

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIBERATO MENDIONA, A. K. A. “RENATO”;, AND TIRSO CINCO (AT LARGE), ACCUSED.

G.R. No. 129056. February 21, 2000

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PER CURIAM:

Before this Court for automatic review is the Decision[1] dated 8 February 1997, of the Regional Trial Court, Eighth Judicial Region, Branch 7, Tacloban City, finding accused-appellant Liberato "Renato" Mendiona guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the supreme penalty of death and to pay the complainant, Maricel Capongcol, the amount of fifty thousand pesos (P50,000.00) as moral damages.

The Information against accused-appellant and Tirso Cinco reads:

"That on or about the 7[th] day of October, 1995, in the Municipality of Dulag, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other and with lewd designs, did then and there willfully, unlawfully and feloniously enter the house of Maricel Capongcol - the offended party, and once inside, succeeded in having carnal knowledge of (sic) her with the use of bladed weapon, without her consent and against her will.

Contrary to law with the generic aggravating circumstances of dwelling."[2]

Cinco remained at large. On March 8, 1996, accused-appellant pleaded not guilty.[3]

The victim Maricel Capongcol took the witness stand. She testified that she is nineteen (19) years old, single, a laundry woman and a resident of Barangay Batug, Dulag, Leyte. She knew accused-appellant and Cinco. The latter is her relative. On 7 October 1995, at about 6 o'clock in the evening, she was alone in their house. Her mother happened to be in Tacloban City. From the window, she saw accused-appellant and Tirso Cinco by the fence. The two broke into house through the window by kicking its shutter. Once inside, they threatened to kill her. Cinco had a bolo known in their dialect as "pisao." The two removed her dress, panty, sando and shorts pants. She shouted three times in protest. Accused-appellant covered her mouth with his right hand to muffle her voice and threatened her with the "pisao" which he got from Cinco.[4] Accused-appellant laid her on the floor and mounted her while Cinco held her thighs. Accused-appellant was able to deflower her. Feeling pain in her bleeding private part, she shouted calling her mother. He also kissed her cheeks, lips and private part and touched her breasts. He penetrated her two times. After satisfying his lust, he threatened to kill her should she mention the incident to his uncle, Matias Teston.[5]

Her cousin Felix Naing and Virgilio Malte heard her screams and came. Accused-appellant and Cinco avoided them by jumping out through the window. Maricel's cousins found her crying as she put on her dress. She did not inform them of her violation for fear that they might tell her mother and uncle who, in turn, might punish her. Nonetheless, on 22 October 1995, she revealed to her mother her unfortunate fate.[6]

Felix Naing corroborated the testimony of Maricel. He testified that on 7 October 1995, at about 6 o'clock in the

evening, he and Virgilio Malte were on their way to deliver a carabao to Sergio Bongcaran. They heard a woman's scream coming from the house of Damiana Capongcol. They alighted from the carabao and tethered it to a coconut tree. With their flashlights on, they proceeded to the said house. At a distance of ten (10) to fifteen (15) meters, they saw accused-appellant and Cinco jump out of the window of Damiana's house. Felix noticed that accused-appellant was holding his unzipped pants with his left hand while his right hand was holding the shirt placed on his right shoulder. From about five (5) to six (6) meters, he saw Maricel standing by the window crying and covering her breasts with a shirt. He suspected that the two did something wrong to complainant but he did not inquire further.[7]

In defense, accused-appellant declared that on the date and time of the incident, he spent the night in his grandmother's house in Barangay Del Pilar, about one-half kilometer away from Barangay Batug. He came from the birthday party of the daughter of the barangay captain of Barangay Batug where he joined the tuba drinking session from 4 o'clock to 5 o'clock in the afternoon. Allegedly, he stayed in his grandmother's house until the following morning.[8]

The trial court gave credence to the testimonies of the prosecution witnesses and rejected accused-appellant's alibi. He was convicted of rape in a Decision, the dispositive portion of which reads:

"WHEREFORE, AND IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court finds the accused, Liberato Mendiona, GUILTY beyond reasonable doubt of the crime of Rape, defined and penalized by Art. 335 of our Revised Penal Code, as amended by R.A. 7659, (sic) with reclusion perpetua to death. With the presence of two (2) aggravating circumstances of dwelling and unlawful entry, not offset by any mitigating circumstance, the Court hereby sentences said accused, pursuant to No. 1, Article 63 of our Revised Penal Code as well as the Heinous Crimes Law, with the supreme penalty of DEATH; to pay the offended party, Maricel Capongcol, the amount of P50,000.00 as moral damages and to pay the costs.

Let the accused be transferred to the National Penitentiary at Muntinlupa City, Metro Manila.

In order that the case as against accused, Tirso Cinco, shall not remain pending for an indefinite period of time, the records of the case are hereby sent to the archives.

Let also alias warrants of arrest issue against said accused furnishing copies thereof to the Philippine National Police (PNP) Provincial Superintendent of Leyte, Tacloban City, and the National Bureau of Investigation (NBI), Manila, and Tacloban City in order that his name shall be included in the list of wanted persons. Furnish also a copy of said alias warrant of arrest to the family of the offended party who is hereby authorized to secure the assistance of any officer of the law to effect the arrest of the accused, Tirso Cinco.

IT IS SO ORDERED."[9]

Before this Court, appellant maintains that his conviction for rape is erroneous. As first ground, he assails the credibility of Maricel. He states that he was initially charged with the lesser crime of acts of lasciviousness and Maricel testified that on her own, she would have maintained said charge.[10] A careful examination, however, of the complete testimony of Maricel - direct, cross and redirect - will reveal that she clearly impressed on the trial court that she was raped by the accused-appellant, viz:

"X X X

"Q

You testified on cross-examination that when you reported to Brgy. Captain Sergio Bangcaran, you told him that Renato Mendiona touched your womanhood, and when you were asked to explain what you meant by that (sic) words you said that his – Renato's penis, was placed inside your vagina. When you executed your

affidavit on October 10, 1995, you also told the investigator or Police Investigator – Police Officer, your statement to SPO4 Mahinay of the Dulag Police Station that in the evening of October 7, 1995, the accused forcibly entered your – the accused Renato Mendiona entered your house and sexually molested you by hugging you, kissing you, mashing your breasts and touching your womanhood. By this term ‘Touching your womanhood’, do you want to convey to this court that the penis of Renato Mendiona was placed inside your vagina?

"ATTY. TANDINCO:

"Leading and misleading because from the answer of the witness, - made by the witness (sic) she said that there was holding of the hands.

"PROS. LOPEZ:

"But she also mentioned in her affidavit that the accused, aside from hugging, kissing her, mashing her breasts and touching her womanhood, (sic). I am asking her if by touching her womanhood – what she meant by the words ‘touching her womanhood’?

"ATTY. TANDINCO:

"Practically impeaching her own witness, your Honor.

"COURT:

"Objection overruled.

"ATTY. TANDINCO:

"In fact, in my cross [examination] I emphasized on that particular portion of that statement on what is meant by touching her womanhood and the answer was that it was merely held.

"PROS. LOPEZ:

"I want to clarify because according to the witness when she reported this to the barangay captain that her womanhood was touched by the accused and when she was made to explain or clarify what she meant by that word, the witness testified that accused Renato placed his penis inside her vagina. There is also the word [or] phrase ‘touching her womanhood’ on her affidavit. So I am asking the witness what she meant by that.

"COURT:

"That is why during the direct [examination], she explained what she meant by ‘touching her womanhood’, that is, aside from mashing her breasts, kissing her and hugging and sexually molesting her (sic). And on cross [examination], she was asked, ‘If you have your own way, you would only want the accused to be charged of (sic) Acts of Lasciviousness.’, and she said "Yes.’ So she has her own way. So, the ruling stands. Witness may answer.

"A

Yes, ma’am.

"x x x"[11]

"Acts of lasciviousness" is a technical term whose meaning and nuances could not have been appreciated by Maricel. We note that the trial court described Maricel in its Decisions as "very shy, afraid and secretive 19-year old with slow comprehension and behave like a 7 – year old xxx." [12] A review of the records will also show that upon re-investigation the charge of rape was filed against the accused-appellant by the public prosecutor based on

the medical report which showed that Maricel has healed hymenal lacerations and her revelation that it was her first time to have a sexual encounter with a man.

The further charge of accused-appellant that Maricel was merely instigated by her relatives to file the case at bar is belied by her testimony where she categorically stated that she herself informed her mother of her unfortunate experience, viz:

"x x x

"PROS. LOPEZ:

"Q

On cross-examination, you also testified that your Uncle Matias Teston instigated the filing of this rape case against Renato Mendiona and Tirso Cinco. Please explain to the court what you mean by 'instigating'. What do you mean by that 'instigating of your Uncle (sic)'?

"A

I was the one who informed my mother about the incident.

"Q

And what was that information you gave to your mother?

"A

That I was deflowered.

"Q

You said it was you yourself who told your mother that you were deflowered. If you know, how did he come to know that you were deflowered?

"A

My mother informed my Uncle Matias Teston about the incident."[13]

As second ground, accused-appellant contends that he should not have been sentenced to death because the crime he committed has "less horrifying features" than the heinous crimes mentioned in R.A. No. 7659.[14]

The contention is untenable.

The crime of rape is defined and penalized under Article 335 of the Revised Penal Code as follows:

"Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. 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.

x x x."

In the instant case, the prosecution established that appellant and Cinco succeeded in defiling Maricel with the use of a deadly weapon, i.e., "pisao." Accordingly, the range of penalty imposable on appellant is composed of two indivisible penalties, i.e., reclusion perpetua to death. Following Article 63 (1)[15] of the same Code, which provides the rules for the application of indivisible penalties, appellant was correctly meted the supreme penalty of death since the aggravating circumstances of dwelling and unlawful entry attended the commission of the rape. The attendance of these aggravating circumstances is not contested by the accused-appellant.

On a final note, we correct the trial court's erroneous classification of the award of P50,000.00 as moral damages. In *People v. Prades*, [16] we explained that "x x x the award authorized by criminal law as civil indemnity ex delicto for the offended party x x x is mandatory upon the finding of the fact of rape; it 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 sound discretion." Further, our more recent rulings hold that the indemnification for the victim shall be in the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law. Applying the foregoing rulings, the civil indemnity to be awarded to the complainant should be seventy five thousand pesos (P75,000.00).

The People having established the guilt of accused-appellant beyond reasonable doubt, his conviction and the death penalty imposed by the trial court must be affirmed. Withal, four (4) members of this Court maintain their position that Republic Act No. 7659 insofar as it prescribes the death penalty is unconstitutional; but they nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.

IN VIEW WHEREOF, the impugned Decision of the of the Regional Trial Court of Tacloban City, Branch 7, in Criminal Case No. 95-12-587 finding the accused-appellant guilty beyond reasonable doubt of rape as defined by Article 335 of the Revised Penal Code and sentencing him to death is **AFFIRMED** with the **MODIFICATION** that the award of civil indemnity to the complainant, Maricel Capongcol, is increased to seventy five thousand pesos (P75,000.00) conformably with existing jurisprudence.

Let the records of this case be forwarded to the Office of the President upon finality of this decision for possible exercise of executive clemency in accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code.

SO ORDERED.

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

[1] In Criminal Case No. 95-12-587. Penned by Acting Presiding Judge Roberto A. Navidad.

[2] Records, p. 1.

[3] Certificate of Arraignment, Rollo, p. 12.

[4] TSN, Maricel Capongcol, April 17, 1996, pp. 14-17.

[5] TSN, Maricel Capongcol, April 16, 1996, pp. 2-13.

[6] Id., pp. 9, 13-14.

[7] TSN, Felix Naing, August 13, 1996, pp. 2-10.

[8] TSN, Liberato Mendiona, September 10, 1996, pp. 2-9.

[9] Decision, pp. 7-9; Rollo, pp. 29-30.

[10] TSN, April 17, 1996, p. 48.

[11] TSN, Maricel Capongcol, April 23, 1996, pp. 3-4.

[12] Rollo, p. 28.

[13] TSN, April 23, 1996, pp. 4-5.

[14] Rollo, p. 65.

[15] Article 63. Rules for the application of indivisible penalties. – x x x In all case in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x.

[16] People of the Philippines v. Senen Prades, 293 SCRA 411 (1998)

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