. Batulan*, 253 SCRA 52, 64.

[20] 303 SCRA 697, p 707; citing: Sec. 14(2), Art. III, Constitution; *People vs. Garcia*, G.R. No. 129439, September 25, 1998; *People vs. de Guzman*, 164 SCRA 215.

[21] *People vs. Marcelo*, 305 SCRA 105, p.117

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