

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVEN DE LA CUESTA Y PARARAS, ACCUSED- APPELLANT.

G.R. No. 126134. March 02, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is before the Court for automatic review of the decision[1] of the Regional Trial Court, Makati City, finding the accused-appellant Joven de la Cuesta y Pararas guilty of six (6) cases of rape committed against nine-year-old (9) Merma Binasbas y Velasquez. For each case of rape, the trial court sentenced the accused to suffer the supreme penalty of death, and to indemnify the victim Merma Binasbas y Velasquez in the amount of P20,000.00, plus costs of suit.

On February 8, 1996, an assistant prosecutor of Makati, upon prior sworn complaint of Merma Binasbas y Velasquez, filed with the Regional Trial Court, Makati City, six (6) separate informations for rape against the accused.

The accusatory portion of the information[2] in Criminal Case No. 96-350 alleges:

"That on or about the 18[th] day of January 1996, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said Merma Binasbas y Velasquez, a nine (9) years old girl, without her consent and against her will.

CONTRARY TO LAW."

The information[3] in each of Criminal Cases Nos. 96-351, 96-352, 96-353, 96-354, 96-355 is similarly worded except as to the dates of commission of the offense, which are on January 19, 20, 21, 22, 23, 1996, respectively.[4] The six cases were consolidated in one sala upon request of the prosecution.

Upon arraignment on February 26, 1996, the accused pleaded not guilty to all the charges. After due trial, the court a quo rendered a consolidated decision dated September 11, 1996, finding the accused guilty beyond reasonable doubt of six (6) counts of rape and sentencing him in each case to suffer the supreme penalty of death and to indemnify the victim Merma Binasbas y Velasquez in the amount of P20,000.00, plus costs.

Hence, this automatic review of the death sentence.

The prosecution's evidence established the following facts:

Merma Binasbas, a nine-year-old girl, lived with her mother Mercedes Binasbas in one of three rooms for rent in the second floor of House No. 283 Guijo St., Makati City, owned by spouses Salvador and Rodina Lipon. Mercedes' niece, Lyka Mariano, and her husband Richard, rented the other room; while boarders Tess[5] and Beth[6] occupied the third room. The spouses Lipon lived on the ground floor of the house. Three other girls lived in the room rented by Mercedes Binasbas, namely, Tina, Evelyn and Benilda, the "anak-anakan" of the accused

Joven dela Cuesta, a 64-year-old man. Joven dela Cuesta (later referred to as Joven, for brevity) lived in the house adjacent to the Lipon's house. However, since his house was being renovated, Joven had been staying in the room rented by Mercedes Binasbas for about two months until January 23, 1996.

On January 18, 1996, Mercedes Binasbas left for Davao, leaving her daughter Merma in the care of her niece Lyka Mariano and Joven. That same night, while Merma and Joven were alone in the room, the accused started kissing her; sucking her mouth and tongue; touching her breast;[7] inserting his fingers inside her vagina; asking her to touch his penis; placing himself on top of the victim and inserting his penis for about an inch deep inside Merma's vagina.[8] Although Merma did not bleed, she testified that she was in pain and "(m)ay tumutulo pong malagkit sa aking hita." [9] For five (5) consecutive nights thereafter, from January 19 to 23, 1996, the accused repeatedly laid on top of Merma and inserted his penis inside her vagina. After each sexual encounter, the accused threatened her not to report anything to her mother and gave her twenty (P20.00) pesos.[10]

In the evening of January 22, 1996, Rodina Lipon overheard the accused telling Merma: "Maghugas ka na, pagkatapos ay magpalit ka ng underwear at pumunta ka sa taas." She also heard the accused asking for some water to wash himself.[11] Afterwards, Joven and Merma locked themselves inside the room rented by Mercedes. Rodina then repeatedly heard Merma giggling and uttering: "Itay, huwag po diyan. Itay, nakikiliti po ako." Rodina later relayed the incident to Lyka Mariano, who questioned Merma about the matter in Rodina's presence. After some prodding, Rodina heard Merma confessing that "pinakialaman po niya ako;" "pinasok niya ang ari niya sa akin;" "pinahahawakan niya ang ari niya;" and that she saw a white sticky substance afterwards.[12]

Lyka Mariano testified that on January 17, 1996, Mercedes Binasbas left Merma in her care while the former was in the province. When she learned of the sexual abuse suffered by Merma, she repeatedly asked the child regarding its veracity. Upon determining the truthfulness of the statement, on January 26, 1996, she accompanied Merma to the police station to file a formal complaint against the accused.[13]

Dr. Eduardo Vargas, Jr., the medico-legal officer who examined Merma on January 27, 1996, testified that there were no evident signs of extra-genital physical injuries on the body of the victim, the hymen was intact and the orifice was small, around 1.5 cms. in diameter.[14] He categorically stated that there was no medical basis of an insertion (of the penis) in the labia menora, although he did not discount the possibility that there was an insertion. He stated that with an intact hymen and small orifice, it was impossible that there was complete penetration. He also maintained that there was no medical basis of even a partial penetration. On cross-examination, he admitted that there is a great possibility that there was no penetration at all.[15]

Accused Joven dela Cuesta denied the charges against him. He said that Mercedes left Merma in his care while the former went to the province to look for money to repay her debt to him. He looked after the child as his own granddaughter.[16] He averred that he had been entrusted to take care of Merma every time Mercedes went to work. He maintained that he was framed up by the spouses Lipon as a revenge for telling Merma that Salvador Lipon had a pending case for rape and that Merma should not play with the spouses' daughter since she might be raped too. He also insisted that Lyka Mariano was part of the frame-up since she was likewise indebted to him. Apart from these, he could not think of any reason for the alleged frame-up.[17] When asked by the court if he still had erections, he replied -- "hindi na po gaya ng dati." His last erection was three (3) years ago.[18]

The defense likewise offered the medico-legal findings as part of its evidence, stressing the statement that there was no laceration of the hymen. It also adopted the testimony of the medico-legal expert that there is a possibility that the organ of the accused did not touch the labia menora or labia majora of the victim.

The trial court gave full faith and credence to the testimony of Merma Binasbas, which it found to be "firm, categorical and convincing." The act of the accused in placing himself on top of Merma and inserting his penis

inside the child's vagina for six (6) consecutive days constitutes six (6) separate counts of rape. It gave little credit to the testimony of the medico-legal expert that the hymen was still intact and there was no laceration. We have consistently held that rupture of the hymen or laceration of the vagina is not an essential element of rape, for mere knocking at the door of the pudenda by the accused's penis suffices to constitute the crime of rape.[19] In this case, the penis did not only knock but insertions were made into the vagina. The trial court found the accused's allegation of a frame-up too shallow to be believed. It considered Lyka Mariano as not the type of woman to concoct a rape charge against an old man and neighbor for a flimsy reason.

The trial court sentenced the accused to death for raping a girl under eighteen (18) years old and the offender is her guardian, in accordance with Art. 335 of the Revised Penal Code, as amended by R.A. No. 7659. It also ordered the accused to indemnify the victim in the amount of P20,000.00 for each count of rape. It concluded that the accused acted as Merma's guardian during the time that he committed the rape when Mercedes left Merma in the care of the accused. It reasoned that the fact that Merma was often left in the custody of the accused, that Merma even called him "Itay," and that he treated the child as his granddaughter were sufficient to consider him a guardian of Merma.[20]

In his first assignment of error, the accused-appellant avers that the trial court erred in considering him as the guardian of the victim. He contends that mere management of another person's affairs does not automatically constitute one as a guardian of the former. A judicial appointment is necessary to be considered a guardian of another person or of his property. The Solicitor General, in his appellee's brief, agrees with appellant that the trial court erred in imposing the death penalty. The Solicitor General avers that the accused was not the victim's guardian during the time that she was repeatedly raped. Thus, the Solicitor General proposes the reduction of the penalty to reclusion perpetua, but to increase the civil liability to P50,000.00 for each count of rape, in accordance with present jurisprudence.

The Court agrees with the Solicitor General that the trial court erred in imposing the supreme penalty of death on the accused. R.A. 7659 provides that the death penalty shall be imposed when the victim is under eighteen (18) years old and the offender is a guardian. As stated in Mercedes' testimony, Merma was left to the care of Lyka Mariano and Joven dela Cuesta while the mother was in the province. In *People v. Garcia*,[21] we held that the restrictive definition of a guardian, that of a legal or judicial guardian, should be used in construing the term "guardian" for the purpose of imposing the death penalty under R.A. 7659. Upon review of the deliberations in Congress regarding the imposition of death penalty, the Court noted that Congress was not definitive on the concept of "guardian" as it now appears in R.A. 7659. Congress took note of the status of guardian as contemplated in the law of rape but, apparently on pragmatic considerations to be determined by the courts on an ad hoc basis, they agreed to just state "guardian" without qualification that he is a legal or judicial guardian. It was assumed, however, that he should, at the very least, be a de facto guardian.

The mere fact that the mother asked Joven to look after her child while she was away did not constitute the relationship of guardian-ward as contemplated by the law. He was allowed to stay in the rented room free of charge while his house was under renovation, and in return he helped look after the child. At most, he was a mere custodian or caretaker of the child over whom he exercised a limited authority for a temporary period.

Furthermore, assuming arguendo that he may be considered as a guardian of the child, he may still not be sentenced to death. The seven modes of committing rape introduced under R.A. 7659 and R.A. 4111 which warrant the 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 degree.[22] As such, this qualifying circumstance, that the child is under eighteen (18) and the offender is a guardian, should be alleged in the information to be appreciated as such. The informations filed against the accused do not specify such

circumstance. 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, on which he was arraigned, and be convicted of qualified rape punishable by death. Moreover, even considering it as an aggravating circumstance, it can not affect the impossible penalty since reclusion perpetua is a single indivisible penalty.[23]

In his second assignment of error, the accused asserts that the court a quo erred in convicting him of the crime charged since the prosecution failed to prove his guilt beyond reasonable doubt. The defense contends that given the age (64 years old) and physical condition of the accused, it is improbable, if not impossible, for him to rape the victim for six (6) consecutive nights. It maintains that the accused has neither the sexual desire nor the strength to commit the said acts. It also relies heavily on the medico-legal findings that it is possible that there was no actual touching of the penis with the vagina. It avers that such finding contradicts the testimony of Merma that the penis was inserted inside her, thus there is a great possibility that she was coached to lie. This, then, casts a shadow of doubt on the credibility of the witness. It also challenges the three-day delay, from its discovery on January 24, 1996 until the examination on January 27, 1996, in presenting Merma to a medico-legal expert for examination. It contends that it is unusual for family members to wait for three days since the usual reaction is to subject the victim to an immediate medical examination to preserve any trace of evidence.

After a careful study of the record, we find that the prosecution has adequately proved the guilt of the accused beyond reasonable doubt of the crime charged. The accused's contention that he was incapable of committing the bestial acts due to his age, physical condition and lack of earthly desires is self-serving. There is no evidence presented to substantiate his alleged dysfunction. In one case, we rejected the defense even after a doctor had examined the accused by stimulating his organ with a wisp of cotton for three minutes and there was no erection.[24] At any rate, advanced age does not mean that sexual intercourse is no longer possible, as age is not a criterion taken alone in determining sexual interest and capability of middle-aged and older people.[25]

As regards the medical findings that the victim's hymen was still intact, the absence of laceration and the possibility that there was no contact between the penis and the vagina, do not negate the commission of rape. Firstly, a medical examination is not an indispensable element in a prosecution for rape.[26] Secondly, such findings are weak as against the direct and straightforward testimony of the witness that the penis was inserted about an inch deep inside her vagina. Once a woman cries rape, she is saying all that is necessary to show that rape was indeed sufficient to warrant conviction of the accused.[27]

In her testimony, Merma clearly stated that the accused inserted his penis in her vagina. Confronted with an intense cross-examination, the witness did not waiver in her narration of what transpired during those six consecutive nights. Such direct, positive and categorical testimony of a child bears the earmarks of credibility. Lastly, the medico-legal expert admitted that he did not discount the possibility that there was penetration, although he maintained that it was impossible that there was complete penetration. Jurisprudence has consistently held that full penetration of the female genital organ is not indispensable to sustain a conviction for rape. It suffices that there is proof of the entrance of the male organ within the labia of the pudendum of the female organ.[28]

Regarding the three-day delay in conducting the medical examination, such delay is not an indication of a fabricated charge. At any rate, we have held that a medical examination is not an indispensable requirement, and absence thereof does not affect the verdict of conviction if sufficient evidence is presented to prove the crime charged.

On the matter of 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.[29] Thus, the trial court's award of P20,000.00 as damages for each

count of rape should be increased to P50,000.00 per count thereof. Moreover, as ruled in *People v. Prades*,^[30] an additional award of P50,000.00 as moral damages is justified notwithstanding the absence of proof for its award.

WHEREFORE, the Court hereby MODIFIES the decision of the trial court and finds the accused-appellant Joven de la Cuesta y Pararas guilty beyond reasonable doubt of six cases of rape under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and hereby sentences him in each case, to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the offended party Merma Binasbas y Velasquez in the amount of P50,000.00, plus another P50,000.00, as moral damages and to pay the costs.

SO ORDERED.

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

Vitug, J., on official leave.

[1] Criminal Case Nos. 96-350, 96-351, 96-352, 96-353, 96-354, 96-355, consolidated decision of Judge Roberto C. Diokno, dated September 11, 1996.

[2] Rollo, p. 4.

[3] Rollo, pp. 5-9.

[4] All six (6) informations were filed by Second Assistant Prosecutor Andres N. Marcos.

[5] Family name not given.

[6] Family name not given.

[7] Original Record, p. 63.

[8] tsn, p. 82.

[9] tsn, p. 95.

[10] Original Record, p. 63.

[11] tsn, pp. 124-125.

[12] tsn, pp. 134-136.

[13] TSN, pp. 150, 158-163.

[14]tsn, p. 188.

[15] TSN, pp.189, 192-193.

[16]TSN, pp. 201, 203.

[17] TSN, pp. 206-207, 224.

[18] TSN, p. 208.

[19] *People v. Echegaray*, 257 SCRA 561.

[20] Rollo, pp. 17-24.

[21] 281 SCRA 463.

[22] People v. Perez, G.R. No. 122764, September 24, 1998.

[23] People v. Ilao, G.R. No. 129529, September 29, 1998.

[24] People v. Palma, 144 SCRA 236.

[25] People v. Bahuyan, 238 SCRA 330.

[26] People v. Salazar, 258 SCRA 55.

[27] People v. Abangin, G.R. No. 125939-40, October 12, 1998, citing People v. Tismo, 204 SCRA 535 and People v. Antido, 278 SCRA 425.

[28] People v. Padilla, G.R. No. 121539, October 21, 1998.

[29] People v. Victor, G.R. 127903, July 9, 1998.

[30] G.R. No. 127569, July 30, 1998.

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