

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR M. DANTE, ACCUSED-APPELLANT.

G.R. No. 127652. December 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us on automatic review is the Decision[1] dated November 27, 1996 of the Regional Trial Court of Quezon City, Branch 76, in Criminal Case No. 96-65488, finding accused-appellant Oscar M. Dante guilty of rape and imposing on him the death penalty.

In a criminal complaint filed on March 29, 1996, accused-appellant was charged with the crime of rape, committed as follows -

That on or about the 25[th] day of March, 1996, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously removed (sic) her clothes and underwear and went on top of her with lewd design and thereafter have carnal knowledge with (sic) the undersigned complainant against her will and without her consent.[2]

At his arraignment, accused-appellant entered a plea of "not guilty."

The victim, Aurora Cañizares, is the daughter of Antonio Cañizares and Sonia Mayote. After her parents separated, she lived with her mother and her live-in partner, accused-appellant herein, in their house in Nawasa Road, Barangay Holy Spirit, Quezon City. The two have been cohabiting since Aurora was eight (8) years old. Aurora, thus, regarded accused-appellant, who is her mother's first cousin, as her stepfather.

Aurora testified that she was first raped by accused-appellant in 1992 when she was only ten (10) years old. Accused-appellant raped her everyday after her mother went to work and she was left alone in the house with her younger sister.

The last time accused-appellant raped Aurora was on March 25, 1996, when she was fourteen (14) years old. Accused-appellant ordered Aurora's younger sister to go to the store to buy ice cream. With her younger sister gone, accused-appellant pulled Aurora inside the bedroom and ordered her to remove all of her clothes. She refused at first, but accused-appellant got mad and threatened her that he would tell her mother of their previous sexual encounters. This was sure to make her mother crazy, and Aurora would be blamed. Because of this threat, Aurora removed her clothes. Accused-appellant also took off his shorts and briefs, then he lay on top of Aurora and inserted his penis inside her vagina. After satisfying his lust, accused-appellant dressed up and ordered Aurora to put on her clothes. Before leaving the room, he warned her not to tell anyone about what happened.

On March 26, 1996, Aurora did not go home after school. Instead, she went to the house of her classmate, Ma. Victoria de Monteverde, in Barangay Piñahan, Quezon City. Ma. Victoria told her father, Mohammed, that Aurora was sexually abused by her stepfather. Being a member of the press, Mohammed brought Aurora to his press colleagues, to whom she relayed her story. The next morning, accompanied by Mohammed and other

members of the press, Aurora went to the Police Headquarters in Kamuning, Quezon City, where she gave her statement and underwent medical examination.

Aurora's natural father, Antonio Cañizares, testified that he found out about the rape of his daughter through his niece, Maritess, who read about it in the tabloid, Abante. He took custody of Aurora after learning that she was under the care of the Monteverdes.

Dr. Ma. Cristina Freyra, the medico-legal officer who conducted the medical examination on Aurora, testified that she found her to be in a non-virgin state, physically; and that she had shallow healed lacerations on her vagina.

Accused-appellant denied the charges against him. He averred that if Aurora was indeed raped from 1992 up to 1996, she could have complained to her uncle, who was residing in the same house. He claims that in the afternoon of March 25, 1996, Aurora came home from school and asked for money to buy softdrinks but he refused as he had no money at that time. He denied Aurora's claim that he ordered Antonette to buy ice cream outside. He stated that he beat up Aurora when he learned from a neighbor that she was going out with some male suitors.

After trial, the lower court rendered judgment as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape described and penalized under Article 335 of the Revised Penal Code as amended by Republic Act 7659, the court hereby imposes the death penalty on the accused Oscar Dante. He is also ordered to indemnify the offended party in the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[3]

On August 28, 1997, a Motion for New Trial was filed by accused-appellant, based on an affidavit executed by the victim, Aurora Cañizares, wherein she declared as follows--

x x x x x x x x

That in the interest of justice and fairness to the accused, I hereby declare under oath the more accurate version of the case;

That since the separation of my biological father Antonio Cañizares and my mother Sonia Mayote, I have the deep longing that one day my legitimate parents would reconcile and live together under one roof as one happy family;

That failing that wish I have always looked upon my stepfather as the stumbling block to the reconciliation of my father and my mother;

That because of my antipathy with my stepfather, I have always looked upon his manner of discipline as an act of cruelty and his warmth to me as an indication of prurient desires;

That on January 1, 1996, acting on the report of my stepfather's kumpadre that I was dating with my boyfriend, I was beaten up by my stepfather which damaged my nosebridge and bruised my body;

That after that incident, I all the more developed the feeling that my stepfather has a sexual interest in me and that living with him in one house is more of a problem than a convenience for me;

That on March 25, 1996, I mustered enough courage to report to my friends my predicaments with my stepfather and that on March 27, 1996, I together with the father of my friend, went to the Police Station 10 at Kamuning, Quezon City to file a charge of rape against my stepfather;

That during the trial, I did not have the chance to have a talk with my mother and my stepfather and so I did

not have the opportunity to discuss with them my grievance with my stepfather;

That I am executing this affidavit for the purpose of informing the Supreme Court that a re-trial or new trial of the case could bear out the more accurate incidents of the case.[4]

By way of defense, accused-appellant contends that although the prosecution attempted to prove that Aurora was repeatedly raped by accused-appellant from 1992-1996, the Criminal Complaint against him alleged only one incident of rape, which was committed on March 25, 1996 when Aurora was already fourteen (14) years old. Thus, if at all committed, it did not constitute statutory rape. Accused-appellant further argued that the alleged threats on Aurora were mere warnings and that, in the absence of force or intimidation, accused-appellant can not be convicted of rape.

Accused-appellant also points out that the healed lacerations found on Aurora's hymen were inconsistent with the theory that she was raped only two (2) days earlier.

Finally, accused-appellant alleges that Aurora had a "penchant to associate herself with group of youngsters who are engaged in sexual experiments." He also claims that she had a fondness for amorous relationships, and that she had several boyfriends at the early age of fourteen.

The Office of the Solicitor General filed its Comment on the Motion for New Trial, arguing that the holding of a new trial merely on the basis of an affidavit of desistance is generally frowned upon.

Rule 121, Section 2 of the Revised Rules of Criminal Procedure provides:

SEC. 2. Grounds for a new trial. - The Court shall grant a new trial on any of the following grounds:

- (a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;
- (b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

The affidavit of Aurora can not qualify as "new and material evidence." She was the principal witness in her complaint against accused-appellant. In open court, she tearfully narrated the details of the despicable act against her.

It is settled that affidavits of recantation made by a witness after the conviction of the accused deserves scant consideration.[5] This is because affidavits of retraction can easily be secured from witnesses, usually through intimidation or in exchange for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated.[6]

In the case of *People v. Garcia*,[7] where a young girl was raped by her father, the affidavit of desistance also belatedly filed by the victim was rejected by this Court for being "brief, perfunctory, pro forma and highly suspect," which "obviously did not emanate directly from her mouth but was merely prepared for her adherence." So it is with Aurora's affidavit in the case at bar. It is couched in sophisticated language, which suggests that it was prepared by a legal mind. We even doubt whether Aurora fully understood its import. As in *People v. Garcia*,[8] we give more credence to the innocent victim's straightforward, detailed and consistent testimony rather than to an affidavit obviously prepared for her.

We find it hard to believe that after having accused-appellant arrested, exposing herself to the embarrassment of recounting the rape to the police, the press and the court, enduring the humiliation and pain of physical

examination, opening herself to pernicious gossip and speculation regarding her character, and jeopardizing the security and comfort of her family, Aurora would suddenly turn around and execute an Affidavit of Desistance/Recantation.

After carefully poring over the affidavit in question, we see no direct statement in Aurora's affidavit which categorically declares that she was not raped by accused-appellant. It merely narrated her unexpressed "grievances" against him, and how she considered him a hindrance to her parents' possible reconciliation. At worst, she described accused-appellant as having a sexual interest in her. She never absolved or exculpated accused-appellant from her previous charge of rape.

We agree with accused-appellant that since the Criminal Complaint narrated only one incident of rape, which occurred when Aurora was already fourteen years old, he could not be found guilty of statutory rape. We, however, disagree with accused-appellant's contention that force and intimidation must be sufficiently proved in order to make him liable for rape. Accused-appellant contends that the alleged threat he exerted on the victim was not sufficient to fall within the legal definition of intimidation.

The sufficiency of the intimidation exerted against the rape victim should be viewed in light of the victim's perception and judgment at the time of the commission of the offense and not by any hard and fast rule.[9] In the case at bar, it is convincing that a fourteen year-old girl, especially one in Aurora's circumstances, would perceive the threats on her to be especially intimidating. Intimidation, after all, is a relative term, depending on the age, size and strength of the parties, and their relationship with each other.[10] It is addressed to the mind, as it was in the instant case.

In any event, it is worthy to note that accused-appellant exercised moral ascendancy over her. Not only was he her stepfather and the man of the house, he was also her uncle. In the case of *People v. Manggasin*[11] we ruled that the moral ascendancy exercised by the accused over the victim rendered his threats effective. Such moral ascendancy and influence sufficiently substitute for violence and intimidation.[12]

As regards the healed lacerations found on Aurora, well-settled is the rule that in rape cases, the absence of fresh lacerations in complainant's hymen does not prove that she was not raped. Healed lacerations do not negate rape.[13]

Finally, accused-appellant's allegation that Aurora was a girl of loose morals with a propensity to associate with youngsters fond of sexual experimentation cannot have any bearing to this case. The moral character of a rape victim is immaterial in the prosecution and conviction of the accused. Indeed, even prostitutes can be victims of rape.[14]

All told, the trial court did not err in finding accused-appellant guilty beyond reasonable doubt of the crime of rape.

However, we do not agree with the trial court's imposition of the death penalty on accused-appellant. The Criminal Complaint failed to allege that accused-appellant was the common-law spouse of Aurora's mother and that Aurora was under eighteen (18) years of age at the time of the rape. Once more, we rule that, in order to warrant the death penalty, both circumstances of minority of the victim and her relationship with the accused must be alleged in the Complaint or Information. Otherwise, the accused can only be convicted of simple rape. The requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense, pursuant to the due process clause of the Constitution.[15]

Therefore, the penalty that should be imposed on accused-appellant, pursuant to Article 335, as amended, in

connection with Article 63 of the Revised Penal Code, is reclusion perpetua.

Finally, the victim should be awarded civil indemnity for the rape, in addition to moral damages in the amount of P50,000.00. An award for civil indemnity is separate and distinct from moral damages. Civil indemnity is automatically granted to the offended party without need of further evidence other than the fact of the commission of the crime and the accused's responsibility therefor.[16] The award of civil indemnity shall be in the amount of P50,000.00, following prevailing jurisprudence.[17]

WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 76, in Criminal Case No. 96-65488, finding accused-appellant guilty beyond reasonable doubt of the crime of rape, is AFFIRMED with MODIFICATIONS. Accused-appellant Oscar Dante is sentenced to suffer the penalty of reclusion perpetua, and is ordered to indemnify the victim, Aurora Cañizares, civil indemnity in the amount of P50,000.00, in addition to moral damages in the amount of P50,000.00, and to pay the costs of suit.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., on official leave.

[1] Penned by Judge Monina A. Zenarosa; Records, pp. 68-72.

[2] Records, pp. 1-2.

[3] Op. cit., note 1, at p. 72.

[4] Annex "A", Motion for New Trial; Rollo, pp. 35-36.

[5] Villanueva v. People of the Philippines, 330 SCRA 695 [2000], citing Molina v. People of the Philippines, 259 SCRA 138 [1996].

[6] People v. Dalabajan, 280 SCRA 696 [1997], citing Lopez v. Court of Appeals, 239 SCRA 562 [1994].

[7] 288 SCRA 382 [1998].

[8] Supra.

[9] People v. Alfanta, 300 SCRA 357 [1999].

[10] People v. Garcia, 281 SCRA 463 [1997].

[11] 306 SCRA 228 [1999].

[12] People v. Medina, 300 SCRA 98 [1998], citing People v. Casil, 241 SCRA 285 [1995].

[13] People v. Sapinosa, G.R. No. 122540, 328 SCRA 649 (2000); People v. Llamo, 323 SCRA 791 [2000], citing People v. Ngo, 202 SCRA 549 [1991] and People v. Liquiran, 228 SCRA 62 [1993].

[14] People v. Edualino, 271 SCRA 189 [1997], citing People v. Barera, G.R. No. 99867, 16 September 1996.

[15] People v. De Villa, G.R. No. 124639, 1 February 2001, citing People v. Villanueva, G.R. No. 135330, 31 August 2000.

[16] People v. Adora, 275 SCRA 441 [1997].

[17] People v. Nubla, G.R. No. 137164, 19 June 2001.

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