

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO ONABIA ALIAS “ODOY”, ACCUSED-APPELLANT.

G.R. No. 128288. April 20, 1999

Ponente: BUENA, J.

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BUENA, J.:

This is an automatic review of the decision dated December 12, 1996 of the Regional Trial Court, 6th Judicial Region, Branch 42, Bacolod City in Criminal Cases Nos. 95-17443, 95-17444, 95-17445 and 95-17450 for four (4) counts of Rape, the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds the accused Wilfredo Onabia alias 'Odooy' guilty beyond reasonable doubt of having committed the crime of rape against Raquel B. Eballe, a minor less than 12 years old, on four (4) counts as charged in four (4) separate informations (Crim. Case No. 95-17443; Crim. Case No. 95-17444; Crim. Case No. 95-17450; Crim. Case No. 95-17445) with the aggravating circumstances of abuse of superior strength, abuse of confidence and lack of respect on account of age and relationship, attending the commission thereof and, there being no mitigating circumstances present to effect the same, hereby sentences said accused to suffer the following penalties:

In Crim. Case No. 95-17443, the Supreme Penalty of DEATH with the accessory penalties provided for by law and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00;

In Crim. Case No. 95-17444, the penalty of Reclusion Perpetua with its accessory penalties, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00;

In Crim. Case No. 95-17450, the penalty of Reclusion Perpetua with its accessory penalties, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00; and

In Crim. Case No. 95-17445, the penalty of Reclusion Perpetua with accessory penalties prescribed by law, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00.

No pronouncement as to costs.

SO ORDERED."[1]

The antecedents are:

Private complainant Raquel B. Eballe, then nine (9) years old, is the stepsister of accused-appellant Wilfredo Onabia.[2]

At about 6:30 in the evening of February 15, 1994, accused-appellant asked private complainant to go with him to the copra drier located at about two hundred (200) meters from their house.[3] In going to the copra drier, appellant was carrying a kerosene lamp and a bolo placed in his waist.[4] When they arrived at the copra drier, they went upstairs. Thereupon, appellant put out the lamp, embraced private complainant and forced her to lie down.[5] Appellant told private complainant that he would kill her and the other members of her family if she

would shout[6]. Accused-appellant removed his pants and brief. Thereafter, he inserted his penis into the vagina of private complainant.[7] Private complainant felt pain and cried. Accused-appellant told private complainant that he would kill her and her family if she would reveal the incident to her mother.[8]

In the afternoon of August 10, 1994, only private complainant and accused-appellant were in their house as the other members of their family went to the farm[9]. Private complainant was in her room at that time. Accused-appellant entered the room of private complainant and told her not to shout, otherwise, he would kill her and the other members of her family[10] Thereupon, he embraced private complainant, forced her to lie down, removed her panty and inserted his penis into her vagina[11].

At about 9:00 P.M. of October 7, 1995, accused-appellant called private complainant who was then in her room and requested her to massage him at the sala of their house[12]. Private complainant was hesitant to massage appellant. However, she was constrained to massage accused-appellant because she was told to do so by her mother[13]. While private complainant and appellant were at the sala, the latter squeezed the arm of the former and told her not to shout[14] Thereupon, accused-appellant removed his short pants and brief and private complainant's underwear. Then, he inserted his penis into the vagina of private complainant[15].

At about 9:00 P.M. of November 6, 1995, private complainant was in her room. Accused-appellant, who was then in the sala, called private complainant and told her to massage him[16] Although private complainant was hesitant to massage appellant, she was prevailed upon by her mother[17] While both private complainant and accused-appellant were in the sala, she was told by the latter not to shout. Thereupon, appellant forced private complainant to lie down. After removing his brief and the underwear of private complainant, accused-appellant inserted his penis into the vagina of private complainant[18]

On November 7, 1995, private complainant reported to her brother Jessie the sexual assault perpetrated upon her by appellant[19]. Jessie reported the same to their elder brother Bernabe. Thereupon, Bernabe and private complainant reported the incident to the barangay councilman and the police[20] On the following day, November 8, 1995, private complainant was subjected to medical examination by Dr. Dennis Duenas. The medical report[21] issued by him on November 15, 1995 showed that private complainant sustained lacerations on her hymen as follows:

[.] OLD LACERATION AT THE HYMENAL RING 9'2'5'3' POSITION
[.] INTROITUS ADMITS 1 FINGER WITH EASE
[.] CERVIX *SMALL, CLOSE
UTERUS SMALL
ADNEXIE (-)

Consequently, accused, herein appellant, Wilfredo "Odo" Onabia was charged separately with four (4) counts of Rape, thus:

"CRIMINAL CASE NO. 95-17443

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 15th day of February, 1994, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17444

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 10th day of August, 1994, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17450

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 7th day of October, 1995, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17445

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 6th day of November, 1995 in the municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court; the above-named accused, by means of force and intimidation, did then and there, willfully and feloniously have carnal knowledge with the offended party against her will."[22]

In disowning liability for the offenses charged, accused-appellant simply denied the same and argued that the charges were mere fabrications as a consequence of a quarrel he had with the private complainant's elder brother[23]

After trial on the merits, accused-appellant Wilfredo Onabia was found guilty beyond reasonable doubt of the crimes charged and was sentenced accordingly. Hence, this case before us for review. In his brief, accused-appellant raises the following errors:

ASSIGNMENT OF ERRORS

I.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE RAPE ALLEGEDLY COMMITTED ON 15 FEBRUARY 1994 (CRIM CASE NO. 95-17443) WAS QUALIFIED WITH THE USE OF DEADLY WEAPON.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDIT TO THE TESTIMONY OF THE COMPLAINING WITNESS RAQUEL B. EBALLE.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE AND IN ORDERING HIM TO PAY MORAL DAMAGES OF Php50,000.00 FOR EACH COUNT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[24]

In his first assigned error, accused-appellant argues that the crime of Rape in Criminal Case No. 95-17443 was not qualified by the use of a deadly weapon. We agree.

A review of the records at hand reveal that, while accused-appellant was then carrying a bolo in his waist, as he usually does[25] (TSN), accused-appellant never used the same to threaten private complainant[26]. The threats made by accused-appellant was never accompanied with the use of his bolo.

The case of *People v. Lamberte*, which was raised by the People to refute accused-appellant's first assigned error, is not applicable for in that case the rape was not qualified by the "use of a deadly weapon" but rather the commission "by two or more persons."

"The defense also calls attention to the fact that the use of a weapon was not mentioned in the Information filed by the Fiscal. The use of a 'knife,' however, was alleged in the earlier complaint CLARISSA had filed before the Municipal Court of Catarman. But even in the absence of such an allegation in the Information, the nature of the offense charged is not altered for the use of force or intimidation in having carnal knowledge of a woman sufficiently constitutes the crime of rape, and its commission by two or more persons qualifies it." [27] (underscoring supplied)

While private complainant in the present case did mention the use of a "bladed weapon" in her earlier complaint,[28] the use of the same, as we found earlier, was never established. Besides, the qualifying circumstance of "commission by two or more persons" is not available unlike in *Lamberte*. Hence, the crime of rape in Criminal Case No. 95-17443 cannot be qualified.

Still on Criminal Case No. 95-17443, we also find the court a quo to have erred in appreciating the aggravating circumstances of: (1) abuse of superior strength; (2) abuse of confidence; and (3) lack of respect on account of age and relationship.

The second paragraph of Section 14, Article III of the Constitution guarantees the right of the accused to be informed of the nature and cause of the accusation against him. The rationale for this was aptly put by Mr. Justice Felix Q. Antonio in the early case of *Matilde, Jr. v. Jabson*, thus:

"Inasmuch as 'not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against them, and thus avoid all and any possible surprises which may be detrimental to their rights and interests.' The main purpose of this requirement is to enable the accused to suitably prepare his defense. He is presumed to be innocent and has, therefore, no independent knowledge of the facts that constitute the offense with which he is charged.[29]

In the case before us, the above-mentioned aggravating circumstances were neither mentioned in the complaint nor in the information. Consequently, to appreciate the aforementioned aggravating circumstances and to convict the accused of an offense higher than that charged in the complaint or information on which he is tried would constitute an unauthorized denial of his constitutional right.[30] Considering further that the crime is simple rape, which is punishable by a single indivisible penalty of reclusion perpetua,[31] no ordinary mitigating or aggravating circumstances may affect it.[32]

Moreover, in order to appreciate the aggravating circumstance of "abuse of superior strength,"[33] it must be sufficiently established that the same was deliberately taken advantage of.[34] No such proof was offered in the present case. As regards the aggravating circumstance of "abuse of confidence," it is necessary that the confidence facilitated the commission of the offense[35] and the same will not hold true if the victim had already lost confidence in the accused.[36] In this case before us, private complainant's hesitance and apparent reluctance to accompany accused-appellant[37] showed her lack of confidence in him. Next, the aggravating circumstance of "lack of respect on account of age" requires that the accused should have deliberately intended to offend or insult

the age of the offended party.[38] Nowhere in the case at bar was it shown that the rape was perpetrated by the accused-appellant with the thought or intention "of heaping contumely or insult upon the child because of her sex or her tender age." [39] Finally, the stepbrother and stepsister relationship between private complainant and accused-appellant cannot elevate the crime to "qualified rape" under Article 335 of the Revised Penal Code, as amended by R.A. 7659 for they are not considered related either by blood or by affinity.[40]

As regards the second and the third assigned errors, the same will be resolved jointly for being interrelated. In essence, accused-appellant assails the credibility of private complainant.

In this case before us, appellant interposed the defense of alibi and argued that the first and second incidents of rape could not have happened because he only moved in with his father and the latter's new family on August 24, 1994. While this may be true, the same would not stop accused-appellant from visiting them before he moved in.

In the 1997 case of *People v. Bugarin*, this Court through Mr. Justice Vicente V. Mendoza, pronounced:

"Now it is settled that when the complainant in a rape case, more so if she is a minor, testifies that she has been raped, she says in effect, all that is necessary to prove the commission of the crime. Care must be taken, however, that her testimony is credible for conviction to be justified based on her testimony alone." [41]

In the present case, private complainant made a detailed accounting of how accused-appellant molested her on those two incidents.

1[st] Incident of Rape

February 15, 1994

(Criminal case No. 95-17443)

"Q- Now, after Wilfredo had entered the copra drier building, where did he proceed if he proceeded anywhere?

A- After entering the copra drier he went upstairs, Sir.

Q- How about you?

A- I followed him because he told me to go along with him, Sir.

Q- Were you able to go upstairs?

A- Yes, Sir.

Q- When Wilfredo went upstairs was he still carrying the improvised kerosene lamp.

A- Yes, Sir.

Q- When you reached upstairs what happened?

A- Then he put out the lamp, Sir.

Q- Do you know why he put out the lamp?

A- No, Sir.

Q- Did Wilfredo tell you anything why he put out the lamp?

A- No, Sir.

Q- So what happened next?

A- After he put out the lamp he embraced me and let me lie down?

Q-

When Wilfredo put out the lamp did you know whether he would embrace you and let you lie down?

A- No, Sir.

Q- When he embraced you and put you down on the floor what was your reaction?

A- I tried to stand up but he prevented me to do so, Sir.

Q- Did he tell you anything?

A-

Yes, Sir.

Q- What did he tell you?

A- He told me that if I will try to shout he will kill me and also the other members of my family, Sir.

Q- Did you believe him?

A- Yes, Sir.

Q-

So what else did he do to you after he put you down to the floor and threatened you that he would kill you and the rest of your family?

A- He put himself on top of me, Sir.

Q- What else did he do?

A- He took off my panty, Sir.

Q- What happened next?

A- After that, when he was on top of me he told me to embrace him, Sir.

Q- Did you embrace him?

A- Yes, Sir.

Q- Why?

A Because I was afraid, Sir.

Q- What else did he do to you?

A- While I was embracing him he made a pumping motion and he was heavily panting, Sir.

Q- What else did he do?

A- While he was making a pumping motion on top of me he was mashing my breast and my vagina.

Q- When he made that pumping motion was he still dressed?

A- He was still wearing T-shirt but he has taken off his short-pants and brief, Sir.

Q- Why did he take off his short and brief?

A- When he was making a pumping motion on top of me, Sir.

Q- What did he use when he made a pumping motion to you?

A- He was using his penis when he was making pumping motion to me, Sir, after he took off his short and brief.

Q- Where did he put his penis?

xxx xxx xxx

WITNESS:

After he took off his shorts and brief he forcibly inserted his penis into my vagina, Sir."[42]

2[nd] Incident of Rape

August 10, 1994

(Criminal Case No. 95-17444)

"Q-

Now, you said that on August 10, 1994 at around 2:00 o'clock in the afternoon when you were inside your room, Wilfredo entered your room and he told you that he would kill you and your family if you would shout, and you said that he used to carry a bolo, was he carrying a bolo then?

A- No, Sir, he was not carrying a bolo then but his bolo was kept inside his room, Sir.

Q- Meaning the next room from your room?

A-

In the first room, Sir.

Q- How many rooms were there in your house?

A- Three rooms, Sir.

Q- After he threatened you that he would kill you and your family if you would shout, now, what else happened?

A- He embraced me and let me lie down, Sir.

Q- What else did he do to you?

A- He took off my panty, Sir.

Q- And what did he do after taking off your panty?

A- He also took off his short and brief, Sir.

Q- And then what happened next?

A- He spreaded my legs and again forcibly inserted his penis into my vagina, Sir.

Q- You said that he forced to insert his penis into your vagina, was he able to insert his penis into your vagina?

A- Yes, Sir.

Q- And after he inserted his penis inside your vagina what did he do?

A- He made a pumping motion and he was panting, Sir.

Q- After that what happened?

A-

He again threatened me not to tell to anybody what he made to me otherwise he will kill me and kill my family, Sir."[43]

Private complainant's straightforward account of these two incidents is typical of young victims of rape[44] Her revelation, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she was compelled to give out the details of the assault on her dignity, cannot be so easily dismissed as mere concoction[45] It is most improbable that a victim of tender years especially one who is not exposed to the ways of the world would impute a crime as serious as rape if it were not true[46], and if she was not solely motivated by her desire to have the culprit apprehended and punished[47]

As we find private complainant's testimony credible, accused-appellant's defense of alibi must fail. It is well-settled that an affirmative testimony is far stronger than a negative testimony[48] Moreover, the positive identification made by the complainant of the person who took away her honor has made the defense of alibi unacceptable[49].

As regards the third and fourth incidents of rape, accused-appellant presents the improbability of having committed the rape in the living room. We do not agree for lust is no respecter of time and place[50]. Consequently, rape may be committed even in the most unlikely places.

"In a long line of rape cases, this Court has held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are sleeping[51].

With regard to the purported delay in reporting the four incidents of rape, the same finds justification in private complainant's testimony to the effect that accused-appellant threatened her on all four occasions[52].

Except for the penalty imposed in Criminal Case No. 95-17443 therefore, We affirm the findings of the trial court and uphold the long established rule that,

"(T)he assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the utmost significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case."[53]

WHEREFORE, the decision appealed from is **AFFIRMED** with the modification that (1) in Criminal Case No.

95-17443 the accused-appellant is found guilty beyond reasonable doubt of rape, without any of the qualifying circumstances, and is accordingly sentenced to suffer the penalty of reclusion perpetua in accordance with Republic Act No. 7659 and (2) the accused-appellant shall pay the additional amount of P50,000.00 as moral damages in each of the four (4) cases in accordance with prevailing jurisprudence.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, and Gonzaga-Reyes, JJ., concur.

Ynares-Santiago, J., no part.

[1] RTC Decision, pp. 43-44, Rollo.

[2] TSN, August 13, 1996, pp. 6 and 17.

[3] TSNs, August 13, 1996, p.7; September 3, 1996, p. 18.

[4] TSN, August 13, 1996, p. 8.

[5] Ibid., p. 10.

[6] TSN, August 13, 1996, p. 11.

[7] Ibid., p. 12.

[8] Ibid., p. 13.

[9] Ibid., p. 16.

[10] Ibid., p. 17.

[11] Ibid., p. 19.

[12] Ibid., p. 23.

[13] TSN, August 13, 1996, p. 24.

[14] Ibid., pp. 24-25.

[15] Ibid., p. 25.

[16] Ibid., p. 26.

[17] Ibid., p. 26.

[18] Ibid., p. 27-28.

[19] Ibid., pp. 29 & 30.

[20] TSNs, August 13, 1996, p. 30; September 3, 1996, p. 33.

[21] Exh., "H", p. 9, Records.

[22] RTC Decision, pp. 16-17, Rollo.

[23] TSNs, September 24, 1996, pp. 8-10; September 25, 1996, pp. 4-5.

- [24] Appellant's Brief, pp. 66-67, Rollo.
- [25] TSNs, August 13, 1996, p. 8.
- [26] TSN, September 3, 1996, p. 25.
- [27] *People v. Lamberte*, 142 SCRA 685, pp. 691-692.
- [28] Criminal Complaint, p. 5, Records.
- [29] *Matilde v. Jabson*, 68 SCRA 456, pp. 460-461.29
- [30] *Matilde v. Jabson*, supra, p. 461 cited in *The 1985 Rules on Criminal Procedure* (M.R. Pamaran, 1998 ed., p. 79).
- [31] Article 335, Revised Penal Code (as amended by R.A. 7659).
- [32] *People v. Tabugoca*, 285 SCRA 312.
- [33] Paragraph 15, Article 14, Revised Penal Code.
- [34] *People v. Ortega, Jr.*, 276 SCRA 166, 179; *People v. Escoto*, 244 SCRA 87, 97-98.
- [35] *People v. Luchico*, 49 Phil. 689, 697-698 and *People v. Alqueza*, 51 Phil. 817, 820, both cited in the Revised Penal Code (R.C. Aquino, 1997, ed., Vol. 1, p. 332).
- [36] *Ibid.*, p. 333, citing *People v. Luchico*, supra.
- [37] TSNs, August 13, 1996, p. 7; September 3, 1996, p. 18.
- [38] *People v. Mangsant*, 65 Phil. 548, as cited in the Revised Penal Code (R.C. Aquino, 1997 ed., Vol. 1, p. 318).
- [39] *Ibid.*, p. 318-319, citing *U.S. v. Dacquel*, 36 Phil. 781, 783; see also *People v. Decena*, 235 SCRA 67, 78.
- [40] *Handbook on the Family Code*, A.V. Sempio-Diy, 1995 copyright, p. 52.
- [41] *People v. Bugarin*, 273 SCRA 384, 394.
- [42] TSN, August 13, 1996, pp. 9-12.
- [43] TSN, August 13, 1996, pp. 18-19.
- [44] *People v. Cabillan*, 267 SCRA 258, 261; see also *People v. Tabugoca*, 285 SCRA 312.
- [45] *People v. Cabillan*, supra, p. 265.
- [46] *People v. Borja*, 267 SCRA 370, 379.
- [47] *People v. Ramirez*, 266 SCRA 335, 352; see also *People v. Abad*, 268 SCRA 246, 256.
- [48] *People v. Ramirez*, supra; *People v. San Juan*, 270 SCRA 693, 712.
- [49] *People v. Barrientos*, 285 SCRA 221, 237.
- [50] *People v. Cabillan*, supra, 265; *People v. San Juan*, supra, 709; *People v. Gementiza*, 285 SCRA 478, 488.
- [51] *People v. San Juan*, supra, 708-709; *People v. Gementiza*, supra.
- [52] *People v. Tabugoca*, supra, 326; *People v. Abad*, supra, 256.

[53] People v. San Juan, *supra*, p. 704.

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