PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME BALACANO Y DALAFU, ACCUSED-APPELLANT.

G.R. No. 127156. July 31, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

For automatic review is the Decision of Branch 78, Regional Trial Court of Quezon City,[1] finding the appellant guilty beyond reasonable doubt of the crime of rape, and sentencing him as follows:[2]

> "WHEREFORE, the Court finds accused JAIME BALACANO y DALAFU GUILTY beyond reasonable doubt as principal of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, and is hereby sentenced to suffer the penalty of DEATH in Criminal Case No. Q-95-62686. The accused is likewise ordered to indemnify the victim Esmeralda Balacano the amount of One Hundred Thousand (P100,000.00) Pesos, as moral damages.
>
> SO ORDERED."

On August 16, 1995, Esmeralda Balacano, assisted by her mother, Ma. Luisa M. Balacano, lodged subject complaint[3] for rape before Assistant City Prosecutor Wilfredo L. Maynigo, stating thus:

> "The undersigned accuses JAIME BALACANO Y DALAFU of the crime of Rape, committed as follows:
>
> That on or about the 9th day of August, 1995, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously put himself on top of said complainant, a minor 14 years old, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.
>
> CONTRARY TO LAW."

Upon arraignment on September 20, 1995 with the assistance of Atty. Eranio G. Cedillo, appellant pleaded not guilty to the crime charged.

Evidence for the People consisted of the testimonies of the victim, Esmeralda Balacano, and Dr. Jesusa Nieves-Vergara, the medico legal officer who examined her.

Esmeralda Balacano, fourteen years of age, testified that she was raped five (5) times by the appellant, who is her step-father, but she could not anymore remember the dates she was ravished except that which happened on August 9, 1995. She also narrated that on the said date, at around 7:00 o'clock in the evening, she and her sister Peñafrancia were in their residence at No. 121 Commonwealth Avenue, Barangay Commonwealth, Quezon City, when the appellant entered the room, asked her sister to go out, and ordered her (victim) to undress. Sensing that appellant was drunk and afraid of his anger, she complied. Appellant then inserted his penis into her vagina. After satisfying his lust, he slept. She then went out of the house to look for her sister and they waited for their mother. Upon the arrival of the latter, they went to the police station where the investigation of the incident took place.

The other witness for the prosecution, Dr. Jesusa Nieves-Vergara, the medico-legal officer who conducted a physical examination of the victim, recounted that the victim was in a non-virgin state with deep lacerations, positioned at 3, 6 and 9 o'clock, respectively. The medico-legal expert opined that the lacerations in the hymen of the victim were indications of sexual abuse.[4]

Appellant interposed the defense of denial. According to him, on the alleged date of commission of the crime, he was alone, sleeping inside their rented room. He denied having raped the victim. No other witness was presented to corroborate appellant's testimony.

On May 13, 1996, the trial court found the evidence for the prosecution enough to convict appellant Jaime Balacano for raping his step-daughter Esmeralda Balacano. In arriving at its finding of guilt, the trial court ratiocinated:

> "The Court believed the testimony of Esmeralda Balacano which bears an earmark of truthfulness in spite of the fact that she was an illiterate and minor inconsistencies in her testimony, which was corroborated by the findings of the medico-legal and other circumstances rather than the unsubstantiated testimony of Jaime Balacano.
>
> Esmeralda was categorical and vivid in narrating the incidents of rape committed by Jaime Balacano on her. She was very straight-forward and honest in answering questions propounded on her even to the point of casting doubt on her credibility .
>
> xxx xxx xxx
>
> The Court cannot cast doubt on the testimony of Esmeralda. There may be some inconsistencies in her testimony but these are minor ones that do not destroy her credibility neither weakens the case of the prosecution. It even impressed on the mind of the Court that the same is not fabricated. It is expected also considering the nightmare she has gone through which some people would like to forget."[5]

Appellant's Brief is anchored on the lone assigned error, that:

> THE LOWER COURT ERRED IN FAILING TO APPLY THE RULE THAT IN CASE OF DOUBT SUCH DOUBT MUST BE RESOLVED IN FAVOR OF THE ACCUSED.

Appellant contends that on the basis of the evidence on record, there is a doubt as to his guilt, and the same should be resolved in his favor pursuant to the constitutional provision that "xxx the accused shall be presumed innocent until the contrary is proved xxx".[6] He theorizes that in criminal cases, the accused is entitled to acquittal in the absence of proof of guilt beyond reasonable doubt.[7]

In criminal prosecutions, "reasonable doubt" is not a mere guess that the appellant may or may not be guilty. It is such a doubt that a reasonable man may entertain after a fair review and consideration of the evidence.[8] It is:

> "xxx a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge, a certainty the convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it."[9]

In short, it is a state of the mind engendered by insufficient proof.[10]

In this case under automatic review, there are pieces of evidence introduced by the prosecution to traverse the denial theorized upon by the defense.

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Appellant contends that the evidence offered by the prosecution does not suffice to convict him; arguing that the prosecution depended heavily on the testimony of the victim, which he (appellant) brands as inadequate in view of admissions by the victim allegedly impairing her credibility and exposing the impossibility of commission of the rape charged, such as: (1) Her claim that she was raped five (5) times by the accused but she only reported the fifth rape; (2) Admission by the victim that no threats were made on her by the accused during or after the rape; and (3) That they (appellant's family) were renting only one room wherein all the family members were sleeping such that, rape could not have taken place therein.

The appeal is barren of merit.

Appellant relied principally on his defense of denial, insisting that he never raped Esmeralda, who is his step-daughter. Assisted by the Public Attorney's Office (PAO), appellant narrated thus:

> "xxx xxx xxx that on August 9, 1995 at 7:00 o'clock in the evening, when the alleged rape happened, he was at home and in fact already sleeping; that they are only renting a room in a house in Barangay Commonwealth, Quezon City; that on the alleged date of the crime his wife (Ma. Luisa Balacano) was also at their house, the same thing with their two daughters namely Esmeralda and Peñafrancia."[11]

As repeatedly pronounced by this Court (1) an accusation for rape can be made with facility; it is difficult to prove but even more difficult to disprove by the person charged, though innocent; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence of the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[12]

But, time and again, the Court has ruled that the lone testimony of the victim may suffice to convict the rapist. When a victim says she has been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[13] The aforestated principle applies squarely to this case.

As a general rule, the factual findings by the trial court deserve a high degree of respect and are not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the conviction of the accused.[14]

In the case under scrutiny, the Court agrees with the lower court that the credibility of the victim has not been impaired by her alleged inconsistencies alluded to by the appellant. On this score, the trial court said:

> "The Court cannot cast doubt on the testimony of Esmeralda. There may be some inconsistencies in her testimony, but these are minor ones that do not destroy her credibility neither weakens the case of the prosecution. It even impressed of the mind of the Court that the same is not fabricated. It is expected also considering the nightmare she has gone through which some people would like to forget. xxx"[15]

As regards the first inconsistency referred to, considering that appellant has been convicted for the fifth rape, which he perpetrated on August 9, 1995, it does not matter whether or not there are proofs on record of the four other rapes he previously committed. The lack of evidence of the four other rapes aforesaid is of no moment.

It should be noted that appellant was only tried and convicted for the fifth rape. Immediately after the rape on August 9, 1995, the victim informed her mother what happened and both of them proceeded to the police station for an investigation of the rape complained of, as can be gleaned from the records on hand, to wit:

> "PROS. VELASCO: (on direct examination)
>
> Q - At about 7:00 o'clock in the evening of August 9, 1995, were you at your residence at No. 121

Commonwealth Avenue, Barangay Commonwealth, Quezon City?

ANSWER:

.....Yes, Sir.

xxx xxx xxx
Q - At that time about 7:00 o'clock in the evening, what were you and Penafrancia doing?
A - We were both laying down in our room, sir.

Q - While you and Penafrancia were lying in your room, was there any unusual incident which transpired?
A - Yes, sir, there was, sir.

Q - And what is this?
A - First, Jaime Balacano asked my sister to go out of the house and then he asked me to remove my dress but I resisted and then he was able to remove my pants and then he put his penis into mine, sir.

Q - Now, after putting his penis inside yours, what transpired next, Madam Witness?
A - When he put his penis inside my vagina, I felt a sticky water came (sic) out and then afterwards, he slept and then I went out of the house to look for my sister and we waited for my mother, sir.

PROS. VELASCO: (on direct examination)

Q - And did your mother arrived?

ANSWER:

.....A - Yes, sir

Q - And what did you do when your mother arrived?
A - I told my mother what happened, sir.

xxx xxx xxx

Q -.....In connection with this case, do you remember if you were investigated by the police?
A - Yes, sir.

Q -.....And did you execute a statement at the police station?

Q - Yes , sir."[16]

On August 16, 1995 or seven days after the August 9, 1995 rape, the victim (with the assistance of her mother) was able to formalize her complaint before Asst. Prosecutor Wilfredo L. Maynigo. There was thus no delay in reporting the incident sued upon. Anyway, delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the complaining witness.[17]

On the issue of whether the absence of threats negated the present charge of rape, the Court rules in the negative.

Appellant placed reliance on his theory that there was no threat as the victim admitted that no threats were made against her life or that of her family; and that the physical examination conducted on the victim by the medico-legal officer showed no signs of physical injuries.

It should be borne in mind that appellant is lawfully married to the mother of the victim, who practically grew up recognizing the appellant as her own father.

The relationship between a stepfather and stepdaughter is akin to the relationship of a natural father and a natural daughter especially if the stepdaughter grew up recognizing him as her own. Such relationship necessarily

engendered moral ascendancy of the stepfather over the step-daughter.

Although it is true that there were no physical injuries found in the victim's body, in rape cases absence of bodily threats does not matter where there is an existing relationship between the appellant and the victim, resulting to moral ascendancy of the former over the latter. Appellant being the "step-father" of the victim certainly exercised moral and physical ascendancy over the victim, which ascendancy could suffice to cow the step-daughter into submission to her stepfather's bestial desires.[18] A stepfather need not make any threat against the stepdaughter because the latter is cowed into submission when gripped with the fear of refusing the advances of a person she customarily obeys.

Appellant argues that it was impossible for him to rape his stepdaughter since they were renting a single room where he slept with his wife, their daughter and the victim. This contention is also untenable. Rape may be committed in a room which is adjacent to where the victim's family is sleeping or even in a room which the victim shares with other people. There is no rule that rape can only be committed in seclusion.[19]

Anent the defense of denial by appellant, it is a well-settled rule that denials unsubstantiated by clear and convincing evidence are negative and self-serving and deserve no weight in law and cannot be given greater evidentiary weight than the credible testimony of the victim.

In the case under evaluation, appellant failed to substantiate his defense of denial. He merely theorized that he was probably sleeping at the time of the incident. On this point, appellant declared:

> "Atty. Uy. (on direct examination)
>
> Q - Now, the evidence for the prosecution discloses, Mr. Witness, as testified to by the complainant and other witnesses that you are charged for rape by the complainant which according to them committed by you on August 9, 1995 at 7:00 o'clock in the evening, what can you say about that testimony?
>
> ANSWER:
>
> .....I don't know anything about that, sir.
>
> Q - The charge against you, is there any truth to it, Mr. Witness?
> A - That is not true, sir.
>
> Q - By the way, do you recall where you were on August 9, 1995 at 7:00 o'clock in the evening?
> A - It could be that I was at home sleeping, sir."[20]

Verily, the testimony of the victim, duly corroborated by the medico-legal report, prevails over appellant's plain denial of the charges against him. Dr. Jesusa Nieves-Vergara, the medico legal officer who conducted the medical examination, disclosed:

> "ATTY. CEDILLO:
>
> .....For the accused, your Honor.
>
> PROS. VELASCO:
>
> .....For the prosecution. May we call on Dr. Vergara.
>
> COURT:
>
> .....Swear in the witness.
>
> xxx xxx xxx

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WITNESS:

.....I am JESUSA NIEVES VERGARA, 32 years old, married, medico-legal officer, c/o PNP-CLS, Camp Crame, Quezon City.

PROS. VELASCO:

.....Our witness your Honor please conducted (sic) physical examination upon the person of Esmeralda Mendoza Balacano and on her examination, the subject is on a non-virgin state.

xxx xxx xxx

PROS. VELASCO:

.....Madam Witness, do you remember if you personally examined the person of one Esmeralda Mendoza?

ANSWER:

.....Yes, Sir.

Q .....When did you conduct said examination.
A .....August 14, 1995 at around 2:15 P.M., sir.

Q .....What was the result of your examination.
A.....The result is - the victim is in a non-virgin state physically.

Q .....What is the basis of your conclusion.
A.....My findings on the hymen - deep healed lacerations positioned at 3, 6 and 9 o'clock.

Q.....How about any signs of application of violence. Did you find this signs in the body of the victim?
A .....None, sir.

Q.....Did you reduce your findings in the written form?
A .....Yes, sir.

xxx xxx xxx

CROSS-EXAMINATION OF DR. JESUSA VERGARA, WITNESS, CONDUCTED BY -

a ATTY. CEDILLO: (sic)

.....Madam witness, in Exh. "B", Medico Legal Report, you stated the purpose of laboratory examination as to determine physical signs of sexual abuse, am I correct?

A.....Yes, sir

Q.....And the conclusion was that subject is in non-virgin state. Question! The purpose was not being answered in the conclusion, am I correct? Whether or not there was a sexual abuse. You merely state that the victim is in non-virgin state, am I correct?
A.....Yes, sir.

Q .....Why is it so?
A.....My basis for saying that the victim is in a non-virgin state physically are my findings on the genital particularly on the hymen revealing alterations positioned at 3, 6 and 9 o'clock.

ATTY. CEDILLO:

.....So stated otherwise, other than your conclusion that the subject is in non-virgin state, there were no physical

signs of sexual abuse.

ANSWER:

.....I think sir the alterations on the hymen is one indication that there was sexual abuse.

xxx xxx xxx

Q.....What were the exceptions if you know.

A.....There are other factors that cuase (sic) laceration of the hymen. Like the passage of blood during menstruation, a fall on a hard, sharp object with the genital hitting that object, instrumentation is another.

ATTY. CEDILLO:

.....So to recapitulate, there were at least three (3) instances whereby the victim will be in a non-virgin state and yet she is not a victim of sexual assault, am I correct?

A.....Yes, sir.

ATTY. CEDILLO:

.....Namely, passage of clotted blood, fall on a sharp object and instrumentation.

A.....Those were among the factors, sir.

Q.....When you said among, aside from these three (3), there were others?
A.....Yes, sir.

ATTY. CEDILLO: (on cross)

.....What were those others.

ANSWER:

.....Disease called diptheria (sic), forcible entry of a hard blant (sic) object.

Q.....So far as you remember, there were five (5) exceptions.
A.....Yes, sir.

ATTY. CEDILLO:

.....That will be all, your Honor.

COURT:

.....How about horseback riding and by bicycle.

A.....No, your Honor, unless there is direct trauma on the hymen."[21]

It bears stressing here that the victim was only fourteen years old when she lodged the complaint against her stepfather. It has been held that no woman, especially one of tender age, would contrive a complaint for rape, allow a gynelogic examination and permit herself to be subjected to a public trial if she is not motivated solely by a desire to have the culprit apprehended and punished.[22] In fact, the prevailing rule is that the testimonies of rape victims who are young and immature deserve full credence.[23] No young girl would expose herself to humiliation and public scandal unless she is impelled by a strong desire to seek justice.[24]

The instances cited by appellant being insufficient to tilt the scales of justice in his favor, the Court is fully convinced that the appellant is guilty.

But for what crime is appellant answerable?

After a careful study and assessment of the evidence on hand, only the crime of simple rape was committed. The trial court erred in applying Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659, which prescribes the death penalty, when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

Although the propriety of imposition of the penalty has not been raised by appellant; nonetheless, an appeal in criminal cases opens the entire case for review and it becomes the duty of the appellate court to correct any error, as may be found in the appealed judgment, whether assigned as an error or not.[25]

A reading of the Information in Criminal Case No. Q-95-62686 leads to the irresistible conclusion that the appellant was merely indicted for simple rape and not for rape with the qualifying circumstances within the contemplation of RA 7659. Failure to mention the relationship between the appellant and the young victim, step-father and step-daughter, respectively, necessarily excludes the crime from the coverage of RA 7659. To justify the imposition of the supreme penalty of death, both the special qualifying circumstances of the victim's minority and her relationship to the offender must be alleged and proved.

As succinctly ratiocinated in the case of People vs. Ramos:[26]

> "While Republic Act No. 7659 did not give a legal designation to the crime of rape attended by any of the seven new circumstances introduced in Article 335 on December 31, 1993, this Court has referred to such crime as qualified rape in a number of its decisions. However, with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender give a different character to the rape defined in the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special qualifying circumstance.
>
> As this qualifying circumstance was not pleaded in the information or in the complaint against appellant, he cannot be convicted of qualified rape because he was not properly informed that he is being accused of qualified rape. The Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him. This right finds amplification and implementation in the different provisions of the Rules of Court. Foremost among these enabling provisions is the office of an information. (underscoring supplied)
>
> xxx xxx xxx
>
> To be more precise, we declared in Garcia that 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 and be convicted of its qualified form punishable with death although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned."

Consequently, the lack of allegation of relationship between the appellant and his victim in the Information for rape, precludes the imposition of the death penalty since relationship, in this particular form of rape, is qualifying and not just a generic aggravating circumstance. Having been informed of the crime of simple rape only, appellant can just be convicted of simple rape and sentenced to suffer the penalty of reclusion perpetua prescribed therefor.

The award of P100,000.00 for moral damages is deemed to include the civil indemnity.

WHEREFORE, the judgment of the trial court in Criminal Case No. Q-95-62686 imposing the death penalty on appellant Jaime Balacano Y Dalafu is AFFIRMED with MODIFICATION, in that the penalty imposed below is

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hereby REDUCED to reclusion perpetua. Appellant is ordered to pay the victim civil indemnity of Fifty Thousand (P50,000.00) Pesos, plus moral damages of Fifty Thousand (P50,000.00) Pesos. Costs against appellant

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Bellosillo, J., abroad on official business.

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[1] Penned by Hon. Percival Mandap Lopez, Branch 78, Regional Trial Court in Quezon City.

[2] Rollo, p. 19.

[3] Records, p. 1.

[4] TSN, Nov. 13, 1995, pp. 3-5.

[5] Rollo, pp. 15-18.

[6] Section 14(2), Artcle III,

[7] Sec. 2, Rule 133, Revised Rules of Court.

[8] United States vs. Douglass, 2 Phil 461, 474.

[9] Moreno, Federico B. Philippine Law Dictionary; 2nd Ed., p. 516, citing the case of People vs. Umali, 02980-CR, April 26, 1965.

[10] Ibid., citing: Lee Kheng vs. Go Chian, 55066-R, August 19, 1976.

[11] Rollo, p. 33, Brief for the Accused-Appellant, p. 4.

[12] People vs. Obar, Jr., 253 SCRA 288, 293; People vs. Melivo, 253 SCRA 347, 362.

[13] People vs. Rabosa, 273 SCRA 142, 151; People vs. Cristobal, 252 SCRA 507, 516.

[14] People vs. Jagolingay, 280 SCRA 768, 774.

[15] Rollo, page 18.

[16] TSN, Nov. 15, 1995, p. 5-6.

[17] People vs. Devilleres, 269 SCRA 716, 730.

[18] People vs. Sagaral, 267 SCRA 671, 680; People vs. Casil, 241 SCRA 285; People vs. Obejas, 229 SCRA 549.

[19] People vs. Devilleres, supra; People vs. Talaboc, 256 SCRA 441; People vs. Catoltol, Sr., 265 SCRA 109.

[20] TSN, December 6, 1995, p. 12.

[21] TSN, November 13, 1995, pp. 2-6.

[22] People vs. Antipona, 274 SCRA 328, 335; People vs. Gagto, 253 SCRA 455; People vs. Abordo, 258 SCRA 571.

[23] People vs. Galimba, 253 SCRA 722, 728.

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[24] People vs. Andres, 253 SCRA 751, 757.

[25] People vs. Reñola, 308 SCRA 145 citing: People vs. Medina, 300 SCRA 98.

[26] People vs. Ramos, 296 SCRA 559, 575-576 citing: Section 14(2), Article III, Constitution and Section 1 (b), Rule 115; Sections 3, 4, 6-14, Rule 110; Rule 116; Rule 117; Sections 3, 4, 5, 11, Rule 120, Rules of Court.

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