

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEMETRIO NUÑEZ Y DUBDUBAN, ACCUSED-APPELLANT.

G.R. No. 128875. July 08, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For sheer carelessness of the prosecutors in this case in ensuring that the information contains all the essential allegations, a man who deserves no less than the supreme penalty of death for violating his own flesh and blood gets off with a sentence of reclusion perpetua.

Complainant Janeth Nuñez was born on August 30, 1981 to Demetrio Nuñez and Nelia Ebay. When her mother took on a job as domestic helper in Guam, Janeth stayed on with her father and younger brother in Lower Cabantian, Buhangin, Davao City.

On January 17, 1996, at around 10:00 p.m., complainant was roused from her sleep and discovered that her shorts and panties had been taken off. Her father, whom she found beside her, touched her nipple and inserted his finger into her vagina. He also sucked her nipple. Complainant pushed her father away, whereupon he returned to bed and complainant put on her shorts and panties and went back to sleep. She woke up again later and saw her father on top of her. He inserted his penis into her vagina. She pushed him aside and felt sticky fluid spill on her thigh and vagina. When her father left, complainant just sat down and could no longer sleep.

The following day, complainant confided the incident to her classmate and her teacher, Mrs. Meliana Geradona, who reported the matter to the police. Complainant thereafter submitted herself to an examination by the Medico-Legal Officer of the Davao City Health Office, Dr. Danilo Ledesma, who found a superficial laceration on her hymen at 6:00 o'clock position.

The incident made complainant very angry at her father, so she voluntarily instituted a case which led to the filing of the following Information with the Regional Trial Court of Davao City:

INFORMATION

The undersigned accuses the above-named persons (sic) of the felony of Rape, under Article 335 of the Revised Penal Code in relation to Republic Act 7659, at the instance of Janeth Ebay Nuñez, whose affidavit is hereto attached to form part of this information, committed as follows:

that on or about January 17, 1996, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force, wilfully, unlawfully and feloniously had carnal knowledge of his daughter Janeth E. Nuñez, against her will.

CONTRARY TO LAW.

Davao City, Philippines, January 22, 1995.

(sgd)

LOLITO O. EVANGELIO

Prosecutor I

When arraigned on January 30, 1996, the accused entered a plea of not guilty.[1] Thereafter, trial on the merits ensued.

The prosecution presented Dr. Ledesma,[2] PO2 Raul Tonzo,[3] who arrested the accused, and Social Welfare Assistant Milagros Basmayor[4] who interviewed complainant.

On the second hearing day, November 14, 1996, defense counsel manifested that the accused was willing to plead guilty. After finding that the accused was making his plea voluntarily, the court entered his plea of guilt.[5]

The prosecution then presented its remaining two witnesses, Meliana D. Heradona,[6] Janeth Nuñez's teacher, and the victim herself, Janeth Nuñez.[7]

Following the testimony of Janeth, and the offer of its exhibits as evidence, the prosecution rested its case.

At the hearing for the presentation of evidence for the defense, the accused, through his counsel, manifested that he would no longer present any evidence, not even his own testimony, but would merely submit the case for decision based on the evidence submitted by the prosecution.[8]

On January 23, 1997, the trial court rendered its Decision,[9] the dispositive portion of which reads:

"Accordingly, finding the evidence of the prosecution more than sufficient to prove the guilt of accused, Demetrio Nuñez y Dubduban of the offense charged beyond reasonable doubt, notwithstanding his plea of guilty of the offense charged pursuant to Rep. Act 7659, Section 11, sub-par. 7 thereof, accused, Demetrio Nuñez y Dubduban, is sentenced to suffer the supreme penalty of death by lethal injection pursuant to Rep. Act 8176, amending Sec. 24 of Rep. Act 7659 as to the manner therein provided, subject to such method of carrying out his sentence as may be provided for under said Rep. Act or any regulation under such other means 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, Janeth Nuñez, his daughter, the amount of P30,000.00, by way of moral damages for all the ignominy and sufferings she incurred out of accused demonic act of sexually abusing his own daughter.

Finally, in accordance with the automatic review of the Supreme Court of this judgment, it appearing accused was charged of a capital offense, considered heinous crime, the Branch Clerk of Court of this court, is ordered to at once after promulgation of this judgment to accused, elevate the entire records of this case with the Clerk of Court of the Supreme Court, Manila, for review, evaluation and final appropriate action.

SO ORDERED." [10]

In his Appellant's Brief, accused raised a lone assignment of error -

THE TRIAL COURT GRAVELY ERRED IN ACCEPTING ACCUSED-APPELLANT'S IMPROVIDENT PLEA OF GUILTY TO A CAPITAL OFFENSE AND IN FAILING TO CONDUCT A SEARCHING INQUIRY TO FULLY DETERMINE WHETHER THE ACCUSED FULLY UNDERSTOOD THE CONSEQUENCES OF HIS PLEA.[11]

The records reveal that in making the plea of guilt, the accused was proceeding under the mistaken assumption that a plea of guilt would mitigate his liability. Rather than correcting this misconception, the trial court contributed to the mistaken belief of the accused. The records will show the infirmity attending such plea -

"FISCAL EVANGELIO:

For the Prosecution, we are ready.

ATTY. TE:

Respectfully appearing for the accused.

COURT:

How many more witnesses?

FISCAL EVANGELIO:

Two witnesses and we shall rest our case.

ATTY. TE:

The accused is not yet around your honor.

FISCAL EVANGELIO:

Considering the gravity of this case in case of conviction for death in view of the qualifying circumstance of the relationship as father and daughter.

COURT:

If he pleads guilty of the offense, . .

ATTY. TE:

I have conferred with the accused and he is asking for time.

COURT:

There is no more time.

ATTY. TE:

The accused is willing to plead guilty.

COURT:

If he pleads guilty, it could be mitigating. It is still life imprisonment. And so, whether it is life imprisonment, we still have the prosecution to present its evidence. If he pleads guilty to mitigating circumstance, the penalty will depend on the evidence of the prosecution.

ATTY. TE:

For humanitarian reason, we may be allowed that accused could not be sentenced to death?

COURT:

The court cannot determine the sentence. If accused will plead guilty, the court will require the prosecution to present their evidence to determine the penalty.

ATTY. TE:

I have conferred with the accused, accused confided to this representation that he will enter or want to withdraw his earlier plea of not guilty and instead enter a plea of guilty after this representation explained to accused with regards with his re-arraignment.

COURT:

Re-arraigned the accused upon manifestation of counsel.

(Accused pleaded guilty to the information).

Q - I will ask you this question. In your plea of guilty, did you understand that you are pleading guilty to a capital offense?

A - Yes.

Q - Your counsel, Atty. Te explained to you the implication of your plea of guilty?

A - Yes.

Q - And I explain to you that when you plead guilty to a capital offense, it is either life or death penalty?

A - Yes.

Q - I am also explaining to you that consequences, you still continue your plea of guilty of the capital offense?

A - Yes.

Q - Did the court gets (sic) from you that your admission of your plea of guilty is your own will as stated by you, as explained by the court as well as your counsel?

A - Yes.

Q - Your plea of guilty is your own personal and voluntary plea without any existing force and intimidation from anybody?

A - Yes, it is my own will.

COURT:

Since the plea of guilty of the accused as voluntarily entered with the assistance of his counsel de oficio as well as explanation given by this court to him, entering the plea of guilty of the accused, withdrawing his previous plea of not guilty, the court will require the prosecution to present their evidence as required by the court.

ATTY. TE:

May we moved (sic) that the mitigating circumstance of plea of guilty of accused be accepted in favor of the accused.

COURT:

Make that of record."[12] (underscoring, Ours)

Evidently, both the trial court and counsel for the accused led the accused to believe that his plea of guilt would be a mitigating circumstance in his favor. This was clearly misleading because (1) a plea of guilty may only be considered as mitigating when seasonably interjected, that is, before the prosecution presents its evidence;[13] and (2) the penalty of death is indivisible and is not affected by either aggravating or mitigating circumstances. Clearly, too, the accused was not categorically advised that his plea of guilt would not under any circumstance affect or reduce his sentence, making his re-arraignment flawed.[14]

However, even if the plea of guilt of the accused was improvidently made, it does not work to effectively vacate the finding of guilt made by the trial court. We note that at the onset, the accused had entered a plea of not guilty but had merely changed this plea to one of guilt midway during the presentation of evidence for the prosecution. It is a settled rule that a decision based on an irregular plea may nevertheless be upheld where the judgment is supported by other adequate evidence on record.[15] And such other evidence supports the finding of guilt in the instant case.

First, We have the direct and straightforward testimony of Janeth recounting the violation of body and spirit she suffered from her very own father. Her account of the harrowing incident is as follows --

"Q - Now, on January 17, 1996, where were you?

A - At home.

Q - Sometime in the evening of January 17, 1996, can you tell the court what happened?

A - Yes.

Q - Tell the court what happened.

A - I was molested by my father.

Q - Can you describe to the Hon. Court, how your father molested you?

A - Yes, sir.

Q - Please do so.

A - On that night, January 17, 1996, my father told us to sleep at 10:00 p.m.

Q - What happened next?

A - I mean, it was about 7:00 to 8:00 p.m., that he told us to sleep.

Q - What happened next?

A - When I woke up at about 10:00 p.m., on the same night, I have no more short pants including my panty.

Q - You said, you noticed that you are undress. What else did you notice to your body?

A -

He puddled my nipple. (sic)

Q - Are you referring to your father?

A - Yes, sir.

Q - What else did you noticed?

A - He inserted his finger in my vagina.

Q - What else did your father do?

A - He sucked my nipple.

Q - Aside from sucking your nipple, what else your father do?

A - I already pushed him aside.

Q - After pushing him, what happened next?

A - He went back to where he was sleeping.

Q - How about you, where did you go?

A - I put on again my panty and short.

Q - Did you sleep again?

A - Yes, sir.

Q - What happened when you sleep again?

A - When I woke up again, he was already on top of me.

Q - Who was actually on top of you?

A - My father.

Q - Why did you say that it was actually your father who is on top of you?

A - Because there was no other person in the house, except my father.

Q - When your father was on top of you, what did you feel in your body, if any?

A - He inserted his penis to my vagina.

Q - What made you say that he inserted his penis in your vagina?

A - Because there was a hard thing that penetrate my vagina and I pushed him aside and there was a sticky thing on my thigh and vagina.

Q - What is this sticky thing are you referring?

A - It was a white sticky thing.

Q - You said that the penis of your father was inserted in your vagina. What is the extent of the penis that

inserted to your vagina?

A - Only a short portion of his penis.

Q - When you know it was your father, who was doing that act to you that evening, what did you do?

A - I was afraid. I was not able to sleep. I sat on the side of the room and never again sleep.

Q - When you mean on top of you, what did you do?

A - I pushed him.

Q - What was the reaction of your father when you pushed him?

A - He again sleep.

Q - Because of the incident, did you report the matter to the police authorities?

A - The following morning, and I confided this to my classmate.

Q - Who else did you confide with?

A - My teacher.

Q - Are you referring to Mrs. Heradona?

A - Yes.

Q - Now, because of the incident, do you recall if you have submitted for a medical examination?

A - Yes.

Q - Showing to you this medical certificate, is this the same medical certificate which was your medical certificate issued by Dr. Ledesma?

A - Yes.

Q - Were you interviewed by Dr. Ledesma in connection with this incident?

A - Yes."^[16]

We are inclined to give much weight to her testimony since it is a reputable precept that testimonies of rape victims who are young or of tender age are credible. The revelation of an innocent child whose chastity was

abused deserves full credit. Courts usually lend credence to the testimony of a young girl especially where the facts point to her having been a victim of sexual assault.[17] Indeed, "no woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished." [18] More telling, a daughter especially of tender age, would not accuse her own father of such a heinous crime as rape had she really not been aggrieved.[19]

Janeth's credibility is strengthened by the fact that no motive was shown for her to testify falsely against the accused, who, incidentally and unfortunately, is her own father.[20] That she lost no time and immediately reported the rape the following day to her teacher further bolsters her credibility.[21] Indeed, Janeth's testimony alone, which is credible, is sufficient to sustain the conviction of her ravisher.[22]

The charge of rape was adequately established not only by Janeth's straightforward testimony but likewise by that of Dr. Danilo Ledesma who testified as follows -

"Q - As the attending physician in this case, do you confirm all the entries in this particular medical report Doctor?

A - Yes, sir.

Q -

Inviting your attention to the genital examination entry in your report Dr. which you said among other things, that there was superficial laceration at 6:00 o'clock position, will you explain the meaning of that findings?

A -

When I examine the genitals of the patient, I saw that the hymen had laceration superficial, and healing laceration at 6:00 position, corresponding to the face of the watch. Meaning to say, if we compare the hymen to the face of the watch, the laceration is 6:00 o'clock.

Q - As an examiner, what would have cause such laceration?

A - As a general rule, the hymen is lacerated for the first time during the first sexual intercourse. (sic)

Q - In your conclusion, you said that there was a healing genital laceration, what do you mean by that?

A - Meaning to say, when I saw the patient, the laceration was already more than 24 hours.

Q - You are referring to the laceration mentioned in your genital examination?

A - Yes, sir." [23]

Against these pieces of evidence, the accused had nothing to offer. He did not even testify in his own behalf and merely submitted his case on the basis of the prosecution's evidence. The studied silence of the accused on the evidence for the rape amounts to an admission of the sexual congress.[24]

In light of the foregoing as well as the clear, convincing and competent physical and testimonial evidence, this

Court is convinced that accused has been proven guilty beyond reasonable doubt of the crime of rape.

Although the matter of the proper imposition of the penalty is not assigned as an error by the accused, nevertheless, it is a well-established rule in criminal procedure that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct an error as may be found in the appealed judgment, whether it is made the subject of assignment of errors or not.[25]

Under Section 11 of Republic Act No. 7659, the death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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 degree, or the common-law spouse of the parent or victim.
- When the victim is under the custody of the police or military authorities.
- When rape is committed in full view of the husband, parent, any of the children or 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 occasion of the rape, the victim has suffered permanent physical mutilation.

Applying the aforesaid law, the trial court imposed the penalty of death upon the accused, taking into account the minority of Janeth as she was only fourteen (14) years old at the time of the incident, as well as the relationship of father and daughter between the accused and the complainant.

The penalty of death cannot be automatically imposed on the accused merely because of the trial court's appreciation of both the fact of minority and relationship, no matter how clearly established. Jurisprudence dictates that these twin facts be alleged in the Information or Complaint before the death penalty can properly be imposed.

Indeed, this Court has consistently held that the seven attendant circumstances under Section 11 of RA 7659 are in the nature of qualifying circumstances which, unlike generic aggravating circumstances that may be proved even if not alleged, cannot be proved as such unless alleged in the Information.[26]

Although it was established that Janeth was a minor at the time of rape, fourteen (14) years old and a grade six student, to be exact, this qualifying circumstance was not alleged in the Information.

In the recent case of *People v. Calayca*,[27] the accused was also found to have raped his 15-year old daughter. As in the instant case, only the fact of relationship between the parties was alleged in the Information, namely that the victim was the daughter of the accused. The fact of minority of the victim was not. Finding the crime charged as simple rape, this Court ruled as follows -

"A reading of the Information for rape filed against appellant in the present case reveals that he is merely charged with the crime of simple rape which warrants the imposition of the penalty of reclusion perpetua. This is so because the fact of the minority of the victim is not stated in the Information. What was alleged therein was only the relationship of the offender as the parent of the victim. Again, as we have emphasized in *People*

v. Ramos, the elements of minority of the victim and her relationship to the offender must concur. As such, the charge of rape in the Information is not in its qualified form so as to fall under the special qualifying circumstances stated in Section 11 of R.A. 7659. x x x."

(emphasis copied)

Thus, there being no allegation of minority in the Information under which accused was arraigned and tried in the case at bench, he cannot be convicted of qualified rape.

Strict application of the rule requiring the allegation of the qualifying circumstances mentioned in Section 11 of R.A. 7659 was further enunciated in *People v. Dimapilis*.^[28] While the Information there alleged that the victim was the stepdaughter of the accused, it was not accepted as a proper allegation of the qualifying circumstance that the accused was the "common-law spouse of the parent of the victim" and the death penalty imposed by the trial court was once again reduced to reclusion perpetua.

Taking into account the growing number of cases where qualified rape under Section 11 of R.A. 7659, although proven during trial, could still not be properly penalized because of defects in the Information, We urge the prosecuting fiscals who are charged with the responsibility of preparing Informations to state with particularity the attendant circumstances provided for under Section 11 of R.A. 7659. More specifically, in qualified rape, both the fact of minority of the victim and the actual relationship between the parties, as worded in R.A. 7659, must be alleged in the Information. Otherwise, We shall continue to fail both the law and the victims whom the law have sought to protect.

We note that the affidavit of complainant Janeth Ebay Nuñez was attached to and made part of the Information in this case. In this connection, we are constrained to lay down the rule that documentary evidence, such as the affidavits of the witnesses, should not be attached to and made integral parts of an information. As we have previously held, a criminal indictment should never be formulated in a melange of accusatory allegations and evidentiary details resulting in unusual prolixity.^[29]

In the light of the flaw in the Information in the case at bench, the penalty of death imposed by the trial court in Criminal Case No. 36, 378-96 is reduced to reclusion perpetua.

Reclusion perpetua is a single indivisible penalty which, under Article 63 of the Revised Penal Code, must be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime. Thus, while relationship is aggravating in crimes against chastity such as rape,^[30] this circumstance will not affect the imposable penalty^[31] since reclusion perpetua is a single indivisible penalty.^[32] Conversely, neither may the mitigating circumstance of plea of guilt affect such single indivisible penalty.

Finally, We note that while the trial court awarded P30,000.00 to Janeth in the form of moral damages, it failed to impose any civil indemnity for the rape committed. Such civil indemnity is mandatory upon the finding of the fact of rape and is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of its sound discretion.^[33] While the amount for civil indemnity has been raised in *People v. Victor*^[34] from P50,000.00 to P75,000.00 if the rape is committed or is qualified by any of the circumstances which under the law would justify the imposition of the death penalty, We are constrained to set the civil indemnity award to P50,000.00 since in this case, the rape charged and proved is not qualified.^[35]

Moral damages may, nevertheless, still be awarded in favor of Janeth since it has also been resolved that in crimes of rape, such form of damages may be additionally awarded to the victim without need for pleading or proof of the basis thereof.^[36] It is assumed that the offended party has suffered moral injuries entitling her to the award of

such damages.[37]

Exemplary damages may also be adjudicated against the accused when a crime is attended by an aggravating circumstance.[38] Here, such aggravating circumstance justifying an award of exemplary damages is the relationship between the accused and his victim.[39] We follow the award of P25,000.00 for exemplary damages set by this Court in *People v. Calayca*.^[40]

WHEREFORE, the appealed judgment of conviction of the accused Demetrio Nuñez y Dubduban rendered by the Regional Trial Court, Branch 9, of Davao City in Criminal Case No. 36, 378-96 is MODIFIED. The accused is hereby found guilty of simple rape and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the complainant, Janeth E. Nuñez, the sum of P50,000.00 by way of indemnity and P50,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

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

Romero, J., on official leave.

[1] Order, 30 January 1996; Records, p. 16.

[2] T.S.N., 7 November 1996, pp. 2-7.

[3] Id., pp. 8-12.

[4] Id., pp. 13-19.

[5] T.S.N., 14 November 1996, p. 4.

[6] Id., pp. 5-13.

[7] Id., pp. 14-28.

[8] Order, 11 December 1996; Records, p. 49.

[9] Records, pp. 53-62.

[10] Decision, p. 10; Records, p. 62.

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

[12] T.S.N., 14 November 1996, pp. 1-4.

[13] *People v. Albert*, G.R. No. 114001, 251 SCRA 136, 148-149 (1995), citing *People v. Manibpel*, L-15077, 6 SCRA 936 (1962) and Article 13(7), Revised Penal Code.

[14] See *People v. Estomaca*, G.R. No. 117484-86, 256 SCRA 421, 434 (1996).

[15] *People v. Albert*, supra, citing *People v. Nismal*, G.R. No. 51257, 114 SCRA 487 (1982) and *People v. Petalcorin, et al.*, G.R. No. 65376, 180 SCRA 685 (1989).

[16] T.S.N., 14 November 1996, pp. 15-18.

[17] *People v. Victor*, G.R. No. 127903, 9 July 1998.

- [18] *People v. Bernaldez*, G.R. No. 109780, 17 August 1998, citing *People v. Derpo*, 168 SCRA 447, 457 (1988) and *People v. Magpayo*, 266 SCRA 13 (1993).
- [19] *People v. Dusohan*, G.R. No. 97307, 227 SCRA 87, 92 (1993).
- [20] *People v. Igat*, G.R. No. 122097, 291 SCRA 100, 106 (1998).
- [21] See *People v. Tablizo*, G.R. No. 88190, 182 SCRA 739, 748 (1990).
- [22] *People v. Fuensalida*, G.R. No. 119963, 281 SCRA 452, 460-461 (1997); *People v. Burgos*, G.R. No. 117451, 279 SCRA 697, 707 (1997).
- [23] T.S.N., 7 November 1996, pp. 3-4.
- [24] *People v. Delovino*, G.R. No. 116132-33, 247 SCRA 637, 648 (1995).
- [25] *Pp. v. Calayca*, G.R. No. 121212, 20 January 1999.
- [26] *People v. Dimapilis*, G.R. No. 128619-21, 17 December 1998; *People v. Calayca*, *supra*.
- [27] See Note 25.
- [28] See Note 26.
- [29] *People v. Guarin*, 259 SCRA 34, at 36 (1996), per Justice Florenz D. Regalado.
- [30] *People v. Porras*, 58 Phil. 578 (1933); *People v. Lucas*, 181 SCRA 316 (1990).
- [31] *People v. Balmoria*, G.R. No. 120620-21, 287 SCRA 687, 711 (1998).
- [32] *People v. De La Cuesta*, G.R. No. 126134, 2 March 1999, citing *People v. Ilao*, G.R. No. 129529, 29, September 1998.
- [33] *People v. Parades*, G.R. No. 127569, 30 July 1998.
- [34] See Note 17.
- [35] See *People v. Malapo*, G.R. No. 123115, 28 August 1998.
- [36] See Note 32.
- [37] See Note 34.
- [38] Article 2230, New Civil Code.
- [39] See *People v. Fundano*, G.R. No. 124737, 291 SCRA 356, 371 (1998).
- [40] See Note 25.

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