

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS., NOLINO BAGONG MANAGAYTAY, ACCUSED-APPELLANT.

G.R. No. 126916. March 25, 1999

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PER CURIAM:

At bar is automatic appeal from the Decision of Branch 25 of the Regional Trial Court in Danao City, finding accused Nolino Bacong Managaytay guilty beyond reasonable doubt of the crime of rape, and sentencing him as follows:

"Wherefore, the Court finds accused guilty beyond reasonable doubt of the heinous crime of rape, there being no mitigating circumstances considered, accused is hereby sentenced to face the supreme penalty of death.

Accused is hereby ordered to indemnify complainant the sum of Fifty Thousand Pesos (P50,000.00) for damages.

SO ORDERED."^[1]

On June 16, 1995, Lorena S. Managaytay, assisted by her mother, filed her Complaint for Rape^[2] with City Prosecutor Godocaje C. Camoro, alleging:

"That in or about June 4, 1995 at 12: 00 o'clock noon more or less, in Danasan, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant who is his daughter, a virgin over twelve but under eighteen years old.

CONTRARY TO LAW."^[3]

On December 14, 1995, upon arraignment thereunder, with the assistance of counsel, accused pleaded not guilty to the crime charged.

As summarized by the Solicitor General in the Appellee's Brief^[4], the version of the prosecution runs thus:

"Complaining witness LORENA MANAGAYTAY is 15 years old, single, a student and residing at Danasan, Danao City. She testified that on June 4, 1995, at 12:00 o'clock noon, there were four (4) of them who were inside their house at Danasan, Danao City, namely; her father Nolino Managaytay, her two younger brothers and herself; that during that time, her mother was working in Consolacion, Cebu as a househelper; that while they were in the house, her father Nolino Managaytay instructed her two brothers to attend and fetch the cow which was pastured 70 meters away from the house; that after her two brothers left, her father hugged her tightly and commanded her to lie down on the floor; that because she did not obey his command, her father forced her down on the floor; that because she did not obey his command, her father forced her down, placed himself on top of her body and inserted his penis to her vagina; that she did not shout for help because her father threatened her to kill her if she will shout; that at first she did not tell her mother about the incident but told only her aunt Diditha Suplaag who then reported the matter to the Barangay Captain Ponciano Lawas; that as a result of the report of her aunt to the Barangay Captain, her father was arrested by two Barangay Tanods; that when she finally related the incident to her mother, she was brought to Don Vicente Sotto Memorial

Medical Center for medical examination;

xxx that her mother reported the matter to the Department of Social Welfare and Development (DSWD); that at present she is no longer residing at Danasan, Danao City because she is already taken care of the Office of the DSWD (TSN dated Jan. 25, 1996, pp. 2-6). xxx that upon examination of the patient, she noted several old healed lacerations of the hymen and when she conducted genital examination, she noted that the vaginal opening can admit two fingers with ease; that it is most probable that prior to her examination of the patient there was previous penetration of her vagina; that when she conducted a sperm examination, the result was negative, meaning no sperm was found, that theoretically, after four (4) hours of contact, one can hardly see and identify a live sperm and that there are some men who have no sperms at all and there are those that will be washed out even before the expiration of twenty four (24) hours; that she has no way of determining whether, or not the old healed lacerations she observed in the hymen of the victim were caused in the month of June, 1995 or earlier unless those lacerations are very recently that if one tries to do some manipulation, it will bleed again." (TSN dated March 26, 1996, pp. 3-17; Decision, pp. 2-3).

The accused put up his defenses of denial and alibi, theorizing that he was in Camansili, Balamban, Cebu, when the rape complained of happened. Citing *People v. Godoy*, 250 SCRA 676; *People v. Teves*, 246 SCRA 236 and *People v. Relacion*, 95 SCRA 369, the accused, through the Public Attorney's Office, maintained:

"Appellant submits that no rape could have taken on June 4, 1995. The complainant testified that on June 4, 1995 at about 12:00 noon, they were four (4) inside their house. (TSN, January 25, 1996, p. 2). She also testified that only one of her brothers was sent by his father to fetch the cow. (TSN, *ibid*, p. 3) Considering that they were still three (3) left inside the house it is impossible, therefore for her father to rape her.

Private complainant also testified that when she was raped by her father, she resisted and even kicked her father. Yet the examining physician did not report any sign of injury in any part of her body, not even a slightest contusion or abrasion. xxx

xxx xxx xxx

Apparently, the crime of rape contended by the appellant, was merely filed by the private respondent as she has ill feelings towards her father because her father severely punished her several times, xxx"[5]

On February 12, 1998, the People's Appellee's Brief traversed the stance of the accused; thus:

"Admittedly, private complainant resented the beatings she got from her father but still being beaten is inadequate to spur private complainant to fabricate a rape charge against her own father in exchange for exposing herself along with her family to public humiliation and embarrassment. xxx"[6]

Contrary to the theory of accused, private complainant categorically recounted that she was alone with her offending father when she was raped and forcibly deflowered. On cross-examination, she explained the absence of contusions or scratches in her body, as follows:

"xxx It is a matter of record that the rape against private complainant took place on June 4, 1995. Private complainant had herself examined on June 15, 1995 or after nine days. If ever there were contusions or scratches in private complaint's body these would have been completely healed at the time the complainant presented herself for examination. xxx"[7]

On August 30, 1996, the trial court of origin came out with its judgment, finding accused guilty beyond reasonable doubt of the crime of rape charged and sentencing him accordingly.

Pursuant to Sec. 3(e), Rule 122 of the 1985 Rules on Criminal Procedure, the said verdict imposing the supreme penalty of death was elevated on automatic appeal for this court's review and scrutiny.

As his only assignment of error, accused contends that:

"THE TRIAL COURT ERRED IN FINDING ACCUSED APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE MATERIAL INCONSISTENCIES IN THE TESTIMONY OF THE PRIVATE COMPLAINANT WHICH RENDERED IT UNTRUTHFUL." [8]

We are not impressed with the submission of the accused.

To begin with, he theorized that private complainant was confused in her testimony when she alleged that on June 4, 1995, at 12:00 noon, they were four (4) in their house. (TSN, January 25, 1996, p. 2) Then, she stated that they were only three (3) since his father sent his brother to fetch their cow. Rape, according to accused, cannot be committed in the presence of other occupants in the house. But in a long line of cases, this court held:

"It is an accepted rule that credibility of a rape victim is not impaired by some inconsistencies in her testimony." (People v. Bultron, 272 SCRA 352).

"And the credibility of a rape victim is not destroyed by the inconsistencies in her testimony." (People v. Atuel, 261 SCRA 339 citing People v. Abapo, 239 SCRA 373).

"Minor inconsistencies tend to bolster, rather than weaken, the rape victim's credibility since one could hardly doubt that her testimony was not contrived and the court cannot expect a rape victim to remember every ugly detail of the appalling outrage." (People v. Sagucio, 277 SCRA 163).

"Minor lapses would tend to buttress rather than weaken the complainant's credibility as one could hardly doubt that her testimony was contrived." (People v. Querido, 229 SCRA 745).

"Errorless testimonies cannot be expected especially when a witness is recounting details of a harrowing experience. Complainant's testimony deserves the badge of credence when it is free from substantial self-contradictions." (People v. Ibay, 233 SCRA 216).

"A rape victim is not and cannot be expected to keep an accurate account of her traumatic experience." (People v. Garcia, 281 SCRA 463).

"A rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone." (People v. Rabosa, 273 SCRA 142).

"Lust is no respecter of time and precinct; it can be committed in most unlikely places such as in park, along a roadside, within school premises, or even in an occupied room." (People v. Cabillan, 267 SCRA 258).

"Lust is no respecter of time and place." (People v. San Juan, 270 SCRA 693)

"Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping." (People v. Gabayron, 276 SCRA 78),

"Lust is no respecter of time and place." (People v. Gecomo, 254 SCRA 82; People v. Dones, 254 SCRA 696).

"Rape is no respecter of time and place." (People v. Alimon, 257 SCRA 658).

"It is not necessary for the rape to be committed in an isolated place." (People v. Leoterio, 264 SCRA 608).

"There is no rule that rape can be committed only in seclusion." (People v. Sangil, Sr., 276 SCRA 532; People v. Talaboc, 256 SCRA 441).

"Rape can be committed in a house where there are many other occupants." (People v. Escobar, 281 SCRA 498).

Accused pointed out that the examining physician did not report any sign of injury in any part of the body of complainant during the medical examination she conducted on her. The said fact does not render improbable the occurrence of rape because settled is the doctrine that absence of external injuries does not negate rape.

"Absence of external injuries in the body of the rape victim is not essential to the conviction of her attackers." (People v. Davatos, 229 SCRA 647).

"Rule is settled that absence of external signs or physical injuries does not negate the commission of the crime of rape." (People v. Querido, 229 SCRA 745).

"Absence of external signs or physical injuries does not negate the commission of rape since proof of injuries' is not an essential element of the crime" (People v. Casipit, 232 SCRA 638).

"Absence of external signs of injury does not necessarily negate the commission of rape, especially when the victim was so intimidated by the offender into submission." (People v. Bautista, 236 SCRA 102).

"The Court has time and again held that the absence of any external signs or physical injuries does not negate the commission of the crime of rape." (People v. Alimon, 257 SCRA 658).

So, also, accused theorized that the victim merely lodged her complaint charging him with rape because of severe beatings he inflicted on her. This theory deserves scant consideration. In People v. Ramirez, 266 SCRA 335, and other relevant cases, the court ratiocinated:

"No woman especially one who is of tender age would concoct a story of deploration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished."

"When an alleged Victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her as long as her testimony meets the tests of credibility, the accused may be convicted on the basis thereof." (People v. Butron, 272 SCRA 352; People v. Rabosa, 273 SCRA 142)

"Where the accused was positively identified by the victim of rape herself who harbored no ill motive against the accused, the defense of alibi must fail. Axiomatic it is in rape cases that the victim's testimony must be clear, convincing and free from material contradiction." (People vs. Subido, 253 SCRA 196)

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"A rape victim 'will not come out in the open if her motive is not to obtain justice.'" (People v. Castromero, 280 SCRA 421)

"xxx it is highly inconceivable for a young barrio lass, inexperienced with the ways of the world, to fabricate a charge of deploration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the wrong committed against her." (People vs. Esguerra, 256 SCRA 657)

What is more, well-entrenched to the point of being elementary is the jurisprudence that findings of fact by the trial court which had the singular opportunity to observe the demeanor of the witnesses, are accorded great respect by this Court.

"Factual findings of the trial court are accorded the highest respect unless it is shown that certain facts of value have been plainly overlooked which if considered could affect the result of the case." (People v. Villanueva, 254 SCRA 202).

From the evidence on record, it is indeed abundantly clear that accused raped his own daughter. His defenses of alibi and denial are inherently weak. They cannot outweigh and overcome the positive and unequivocal narration by the victim on how she was ravished by her own father.

"FISCAL GENEROSO CAPUYAN: continues

Q. What happened, next, when your father was on top of you?

A. His penis was inserted to my vagina, sir.

Q. What was your reaction at that time?

A. I was crying, sir.

COURT TO THE WITNESS:

Q. You said that your father inserted his penis to your vagina, did your father pull out his penis from your vagina?

A. Yes, Your Honor.

xxx "[9]

All things studiously considered and viewed in proper perspective, the mind of the court can rest easy on a finding that the accused is guilty of raping his own daughter. Instead of protecting her chastity and virginity, he spoiled his own flesh to satisfy his lust.

The applicable law being Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the penalty for the heinous offense accused perpetrated is the supreme penalty of death.

Although four (4) members of the Court are steadfast and consistent in their adherence to the separate opinion expressed in People v. Echegaray, G.R. No. 117472, February 7, 1997, that Republic Act No. 7659 is unconstitutional, insofar as it prescribes the death penalty, they nevertheless bow to the majority ruling that the said law is constitutional and the death penalty authorized thereunder can be imposed.

WHEREFORE, the judgment a quo in Criminal Case No. DNO-1436, finding accused Nolino Bacong Managaytay guilty of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing him to suffer the death penalty, is hereby **AFFIRMED**, with the **MODIFICATION** that the indemnity or compensatory damages awarded to the offended party, Lorena Managaytay, be **INCREASED** to **SEVENTY-FIVE THOUSAND (P75,000.00) PESOS**, following the ruling in People of the Philippines vs. Esteban Victory y Penis, promulgated by this court on July 9, 1998.

Upon the finality of this Decision, let certified true copies thereof as well as the records of the case be forwarded without delay to the Office of the President for possible grant of executive clemency, in accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659. With costs de oficio.

SO ORDERED.

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

[1] RTC Decision, p. 17, Rollo, p. 54.

[2] Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659, provides, that:

"Article 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

xxx

The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or commonlaw spouse of the parent of the victim. xxx"

[3]

[4] Rollo, pp. 61-62

[5] Brief for the Appellant, pp. 4-5, Rollo, pp. 40-41.

[6] Appellee's Brief, p. 6, Rollo, p. 64

[7] Appellee's Brief, p. 9, Rollo, p. 67.

[8] Brief for the Appellant, p. 1, Rollo, p. 37.

[9] TSN, January 25, 1996, Direct Examination, Lorena Managaytay.

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