PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMSON BRAGAS Y BLANCO, ACCUSED-APPELLANT.

G.R. No. 128874. September 24, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is before us for automatic review of the decision of the Regional Trial Court of Davao City[1] convicting accused-appellant Samson Bragas y Blanco of rape, the dispositive portion of which reads:

> "Accordingly, finding the evidence of the prosecution more than sufficient, to prove the guilt of accused, Samson Bragas of the offense charged, beyond reasonable doubt, pursuant to Rep. Act 7659, Sec. 11 thereof and sub-paragraph 7, accused Samson Bragas, is sentenced to suffer the supreme penalty of death through lethal injection as provided for in Rep. Act 8177, amending Sec. 24 of Rep. Act 7659 in the manner and procedure therein provided.
>
> "Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered, to indemnify complainant, Lira Maureen Rosario, a minor 13 years old, daugther of his common-law wife, Maxima Rosario, the amount of P30,000.00, by way of moral damages of all the ignominy and sufferings, she incurred out of accused unlawful act of sexually abusing his only 12 years old foster-daugther at the time of the commission of the offense.
>
> "x x x
>
> "SO ORDERED.
>
> "Given this 27th day of January, 1997, at Davao City, Philippines.
> "(s/t) RENATO A. FUENTES
> "J u d g e"[2]

On May 17, 1996, Davao City Prosecutor Oscar S. Aquino filed with the Regional Trial Court, Davao City, an Information charging Samson Bragas y Blanco with rape, committed as follows:

> "The undersigned, at the instance of the offended party Lira Maureen Rosario, 13 years old, whose Affidavit is hereto attached and form part of this Information accuses SAMSON BRAGAS Y BLANCO of the crime of RAPE under Art. 335 of the Revised Penal Code, in relation to Republic Act No. 7659, committed as follows:
>
> "That on or about April 30, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, did then and there wilfully, unlawfully and feloniously by means of force, violence and intimidation lie and have carnal knowledge of Lira Maureen Rosario against her will.
>
> "Contrary to law.
>
> "Davao City, Philippines, May 14, 1996.
> "(Sgd.)Oscar S. Aquino

Prosecutor I"[3]

Upon arraignment on June 7, 1996, the accused entered a plea of not guilty to the information.[4] Hence, trial was had.

Complainant Lira Maureen Rosario was born on February 9, 1983, the child of Luis F. Rosario and Maxima Roble Rosario.[5] Sometime in 1987, when she was four (4) years old, her parents separated. In 1989, her mother lived as common-law wife with accused-appellant Samson Bragas y Blanco.[6]

On April 30, 1995, complainant's mother left for Manila to follow-up the support due from Lira's father. Complainant, who was then twelve (12) years old, was left at home with her younger brother and accused-appellant, at Mahayag, Buhangin, Davao City. Around 3:00 in the afternoon, while Lira's younger brother was playing outside the house, accused-appellant Samson Bragas entered the room of the complainant and asked her to remove his dandruff from his scalp. Complainant complied by using a comb in removing the dandruff. After removing his dandruff, she wanted to get out of the room but accused prevented her by holding her chin tightly and forcing her to lie down on the floor. After she lay down, accused removed his pants as well as his brief and raised Lira's skirt and removed her panty. Then accused-appellant placed himself on top of her and inserted his penis into her vagina. After appellant consummated the sexual act, he warned complainant not to tell her mother about what happened, otherwise he would create trouble.[7]

On March 25, 1996, at around 9:00 in the evening, complainant Lira knocked at the door of the house of her neighbor, Mrs. Imelda Pania. Lira told her that accused-appellant raped her on April 30, 1995, and that almost every night thereafter, accused-appellant required her to wear only a t-shirt and panty because he would touch her private parts.[8] Immediately, Mrs. Pania asked one of her neighbors to fetch Lira's mother. Maxima Rosario went to Mrs. Pania's house where Lira told Maxima what appellant had been doing to her. Maxima requested Mrs. Pania to hide Lira for that night. The following morning, Maxima with policemen fetched Lira. Maxima reported the matter to the Talomo Police Station, Davao City, and six (6) policemen were dispatched to assist Maxima and Lira in confronting appellant who could not be located at that time.

On March 26, 1996, Dr. Danilo Ledesma, Medico Legal-Officer of the City Health Office of Davao City subjected complainant to a medical examination. His medical report[9] showed that private complainant sustained abrasion which measured 0.4 cm. long, and two old healed deep lacerations in the hymen estimated at 4:00 and 8:00 o'clock positions.[10]

In disowning liability for the offense charged, accused-appellant Samson Bragas denied that he had sexual intercourse with complainant. He declared that on April 30, 1995, at 3:00 in the afternoon, he was at Dapecol, Davao del Norte, doing a carving job. He finished carving the round table of a certain Dodo for one (1) week. Then, on May 7, 1995, he went back to Dapecol. On March 26, 1996, he was arrested and brought to Talamo Police Station.[11]

After trial on the merits, on January 27, 1997, the trial court rendered decision finding accused Samson Bragas y Blanco guilty beyond reasonable doubt of the crime charged and sentencing him to the extreme penalty of death and to indemnify complainant the amount of P30,000.00 as moral damages.[12]

Hence, the case is now before us for automatic review.

In his brief, accused-appellant assigned two errors imputed to the trial court, which, however, boil down to the sole issue of credibility of witnesses, as basis for conviction.

The accused argues that "the trial court did not scrutinize with great caution the testimony of the private complainant. It overlooked the fact that the charge of rape against accused-appellant was concocted by

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complainant's mother in order to get rid of him so that she could marry her American boyfriend. Why did it take private complainant ten (10) months to report the rape allegedly perpetrated by the accused-appellant against her? Delay in the prosecution of case without reasonable explanation affects the credibility of the alleged rape victim. The long delay of complainant in reporting the incident created a doubt that she was indeed raped by the accused. On this score alone, the trial court should have acquitted accused-appellant."[13]

We find the appeal devoid of merit.

It is true that appellant's conviction hinges on the credibility of the victim and her testimony. We agree with the trial court, which had the opportunity to observe the demeanor of the witnesses, that the victim's account was credible. We find no reason to reverse its holdings, for "it is doctrinally settled that the assessment of the credibility of witnesses and their testimony is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. A trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case."[14]

In view of the intrinsic nature of the crime of rape, oftentimes the only evidence that can be offered to prove the guilt of the perpetrator is the testimony of the offended woman herself. Thus, her testimony, standing alone can be the basis of conviction if such testimony meets the test of credibility.[15]

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, can not be easily dismissed as mere concoction.[16]

As we find complainant's testimony credible, accused-appellant's defense of alibi must fail. We have unfailingly held that alibi and denial cannot prevail over the positive identification of the accused as the perpetrator of the crime.[17]

With regard to the delay in reporting the incident of rape, the same finds justification in private complainant's testimony that accused-appellant threatened her. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. Fear of reprisal, social humiliation, familial considerations and economic reasons have been considered as sufficient explanations.[18]

The death penalty is imposed when "the victim is under eighteen years of age and the offender is x x x the common law spouse of the parent of the victim."[19] The victim is the daughter of accused-appellant's common-law spouse. Ordinarily, the case would have meant the imposition of the mandatory death penalty. Quite fortunately for accused-appellant, however, he would be spared this extreme punishment. The relationship between appellant and his victim, the daughter of appellant's common-law spouse by the latter's previous relationship with another man, is a qualifying circumstance that was not alleged in the information. "This Court has successively ruled[20] that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659 the attendance of any which mandates the single indivisible penalty of death, instead of the standard penalty of reclusion perpetua to death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances. Unlike a generic aggravating circumstance which may be proved even if not alleged,[21] a qualifying aggravating circumstance cannot be proved as such unless alleged in the information[22] although it may be proved as a generic aggravating circumstance if so included among those enumerated in the Code."[23] In the case before us, the above-mentioned qualifying aggravating circumstance was not mentioned in the information. "Obviously, the technical flaw[24] committed by the prosecution in this instance is a matter that cannot be ignored, and it constrains the Court to reduce the penalty of death imposed by the trial court to that of

reclusion perpetua."[25]

In line with prevailing jurisprudence, an additional award of civil indemnity ex delicto of P50,000.00 is given in favor of the offended party for rape[26] and the award for moral damages is increased to P50,000.00 even if there is neither allegation nor evidence presented as basis therefor.[27]

WHEREFORE, we AFFIRM the decision of the Regional Trial Court of Davao City, Branch 17, in Criminal Case No. 36,863-96 finding accused-appellant Samson Bragas y Blanco guilty beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659[28] before its repeal by R. A. No. 8353, effective on October 7, 1997, with the MODIFICATION (a) that the sentence is reduced from death to reclusion perpetua, with the accessory penalties of the law, and (b) that accused-appellant is likewise ordered to pay the victim, Lira Maureen Rosario, the amount of P50,000.00 as civil indemnity, and the increased amount of P50,000.00 as moral damages.

Costs against accused-appellant in all instances.

SO ORDERED.

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

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[1]In Criminal Case No. 36,863-96, Judgment, dated January 27, 1997, Judge Renato A. Fuentes, presiding.

[2] Original RTC Record, pp. 64-78.

[3] Information, Crim. Case No. 36,863-96, Rollo, p. 6.

[4] Order, dated June 7, 1996, Original RTC Record, p. 17.

[5] Exh. "A" (birth certificate of Lira Maureen Rosario), Original RTC Record, p. 43.

[6] TSN, July 8, 1996, pp. 2-7.

[7] TSN, September 16, 1996, pp. 2-8.

[8] TSN, July 8, 1996, pp. 12-16.

[9] Exh, "B", Records, p. 44.

[10] TSN, July 9, 1996, pp. 2-4.

[11] TSN, November 25, 1996, pp. 2-16.

[12] Rollo, pp. 64-78.

[13] Brief for the Accused-Appellant, Rollo, pp. 39-47, at pp. 45-46.

[14]People vs. Banela, G. R. No. 124973, January 18, 1999, citing cases.

[15] People vs. Adora, 275 SCRA 441 [1997]; People vs. Ching, 240 SCRA 267 [1995]; People vs. Sanchez, 250 SCRA 14 [1995].

[16] People vs. Cabillan, 267 SCRA 265 [1997].

[17] People vs. Oliver, G. R. No. 123099, February 11, 1999; People vs. Banela, supra; People vs. Narca, 275

SCRA 696 [1997]; People vs. Paredes, 264 SCRA 578 [1996].

[18] People vs. Accion, August 11, 1999, citing People vs. Lusa, 288 SCRA 296 [1998]; People vs. Viovicente, 286 SCRA 1 [1998].

[19]People vs. Echegaray, 257 SCRA 561 [1996].

[20] People vs. Medina , G. R. No. 126575, December 11, 1998; People vs. Ilao, 296 SCRA 658 [1998]; People vs. Ramos, 296 SCRA 559 [1998]; People vs. Garcia, 281 SCRA 463 [1997].

[21] People vs. Godinez, 106 Phil. 597 [1959]; People vs. Butler, 120 SCRA 281 [1983].

[22] People vs. Ilao, supra.

[23] People vs. Dimapilis, G. R. Nos. 128619-21, December 17, 1998, citing People vs. Guba, 42 SCRA 109 [1971]; People vs. Lacao, 60 SCRA 89 [1974].

[24]People vs. Rodico, 249 SCRA 309 [1995].

[25] People vs. Dimapilis, supra.

[26] People vs. Napiot, G. R. No. 119956, August 5, 1999; People vs. Dimapilis, supra.

[27] People vs. Dizon, G. R. No. 128889, August 20, 1999; People vs. Ramos, G. R. Nos. 131261-62, August 10, 1999; People vs. Alba, G. R. Nos. 131858-59, April 14, 1999; People vs. Maglente, G. R. Nos. 124559-66, April 30, 1999; People vs. Ramos, supra; People vs. Prades, 293 SCRA 411 [1998], cited in People vs. Medina, supra.

[28] Effective on December 31, 1993.

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