

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERLINDO TALO, ACCUSED-APPELLANT.

G.R. No. 125542. October 25, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here on appeal from the decision[1] of the Regional Trial Court, Branch 15, Ozamis City, finding accused-appellant Erlindo Talo guilty of forcible abduction with rape and sentencing him to death and to pay complainant Doris Saguindang the amount of P30,000.00 as moral damages and the costs of the suit.

The information against accused-appellant recited —

That on or about the 12th day of May, 1995, at about 2:00 o'clock dawn, in barangay Gata Daku, municipality of Clarin, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused ERLINDO TALO, entered the dwelling by destroying some portion of the toilet of the offended party, armed with a bolo and hunting knife, and by means of force, violence, intimidation and threats, did then and there, with lewd and unchaste designs, willfully, unlawfully and feloniously, take and carry away MISS DORIS SAGUINDANG against her will from the house of her parents, and upon reaching the ricefield, by means of force, violence, intimidation and threats, did then and there willfully, unlawfully and feloniously had carnal knowledge of her against her will.[2]

The evidence presented by the prosecution shows the following:

At around 9 o'clock in the evening of May 11, 1995, complainant Doris Saguindang retired for the night in her family's house in Gata Daku, Clarin, Misamis Occidental. At about 2 o'clock in the morning of the following day, she was awakened by the presence of an intruder in her room, who identified himself as a rebel and claimed that his "commander" wanted to see complainant. The man poked a knife at her and covered her mouth to prevent her from making an outcry. He was wearing briefs, her father's overseas cap, and her sister's shirt. Complainant was led out of the house through the back door. Outside, the man twice called out, "Commander, we are here," but no one responded. The man dragged Doris towards the ricefield about 800 meters from their house and there, at knife point, forced Doris to have sexual intercourse with him. Doris tried to fight back but the man was too strong for her. Doris noticed that, aside from a knife, the man had a bolo with him.[3]

As the man rolled to his side after consummating the sexual act, Doris immediately picked her clothes and ran naked as fast as she could towards the nearby house of her uncle, Margarito Saguindang, who later brought her home. Complainant was then accompanied by her parents to the Philippine National Police (PNP) station where she reported the incident. Complainant described to SPO2 Jesus Macala her attacker. Seven suspects were presented to her but none was her assailant. For this reason, the incident was entered in the police blotter of the PNP, but no complaint was filed in court.[4]

Complainant and her mother also sought the help of their pastor, Ponciano Ayop, Sr., who arranged for the medical examination of complainant by Dr. Daniel Medina, municipal health officer of Clarin.[5] Dr. Medina

conducted the examination at around 2 o'clock that afternoon and later issued the following report:

PHYSICAL FINDINGS:

- Vagina slightly hyperemic with whitish muco[u]s fluid at base of the vagina[.] [N]o more hymen found at the vagina.
- 3 cm. l[i]near abrasion at the right lower thigh 2 in numbers.
- 2 cm. hematoma at right postero lateral aspect of the chest posterior axillary line level 5th rib.
- 1.5 cm. hematoma at left posterior chest at med scapular line level 6th rib.
- 1 cm curvel[i]n[e]ar abrasion at right neck above scapula. . . .

Conclusions:

- 1). The above described physical injuries are found in the body of the subject, the age of which is compatible to the alleged date of infliction. . . .

Remarks:

5 slides negative for sperm determination[6]

Dr. Medina testified that the perforation of complainant's hymen could have been caused by sexual intercourse. As for the mucous found in her genitalia, he said that although it did not contain any spermatozoa, it was a sign of recent sexual contact. He stated that the absence of sperm in complainant's genitalia could be due to the fact that she took a bath after the incident.[7]

With regard to his external examination of complainant, Dr. Medina said that the injury in her neck was caused by a fingernail and is consistent with complainant's claim that she was choked. The abrasion on her right thigh, on the other hand, was caused by a rough but not hard object, while the hematomas on it and on her chest were caused by a hard object.[8]

On cross-examination, Dr. Medina admitted that, although forcible sexual intercourse could produce lacerations in the vaginal orifice, he did not find any in complainant. With regard to the perforation of complainant's hymen, he stated that the same could be caused by other factors such as riding a bicycle, horse, or carabao, and that the perforation could have occurred earlier than May 12, 1995.[9]

Pastor Ayop and his family took complainant to Bukidnon for a vacation because she was having nightmares, coming back to Clarin after three weeks, in May 1995.[10]

Then, at around seven o'clock in the morning of May 27, 1995, while Doris and her friends were walking along the road in Tinaclaan, a neighboring barangay of Gata Daku, she saw accused-appellant in a nearby ricefield, distributing seedlings to farm workers. Because accused-appellant was not facing her, complainant could not clearly make out his features but she could see that his body build resembled that of her attacker. She asked one of her companions, a certain Enan Undag, accused-appellant's name.[11]

A week later, on June 3, 1995, at around 5 o'clock in the afternoon, while complainant and a friend, Grace Endab, were walking along the road in Tinangay Sur, she again saw accused-appellant coming from the opposite direction. When accused-appellant saw them, he hurriedly walked past them. Doris, thoroughly shaken, told Endab, who knew of the rape, that the man they had just encountered was the one who raped her. The latter corroborated complainant on this matter.[12]

After consulting Ayop and her parents, Doris, on the following Monday, June 5, 1995, filed a complaint for rape against accused-appellant.[13] She later amended her complaint to charge accused-appellant with forcible abduction with rape.

Doris positively identified accused-appellant in court as the man who, on May 12, 1995, abducted and later raped her. She said she saw his face when she was awakened in her room and in the ricefield where the moon was bright.[14]

Upon cross-examination by the defense, complainant stated that, although she was born in Gata Daku, she did not know everybody in the barangay since she stayed in Iligan City for three years to study. Before May 12, 1995, she admitted she had seen accused-appellant once but she did not know his name. She added that when she was in high school in Clarin, she had heard of a peeping tom named Erlindo Talo.[15]

Accused-appellant, 50, denied the charge against him. He testified that he was a resident of Barangay Gata Daku and that he managed a farm in the neighboring barangay Tinaclaan. He further stated that until he met complainant in court, he had never known her.[16]

As to his whereabouts at the time of the incident, accused-appellant said that at 9 o'clock in the evening of May 11, 1995, he was in the house of Otelo Londera in Barangay Kinangay Sur, playing mahjong. Aside from Londera, the other mahjong players were Laureano Basaya and Buena Narbay. He said that except for a few breaks, they played mahjong until 5 o'clock in the morning of May 12, 1995. An hour later, accused-appellant allegedly went home to Barangay Gata Daku. Afterwards, at around 9:30 in the morning, he went to Barangay Tinaclaan, to the house of Leonardo Fuentes, whose son, Celso, wanted him to procure a piglet. It was there that he allegedly heard that someone had been raped in Gata Daku.[17]

Although he had a farm in Barangay Tinaclaan, accused-appellant denied that he went there at 7 o'clock in the morning of May 27, 1995, when complainant said she saw him. Accused-appellant said that at that time, he was in Barangay Kinangay Sur with Celso Fuentes buying a piglet because the latter's son was celebrating his birthday. Accused-appellant said he went to his farm in Tinaclaan only at around 11 o'clock to pay his workers.[18]

Accused-appellant likewise denied that he was in Kinangay Sur at around 5 o'clock in the afternoon of June 3, 1995, because at that time he was allegedly in his farm in Barangay Tinaclaan gathering shells, locally called kuhol.[19]

On cross-examination, accused-appellant said that Londera's house, where he was allegedly playing mahjong in the morning of May 12, 1995, is about 500 meters from Gata Daku. He admitted he used to deliver rice to complainant's house.[20]

Corroborating accused-appellant's alibi were his three alleged mahjong playmates, Otelo Londera, Buena Narbay, and Laureano Basaya. Londera stated that the distance between his house and Barangay Gata Daku could be negotiated in 10 minutes by foot. Narbay, for her part, said she cannot remember whether she played mahjong in Londera's house on the dates in question.[21]

Other witnesses were presented by the defense, namely, Celso Fuentes, Angel Saldaña, and Flaviano Narbay, who corroborated accused-appellant's testimony that he was not in his farm in Barangay Tinaclaan at 7 o'clock in the morning of May 27, 1995. On cross-examination, Narbay, who had testified that he was in accused-appellant's farm on the date and time in question and that the accused-appellant did not arrive therein until about 11 o'clock, admitted that he did not know the year when the events he testified to took place and that the date May 27 was only supplied to him by the defense counsel.[22]

The defense likewise presented the then incumbent barangay chairman of Gata Daku, Joven Japay. He said that at around 4:00 in the morning of May 12, 1995, Cesar and Margarito Saguindang, complainant's father and uncle respectively, went to his house to report that complainant had been raped at around 2 o'clock that morning. Thereafter, the three of them went to the house of Cesar Saguindang where he and SPO2 Macala questioned complainant. She allegedly described her attacker to be around 30 years old, curly haired, bearded, and with a big body build. On the basis of this alleged description, they did not include accused-appellant among the possible suspects because, although the latter matches Doris' description as to body size and height, he is not curly haired nor bearded.[23]

The prosecution recalled complainant to rebut Japay's testimony. She denied having told Japay that her attacker was curly haired (kulot) because what she said was that his hair was close-cropped or kopkop. She also denied having said that her attacker was bearded, because although she used the local term bangason, which, loosely translated, means bearded, what she really meant was that the man had newly-grown facial hair.[24]

The prosecution also presented two other witnesses to refute accused-appellant's testimony that he had never been to complainant's house and that there was an all-night mahjong session on May 11, 1995 in the house of Otelon Londera in Kinangay Sur.

Cesar Saguindang, father of complainant, testified that for three years, accused-appellant regularly delivered rice to their house in Gata Daku.[25] On the other hand, Antonina Mutia, whose house in Barangay Kinangay Sur is about 200 meters from that of Otelon Londera, testified that at around 10 o'clock in the evening of May 11, 1995, she passed by the Londera residence on her way home from Barangay Tinaclaan. She noticed that the house was very quiet and, although the adjoining nipa hut where the mahjong sessions were usually played was lighted, there was no mahjong game being played therein. Before 11 o'clock that night, she again passed by Londera's house on her way back to Barangay Tinaclaan to look for her husband who had gone there for the barangay fiesta. She again noticed that Londera's house was quiet.[26]

As sur-rebuttal to Mutia's testimony, the defense presented Catalina Londera, wife of Otelon Londera, who said that at around 8 o'clock in the evening of May 11, 1995, she met Mutia and her husband in the house of a certain Tagaloguin in Barangay Tinaclaan. The three allegedly went back to Barangay Kinangay Sur on board the Mutia spouses' truck. After arriving home at around 9 o'clock, her husband, Laureano Basaya, Buena Narbay, and accused-appellant allegedly started playing mahjong.[27]

The case was thereafter submitted for decision. On April 26, 1996, the trial court rendered its decision, finding accused-appellant guilty of forcible abduction with rape. The dispositive portion of its decision reads:

WHEREFORE, this Court renders judgment finding accused guilty beyond reasonable doubt of forcible abduction with rape aggravated by dwelling and nocturnity and qualified by use of a deadly weapon, sentencing him to DEATH and ordering him to indemnify the complainant P30,000.00 as moral damages. With cost.[28]

Hence this appeal.

First. Accused-appellant contends that he and complainant had a "previous understanding" and that their sexual intercourse was consensual. This allegedly explains why (1) there was no commotion when he and complainant went out of the latter's house as shown by the fact that not a member of the household was awakened when he dragged her out of her parent's house; and (2) when he removed her pajamas and underwear, or when he undressed, she did not push him which would then have allegedly allowed her to escape.[29]

This contention has no merit.

Accused-appellant never claimed that he and complainant had any relationship. In fact, he claimed he had never met her before. Thus accused-appellant testified:

Q Do you know the private offended party of this case, Doris Saguindang?

A I don't know her, sir, I have never met her, only here in Court.

Q Do you still remember that time when did you first see or meet her in Court?

A The fourth time I attended the hearing, sir. . . .

. . .

Q [D]o you know the residence of the parents of Doris Saguindang?

A I don't know, sir.

Q You have not gone there ever since?

A Never, sir.[30]

Indeed, apart from his bare assertion that he and complainant were lovers, accused-appellant has shown no other evidence of such relationship, such as love letters, photographs, or other tokens of endearment. On the contrary, complainant stoutly maintained that she had never known accused-appellant before and that the latter, at knife point, forced her to go with him and molested her in a ricefield. Complainant's testimony must be quoted to appreciate her claim:

Q

Now, as you were awaken[ed] . . . by the accused, what happened?

A

He choked me up.

Q

What did he say?

A

He ordered me to stand up because he has some questions to ask.

Q

Now, what was your reaction?

A

I was nervous and shocked.

. . . .

Q

Now, after the accused woke you up, choked you and commanded you to stand up, what happened?

A

He covered my mouth.

Q

Why did he cover your mouth?

A

So that I could not shout.

Q

Why, did you try to shout for help?

A

I was trying to shout but no voice will come out.

Q

So, what happened afterwards?

A

He forced me to go outside.

Q

How did he force you to go outside?

A

He covered my mouth and the other hand has knife pointing near my chest.

. . . .

Q:

Despite of the fact that you were led by that man outside you did not resist or make any noise in order your parents to be awaken?

A

I tried my best but he was so strong.

Q

You mean he has big muscles?

A

Yes, sir. Strong arms.[31]

Accused-appellant makes much of the fact that he was able to take complainant out of her parent's house without rousing the household from their sleep. That was because complainant was alone in her room, far from where the other members of her family were sleeping. Her parents, her twin siblings, and her nephew were the other people in the house when accused-appellant broke in and abducted complainant. Her parents slept in a separate room furthest from her room and, while her twin siblings and nephew slept in the room adjoining hers, their rooms were separated by a concrete wall with an opening near the roof. Accused-appellant prevented complainant from making an outcry by covering her mouth and poking a knife at her. She was resisting but she was overpowered. After all, what could an 19-year old girl do to resist a 50-year old man? As complainant testified:

Q

By that time when you were led to that dry ricefield he was no longer dragging you, am I correct?

A

Still he drag me and he was holding me.

Q

He was holding both of your hands?

A

He was walking ahead of me and kept on pulling me. (Witness keep on crying since the beginning of her testimony)

Q

If you have resisted at that time when you were brought to the dry land or ricefield you could have escape him away from the hold of that man?

A

How can I escape from him he was holding me so tightly. It was so painful as if my arm will be broken.

Q

But he did not twist your arms?

A

I could not remember but that my shoulder was sprained.

....

PROS. MEDINA:

Q

Now, when you reached to that ricefield which was harvested together with the accused Erlindo Talo, forcing you to go there, threatening you, pointing a knife, did you try to escape?

A

Yes, sir.

Q

How did you do it? (While answering, witness was crying)

A

I was trying to fight but he was very strong.

....

Q

Upon reaching that place, what happened, upon reaching there, did you try to stop him?

A

Yes, sir.

Q

How did you do it? (Witness burst into tears continuously)

A

I kicked him because he was trying to remove my pajama.

Q

And what happened?

A

He successfully removed my pajama.

Q

How about your panty?

A

Including my panty.

Q

How about your blouse?

A

After removing my panty, he was also removing my blouse.

Q

What did you do?

A

I was trying to grapple the knife because he kept on threatening to stop me.

Q

Afterwards, what happened?

....

A

He pushed me to lie down on the ground.

Q

Did he remove your clothes when you were standing up or when you were already pushed down?

A

While I was still standing up, he removed my pants, when I was lying down, he removed my blouse.

Q

All the while, when he was removing your pants, panty and blouse, what did you do?

A

I slapped him.

Q

You mean to say, you fought him?

A

Yes, sir.

Q

Now, when he successfully removed all your clothes and you were already down, what did he do next?

A

He lowered his brief.

Q

And what did he do to you?

A

Then, he raped me.

....

Q You mean to say, he placed his penis inside your vagina?

A Yes, sir.

Q Did his penis penetrate your vagina?

A Yes, sir.

Q You mean to say, his penis stayed inside your vagina?

A Yes, sir.

....

Q At that time, did you fight him?

A Yes, sir.

Q How did you fight him?

A I kicked him.

Q When you kicked him, what did he do?

A Again, he attempted to stop me.[32]

It is settled that a rape victim is not required to resist her attacker unto death.[33] Force, as an element of rape, need not be irresistible; it need only be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point.[34] Indeed, physical resistance need not be

established in rape when, as in this case, intimidation was exercised upon the victim and she submitted to the rapist's lust because of fear for her life or for her personal safety.[35] .

The findings of the medical examination conducted by Dr. Medina a day after the incident confirm complainant's claim that she had been forced to have sexual intercourse by accused-appellant. Dr. Medina found abrasions on her neck and right thigh as well as hematomas on her chest, in addition to the complete perforation of her hymen. These clearly establish that accused-appellant employed force and intimidation to make complainant submit to him.

Finally, complainant's conduct after she had been abused negates any probability that she and accused-appellant had consented sexual intercourse. After accused-appellant had finished ravishing her, she ran away naked. She fled to the house of her uncle to whom she reported what had happened to her. This is not the natural reaction of one who had engaged in consensual sex. It has been observed that the conduct of a woman following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim.[36]

Second. In a complete turnabout from his theory that he and complainant were lovers, accused-appellant contends that complainant's failure to file the criminal complaint renders her claim of abduction with rape suspect.[37]

This contention has no merit, either. Complainant filed this case less than three weeks after the incident. The delay was due to the fact that accused-appellant's identity was not ascertained until June 3, 1995 when complainant came face to face with accused-appellant and learned that his name was Erlindo Talo.

While it is true that Cesar Saguindang, complainant's father, testified that accused-appellant had been delivering rice to their house for a period of three years, there is no evidence to show that complainant knew accused-appellant. Accused-appellant himself testified that he stayed in Cebu City for sometime to study college, went back to Data Daku, Clarin, Misamis Occidental in 1982, and decided to work on the farm. It was probably then that he delivered rice for the barangay captain of Gata Daku, Japay. At that time, complainant was only eight years old. Furthermore, complainant studied at the Clarin National High School in the poblacion of Clarin and went to Iligan City for her college education. It is probable, therefore, she really did not know accused-appellant.

Moreover, the delay in the identification of accused-appellant was due mainly to the failure of the Gata Daku police, specifically of SPO2 Jesus Macala, to include accused-appellant in the lineup of suspects presented to complainant on May 12, 1995. Macala admitted that complainant's description of her attacker in fact matched that of accused-appellant, but he did not include the latter in the lineup because he thought that accused-appellant, whom he admitted was a childhood friend, was innocent.[38]

Accused-appellant points out the alleged inconsistencies in the testimony of complainant as to his age, type of hair, and whether he is bearded or not. As complainant explained, however, she did not really say that accused-appellant was curly haired or that he had a beard. She testified:

Q

Miss Doris Saguindang, the Barangay Captain of Gata Daku, Joven Japay, have testified before this Honorable Court that you specifically described to him the person responsible [for] raping you in the dawn of May 12, 1995, and he said you specifically described . . . him to be curly hair[ed], and that his face was full of beard, what can you say to that statement?

A

That's not true.

Q

Why do you say that's [a] lie?

A

Because what I told . . . the Barangay Captain is that, the hair of the rapist is short to the scalp. In fact, the Barangay Captain asked, was it curly hair, I said "no", his hair is short and his head is somewhat bald because at that time he was wearing my father's hat.

Q

What about the beard?

A

I did not say beard. I did not mention that the face of the man is full of beard because when we say "bangason" or bearded he has full of beard. What I told . . . the Barangay Captain [was] that he has a beard because I have touched the face of the man, not exactly that he was bearded.

Q

Did you mention to the Barrio Captain that the person responsible in raping you that you were able to touch his face, his mustach[e]?

A

I did not tell him that he has mustach[e], I only told him a few beard newly grown in his face.

Q

Did you also mention . . . the age . . . of the person responsible in raping you?

A

No, sir. I did not mention to him the age, what I described to him only that the man was similar to the age of my father.[39]

We find complainant's testimony to be credible. As earlier stated, her story is corroborated by the findings of the medical examination. On the other hand, the defense has not shown any ill motive on the part of complainant to falsely implicate accused-appellant in a very serious charge. As we have said in a number of cases, no woman would concoct a story of defloration, allow an examination of her private parts and expose herself to the stigma and humiliation of a public trial if she is not motivated by a desire to seek justice against the one who had defiled her.[40]

Third. Accused-appellant's defense is that on May 12, 1995, he was in the house of Otelon Londera in Barangay Kinangay Sur. However, Londera himself said that Barangay Gata Daku could be reached in 10 minutes by foot from his house. For the defense of alibi to prosper, it must be shown not only that accused-appellant was

somewhere else at the time the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[41]

The same is true with regard to accused-appellant's claim that on May 27, 1995 and June 3, 1995, when complainant said she saw him after the incident, he was in some other place and could not possibly have been seen by her. Defense witness Narbay, who was supposed to corroborate accused-appellant's testimony that he was not in his farm in Barangay Tinaclaan at around 7 o'clock in the morning of May 27, 1995, admitted on cross-examination that he did not know the year when the events he testified to took place and that the date May 27 was just given to him by the counsel for the defense. On the other hand, accused-appellant's testimony that he was in his farm in Barangay Tinaclaan and not in Barangay Kinangay Sur at about 5 o'clock in the afternoon of June 3, 1995 is not only uncorroborated but also self-serving. It cannot prevail over the testimony of complainant which was corroborated by Grace Endab.

Fourth. The trial court correctly found accused-appellant guilty of the complex crime of forcible abduction with rape. As provided in Arts. 342 and 335, in relation to Art. 48, of the Revised Penal Code, the elements of this crime are: (1) that the person abducted is any woman, regardless of her age, civil status or reputation; (2) that she is taken against her will; (3) that the abduction is with lewd design; and (4) that the abducted woman is raped under any of the circumstance provided in Art. 335.[42] The evidence shows that, at knifepoint, accused-appellant forcibly took complainant from her parents' house and, in a ricefield about 800 meters away, forced her to have sexual intercourse with him.

In the event of conviction in cases of complex crimes, the penalty for the most serious crime should be imposed, the same to be applied in its maximum period.[43] Forcible abduction is punishable by reclusion temporal,[44] while rape is punishable by reclusion perpetua, unless it is committed with the use of deadly weapon, in which case the penalty is reclusion perpetua to death.[45] Thus, in this case, it is the penalty for rape which should be imposed, the same to be applied in its maximum period. However, the use of deadly weapon, being a qualifying circumstance, must be alleged in the information, otherwise it should be treated only as a generic aggravating circumstance and the lower penalty (reclusion perpetua) should be imposed.[46]

In the case at bar, the information alleged that "armed with a bolo and hunting knife, and by means of force, violence, intimidation and threats," accused-appellant, "did then and there . . . with lewd and unchaste designs . . . take and carry away complainant" and that, "upon reaching the ricefield, by means of force, violence, intimidation and threats," he had carnal knowledge of her. The allegation of the use of deadly weapon thus refers not to the rape but to the crime of forcible abduction. We have affirmed convictions for forcible abduction with rape qualified by the use of deadly weapon in cases where the use of deadly weapon was alleged in the information with respect to the crime of forcible abduction,[47] or with respect to the complex crime of forcible abduction and rape,[48] or to the portion referring to the crime of rape.[49] Accordingly, to justify the imposition of the death penalty in this case, the use of deadly weapon should be alleged with respect to the rape or with respect to both the forcible abduction and rape. Since, in this case, this qualifying circumstance was alleged only with respect to the commission of the forcible abduction, it cannot be taken to qualify the crime of rape. The use of a deadly weapon can be appreciated only as a generic aggravating circumstance.

The trial court correctly appreciated other generic aggravating circumstances, namely, dwelling and nighttime. Dwelling was correctly taken into account as an aggravating circumstance as the evidence shows that complainant was forcibly taken from the house of her parents. Such was the ruling in *People v. Lacanieta*,[50] where, similar to the case at bar, the complainant was forcibly taken from her house, brought to a nearby barangay, and then raped by the accused.

The aggravating circumstance of nighttime was also correctly held to be present. Accused-appellant sought the cover of darkness to facilitate the commission of the crime. In *People v. Grefiel*,^[51] it was held that forcible abduction with rape, committed at 2 o'clock in the morning, was attended by the aggravating circumstance of nighttime.

The crime was likewise attended by the aggravating circumstance of unlawful entry. The barangay chairman of Gata Daku, Joven Japay, testified that when he went to the house of the victim the day after the rape incident, he noticed that a baluster in the ceiling at the rear part of the house had been forcibly removed and that there was a ladder propped nearby.^[52] There was thus entry to complainant's house through an opening which was one not intended for that purpose.

The foregoing notwithstanding, the penalty to be imposed on accused-appellant is reclusion perpetua. Under Art. 63, a single indivisible penalty should be imposed regardless of any mitigating or aggravating circumstance which may have attended the commission of the deed. The damages awarded by the trial court should be modified. In accordance with recent rulings of this Court,^[53] complainant Doris Saguindang must be paid P50,000.00 as civil indemnity, P50,000.00 as moral damages, and the additional amount of P25,000.00, as exemplary damages, in view of the attendance of the aggravating circumstances, pursuant to Art. 2229 of the Civil Code.^[54]

WHEREFORE, the decision of the Regional Trial Court, Branch 15, Ozamis City, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay complainant Doris Saguindang the amounts of P50,000.00, as civil indemnity, P50,000.00, as moral damages, and P25,000.00, as exemplary damages.

SO ORDERED.

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

Kapunan, J., on leave.

[1] Per Judge Ma. Nimfa Penaco-Sitaca.

[2] Records, p.1.

[3] TSN (Doris Saguindang), pp. 15-16, 18, 20-24, 29-36, Nov. 23, 1995; TSN, pp. 4, 8, 16-17, 19, Dec. 6, 1995.

[4] TSN (Doris Saguindang), pp. 36-38, Nov. 23, 1995; pp. 16, 28, Dec. 6, 1995; TSN (Jesus Macala), pp. 3-5, 7, 9, Jan. 22, 1996.

[5] TSN (Ponciano Ayop, Sr.), pp. 3-5, Jan. 3, 1996.

[6] Records, p. 14. (Emphasis added)

[7] TSN (Daniel Medina), pp. 5, 8, 10-14, Dec. 11, 1995.

[8] Id., pp. 5-6.

[9] Id., p. 9.

[10] TSN (Pastor Ayop), pp. 8-9, Jan. 3, 1996.

[11] TSN (Doris Saguindang), pp. 27-28, March 11, 1996 .

[12] TSN (Doris Saguindang), pp. 44-48, March 11, 1996; TSN (Grace Endab), pp. 24-26, Dec. 11, 1995.

- [13] TSN (Ponciano Ayop, Sr.), pp. 9-11, Jan. 3, 1996.
- [14] TSN (Doris Saguindang), pp. 39-41, Nov. 23, 1995.
- [15] Id., pp. 54-55, 57-58.
- [16] TSN (Erlindo Talo), pp. 23-24, March 7, 1996.
- [17] Id., pp. 27-29.
- [18]] Id., pp. 30-33.
- [19] Id., pp. 33-35.
- [20] Id., pp. 45, 48.
- [21] TSN (Otelon Londera), pp. 17-20, 26, Feb., 8, 1996; TSN (Buena Narbay), pp. 4-6, 11, Feb. 9, 1996; TSN (Laureano Basaya), pp. 4-7, Feb. 8, 1996.
- [22] TSN (Celso Fuentes), pp. 13-15, March 7, 1996; TSN (Angel Saldaña), pp. 3-4, March 6, 1996; TSN (Flaviano Narbay), pp. 4-8, March 7, 1996.
- [23] TSN (Joven Japay), pp. 19-21, 25, 31, Feb. 9, 1996.
- [24] TSN (Doris Saguindang), pp. 21-22, March 11, 1996.
- [25] TSN (Cesar Saguindang), p. 30, March 11, 1996.
- [26] TSN (Antonina Mutia), pp. 4-6, 10, 12-13, 19, March 11, 1996.
- [27] TSN (Catalina Londera), pp. 3-5, March 13, 1996.
- [28] RTC Decision, p. 8; Rollo, p. 31.
- [29] Appellant's Brief, pp. 1-3; Rollo, pp. 101-103.
- [30] TSN (Erlindo Talo), pp. 24-25, March 7, 1996. (Emphasis added)
- [31] TSN (Doris Saguindang), pp. 15 & 18, Nov. 23, 1995; pp. 14-15, Dec. 6, 1995.
- [32] TSN (Doris Saguindang), pp. 28-34, Nov. 23, 1995; pp. 18-19, Dec. 6, 1995.
- [33] *People v. Igdanes*, 272 SCRA 113 (1997); *People v. Gumahob*, 265 SCRA 84 (1996).
- [34] *People v. Bayani*, 262 SCRA 660 (1996).
- [35] *People v. Napiot*, 311 SCRA 772 (1999); *People v. Prades*, 293 SCRA 411 (1998).
- [36] *People v. Bayron*, 313 SCRA 727 (1999).
- [37] Appellant's Supplemental Brief, pp. 3-6; Rollo, pp. 110-113.
- [38] TSN (Jesus Macala), pp. 9-10, Jan. 22, 1996.
- [39] TSN, pp. 21-22, March 11, 1996.
- [40] *People v. Magalantay*, 304 SCRA 272 (1999); *People v. Oliver*, 303 SCRA 72 (1999).
- [41] *People v. Berzuela*, G.R. No. 132078, Sept. 25, 2000; *People v. Payot*, 308 SCRA 43 (1999).

[42] See *People v. Lacanieta*, G.R. No. 124299, April 12, 2000.

[43] REVISED PENAL CODE, Art. 48.

[44] *Id.*, Art. 342.

[45] *Id.*, Art. 335.

[46] *People v. Bayron*, *supra*.

[47] See *People v. Jose*, 71 SCRA 273 (1976); *People v. Angeles*, 222 SCRA 451 (1993); *People v. Lacanieta*, *supra*.

[48] See *People v. Rivera*, 245 SCRA 421 (1995); *People v. Famador*, 113 SCRA 310 (1982).

[49] See *People v. Delovino*, 247 SCRA 637 (1995).

[50] *Supra*.

[51] 215 SCRA 596 (1992).

[52] TSN, p. 18, Feb. 9, 1996.

[53] *People v. Baid*, G.R. No. 129667, July 31, 2000; *People v. Dreu*, G.R. No. 126282, June 20, 2000; *People v. Licanda*, G.R. No. 134084, May 4, 2000.

[54] See *People v. Santos*, G.R. Nos. 131103 & 143472, June 29, 2000.

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