

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO RAMILLA Y RENTINO, ACCUSED-APPELLANT.***G.R. No. 127485. July 19, 1999*

Ponente: BELLOSILLO, J.

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FERNANDO RAMILLA Y RENTINO was charged on 10 July 1996 with raping ten-year old Crisanda Cabugza Calderon before the Regional Trial Court of Las Piñas,[1] docketed as Crim. Case No. 96-0315. The trial court found him guilty of rape and sentenced him to death, applying Art. 335 of the Revised Penal Code, as amended by Sec. 11 of RA No. 7659.

The records disclose that sometime in 1994 ten-year old Crisanda Cabugza Calderon, the complaining witness, together with her siblings Jason and Cristy, was entrusted by her parents Francisco Calderon and Emy Cabugza to the custody of their long time friends, the spouses Fernando and Jocelyn Ramilla, then residing at Block 26, Lot 10, Bernabe Compound, Pulang Lupa, Las Piñas. Francisco and Emy provided for the children's subsistence with Fernando supplementing his support for Crisanda by giving her pasalubong every week out of his salary as construction worker.

On 29 June 1996, at about ten o'clock in the evening, while they were alone inside their house, Fernando bluntly told Crisanda to remove her clothes including her panty and to lie down on the papag. Then he put some saliva over her genitalia to make it damp and slippery so he could insert his penis into her vagina. After the preliminaries he placed himself on top of her and thrust his organ into her pudendum. As a result, she bled and suffered pain. His lust having been satiated, he warned her to keep silent otherwise he would kill her.

Crisanda was raped a number of times that month of June although she could not remember exactly how many times she was abused. All those incidents happened within the confines of the Ramilla house which was her home for two (2) years.

After June 29 Fernando attempted to rape Crisanda again. However, before he could have sex with her she told him that she would urinate first. At that juncture, Fernando's wife Jocelyn arrived and Crisanda broke down. She told Jocelyn everything. On 6 July 1996 Crisanda was brought by her father and a sister to the National Bureau of Investigation for medical examination. The medico-legal report disclosed the following findings and conclusions: Genital Examination: Labia majora and minora, gaping. Fourchette, tense. Vestibular mucosa, contused on all sides. Hymen, originally crescentic, short and thick, with a healing complete laceration at 7:00 o'clock position, edges of this are edematous, reddish. Hymenal orifice, measuring 1.2 cm. in diameter. Conclusion: No evident sign of any extragenital physical injury noted on the body of the subject at the time of examination; a healing hymenal laceration present, consistent with sexual intercourse on or about the alleged date of commission; and, recent genital trauma present, consistent with the alleged date of infliction.[2]

When the accused was to present his evidence in his defense, he moved that he be allowed to change his original plea of not guilty to guilty. However, considering that the evidence for the prosecution had already been received

the trial court denied the motion. He was then required to present evidence but failed to do so. Thus, his case was deemed submitted for decision.[3]

On 6 December 1996 Fernando Ramilla was sentenced to death by applying Art. 335 of the Revised Penal Code as amended by Sec. 11 of R.A. No. 7659. He was further ordered to indemnify Crisanda Cabugza Calderon in the amount of P100,000.00 and to pay the costs.

Underscoring the tender age of Crisanda and attempting to take advantage of it, Fernando now argues that such circumstance made her vulnerable to manipulation and external pressure from those who exercised authority over her, such that the possibility that her testimony was misguided is great. He also remonstrates that the order of the trial court submitting the case for decision after he failed to present evidence was premature due to the absence of an express waiver on his part thus resulting in denial of due process.

Let it be emphasized that with the failure of the accused to present any witness in his defense, the evidence for the prosecution becomes undisputed. The records fail to show that he ever assailed the propriety of the order of the trial court submitting the case for decision. Consequently, he cannot now argue against his conviction. However, in view of the gravity of the offense and the circumstance that automatic review by this Court of a death sentence is intended primarily for the protection of the accused, specifically to ensure its correctness,[4] we shall nonetheless consider his arguments.

On the alleged vulnerability of Crisanda to "manipulation and external pressure," the Court observes that this claim has not gone beyond mere conceptualization. More important than her imputed vulnerability, Fernando should have established with concrete evidence the existence of such manipulation and external pressure that could have possibly misguided Crisanda. In this regard, we find no error committed by the trial court in giving full weight and credit to her testimony who in her child-like naiveté could not have concocted her narration in court on how she was sexually assaulted by the accused[5]-

Q: Now, on June 29, 1996, at about 10 o'clock in the evening, do you remember where were you?

A: Yes, sir x x x I was in Bernabe Compound, Pulang Lupa, Las Piñas, Metro Manila, sir.

Q: While you were there at that particular place, date and time, do you remember if there was any unusual incident that happened to you?

A: There was, sir.

Q: What was that incident?

A: Kuya Fernando inserted his penis into my vagina and my vagina was bleeding, sir. Kuya Fernando was the one who was taking care of me but he did that to me.

x x x x

Q: Now, this is very important. Please tell this Honorable Court how this accused abused you? Describe how he abused you.

A:

Before he put his body on top of my body, he first told me to remove my clothes and my panty. After I removed my clothes and my panty, he told me to lie down. Then he put saliva over my vagina so that my vagina would be slippery and he could insert his penis into it.

Q: After placing his saliva on your vagina, what did he do next?

A: He went on top of me, sir.

Q: Then what happened next?

A: After putting his body on top of me, he tried to insert his penis into my vagina, sir.

Q: How did you feel with your private part when he went on top of your body?

A: It was very painful, sir.

Q: Why?

A: Because ipinasok niya yong ano niya.

Q: What was that ano niya?

A: Idiniin niya ang kanyang titi sa ari ko.[6]

The youthful Crisanda maintained the consistency of her narration even in her cross examination. This is quite significant for the lone testimony of the victim in rape if credible, as in the present case, suffices to sustain conviction and the mere allegation that she is of tender age is not enough to disqualify, much less discredit, her as a witness. The rationale behind this ruling is the very nature of the offense where, oftentimes, the only evidence that can be adduced to establish the guilt of the accused is the offended party's testimony.[7]

In other words, if we disallow the testimony of Crisanda on account of her tender age, we will in effect be foreclosing her right to seek justice. The offense was perpetrated with no persons present other than the offender

and the victim. Recently, we reiterated that in rape cases we seldom find any disinterested person who was actually present when the offense was committed,[8] and rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from prying eyes, and a prosecution for the crime usually commences solely upon the word of the offended woman herself, and conviction invariably turns upon her credibility as the People's single witness of the actual occurrence.[9] To enlighten accused even more, we have sustained convictions for the same crime based on the credible testimonies of victims much younger than Crisanda, some at five years of age[10] or even less. Needless to say, tender age by itself is not a factor in discrediting a witness.

Clearly, young Crisanda has no improper motive to impute to the accused such a grave and scandalous offense.[11] In fact, prior to the sexual encounters, she was close to him since he was the one taking care of her, giving her *pasalubong* every week.[12] It is revolting to the senses that such emotional closeness would soon shift to physical promiscuity by Fernando's design, the memories of which only the loss of sanity or life can effectively obliterate.

Corroborating and lending truth to the victim's account that she had been sexually assaulted, the examining physician on the basis of his medico-legal report testified[13]-

Q:

Please tell us what is Item No. 2 in your conclusion, tell us in layman's language?

A:

Yes, sir. The second conclusion in my report described the hymen which is a fold of tissue creating the opening of the birth canal. The examination of this part showed a healing laceration. The characteristic of (these) edges of the tear (is) consistent in age with the alleged date of commission and also consistent with sexual intercourse, sir.

x x x x

Q:

Mr. Witness continuing your genital examination you stated, hymen original crescentic, short and thick with a healing complete laceration at 7:00 o'clock position edges of (these) are edematous, reddish. Hymenal orifice measuring 1.2 cm. in diameter. Will you please explain further in layman's language?

A:

The shape of the hymen would generally be round or ring like or round. Other hymen would (be) crescentic type it presented a tear which was existing up to the base which is termed as a complete laceration or tear it is limited at a 7 o'clock laceration if we will correspond (sic) to the face of the watch. The edges were swollen and reddish.

Q:

What is the significance of these findings with Item No. 2 in your conclusion?

A:

It will signify that the wound was in the process of healing corresponding to a period between about two days prior to the date of examination extending up to about a week, sir.[14]

Fernando was not denied his right to due process because he was afforded the opportunity to present evidence.[15] It was quite understandable why he did not avail himself of that chance. He could have realized the futility of it all in view of the overwhelming evidence against him that he finally decided to plead guilty and be spared of the supreme penalty. He might not have expressly waived his right to present evidence; nevertheless, this circumstance is no longer significant. The fact remains that he did not present, nay, did not even offer to present evidence in his behalf. He in fact moved to change his plea of not guilty to guilty, although the trial court denied the motion for the reason that "the court has already received evidence for the prosecution." Then the court a quo in open court dictated its order that "In view thereof, accused is not presenting evidence (underscoring supplied)," [16] and then and there set the promulgation of the decision on 12 December 1996. However, on the scheduled date, the trial court reset the promulgation to 17 December 1996, at 2:00 p.m. "[b]ecause the Decision scheduled to be promulgated this afternoon needs a little refinement x x x x" [17] Quite apparently, from 20 November 1996 when the court terminated the trial and considered the case submitted for decision and announced its promulgation on 12 December 1996, later reset to 17 December 1996, the Fernando never moved for reconsideration, much less offered to present evidence in his defense. In other words, from the time that his motion to change his plea was denied because, according to the court, it had already received the evidence of the prosecution, to the date the decision convicting him was promulgated on 17 December 1996 (earlier scheduled on 12 December 1996), Fernando never told the court that he had evidence to be presented in his behalf. His offer to change his plea from not guilty to guilty clearly meant he accepted the evidence against him and that he had nothing with which to rebut it. The argument of the accused therefore in his brief that "the subsequent order of the court to submit the case for decision after the defense failed to present its evidence was premature as there was no express waiver made by the defense," [18] cannot be sustained. Under the facts, such failure to present evidence is tantamount to a waiver on the part of the defense. As held in *People v. Hernandez*, [19] where the accused failed to present evidence such failure was a waiver of the right to present evidence. Preliminarily, this Court in the *Hernandez* case said that "although the right to present evidence is guaranteed by no less than the Constitution itself for the protection of the accused, this right may be waived expressly or impliedly." [20]

We agree with the lower court that the prosecution has established to a moral certainty that accused Fernando Ramilla is guilty of rape. However, we believe that the proper penalty to be imposed on him should only be reclusion perpetua and not the supreme penalty of DEATH. The Information did not allege that the accused was the guardian of Crisanda and as such took advantage of his moral ascendancy over his ward. The accusatory portion of the Information simply stated that the accused "by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) one Crisanda Calderon, eleven (11) years of age (sic), against her will and consent." [21] And, yet, the trial court held -

And, being the guardian of the complainant, accused was bound to protect her. Complainant was entrusted to the accused by the father of the complainant and to rape her was certainly to take advantage of the moral ascendancy of the accused over his ward, the complainant herein. It is this evil - taking advantage of moral ascendancy - to the mind of the court, which nudged the legislators to upgrade the rape of the ward by her guardian to the status of a heinous crime under R.A. No. 7659. [22]

Article 335 of The Revised Penal Code, as amended by R.A. No. 7659, provides in part that the death penalty shall be imposed when the rape victim is under eighteen (18) years of age and the offender is her 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. It must be emphasized that the relationship of the accused and the victim, and the minority of the offended party must be specifically pleaded in the Information in order to be properly appreciated as a qualifying circumstance for the purpose of imposing the death penalty under R.A. No. 7659.[23] As the qualifying circumstance of relationship was not alleged in the Information against the accused, he cannot be convicted of qualified rape because he was not properly informed that he was being charged with qualified rape.[24] To rule otherwise would be to violate his constitutional right to be informed of the nature and cause of accusation against him.[25] Having been informed only of the elements of statutory rape, Fernando can only be convicted of such crime and accordingly punished with reclusion perpetua.

Finally, we reduce the indemnity awarded to Crisanda by the trial court to P50,000.00; in addition, Fernando is ordered to pay the victim another P50,000.00 for moral damages in line with our ruling in *People v. Prades*[26] without need for pleading or proof of the basis thereof.

WHEREFORE, the judgment of the court a quo finding accused FERNANDO RAMILLA Y RENTINO guilty of qualified rape, imposing upon him the supreme penalty of Death and ordering him to indemnify the offended party Crisanda Cabugza Calderon P100,000.00 and to pay the costs, is MODIFIED. Accused FERNANDO RAMILLA Y RENTINO is convicted of statutory rape only under Art. 335 of the Revised Penal Code and his DEATH sentence is reduced to RECLUSION PERPETUA. He is further ordered to pay the offended party P50,000.00 as indemnity for the rape and another P50,000.00 for moral damages, plus costs.

#### **SO ORDERED.**

Davide, Jr., C.J., Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.  
Panganiban, J., in the result.

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[1]Per Certificate of Live Birth of Crisanda Cabugza Calderon she was born on 8 August 1986 (Exh. "A"), Records, p. 37, but erroneously stated in the Information as eleven (11) years old.

[2]Exh. "F;" Records, p. 42.

[3]Order of 20 November 1996; id., p. 48.

[4]U. S. v. Laguna, 17 Phil. 532 (1910).

[5]*People v. Echegaray*, G.R. No. 117472, 25 June 1996, 257 SCRA 561.

[6]TSN, 9 October 1996, pp. 3 and 4; Records, pp. 51-52.

[7]*People v. Magallanes*, G. R. No. 89036, 29 January 1993, 218 SCRA 109.

[8]*People v. Faigano*, G. R. No. 113483, 22 February 1996, 254 SCRA 10.

[9]*People v. Nuñez*, G. R. No. 79316, 10 April 1992, 208 SCRA 34, cited in *People v. Domingo*, G.R. No. 97921, 8 September 1993, 226 SCRA 156 and *People v. de Guzman*, G.R. No. 117217, 2 December 1996, 265 SCRA 228.

[10]See Note 5; *People v. Castillo*, G. R. No. 84310, 29 May 1991, 197 SCRA 657 and other cases.

- [11] People v. Ulili, G. R. No. 103403, 24 August 1993, 225 SCRA 594.
- [12] TSN, 9 October 1996, p. 6.
- [13] People v. Sueta, G. R. No. 94549, 9 August 1993, 225 SCRA 219.
- [14] TSN, 6 November 1996, pp. 3 and 4.
- [15] Imperial Textile Mills, Inc. v. NLRC, G. R. No. 101527, 19 January 1993, 217 SCRA 237.
- [16] See Note 3.
- [17] Records, p. 68.
- [18] Rollo, p. 45.
- [19] G.R. No. 108028, 30 July 1996, 260 SCRA 25.
- [20] Id., p. 39.
- [21] See Information; Records, p. 2.
- [22] Rollo, p. 22.
- [23] See People v. Garcia, G.R. No. 120093, 6 November 1997, 281 SCRA 463.
- [24] People v. Ramos, G.R. No. 129439, 25 September 1998.
- [25] Sec. 14, par. (2), Art. III, 1987 Constitution.
- [26] G.R. No. 127569, 30 July 1998.

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