PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR VILLAR, ACCUSED-APPELLANT.

G.R. No. 127572. January 19, 2000

Ponente: MELO, J.

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MELO, J.:

This Court is once again called upon to discharge the most awesome power in the criminal justice system, where, by way of automatic review, it is mandated to determine whether or not the extreme penalty of death per Section 11 of Republic Act No. 7659, more commonly referred to as the Death Penalty Law, was correctly imposed by the trial court, in this case by Branch 52 of the Regional Trial Court of the Fourth Judicial Region, stationed at Puerto Princesa City, Palawan for the heinous crime of statutory rape committed by a de facto guardian against his 10-year old ward.

Accused-appellant was charged in two separate Informations pertinently reading as follows:

> Criminal Case No. 11874
>
> That on or about the 19th of January, 1994, at Barangay Bucana, Municipality of El Nido, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd design and by means of force, intimidation, did then and there willfully and feloniously have carnal knowledge with one Mary Ann Ramos, a child below 12 years old, against her will and consent to her damage and prejudice.
>
> (p. 8, Rollo.)
>
> Criminal Case No. 11875
>
> That sometime in the month of January, 1993 at Barangay Bucana, Municipality of El Nido, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design and by means of force, intimidation, did then and there willfully and feloniously have carnal knowledge with one Mary Ann Ramos, a child below 12 years old, against her will and consent to her damage and prejudice.
>
> (p. 10, Rollo.)

The narration of facts by the trial court, supported as it is by the evidentiary record, is hereby adopted, to wit:

> Mary Ann Ramos is the eldest child of the spouses Danilo Ramos and Josefina Recasa who were joined in wedlock in Masbate, on January 15, 1982. Shortly thereafter, the spouses transferred residence to El Nido, Palawan, where in barangay Bucana of the same town, Mary Ann was born to said spouses on April 7, 1983.
>
> From Masbate, Danilo Ramos and Josefina Recasa-Ramos came to Palawan with several others, among whom were the accused Salvador Villar and his nephew identified only by his surname Ranilo. On getting to El Nido, Palawan, the group all stayed in one house. After a while, however, Salvador Villar built a house of his own in the island sitio of Lalutaya, barangay Bucana, El Nido, Palawan, and the spouses Danilo and Josefina Ramos lived with him in the same house. Being more advanced in age than them, and though still a bachelor, Salvador

Villar had been regarded by the spouses as elder member of their family.

Mary Ann Ramos became of school age in 1989. The island-sitio of Lalutaya where the Ramoses and other migrants from Masbate settled some years back, however, was yet without a school. The school nearest to the island-sitio is located in barangay Bucana, El Nido, Palawan. It was that school were Mary Ann Ramos and other children of school ages from sitio Lalutaya go to.

To provide the school children from sitio Lalutaya with a place to stay in during school days, the Ramoses and Salvador Villa built a house where they were to live in barangay Bucana, El Nido, Palawan. Recognizing the need for someone to look after the welfare of the children and attend to their meals and all household needs, their parents engaged the services of Salvador Villar to act as their caretaker and some kind of a guardian.

In that capacity Salvador Villar conducts the school children on a banca from sitio Lalutaya to barangay Bucana late in the afternoon of every Sunday. He stays with the children in barangay Bucana attending to the preparation of their meals and other household chores during school days. He conducts them back to sitio Lalutaya after dismissal from classes in the afternoon of every Friday.

The accused consistently acted as caretaker and guardian of Mary Ann Ramos from the time she was enrolled in Grade I. By the start of school year 1993-1994, though, he had under his care in barangay Bucana, not only Mary Ann but four (4) others, namely; Mae Ramos, a younger sister of Mary Ann; Liezl Ranilo, and the brothers Ernie and Rene Maltos, all cousins of the Ramos sisters. For some time all went well in the manner Salvador performed his duties as guardian of the school children, until the happening of the incident which provided the basis for the institution of the instant twin indictments.

The building serving some kind of a dormitory for Mary Ann and the four (4) other school children with her is a structure of light materials with a floor area measuring about 18 feet long and 16 feet wide. The walls are made of sawali, or wooden buho (reed), and with roof of nipa shingles. Its floor, built about three (3) feet above the ground, is made of bamboo slats.

The house they were living is so structured that it could be said to have two (2) rooms. One room serves as bedroom while on one side of the other is the place for the kitchen, and section for the dining room. Mary Ann and the two other girls sleep side by side on mats spread on the floor in the bedroom while the boys, Ernie and Rene Maltos, also sleep beside each other on another side of the room close to the kitchen. Salvador Villar, on the other hand, sleeps on a bed close to the two boys.

Roughly 10:00 o'clock, one evening about the middle of January, 1993, and while all the four (4) other children with her were already asleep, Mary Ann noticed Salvador Villar approached her and with a knife poked at her chest, undressed her. Even as she struggled to prevent him from undressing her he also took off her panty and made her lie down. She attempted to shout but he covered her mouth with his hand. Then he laid on top of her and thereupon forcibly inserted his male organ in her female genitalia. With his penis inside her private organ he executed repeated pumping motions. The entry of his male organ in to her reproductive organ, and his execution of the pumping motions, caused her intense pain which made her momentary loss of consciousness.

When shortly after she regained consciousness, she felt pain in her female organ. Realizing that her organ had been bleeding she became frightened. Just then, Salvador Villar warned her not to tell anyone what happened or he will kill her. (TSN, Roselyn N. Teologo, February 9, 1995, pp. 9-14.) Because of fear instilled in her by that threat she refrained from telling anyone about what the accused did to her.

That was not to be the last time the accused forcibly imposed his sexual gratification on the complainant.

For a period of about a year thereafter the accused repeatedly had forcible carnal knowledge of the complainant at intervals of more or less three days, or about ten (10) times a month. He raped her so many times, about a hundred (100) times, that she was unable to recall the precise dates of each assault on her. Aside

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from the first occasion which she recalled to have taken place one evening about the middle of January, 1993, the only other occasion which took place also in the house they were staying in barangay Bucana, El Nido, Palawan, was in the evening of January 19, 1994. (TSN, Roselyn N. Teologo, June 9, 1995, pp. 14-23)

In the evening of January 19, 1994, the accused again forcibly had carnal knowledge of the complainant. About 10:00 o'clock that evening, and after all the other school children with Mary Ann have already been asleep, the accused approached her and for nth time forcibly undressed her. Thereafter, he laid on top of her and inserted his male organ into hers. With his penis inside her female organ he executed pumping motions even as she struggled to free herself from him. With his weight over her body and with a knife poked on her she was unable to extricate herself.

Occasioned by the fear instilled in her by the threat to her life by the accused, the repeated sexual assaults on the complainant by the said accused would not have been disclosed to her parents were it not for another unusual incident which may have some bearing to the successive commission of the offenses herein charged.

As usual, on January 20, 1994, a Thursday, Salvador Villar cooked their supper, and at dinnertime set the table for their meals. They ate their supper at about 6:30 o'clock in the evening, as usual. Salvador Villar partook of the meal with them and the children noticed that he was already drunk at the time. After having been through eating, the children, as usual, cleared the table and washed the dishes. Thereafter, Salvador Villar left and some time later the children went to bed, without Salvador Villar having been back.

After the children have been asleep for some time they were awakened when Salvador Villar came. On getting up the house, Salvador Villar drank water first then threw the water container out on the window. Afterwards, he went inside the room where the children have been sleeping and in a drunken mode shouted: "Nasan na Kayo, mga putang ina kayo!" On seeing him with a drawn bolo on hand the children, overcame with fright, rose from bed, jumped out through the window and proceeded together to, and took refuge in, the house of one Minda Mentos. Ms. Mentos welcomed them and made them get up her house. After a while Salvador Villar came, fetching them, but they did not go back with him. Instead, they spent the night in the house of Minda Mentos to whom they related why they jumped out through the window.

The children returned to their place of abode the following morning of January 21, 1994. Salvador Villar prepared their breakfast that morning which they partook with him. When asked while eating why he chased them the night before, the accused told them that he was drunk and did not know what he was doing.

Soon after Mary Ann Ramos was sexually abused by Salvador Villar, she related to her 9-year old cousin, Liezl Ranilo, what the accused did to her. But Liezl likewise refrained from disclosing it to their parents because she was likewise afraid of the threat by the accused. It was that incident which made the children jump out of the window which led to the disclosure by Mary Ann of the sexual abuse on her by the accused.

As was the habit, after dismissal from their classes late in the afternoon of Friday, January 21, 1994, the children proceeded home on a banca to their parents in sitio Lalutaya, barangay El Nido, Palawan. Thru Liezl Ranilo, the mother of Mary Ann Ramos learned about the incident which made them jump out through the window. Thereupon, her mother asked Mary Ann why they jumped out through the window and she related why, including what Salvador Villar had been doing to her. Her mother spanked her. But the following morning they proceeded to the town hall of El Nido and filed a complaint for rape against Salvador Villar. (TSN, Roselyn N. Teologo, 9 February, 1995, pp. 16-17)

Aside from filing a complaint, Mary Ann, accompanied by her mother, also submitted for physical/medical examination by a physician on January 27, 1994. Dr. Nestor A. Reyes of the District hospital of Taytay, Palawan, conducted that examination and issued Medico Legal Certificate, marked Exhibit "C", the full text of which follows:

"Patient: Mary Ann Ramos, 10 years old residing at barangay Bucana, El Nido, Palawan

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"Place of incident: Inside the room (Residential)

"Date of incident: From January 1993 to January 19, 1994

"Time of incident: Nighttime

"Place of treatment: Taytay District Hospital, Taytay, Palawan

"Date of treatment: January 27, 1994

"Time of treatment: 3:30 PM

FINDINGS:

- Breast undeveloped

- Absence of pubic hair

- Hymen with old healed lacerations at 6, 8, 9 and 12 o'clock

- Vagina admits 1 finger easily.

REMARKS:

"- had possible
- sexual intercourse"

(pp. 18-24, Rollo.)

Accused-appellant imputes two errors upon the trial court for convicting him of two counts of rape, to wit:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE (IN JANUARY 1993 AND ON JANUARY 19, 1994) DESPITE THE IMPROBABLE AND INCONSISTENT TESTIMONY OF THE COMPLAINING WITNESS.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT IN CRIMINAL CASE NO 11874 AND SENTENCING HIM TO DEATH PURSUANT TO SECTION 11 OF REPUBLIC ACT NO. 7659 AMENDING ARTICLE 336 OF THE REVISED PENAL CODE.

In his brief, accused-appellant resolutely questions the factual findings of the trial court concerning the credibility of the victim. For instance, accused-appellant cites the inconsistency between the victim's declaration in her sworn statement and her direct testimony in court as to the exact time when she was first raped by accused-appellant in 1993.

The argument fails to persuade us.

It may well be pointed out that not all kinds of inconsistency of a witness render the witness' testimony unworthy of credence. Verily, inconsistencies in minor details reinforce rather than weaken credibility (People vs. Del Prado, 110 Phil. 1034 [1960]), and such inconsistencies do not materially impair the credibility of the witness (People vs. Modelo, 35 SCRA 639 [1970]). Under the circumstances of the case at bar, the Court finds the materiality of the exact time the crime was committed as a minor detail and not of great significance. The more important consideration is that the declarations of the victim both in her sworn statement before the investigating

police officer and in her testimony in court, are consistent on the basic matters constituting the elements of the crime charged. Besides, this Court has already ruled that discrepancy between the witnesses' testimony in court and the affidavits they had previously signed, as to minor details regarding the commission of the crime, do not constitute sufficient ground to impeach the credibility of said witnesses, where on material and important points their declarations are consistent (People vs. Valera, 5 SCRA 910 [1962]).

Furthermore, the Court cannot impose the burden of exactness in the victim's recollection of her harrowing experience more so in the present case where the victim was an innocent and tender 9-year old lass when she was first raped. It is all the more understandable that the victim in the present case may have been confused as to the exact details of each and every rape incident, considering that she claimed she had been sexually ravished for more than 100 times in a span of one whole year. It is in fact expected that such a victim would rather wish and even purposely forget the abhorrent memories of every single occasion. This being the case, it would be exacting too much should the Court demand a very accurate, detailed, and flawless account of the two occasions now subject of her charges out of the 100 occasions of forcible intercourse. In People vs. Sagucio (277 SCRA 183 [1997]), where this Court faced the same issue of alleged inconsistencies in the victim's narration, we held that errorless testimony cannot be expected especially when a witness is recounting details of a harrowing experience. A court cannot expect a rape victim to remember every detail of the appalling outrage.

Accused-appellant also contends that the victim's testimony is unworthy of credence because of the inherent improbability of her testimony that nobody in their house learned of the repeated abuse that had been going which may be noticed from any unusual behavior on her part and in spite of the fact that there were five individuals sleeping side by side on the floor.

The argument does not have much weight.

We find no competent evidence showing that the victim exhibited no unusual behavior during the one-year period that she was being sexually abused by accused-appellant. The lack of concrete evidence of any unusual behavior on record does not prove that there was in fact no such unusual behavior. If accused-appellant wanted the court to consider such an allegation, it was incumbent upon him to prove the same with competent evidence. The fundamental rule is that upon him who alleges rests the burden of proof. He cannot simply rely on the lack of evidence showing the contrary.

We likewise find no merit in accused-appellant's contention that it was improbable that nobody witnessed the rapes despite the fact that there were five of them sleeping inside the same room where the offenses were allegedly committed. This argument is not new in this jurisdiction. In fact, in People vs. Sangil (276 SCRA 532 [1997]), we noted that:

> ... the commission of rape was concededly "improbable but not impossible. . .
>
> In People vs. Ignacio, we took judicial notice of the interesting fact that among poor couples with big families living in small quarters, copulation does not seem a problem despite the presence of other persons around them. Considering the cramped space and meager room for privacy, couples perhaps have gotten used to quick and less disturbing modes of sexual congresses which elude the attention of family members; otherwise, under the circumstances, it would be almost impossible to copulate with them around even when asleep. It is also not impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night. There is no merit in appellant's contention that there can be no rape in a room where other people are present. There is no rule that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place," and rape can be committed in even the unlikeliest of places.

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(pp. 539-540)

Finally, accused-appellant claims that the death penalty cannot be imposed upon him under the provisions of Section 11 of Republic Act No. 7659 which pertinently provides:

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

He posits that he was not a guardian of the victim. He argues that he was a mere employee of the victim's parents, spouses Danilo and Josefina Ramos, charged with the duty of looking after the needs of their children Mary Ann and May Ramos, and likewise given the task of conducting them by banca from Barangay Bucana to Sitio Lalutaya and vice-versa to attend school. He further contends that he cannot be said to have the power, control or authority over the person of Mary Ann Ramos which a guardian should have, because it is still her parents who exercise the same over her. He insists that he served as a mere companion of the children while they attended their classes.

There may be ample evidence on record to show that accused-appellant qualified as a guardian of the victim the way the lawmakers intended the word to be understood, but the Court reserves its ruling on the issue considering that this special qualifying circumstance of being a guardian was not duly alleged in the information.

The Court cannot affirm the death sentence imposed by the trial court anchored upon the above-cited provision of the Death Penalty Law.

In People vs. Dela Cuesta (G.R. No. 126134, March 2, 1999), we held:

> 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 or rape to one degree. 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.
>
> (pp. 10-11)

Although the circumstances to qualify simple rape to the heinous crime of rape, namely: (a) victim under 18 years old (the certificate of live birth – exhibit "A" was admitted by the defense), and (b) the offender being a guardian, were duly proven in the present case, these circumstance cannot considered for purposes of imposing the extreme penalty of death unless these were alleged in the information. An examination of the two informations in the present case reveals that only the qualifying circumstance that the child is under 12 was alleged. There was no allegation that the offender was a guardian of the victim. To consider said circumstance as qualifying, would constitute denial of the right of accused-appellant to due process and to be informed of the charges against him. At best, such circumstance may only be treated as a generic aggravating circumstance, which, in the case of simple statutory rape, however, is inconsequential because the imposable penalty is the singular indivisible penalty of reclusion perpetua.

For each the two counts of simple statutory rape, accused-appellant may be held civilly liable for the amount of P50,000.00 by way of indemnity and an additional P50,000.00 as moral damages.

WHEREFORE, finding the conviction of accused-appellant for two counts of rape justified by the evidence on

record, the Court hereby AFFIRMS the decision of Branch 52 of the Regional Trial Court, Fourth Judicial Region, stationed at Puerto Princesa City (a) in Criminal Case No. 11875 sentencing accused-appellant to reclusion perpetua, with civil indemnity of P50,000.00 in favor of the victim, with an ADDITIONAL P50,000.00 as moral damages; and (b) in Criminal Case No. 11875 MODIFYING the sentence to reclusion perpetua, also with civil indemnity of P50,000.00, and P50,000.00 as moral damages in favor of the victim. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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