THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO FLORES Y VELISTA, ACCUSED-APPELLANT.

G.R. No. 123599. December 13, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Agapito V. Flores was charged with Rape in Criminal Case No. Q-94-99462 and was sentenced to suffer the supreme penalty of death by the Regional Trial Court, National Capital Region, Branch 216, Quezon City under the following information:

> That on or about the 8th day of November, 1994, in Quezon City, Philippines, the said accused, by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously at knife point undress the undersigned, a minor 13 years of age, and then and there placed himself on top her and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

Now on automatic review by this Court, Atty. Roberto Abad from the Law Firm, Abad & Associates entered his appearance in cooperation with the Free Legal Assistance Group (FLAG) to take up the cause of appellant.

From the testimony of the victim, the facts of the case as found by the trial court are as follows:

Ma. Cristina is the eldest among the four children of common-law spouses, Agapito Flores and Rosario Flores. They live in 168 Road 1, Bagong Pag-asa, Quezon City.[1]

In the evening of November 7, 1994, Rosario and Agapito had a quarrel. Rosario was beaten by the accused-appellant and so she left the house and stayed that night with a neighbor's house to escape his wrath.[2] The next morning, at about 10:00 o'clock, while Rosario was still away, the accused-appellant told the children to go out of the house, except Ma. Cristina.[3] He told Ma. Cristina to enter the bedroom as he was going to tell her something. Once inside, the accused-appellant pointed a knife at her neck and ordered her to take off her clothes.[4] She obeyed until she was completely naked. The accused-appellant undressed himself, kissed her, sucked her breast and inserted her penis inside her vagina. She was lying on the "papag" with the accused-appellant on top of her for about an hour.[5] She felt the private part of her father inside her organ and felt pain. All the time and while the accused-appellant was on top of her the knife was poked at her.[6]

When Rosario Flores returned home that same day, she learned about what happened to Ma. Cristina.[7] She went immediately to the police authorities to report the incident and Ma. Cristina was brought to a physician.[8] She was examined by Dr. Rosaline Casidone, Sr. Inspector, Medico-Legal Officer of the PNP who found her hymen to have healed lacerations at 3:00, 7:00, and 9:00 positions.[9]

Ma. Cristina also testified in open court that this was not the first time that such an incident happened. She stated that her father raped her for four (4) times when she was in Grade IV.[10]

The accused-appellant, on the other hand, put up the following version:

He and his common-law wife, Rosario had a quarrel in the evening of November 7, 1994 regarding the non-payment of rentals by a relative of Rosario.[11] The accused-appellant also threatened her that she would be replaced by his other woman, Tess Gaviola, who would take charge of collecting the rental payments.[12] Everytime they had a fight, Rosario would always leave the house tagging along the children.[13] But this time, Ma. Cristina did not follow her mother. She stayed behind to talk to her father. On November 8, 1996 at 10:00 A.M., Ma. Cristina left the house to look for her mother and did not return that day or the next.[14] On November 10, 1994 Rosario returned home without saying anything. After awhile, the barangay tanod came to their house and apprehended the accused-appellant. He was brought to the barangay hall and there he saw Ma. Cristina.[15] He subsequently learned the reason for his arrest and denied the charges hurled at him.[16] Upon presentation of the knife which he allegedly used in poking Ma. Cristina's neck, he explained that this was already in the possession of the Criminal Investigation Division (CID) of the Philippine National Police (PNP) since this was earlier surrendered on October 2, 1994 after he and Rosario had quarreled many times before.[17] The charge of rape was merely fabricated because Rosario was very mad at him and was certainly trying to get back at him.[18]

In this appeal, appellant makes the following assignment of errors:

- Whether or not the rule of sufficiency of evidence in rape cases applied by the trial court amounts to a denial of the presumption of innocence accorded by the Constitution to the accused;

- Whether or not, given the serious inconsistencies in Ma. Cristina's testimony, the evidence is sufficient to establish the guilt of the accused beyond reasonable doubt;

- Whether or not the testimonies of the other witnesses in the case buttress the testimony of Ma. Cristina; and

- Assuming the evidence of guilt is sufficient, whether or not the Court may recommend executive clemency considering that a strict enforcement of the provisions of Republic Act 7659 would result in the imposition of a clearly excessive penalty of death on the accused.[19]

Appellants faults the trial court for making a sweeping statement that "Filipino women will not testify to being raped unless it was the case" pursuant to the ruling in People v. Caballes.[20] According to appellant, "if women can now muster the courage to complain of rape when it happens, it should stand to reason that, when driven by sufficient motivation, some women can also feign charges or rape."[21] In this case, the cry for rape was motivated by the blind jealousy of Ma. Cristina's mother.

Appellant, in a bid for exculpation, also cites inconsistencies in the testimony of Cristina.

-) Ma. Cristina testified that she readily obeyed the accused when he asked her to enter the room because he had something to tell her but in her sworn statement, she stated that after her father sent the other children out of the house, he pulled her towards the bedroom, implying the use of force.

-) In her testimony in court, Ma. Cristina said that the accused forced her to undress and she did so. But, in her sworn statement, she said that the accused undressed her himself.

-) She testified in court that the accused sucked her breast and then entered her. In her sworn statement, however, she stated that he touched her breast with his hand, then her genitalia before entering her.

-) She testified that after the accused raped her, she told her brothers Jesus and Lito about it and they in turn went to inform their mother. On the other hand, she said in her sworn statement, that she herself informed her mother of the rape when she came back at about noon.

-) Ma. Cristina testified that the accused remained on top of her for one hour. This, of course, is contrary to common experience as to the time it takes to consummate sexual acts. Ma. Cristina makes no claim that the accused repeatedly ravished her right that time.[22]

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Appellant further contends that the medical findings reveal that the healed lacerations in the victim's hymen were already existing prior to the alleged date of rape, in which case, there is really no evidence to prove that appellant raped Ma. Cristina on November 8, 1994.

Nonetheless, as if anticipating a conviction for his client, counsel for appellant would plead for mitigation or clemency. He brings to the attention of the Court that cases of rape are generally domestic; between members of the household and belonging mostly from the lower classes where their surroundings and living conditions are dismal - no partitions in the house, boys and girls sleeping together, no covered bathrooms, etc. Counsel further states:

> The number of men waiting to be put to death at the National Bilibid Prisons for rape is a growing number, outpacing the growth of murder said the study. As of December 1995, 53% of the inmates at the death row were convicted for rape and rape-related crimes, while only 35% were convicted for murder and murder-related crimes. The rest are for kidnappings and drugs smuggling at 6% each. A further research should reveal that many of those held at the death row for rape charges are for incestuous rapes. Surely, where the penalty of death is specially excessive, the Court can recommend executive clemency for the commutation of such penalty.[23]

In the main, appellant questions the credibility of the witnesses: the victim herself and her mother who allegedly have an ill-motive to take revenge against him for all the maltreatment he has caused Rosario and the family. But when it comes to the issue of credibility the time honored rule is that appellate courts will generally not disturb the findings of the trial court unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[24] The trial court indeed enjoy this badge of respect since they have the advantage of observing the demeanor of witnesses as they testify in court and are able to detect whether they are telling the truth or not.[25]

It is the finding of the trial court in the instant case that the narration made by Ma. Cristina of how she was raped on November 8, 1994 appears to be credible and worthy of belief. She testified in a clear and straightforward manner. The sincerity, bitterness and disdain of what she experienced was manifested by the tears on her eyes while she was testifying in court.[26] She testified, to wit:

> FISCAL TOBIA- Miss Witness, how are you related to the accused Agapito Flores?
>
> A- My father, sir.
>
> Q- Now, at about 10:00 o'clock in the morning of November 8, 1994, where were you?
>
> A- We were at home, sir.
>
> Q- And this is at 168 Road I, Barangay Bagong Pag-asa, Quezon City?
>
> A- Yes, sir.
>
> Q- Now, was your mother with you at that time?
>
> A- No, sir.

Q- Who was then with you at your residence?

A- My siblings and my father, sir.

Q-

Now do you remember of anything unusual that happened at that time?

A- There was, sir.

Q- Can you tell the Honorable Court what is this unusual incident all about?

A- Yes, sir. He asked me to enter the room as he was going to tell me something.

Q- And, who asked you to enter the room?

A- My father, sir.

Q- Did you go inside the room as asked by your father?

A- Yes, sir.

Q- Before we proceed, Miss Witness, can you point out to your father, the accused Agapito Flores?

RECORD

Witness pointing to a male person wearing an orange T-shirt who identified himself as Agapito Flores.

FISCAL TOBIA - Now, what happened when you went inside the room as asked by your father?

A- He pointed a knife at me, sir.

Q- At what particular part of your body did your father point the knife?

A- At my neck, sir.

Q- Will you describe the knife used by your father?

A- A kitchen knife, sir.

Q- Can you demonstrate to the Honorable Court how long that knife was, including the handle?

RECORD- Witness describing the knife as 10 inches including the handle.

ATTY. TABANG-

Admitted, Your Honor.

FISCAL TOBIA- Now, why did your father point a knife at you, Miss Witness?

A- He was forcing me to undress, sir.

Q- Did you undress as forced by your father?

A- Yes, sir.

Q- What exactly did you remove?

A- All my clothes, sir.

Q- Did this include your panty?

A- Yes, sir.

Q- So you were completely naked?

A- Yes, sir.

FISCAL TOBIA -

May we request, Your Honor, to exclude the other people inside the courtroom?

COURT - On account of the delicate testimony of the witness, may I ask the other persons in Court to step out in the meantime?

RECORD - All the other persons inside the Courtroom stepped out.

FISCAL TOBIA - Now, after you have removed all your clothings, with your father pointing a knife at your

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neck, what happened next?

A- He kissed me, sir.

Q- At that time, was he wearing his clothes?

A- He had undressed, sir.

Q- Nothing was left?

A- Yes, sir.

Q- So, he was completely naked also?

A- Yes, sir.

Q-

After your father kissed you while he was completely naked, what else happened?

A- He sucked my breast and inserted his private part inside mine, sir.

Q- Can you tell the Honorable Court your position at that time you said your father inserted his private part into yours?

A- We were lying down, sir.

Q- And your father was on top of you?

A- Yes, sir.

Q- Where did you lie down?

A- "Papag", sir.

Q- And, did you feel the private part of your father inside you, Miss Witness, at that time?

A- Yes, sir.

Q- And, how long was your father on top of you at that time?

A- One (1) hour, sir.

Q-

You were then 13 years old at that time, Miss Witness?

A- Yes, sir.

Q- Do you understand what the word "orgasm" is? "Labasan."

A- No, sir.

Q- Miss Witness, while the private part of your father was inside you, did you feel anything other than his private part?

A- Yes, sir.

Q- What was it that you felt other than his private part?

A- It hurts, sir.

Q- While your father was on top of you, where was the knife that you mentioned?

A- It was pointed at my neck, sir.

Q-

You mean to say that at the time he was on top of you, he was holding a knife to your neck all the time?

A- Yes, sir.

Q- You also mentioned earlier that while your mother was not with you, your other siblings, where were they at that time that your father was on top of you?

A- They were outside, sir.[27]

The trial court further described Ma. Cristina to be young, decent, shy and soft spoken. The way she answered the questions propounded on her indicated that she would not undergo the travails of a public trial thereby exposing herself to humiliation and embarrassment if her accusations against her father were not true for her natural instinct would be to protect her honor. We agree with the observation that it is rather unthinkable for a daughter to falsely impute the crime of rape against her own father if it was not real. To a great degree, the misdeed of her father is shocking to one's moral conscience, and her only purpose in revealing her plight is to obtain justice.[28]

Appellant, however, would like us to believe that such charges were merely fabricated. His daughter was being used by Rosario who became very jealous because he threatened to exchange her for another woman. Imputations such as this is indeed hard to believe because no mother would sacrifice her own daughter, concoct a story of the latter's defloration, allow an examination of her daughter's private parts and present her to be the subject of a public trial just to end her relationship with her husband or to retaliate against him for his transgression as a

family man.[29] Rosario has suffered so much of being a battered woman for 13 years. She went through more serious physical abuses and even more life-threatening situations[30] and this particular time was no less different from the other encounters. The November 7 incident was considered as one of those usual quarrels they often had where the appellant once again mauled Rosario.[31] Surely, the maltreatment she received this time or even the threat of being replaced by another woman was not enough reason for Rosario to fabricate a story of rape on her daughter by the appellant if it were not really true. According to Ma. Cristina, this was not the first time that she was abused by her father. But immediately upon learning of such incident, Rosario reported to the authorities which only goes to show that it is a mother's instinct to protect the honor of her daughter once truly wronged.

The inconsistencies cited by the appellant in the testimony of Ma. Cristina in court and what she stated in her sworn statement do not at all discredit her as a witness or impair the essential integrity of the prosecution's evidence. They only refer to minor details and collateral matters which do not really affect either the substance of her declaration, and its veracity. She was, however, consistent in relating the principal occurrence that the appellant raped her that fateful morning - that Ma. Cristina was called to the room after taking off all their clothes, appellant laid on top of her and inserted his organ inside her genitalia. Ma. Cristina felt pain afterwards.

Accused-appellant also contend that Ma. Cristina's allegation of rape is not at all corroborated by the medical expert's testimony. Dr. Rosaline Cosidone revealed that the hymenal lacerations in the victim's vagina were already present even before November 8, 1994. She did not discount the possibility that these lacerations could have been possibly caused by the insertion of fingers. There was even no evidence of physical injury on Ma. Cristina's body implying the use of force on her.

We have held before that in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation caused to a rape victim.[32] Thus, the knife presented which was allegedly used in poking the neck of Ma. Cristina or signs of physical injuries on the victim's body which were not quite evident in the case at bar or the alleged dubious hymenal lacerations of the victim, are of no moment. The force or intimidation required in this particular instance need not be of such nature and degree as in other cases, for a father already exercises strong, moral and physical influence and control over his daughter.[33]

Nonetheless, it cannot be said that the prosecution relied solely on the hymenal lacerations of the victim as evidence of rape but on the testimony of the victim which standing alone were sufficient to convict.[34]

While the trial court may have been correct in finding the guilt of the accused, it had, however, erred in imposing the death penalty on accused-appellant. We note that the information only alleged the minority of Ma. Cristina that she was thirteen years old but did not allege the relationship of the accused to the victim. Section 11 of RA 7659 provides that::

> 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.

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- When the offender knows that he is afflicted 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 seven (7) modes of committing rape introduced under RA 7659 which warrant automatic imposition of death penalty partake of the nature of a qualifying circumstance under the Revised Penal Code since it increases the penalty of rape to one (1) degree. It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape only on which he was arraigned, and be convicted of qualified rape punishable by death.[35] Thus, accused-appellant should only suffer the penalty of reclusion perpetua in this case.

Anent appellant's civil liability ex delicto, it has been the ruling of the Court to outrightly award P50,000.00 as indemnity to victims of rape. Recent jurisprudence also dictate that an additional award of P50,000.00 as moral damages without the need for pleading or proof of the basis thereof,[36] is in order.

WHEREFORE, the Court hereby MODIFIES the decision of the trial court and finds the accused-appellant Agapito Flores y Velista guilty beyond reasonable doubt of rape under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and to suffer the penalty of RECLUSION PERPETUA with accessory penalties of the law, to indemnify the offended party Ma. Cristina Flores the amount of P50,000.000 plus another P50,000.00 as moral damages, and to pay the costs.

SO ORDERED.

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

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[1] TSN, May 17, 1995, p. 3.

[2] Id., at 10.

[3] Id., at 5-6.

[4] Id., at 5-6.

[5] Id., at 8.

[6] Id., at 9.

[7] Id., at 11.

[8] Id., at 12.

[9] (See Exh. B), Records, p. 65.

[10] TSN, May 17, 1995, p. 13.

[11] TSN, September 26, 1995, p. 6.

[12] Id., at 8.

[13] Id., at 7-8.

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[14] Id., at 9-10.

[15] Id., at 12-13.

[16] Id., at 14.

[17] Id., at 14-15.

[18] Id., at 17.

[19] Rollo, pp. 44-45.

[20] Id., at 45.

[21] Id., at 46.

[22] Id., at 47-48.

[23] Id., at 53.

[24] People of the Philippines v. Letigio, 268 SCRA 227 (1997).

[25] People of the Philippines v. Navales, 266 SCRA 569 (1997).

[26] Rollo, p. 12.

[27] TSN, May 17, 1995, pp. 3-9.

[28] Rollo, p. 12.

[29] People of the Philippines v. Henson, 270 SCRA 634 (1997).

[30] See Sworn Statement, Records, p. 5.

[31] TNS, September 26, 1995, p. 9.

[32] People v. Matrimonio, 215 SCRA 613 (1982)

[33] Rollo, p. 13.

[34] People of the Philippines v. Topaguen, 269 SCRA 601 (1997).

[35] People v. Dimapilis, G.R. No. 128619-21, December 17, 1998; People of the Philippines v. Romeo Ambray y Luterio, G.R. No. 127177, February 25, 1999; People of the Philippines v. Joven dela Cuesta y Pararas, G.R. No. 126134, March 2, 1999; People v. Romeo Gallo y Igloso, G.R. No. 124736, September 29, 1999.

[36] People of the Philippines v. Bantilan, G.R. No. 129286, September 14, 1999.

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