

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUILBERT ARCILLAS Y PEREZ, ACCUSED-APPELLANT.

G.R. No. 126817. December 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the judgment of the Regional Trial Court of Zamboanga City, Branch 13, in Criminal Case No. 2990 (12023) finding appellant Guilbert Arcillas y Perez, guilty beyond reasonable doubt of rape with frustrated homicide and sentencing him to suffer the penalty of reclusion perpetua.

The facts of this case, culled from the records, are as follows:

On the morning of August 18, 1995, private complainant Isabel Lanipa y Perez and her husband, Romeo Lanipa, left their home at Tagasilay, Zamboanga City, to go to their farm in Simanta, a sitio of Tagasilay. On the way complainant's husband stopped to chat with a relative they met on the road, leaving private complainant to proceed alone to their farm. When Isabel reached their farm, she saw appellant Guilbert Arcillas, who is her nephew, seated beside their nipa hut with his pants down. He was there to help harvest corn. Isabel did not immediately proceed to the nipa hut, but instead put their carabao to pasture. She then went to the hut but did not see appellant there. Minutes later, appellant returned carrying a round, thick, piece of wood approximately 14 inches in length. She asked him why he was not gathering corn and why was he carrying the wood. Appellant answered his father told him to bring it. Isabel told appellant to start gathering corn as she was going to the creek to wash clothes. While she was busy with her laundry, she felt somebody behind her. As she turned, she saw appellant about to hit her with the thick stick. The blow landed on her right eyebrow and rendered her unconscious. Upon regaining consciousness, she found herself bathed in her own blood. Hurt, she dragged herself to the nipa hut to wait for her husband.

When her husband arrived, he brought her to the Quiniput Emergency Hospital. Later, she was transferred to the Zamboanga Regional Hospital where more thorough examination was conducted at her husband's request. He suspected she had been sexually abused. The laboratory examination showed that she was positive for sperm cells in her private parts.[1] Private complainant had not had sex with her husband before the incident since she had her menstrual period. They suspected appellant of raping her.

On August 23, 1993, she filed a complaint charging appellant of rape with frustrated homicide allegedly committed as follows:

That on or about August 18, 1993, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously, have carnal knowledge of the undersigned ISABEL PEREZ DE LANIPA, against her will; that further to enable accused to commit the above offense, accused armed with a piece of wood and with intent to kill, did then and there wilfully, unlawfully and feloniously strike with the said weapon that he was then armed with, the person of undersigned thereby inflicting serious injuries upon her which ordinarily

would cause her death, thus performing all the acts of execution which would have produced the crime of Homicide, as a consequence, but nevertheless, did not produce it by reason of some causes independent of the will of said accused, that is, by the timely and proper medical attention rendered to the undersigned which prevented her death, to the damage and prejudice of said offended party.

CONTRARY TO LAW.[2]

On August 23, 1993, the trial court issued a warrant for appellant's arrest.

On 17 September 1993, appellant was arraigned. He entered a plea of not guilty.

Upon order of the lower court, Rodolfo Hermoso, the court social worker of the RTC of Zamboanga City, conducted a case study on appellant. Hermoso reported that appellant was born on September 14, 1976[3] and at the time of the incident, a minor.

During the trial, appellant admitted that he hit his aunt with a thick piece of wood out of anger when he heard people gossiping that his father was a thief. He vented his anger on his aunt when she confirmed the gossip. After hitting her, he threw away the stick and ran away. He did not admit nor deny raping his aunt.[4]

On April 16, 1996, the trial court decided the case as follows:

WHEREFORE, in view of all the foregoing this Court finds the accused GUILBERT ARCILLAS y PEREZ guilty beyond reasonable doubt of the crime of 'Rape with Frustrated Homicide' and hereby sentences him to suffer the penalty of RECLUSION PERPETUA; to indemnify Isabel Lanipa y Perez the amount of P50,000.00 as moral damages; to reimburse the said Isabel Lanipa y Perez the amount of P2,000.00 which she spent for hospital expenses and to pay the costs.

However, considering that the accused Guilbert Arcillas y Perez is a minor, instead of pronouncing the above judgment, further proceedings in this case is hereby suspended upon receipt of the Court of his application for the suspension of his sentence and thereafter, he shall be committed to the care and custody of the Department of Social Services and Development, thru the Regional Director in Region 9, Zamboanga City, until he shall have reached the age of 21 years or for a shorter period after considering the Reports and Recommendation that may be rendered by said government agency (DSSD).

SO ORDERED.[5]

On May 16, 1996, appellant filed his notice of appeal. Before us, appellant raises this sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE WITH FRUSTRATED HOMICIDE.

In his brief, appellant argues that absent any positive or concrete evidence to show that he raped his aunt, he should be acquitted of the charge filed against him and held liable only for physical injuries. He avers that the trial court erred in convicting him on the basis of the presence of sperm cells in his aunt's vagina and the self-serving statements of the couple that they did not have sex before the incident. Appellant contends that since the medical examination was inconclusive that the spermatozoa were his, there was no proof that he raped his aunt.

The Solicitor General, in his brief, submits that while it is true that there is no direct evidence showing that appellant carnally abused his aunt, nonetheless, the trial court correctly relied on circumstantial evidence. Appellant did not rebut the testimony of the victim that, on the day of the assault, she was on the third day of her menstrual period, and she and her husband did not have sex days before the incident. The only plausible explanation for the sperm cells in her private parts was that appellant had intercourse with her while she was unconscious. Noteworthy, appellant did not admit nor deny raping the victim.

At the outset, we must note that appellant was charged with the special complex crime of rape with frustrated homicide. The information alleged that the rape was committed "by means of force and intimidation." [6] That "force" consisted, however, of a blow on the head of the victim that rendered her unconscious. The same blow could have caused her death were it not for timely medical treatment. For the information to be sufficient, it must describe the offense with such particularity to make sure the accused fully understand what he is being charged with. The particularity must be such that a person of ordinary intelligence immediately knows what the charge is. [7] All the essential facts constituting the offense must be stated, not just conclusions of law. [8] In this case, the information contained all the essential elements of rape as defined by law, [9] as well as frustrated homicide. [10] The gravamen of rape as an offense is carnal knowledge of a woman against her will. [11] Frustrated homicide was also alleged sufficiently. So was the complex character of the offense charged.

In most rapes, only the victim and the rapist are present at the scene of the crime, usually in isolation. Only the parties can testify on what actually happened. [12] A special difficulty arises where the victim was unconscious. In these instances, the prosecution would have to primarily rely upon circumstantial or physical evidence. We have resolved such cases on purely circumstantial evidence. [13]

In finding appellant guilty of the offense charged, the trial court reasoned out:

While there is no direct evidence showing that the herein accused raped his auntie, because no one saw the actual deed done, since the victim herself was unconscious, yet the laboratory analysis conducted by the laboratory department of the Zamboanga Medical Center establishes the fact that the specimen taken from the private organ of the victim was positive for sperm, which according to the doctor who testified has a life span of three days. In this case, the incident transpired on August 18, 1993, and the laboratory examination on the specimen was made on August 19, 1993. The evidence also shows that this victim, Isabel Lanipa was, on the occasion of the incident, in her menstrual period, hence, she and her husband did not engage in any sexual activity days before the incident. The only plausible explanation for the presence of sperm in the private organ of the herein victim is that accused actually did rape her. [14]

Circumstantial evidence may justify a conviction for rape if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such to produce the conviction beyond reasonable doubt. [15] In this case, the trial court concluded that private complainant was raped because it was the "only plausible explanation for the presence of sperm in the private organ of the herein victim." In so doing, the trial court relied upon this single circumstance to support the conviction, namely, the presence of spermatozoa in the victim's private parts. From this circumstance, it then inferred that the only possible reason for the presence of the sperm cells is appellant's raping the victim. The records, however, do not support this finding. Dr. Caroline Rodriguez, resident physician of the Obstetrics-Gynecology Department of the Zamboanga City Medical Center, who examined the victim, testified that she "could not possibly tell that the patient was raped." [16]. Under cross-examination, Dr. Rodriguez admitted that she "could not attribute these sperm cells to any person" as they lacked the necessary facilities. [17] In her opinion, sperm cells have a life span of three (3) days, [18] thus leading the trial court to conclude that since alleged rape took place on August 18, 1993 and the laboratory examination was done the next day, the appellant stood as the most plausible source of said sperm. However, Dr. Rodriguez also declared that the sperm could have been introduced as late as August 19, 1993 or the very day of the examination and as early as August 16, 1993. [19] Moreover, opinions of forensic experts differ as to how long after sexual intercourse, may spermatozoa be found in the vaginal canal. [20] One authority says that motile spermatozoa can be found in the vaginal canal from as short as one-half hour or as long as 6 hours, or on the average, 3 hours after coitus. But motile sperm cells have also been found in the vagina as much as 100 hours after intercourse. For non-motile sperm, their presence can be detected as much as 17 days after intercourse. [21] Another authority points out that live spermatozoa can

be found in the vaginal canal as much as one week after sexual congress.[22] Others claim that the period during which sperm may be detected inside the vaginal canal ranges from a low of 45 minutes to a high of several days after the last coitus.[23] Clearly, a conviction for rape cannot be made on the sole basis of the testimony of Dr. Rodriguez. The mere presence of spermatozoa in the vagina does not prove that appellant raped private complainant since these sperm cells could have been introduced by sexual contact earlier or later than the alleged rape. The important consideration in rape is not the presence of semen or spermatozoa, but the penetration of the female genitalia by the male organ.[24] The presence or absence of spermatozoa is immaterial in a prosecution for rape.[25] Although the prosecution has proven that private complainant was clubbed into unconsciousness by appellant, the evidence proffered is inadequate to prove that she was raped. Evidence of carnal knowledge is necessary in rape. In this case, evidence of entrance or introduction of the male organ into the labia of the pudendum of the victim is missing. We are left to speculate on the matter. There is a possibility that appellant ravished private complainant and emitted his sperm into her genitalia while she was unconscious. However, an equal possibility exists that he did not violate her at all and the sperm cells were from some previous or later intercourse between the victim and her husband. We are thus constrained to resolve the doubt in appellant's favor. Conviction should be decreed only when the exacting standard of proof beyond reasonable doubt is met. Petitioner enjoys the presumption of innocence, which can only be overcome by proof beyond reasonable doubt. The prosecution's evidence failed to meet this quantum of proof as it stands. Mere suspicions or conjectures, no matter how strong, cannot be substitutes for the required quantum of proof.[26]

With respect to the charge of frustrated homicide, appellant argues that the prosecution's own evidence showed that the victim's wounds were capable of healing in fourteen (14) days. Appellant contends that the victim's injuries are not fatal and he should be held liable only for physical injuries.

But his argument is off-tangent. What is at issue here is whether there was on appellant's part the intent to kill when he inflicted the injuries on his aunt. If so, he should be punished for the appropriate offense which is included in the charge of rape with frustrated homicide, and duly proved. Intent to kill must be evidenced by an act, which at the time of its execution is unmistakably calculated to produce the victim's death by adequate means. In this case, the intent to kill cannot be doubted. Appellant armed himself with a heavy wooden club and aimed his blow at the victim's head. The blow hit her in the head, and she lost consciousness. But for unexplained reasons she regained consciousness after her assailant had fled. She was rescued by her husband who brought her to the hospital for timely medical assistance. Here the crime of homicide was not consummated, but by reasons other than the appellant's desistance. The appellant had performed all the acts of execution, but the felony of homicide was not produced by reasons independent of his will.[27] Appellant is liable for frustrated homicide because the victim lived. Had she died, he would have been liable for the graver offense of consummated homicide.

Under Article 250 of the Revised Penal Code, the penalty to be imposed upon a person convicted "of the frustrated crime of parricide, murder, or homicide, shall be a penalty lower by one degree than that which should be imposed under the provisions of Article 50." [28] The penalty prescribed for homicide is reclusion temporal. [29] One degree lower is prision mayor, the period included in the penalty in its entirety being from 6 years and 1 day to 12 years. At the time of the commission of the offense on August 18, 1993, appellant was below eighteen (18) years of age. He is thereby entitled to the privileged mitigating circumstance of minority. [30] Pursuant to Article 64 (2) of the Revised Penal Code, the penalty shall be imposed in its minimum period. [31] Applying the Indeterminate Sentence Law, the "minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The imposable penalty shall be within the range of prision correccional as the minimum to prision mayor as the maximum, or from 4 years, 2 months, and 1 day of prision correccional to 8 years of prision mayor.

On the damages awarded, we find that the P2,000.00 reimbursement of hospital expenses in order, there being testimonial evidence that the victim incurred medical expenses. The offended party having suffered actual injuries is clearly entitled under Article 2219 of the Civil Code to moral damages.[32] However, a reduction of the amount is in order. In this case, the rape with frustrated homicide was not proved but only frustrated homicide. Hence P10,000.00 as moral damages would be sufficient under the circumstances.

WHEREFORE, the assailed judgment of the Regional Trial Court of Zamboanga City, Branch 13, in Criminal Cases No. 2990 (12023) is hereby MODIFIED. Appellant GUILBERT ARCILLAS y PEREZ is found GUILTY only of frustrated homicide. His sentence is reduced to a prison term of 5 years, 5 months and 11 days of prison correccional as minimum to 6 years, 8 months, and 20 days of prison mayor as maximum, with the accessory penalties provided by law. He is also ordered to pay Isabel Lanipa y Perez P2,000.00 for hospital expenses as actual damages, P10,000.00 as moral damages, and the costs. Let the records of the case be remanded for appropriate action by the Regional Trial Court of Zamboanga City, Branch 13, soonest.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1]Records, p. 5.

[2]Id. at 1.

[3]Id. at 47-48.

[4]TSN, December 14, 1993, p. 7.

[5]Id. at 76.

[6]Supra note 2.

[7]RULES OF COURT, Rule 110, Sec. 9. Cause of accusation. - The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.

[8]Dans, Jr. vs. People, 285 SCRA 504, 505 (1998).

[9]Rev. Pen. Code, Art. 335 provides for the following elements of rape: (1) That the offender had carnal knowledge of a woman; (2) That such act is accomplished under any of the following circumstances: (a) By using force or intimidation; or (b) When the woman is deprived of reason or otherwise unconscious; or (c) When the woman is under 12 years of age.

[10]Rev. Pen. Code, Art. 249 in relation to Art. 6.

[11]People vs. Jesus Docena, G.R. No. 131894-98, January 20, 2000, p. 7; citing People vs. Igat, 291 SCRA 100 (1998); People vs. Reyes, G.R. No. 113781, September 30, 1999.

[12]People vs. Caratay, 316 SCRA 251, 261 (1999).

[13]People vs. Tabarangao, 303 SCRA 623, 630-631 (1999).

[14]Supra note 6.

[15]People vs. Robles, Jr., 305 SCRA 273, 281 (1999).

[16]TSN, October 18, 1993, p. 12.

[17]Id. at 20.

[18]Id. at 18.

[19]Ibid.

[20]P. P. Solis, , Legal Medicine 513 (1987).

[21]C.G. Tedeschi, W. G. Eckart and L.C. Tedeschi, II Forensic Medicine 952 (1977).

[22]A. W. Herzog, Medical Jurisprudence 828 (1931).

[23]Gonzales, Vance et al., Legal Medicine 612 (1954).

[24]People vs. Siao, G.R. No. 126021, March 3, 2000, p. 26, citing People vs. Galleno, 291 SCRA 761 (1998).

[25]People vs. Bato, G.R. No. 134939, February 16, 2000, p.7, citing People vs. Juntilla, 314 SCRA 568 (1999); People vs. Sacapaño, 313 SCRA 650 (1999); People vs. Manuel, 298 SCRA 184 (1998).

[26]See People vs. Maing, G.R. No. 122112, May 12, 2000, p. 7, citing People vs. Dela Rosa, 284 SCRA 158 (1998).

[27]See Rev. Pen. Code. ART. 6. Consummated, frustrated, and attempted felonies. - Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

[28]Rev. Pen. Code, ART. 50. Penalty to be imposed upon principals of a frustrated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

[29]Rev. Pen. Code, ART. 249. Homicide. - Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[30]Rev. Pen. Code, ART. 13. Mitigating Circumstances. - The following are mitigating circumstances:

x x x

(2) That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of article 80.

[31]ART. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single indivisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts

shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating circumstances:

x x x

(2) When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

[32]ART. 2219. Moral damages may be recovered in the following and analogous cases:

A criminal offense resulting in physical injuries.

x x x

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