PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO REMUDO Y SIRAY, ACCUSED-APPELLANT.

G.R. No. 127905. August 30, 2001

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PER CURIAM:

For automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659[1], is the 16 December 1996 Decision[2] of the Regional Trial Court, Branch 95, Quezon City, in Criminal Case No. Q-96-67462, finding accused-appellant Danilo Remudo y Siray (hereafter DANILO) guilty of the crime of rape committed against his own sister Marissa Remudo y Siray (hereafter MARISSA), and sentencing him to suffer the penalty of death and to indemnify MARISSA the amounts of P50,000 as moral damages and P30,000 as exemplary damages.

On 26 August 1996, the Office of the City Prosecutor of Quezon City filed before the court below a complaint[3] charging DANILO with rape under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659. The accusatory portion of the information reads as follows:

> That on or about the 3[rd] day of June 1996, in Quezon City, Philippines, the above-named accused, brother of herein complainant, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with complainant MARISSA REMUDO y SIRAY, a minor 13 years of age, without her consent and against her will, to the damage and prejudice of said MARISSA REMUDO y SIRAY in such amount as may be awarded to her under the provision of law.
>
> CONTRARY TO LAW.

The case was docketed as Criminal Case No. Q-96-67462.

Upon arraignment on 16 September 1996, DANILO entered a plea of not guilty. On the same occasion, the trial court denied the prosecution's motion for the consolidation of Criminal Case No. Q-96-67461 and Criminal Case No. Q-96-67462 on the ground that while in the two cases MARISSA is the complainant, the accused are not the same and the crimes charged in both were committed on different dates. The accused in the first case is Pedro Hilario y Sirnicola.[4]

The first witness for the prosecution was Dr. Ma. Cristina Freyra. However, on 14 October 1996, the parties agreed to dispense with her testimony and entered into a stipulation that her testimony in Criminal Case No. Q-96-67461 including all documentary evidence she testified on shall be deemed reproduced in, and shall form part of, the record of Criminal case No. Q-96-67462. The parties likewise stipulated that MARISSA was born on 12 July 1983.[5]

On 6 November 1996, MARISSA took the witness stand. She testified that she was born on 12 July 1983. At about 1:00 p.m. of 3 June 1996, at their residence at No. 87-K 6th Street, Kamuning, Quezon City, her brother DANILO suddenly and forcefully pulled her by the arm and made her lie down on the floor. While she was in that position, DANILO removed her undergarments and kissed her neck. Thereafter, DANILO inserted his organ into her vagina and performed several pumping motions. MARISSA tried to resist DANILO's advances by kicking

him, but her efforts were in vain. It was only after he consummated his bestial desire that he left her.[6]

MARISSA kept to herself her sad ordeal, as she was afraid of her Kuya DANILO. However, after a month, MARISSA finally mustered enough courage and revealed DANILO's dastardly act to her teacher Mrs. Batacan. The latter then brought MARISSA to an office of the Department of Social Welfare and Development (DSWD) located at Kamuning, Quezon City.[7]

On 18 July 1996, DSWD Social Worker Felisa Amar brought MARISSA to the Philippine National Police (PNP) Crime Laboratory Services for genital and medical examinations.[8] Upon examination, Dra. Freyra found deep healed hymenal lacerations at 3, 6, and 9 o'clock positions and concluded that MARISSA was no longer a virgin.[9]

On 22 August 1996, MARISSA, accompanied by Barbara Garcia of the DSWD office in Marilac Hills, Alabang, Muntinlupa,[10] reported to the police her defilement and executed her Sinumpaang Salaysay.[11] Thereupon, MARISSA, assisted by her mother, filed a complaint for rape against DANILO. Likewise, Felisa Amar and Barbara Garcia executed their respective Sinumpaang Salaysay,[12] but their testimonies were dispensed with upon agreement by the parties.[13]

DANILO, the sole witness for the defense, invoked denial and alibi. According to him, on 3 July 1996, he was at Cambridge, Cubao, Quezon City, working as a construction worker. As a construction worker he was mostly out of their house, leaving at 7:00 a.m. and returning thereto only at 6:00 p.m. His relationship with his sister MARISSA was fine, and he did not know of any reason why she implicated him in the commission of an odious crime.[14] On cross-examination, DANILO stated that his place of work at the time of incident was not at Cambridge, Cubao, but at Makabayan, Roces Avenue, Quezon City.[15]

In its decision,[16] the trial court found DANILO guilty beyond reasonable doubt of the crime of rape. It observed that despite MARISSA's shyness and naivety she was able to positively testify in detail the material circumstances of her defilement. It found no ulterior motive why MARISSA would file a serious charge of rape against her own brother if her story of sexual ravishment were not true. Finally it ruled that DANILO's self-serving negative evidence cannot stand against the prosecution's positive evidence.

In imposing the death penalty, the trial court appreciated the presence of the special circumstances of relationship and minority provided for in Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659. It was not disputed that MARISSA was born on 12 July 1983, as testified to by her and as admitted by the defense as part of the stipulation of facts; hence she was only almost 13 years old at the time of the commission of the crime. It was likewise undisputed that DANILO is MARISSA's full-blood brother.

On 9 September 1997, DANILO terminated the services of the Public Assistance Office (PAO) as his counsel. After DANILO failed to inform us of the name and address of his counsel, we appointed Atty. Arthur Lim as his counsel de oficio.

After several motions for extension of time to file the Appellant's Brief, Atty. Lim filed on 9 August 1999 a Motion for Leave to File Petition for New Trial, which we denied in the Resolution of 31 August 1999. Despite the denial, a Verified Motion for New Trial was filed on 2 September 1999. In the Resolution of 28 September 1999, the motion was denied.

On 8 September 2000, DANILO filed his Appellant's Brief. He alleged therein that the trial court erred in convicting him of the crime of rape and in sentencing him to suffer the penalty of death despite the fact that

I

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... THE ACCUSED WAS DEPRIVED OF THE RIGHT TO AN EFFECTIVE COUNSEL.

II

... ASSUMING ARGUENDO THE ACCUSED DID HAVE CARNAL KNOWLEDGE OF THE COMPLAINANT, NO FORCE OR VIOLENCE WAS EMPLOYED; FROM THE ENVIRONMENTAL FACTS AND CIRCUMSTANCES, IT WAS A CONSENSUAL ACT OF THE PARTIES.

In support thereof DANILO now questions the dedication and effectiveness of Atty. Trebonian Tabang, his counsel de oficio, during the trial. He alleges that Atty. Tabang failed to prove the impossibility of consummating the sexual act in the presence of at least ten persons then residing at their house and to tie up all loose ends by making sure that DANILO would remember the name of his employer, which could have made his defense of alibi more acceptable. He further asserts that Atty. Tabang did not exert efforts to interview DANILO and other vital witnesses whose testimonies could help him arrive at the conclusion that the sexual congress between MARISSA and DANILO was a case of consensual act. Thus, having been deprived of the adequate legal defense and representation, DANILO humbly submits that he be afforded the opportunity to ventilate fully his defense in a new trial called for this purpose.

In the Appellee's Brief, the Office of the Solicitor General (OSG) supports the trial court's finding and conclusion that DANILO is guilty beyond reasonable doubt of raping MARISSA, his own sister. His bare denial and alibi cannot overcome the categorical testimony of MARISSA that he violated her. Moreover, there was no evidence of ulterior motive on the part of MARISSA to implicate DANILO in the commission of the crime. Finally, the OSG finds that there is no need to meet anew the submissions of the appellant for new trial based on his alleged newly discovered evidence, Marissa's affidavit of retraction, because the same had already been denied by us.

We find no reason to depart from our previous ruling denying DANILO's motion for new trial. It has been ruled that the error of the defense counsel in the conduct of the trial is neither an error of law nor an irregularity upon which a motion for new trial may be presented. Generally, the client is bound by the action of his counsel in the conduct of his case and cannot be heard to complain that the result of the litigation might have been different had his counsel proceeded differently. In criminal cases, as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel does not furnish a ground for a new trial. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to suits so long as a new counsel could be employed who could allege and show that the prior counsel has not been sufficiently diligent, experienced, or learned. To do so would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction.[17]

Moreover, DANILO's submission that Atty. Tabang fell short of the principles of advocacy towards his client's cause does not persuade us. First, DANILO testified and insisted that he was not at the house at the time of the alleged rape; he was out working at the construction site. Whether there were other persons in the house is totally irrelevant to his defense. Second, the testimony of DANILO's employer would be corroborative; hence it could be dispensed with. That Atty. Tabang did not get the name of the employer and present him as witness is not proof of neglect of duty. All told, Atty. Tabang could not be faulted. For while a lawyer owes fidelity to his client's cause, that fidelity should not, however, be at the expense of truth and the administration of justice.[18]

The second assigned error is an alternative argument, with DANILO proposing that if indeed he had sex with MARISSA it was with her full consent because no proof of force or intimidation was presented by the prosecution.

Such theory is unavailing, as it is belied by the testimony of MARISSA that she resisted DANILO's sexual acts by

kicking him.[19] Undoubtedly, such offer of resistance negates consent. Besides, it is highly inconceivable that MARISSA would simply yield to the bestial desire of her eldest brother had not her resistance been overpowered. Moreover, in rape committed by a close kin, such as the victim's father,[20] step-father,[21] uncle,[22] or the common-law-spouse of her mother,[23] it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation. In this case, DANILO, the eldest brother of MARISSA who was seven years her senior and whom she called "KUYA," had apparent moral ascendancy, not to mention physical superiority, over her. Hence, the absence of force or intimidation in the perpetration of the crime would not earn him acquittal.

MARISSA's affidavit of retraction also deserves scant consideration. It has been held in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts.[24] It is quite incredible that after going through the process of having DANILO arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish MARISSA would suddenly turn around on appeal and declare that what transpired between her and DANILO was a consensual sexual act.

Likewise, MARISSA's affidavit of retraction, as well as the affidavits of her mother Carmelita and sister Nerissa, can hardly qualify as newly discovered evidence to justify new trial based on newly discovered evidence. To justify new trial based on newly discovered evidence, the following requisites must concur: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) such evidence is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, would probably change the judgment.[25]

The issue of credibility should also be resolved against DANILO. Time and again, we have said that we will not interfere with the judgment of the trial court in determining the credibility of the witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[26]

In the instant case, we find no compelling reason to depart from the established rule. MARISSA clearly testified that DANILO raped her. She recounted the details of her harrowing experience in a credible, convincing and straightforward manner. In her direct examination, MARISSA testified as follows:

> Q
>
> As your brother kissed your neck, what followed next...?
>
> A
>
> He inserted his private organ into my private organ.
>
> Q
>
> After your brother Danny inserted his private organ into your private organ, what transpired next...?
>
> COURT: Put on record that the witness [is] having a hard time answering the question as she is now crying.
>
> COURT: (to the witness)
>
> Q
>
> Now the court will ask you, Madam witness what did your brother do if there was any when he inserted his private organ into your private organ?

A

He made a movement as if his organ was moved out and then moved in.

PROS: (to the witness)

Q

And while your brother accused was making the in and out movement while atop you, what were you doing at that time?

A

I was resisting, sir.

COURT: (to the witness)

Q

How did you resist your brother?

A

I am [sic] kicking him your Honor.[27]

Thus, contrary to the claim of the defense, the prosecution was able to establish with moral certainty the fact of rape and the identity of the culprit. Furthermore, there is absolutely no showing that MARISSA was actuated by any sinister motive to falsely charge her own brother with such a serious crime. If she admitted the ignominy she had undergone, allowed her private parts to be examined, exposed herself to the trouble and inconvenience of a public trial, and endured the embarrassment and humiliation attached to the revelation of that which ought to be suffered in silence, this Court is convinced that she had nothing in mind except to obtain justice.[28] A victim of rape would not come out in the open if her motive were anything other than to obtain justice.[29]

In light of the positive testimony of MARISSA proving DANILO's criminal accountability, his bare denial must fail. A mere denial, like alibi is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of a credible witness who testifies on affirmative matters.[30]

Consequently, we affirm the trial court's imposition of the death penalty. In qualified rape, the concurrence of the minority of the victim and her relationship to the offender must both be alleged and proved with certainty, otherwise, the death penalty cannot be imposed.

In the instant case, the information alleged that the victim was a 13-year-old minor and the accused was the victim's brother. While no birth certificate or any official document was presented to prove MARISSA's age, we uphold the trial court's appreciation of the qualifying circumstance of minority. MARISSA's testimony as to her date of birth coupled with DANILO's admission that MARISSA was born on 12 July 1983 sufficiently established her minority. Hence, a birth certificate or any other official document is no longer necessary to establish the minority of the victim, since the same is admitted and undisputed by the accused himself.

The qualifying circumstance of relationship was also undisputedly proved by the prosecution. Moreover, DANILO categorically admitted that MARISSA is his sister. Thus, on direct examination he declared:

Q

Mr. Witness do you know the private complainant in this case, Marissa Remudo?

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A

Yes sir.

Q

Why do you know Marissa Remudo?

A

She is my sister.[31]

Four Members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

With regard to the civil liability of the accused, we affirm the trial court's award of P50,000 for moral damages. In this jurisdiction, moral damages in rape cases may be awarded to the victim in such amount as the court deems just, without the need for pleading or proof of the basis thereof. Conformably with recent case law, we reduce the lower court's award of exemplary damages from P30,000 to P25,000 in order to deter brothers with perverse tendencies and aberrant sexual behaviors from sexually abusing their siblings. Additionally, in line with current jurisprudence,[32] DANILO should be ordered to indemnify the complainant in the amount of P75,000.

WHEREFORE, the judgment of the Regional Trial Court of Quezon City, Branch 95, in Criminal Case No. Q-96-67462 finding accused-appellant DANILO REMUDO y SIRAY guilty beyond reasonable doubt of the crime of rape penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, and sentencing him to suffer the death penalty and to pay the victim MARISSA REMUDO P50,000 as moral damages is hereby AFFIRMED, with the modification that the amount awarded for exemplary damages is reduced from P30,000 to P25,000 and said accused-appellant is further ordered to pay the victim an additional amount of P75,000 as indemnity.

In accordance with Article 83 of the Revised Penal Code, as amended by section 25 of R.A. No. 7659, upon finality of this decision, let certified true copies thereof and the record of this case be forwarded forthwith to the Office of the President for possible exercise of the clemency and pardoning power.

Costs de officio.

SO ORDERED.

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

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[1] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes, which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555, 569 [1994]).

[2] Original Record (OR), 33-37; Rollo, 11-15. Per Judge Diosdado Madarang Peralta.

[3] OR, 1.

[4] Id., 5.

[5] OR, 9.

[6] TSN, 6 November 1996, 5-9.

[7] Id., 9-11.

[8] Exhibit "F."

[9] Exh. "C."

[10] Exh. "G."

[11] Exhibit "D."

[12] Exhs. "F" and "G."

[13] 11 November 1996, 2-3.

[14] TSN, 20 November 1996, 1-3.

[15] Id., 4-5.

[16] Supra note 2.

[17] U.S. v. Umali, 15 Phil. 33, 35, 37 [1910]; People v. Villanueva, G.R. No. 135330, 31 August 2000.

[18] Garcia v. Francisco, 220 SCRA 512, 515 [1993].

[19] TSN, 6 November 1996, 9.

[20] People v. Flores, 320 SCRA 560 [1999]; People v. Garcia, G.R. No. 117406, 16 January 2001.

[21] People v. Adila, 328 SCRA 620 [2000]; People v. Francisco, G.R. Nos. 134566-67, 22 January 2001.

[22] People v. Zaballero, 274 SCRA 627 [1997]; People v. Gonzales, G.R. No. 133859, 24 August 2000.

[23] People v. Fraga, 330 SCRA 669 [2000].

[24] People v. Gonzales, G.R. No. 133859, 24 August 2000.

[25] People v. Aliviado, 247 SCRA 300, 308-309 [1995].

[26] People v. Malunes, 247 SCRA 317, 324 [1995]; People v. Gutierrez, G.R. No. 132772, 31 August 2000.

[27] TSN, 6 November 1996, 8-9.

[28] People v. Corpuz, 222 SCRA 842, 858 [1993].

[29] People v. Gonzales, supra note 24.

[30] People v. Alvero, 329 SCRA 737, 756 [2000].

[31] TSN, 20 November 1996, 1-2.

[32] People v. Prades 293 SCRA 411, 430 [1998].

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