THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO DE LEON Y SANTOS, ACCUSED-APPELLANT.

G.R. No. 128436. December 10, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an automatic review of the decision of the Regional Trial Court, Branch 90, Cavite City in Criminal Case No. 3454-94,[1] the dispositive portion of which reads:

> "WHEREFORE, this court finds the accused, EDGARDO DE LEON guilty of Rape beyond reasonable doubt, and sentences him to the DEATH penalty and to pay the victim, Amelia de Leon Parocho, the amount of P50,000.00 for moral damages in line with the reward made under the case of People v. Bonday (222 SCRA 216 [1997]).
>
> "SO ORDERED."[2]

The facts, according to the prosecution, are as follows:

On July 22, 1992, at 11:00 in the evening, Amelia de Leon, twenty (20) years of age, was sleeping in her house at Barangay Sta. Cristina 2, Area C, Bagong Bayan, Dasmarinas, Cavite. On the bed beside her slept her two-year old daughter while adjacent to them on a crib was her younger daughter, aged one year. The fluorescent lamp was lit as Amelia had barely fallen asleep. An overpowering smell of liquor suddenly pervaded the air. Waking up, Amelia saw her father, herein accused-appellant Edgardo de Leon, bending over her and aiming a knife at her. He ordered her to undress. Amelia tried to get up but accused-appellant hit her head with the knife's handle. Amelia cried. Accused-appellant covered her mouth with his hand and with the other hand punched her on the thigh. Amelia continued to cry. He placed the knife behind her back and with it ripped her clothes. Amelia protested, crying "Tay, ano bang ginagawa ninyo?" "Sundin mo `yung inuutos ko!" he barked and peeled off her clothes. Amelia struggled. Accused-appellant thrust his knife on the pillow beside them. Amelia feared that he hit her sleeping daughter's head. Instead, he aimed the knife at the child and declared that if Amelia did not give in to what he wanted, he was going to kill the child. Fearing this, Amelia undressed herself and lay down on the bed.

Her father went on top of her, inserted his organ into her private part and made an up and down motion as he kissed her lips, neck and breasts. Amelia tried to wake up her daughter by pinching her. The child cried but accused-appellant shoved a feeding bottle inside her mouth to quiet her. Accused-appellant then ordered Amelia to get up and sit on a chair nearby. She did as she was told. Accused-appellant went beside her and sexually penetrated her. After satisfying his lust, accused-appellant stood up and put on his underpants. He warned Amelia not to report the incident to her mother or he would kill her. Thereafter, accused-appellant went to the living room. He laid down near the door of the house and slept.

That night, Amelia could not sleep. She tried to escape by the window of their house but it was too small. The following day, at 6:00 in the morning, when accused-appellant awoke, Amelia asked permission from him to buy food for their breakfast. He acceded. Amelia left the house with her eldest daughter. Instead of buying food, she

ran to her godfather's house. Seeing her godfather, she told him of her father's assault on her virtue. Forthwith, her godfather took Amelia to her godmother who knew how to reach Simprosa, Amelia's mother. Simprosa was then staying overnight in Navotas taking care of her sick father. They found Simprosa and told her of the incident. They all returned to Dasmarinas that same day and reported the matter to the police.[3]

On September 12, 1994, the following Information was filed against accused-appellant, viz:

> "The undersigned 1st Assistant Provincial Prosecutor accuses EDGARDO DE LEON Y SANTOS of the crime of RAPE based on a verified complaint filed by one Amelia Parocho [sic] de Leon before the Municipal Trial Court of Dasmarinas, Cavite, committed as follows:
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> "That on or before the 22nd day of July 1994 at around 11 o'clock in the evening at Barangay Sta. Cristina 2, Area C, Bagong Bayan, Municipality of Dasmarinas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, with lewd designs and by means of force, violence and intimidation, and being then armed with a knife, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of his daughter Amelia Parocho [sic] de Leon, against the latter's will and consent, to the damage and prejudice of said victim.
>
> "CONTRARY TO LAW."[4]

Accused-appellant pleaded not guilty to the crime charged. At the trial, he denied having raped Amelia. He said that Amelia made up the incident to spite him after he had a heated argument with her mother. Earlier that same day, at about 9:00 in the morning, Amelia sought accused-appellant's permission to marry. He refused to give his consent because Amelia's common-law husband, Juancho Parocho, was in prison serving time for robbery. Simprosa asked why he was objecting to Amelia's marriage to another man when Amelia was not accused-appellant's daughter. Simprosa reminded him that before their marriage, when they started cohabiting in 1976, she was pregnant with Amelia fathered by a man who had just died. Simprosa uttered other statements which hurt accused-appellant's feelings. To make her stop, he punched his wife's face, hitting her on the mouth. Amelia screamed at her father and warned she was going to do everything to put him behind bars.

Simprosa left and took Amelia and her children with her. Alone in the house, accused-appellant passed the day drinking liquor. The next thing he knew he was arrested for rape.[5]

The prosecution evidence was upheld by the trial court. On January 20, 1997, the court rendered a decision convicting the accused of the crime charged and sentenced him to the penalty of death. Hence, this appeal.

Accused-appellant claims that:

> "THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE, DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[6]

It is alleged by accused-appellant that the prosecution evidence has not proved his guilt beyond reasonable doubt because: (1) the evidence for the prosecution which consisted of the victim's sole testimony is insufficient; (2) this testimony is inconsistent; and (3) the other pieces of vital evidence, i.e., the knife and the victim's torn clothes, were not presented to substantiate the victim's testimony.

In rape cases, the guiding principles are: (1) an accusation of rape can be made with facility, it is difficult to prove and even more difficult to disprove; (2) considering that only two persons are usually involved in the crime, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot draw strength from the weakness of the defense evidence.[7]

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Reviewing the records carefully, we find that the sole testimony of the victim sufficiently establishes the guilt of accused-appellant. Amelia de Leon testified naturally, spontaneously and positively. She was straightforward and did not waiver, even on cross-examination. She even cried as she painfully recounted her ordeal in her father's hands.[8] Her testimony is credible and consistent with human nature and the natural course of things. The failure to present her torn clothes and accused-appellant's knife is not fatal because Amelia's lone testimony meets the test of credibility.[9]

The victim allegedly testified that her father undressed her. Later, however, she said she undressed herself. This inconsistency, according to accused-appellant, is not trivial but goes into the very heart of her credibility.[10]

There is no such inconsistency in Amelia's testimony. Accused-appellant indeed tried to undress her by ripping her clothes with his knife. When she resisted, accused-appellant aimed the knife at her sleeping child. Out of fear, Amelia was forced to undress herself completely.

Moreover, our well ingrained ruling is that minor inconsistencies tend to bolster, rather than weaken, the victim's credibility. The court cannot expect a rape victim to remember with accuracy every single detail of her violation; she might have, in fact, tried to forget the incident.[11]

Accused-appellant's claim that the charge against him was merely trumped up by Amelia cannot be believed. No woman, especially a daughter, would subject herself and her family to the humiliation of a public trial and send her father to jail for the rest of his life if her accusation were not true.[12]

The trial court therefore did not err in finding accused-appellant guilty of the crime charged. It erred, however, in imposing the penalty of death.

> Rape, under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659[13] is committed and punished as follows:
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> "Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
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> - By using force or intimidation;
>
> - When the woman is deprived of reason or otherwise unconscious; and
>
> - When the woman is under twelve years of age or is demented.
>
> "The crime of rape shall be punished by reclusion perpetua.
>
> "Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.
>
> "When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.
>
> "When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.
>
> "When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.
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> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
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> - 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.

- when the victim is under the custody of the police or military authorities.

- when the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.

- when the victim is a religious or a child below seven (7) years old.

- when the offender knows that he is afflicted with the Acquired Immune Deficiency Syndrome (AIDS) disease.

- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."[14]

The elements of rape are: (1) that the offender had carnal knowledge of a woman; (2) that such act is accomplished by using force or intimidation; or when the woman is deprived of reason or otherwise unconscious; or when the woman is under twelve years of age or is demented. The imposable penalty for rape is reclusion perpetua. However, whenever the crime is committed with the use of a deadly weapon or by two or more persons, the imposable penalty ranges from reclusion perpetua to death. When any of the seven (7) circumstances enumerated in the law attends the commission of the rape, the imposable penalty is death.[15]

In the case at bar, accused-appellant had carnal knowledge of the victim by force and intimidation. The victim, Amelia de Leon, is accused-appellant's daughter, or step-daughter as appellant claims. The death penalty is imposed if the victim is under eighteen 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 victim's parent. This provision does not apply because at the time the rape was committed, Amelia was more than eighteen years of age.[16] Neither does the fact that the rape of Amelia was made in the presence of her children increase the accused-appellant's penalty to death. The law requires that the rape must have been committed in full view of the victim's children. This circumstance was not stated in the Information, neither was it proven in the court below. From the victim's testimony, the children were asleep when she was being violated. The older child may have awakened after the victim pinched her but there is no showing, much less any allegation, that she was able to view what accused-appellant did to her mother.

Since the rape was committed with the use of a knife, a deadly weapon, the crime is therefore punishable by reclusion perpetua to death. The aggravating circumstance of taking advantage of superior strength stated in the Information cannot increase the imposable penalty to death. Taking advantage of superior strength or abuse of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked.[17] It is abuse of superior numbers or employment of means to weaken the defense.[18] This circumstance is always considered whenever there is notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority notoriously advantageous for the aggressor deliberately chosen by him in the commission of the crime.[19] To properly appreciate it, it is necessary to evaluate not only the physical condition of the parties and the arms or objects employed but the incidents in the total development of the case as well.[20]

That accused-appellant deliberately took advantage of his superior strength by using excessive force on his victim has not been proven. The use of the knife already qualified the rape;[21] and this absorbed the generic aggravating circumstance of abuse of superior strength. Moreover, like the crime of parricide by a husband on his wife,[22] abuse of superior strength is inherent in rape.[23] In 1997, after the instant case, however, Republic Act No. 8353, the Anti-Rape Law of 1997, Section 2, Article 266-A (2) removed the distinction between the sexes in the crime

of rape.23 It is generally accepted that under normal circumstances a man who commits rape on a woman is physically stronger than the latter.[24] There being no aggravating or mitigating circumstance in the instant case, the penalty to be imposed should be reclusion perpetua.

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 90, Cavite City is affirmed insofar as accused-appellant Edgardo de Leon y Santos is found guilty of the crime of rape under Article 335 of the Revised Penal Code, as amended. He is sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim, Amelia de Leon, compensatory damages of P50,000 with an additional P50,000.00 for moral damages.[25]

SO ORDERED.

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

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[1] Penned by Judge Dolores S. Espanol.

[2] Decision, p. 15, Rollo, p. 84.

[3] Exhibit "A," Sworn Statement of Amelia de Leon, Records, p. 9; TSN of February 27, 1995, pp. 1-17.

[4] Records, p. 1.

[5] TSN of March 11, 1996, pp. 1-6.

[6] Appellant' s Brief, p. 1, Rollo, p. 26.

[7] People v.Perez, 270 SCRA 526, 531 [1997]; People v. Abad, 268 SCRA 246, 250 [1997]; People v. Ramirez, 266 SCRA 335, 347 [1997].

[8] TSN of February 27, 1995, pp. 7-8.

[9] People v. Gabayron, 278 SCRA 78, 96 [1997]; People v. Pasayan, 261 SCRA 558, 572 [1997]; People v. Francisco, 258 SCRA 558, 562 [1996].

[10] Accused-Appellant's Brief, pp. 5-6, Rollo, pp. 30-31.

[11] People v. Travero, 276 SCRA 301, 310 [1997]; People v. Butron, 272 SCRA 352, 362 [1997].

[12] People v. Travero, supra, at 311; People v. Ramirez, 266 SCRA 335, 354 [1997]; People v. Melivo, 253 SCRA 347, 361-362 [1996].

[13] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, other Special Laws, and for Other Purposes."

[14] Emphasis supplied.

[15] People v. Ramos, 296 SCRA 559, 575 [1998].

[16] When she testified before the trial court on February 27, 1995, Amelia was 21 years old-TSN of February 27, 1995, p. 1.

[17] People v. Mako, 196 SCRA 378, 387 [1991]; People v. Cabato, 160 SCRA 98, 110 [1988]; People v. Cabiling, 74 SCRA 285, 303 [1976].

[18] People v. Cabiling, supra, at 303, citing Cuello Calon.

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[19] People v. Cabiling, supra, at 303; People v. Cabato, supra, at 110.

[20] People v. Cabiling, supra, at 303- 304; People v. Jimenez, 206 SCRA 214, 222 [1992]; People v. Cabato, supra, at 110.

[21] People v. Codilla, 224 SCRA 104, 126 [1993]—rape with the use of a deadly weapon is qualified rape.

[22] People v. Galapia, 84 SCRA 526, 531 [1978] on parricide by a husband on his wife.

[23] People v.Galapia, 84 SCRA 526, 531 [1978] on parricide by a husband on his wife.

[24] See People v. Galapia, supra, at 531.

[25] People v. Perez, 296 SCRA 17, 37 [1998].

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