THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUNDO DIZON Y GAROTA, ACCUSED-APPELLANT.

G.R. No. 129236. October 17, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On automatic review before this Court is the decision dated November 29, 1996 of the Regional Trial Court of Bacolod City, Branch 44 in Criminal Case No. 96-17638 finding accused-appellant Raymundo Dizon y Garota guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act 7659 and sentencing him to the supreme penalty of death.

In a Complaint filed on April 11, 1996 by Betty D. Vergara, assisted by her mother, Lorna D. Vergara, accused-appellant was charged as follows:

> That during the period from the middle part of 1994 to October 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein complainant, Betty Vergara y Dahil-dahil, 13 years of age, against the latter's will, resulting to her pregnancy.
>
> Act contrary to law.[1]

On arraignment, accused-appellant pleaded "Not Guilty" and the case proceeded to trial.

The evidence for the prosecution consisted of the testimonies of complainant Betty Vergara, her mother Lorna Vergara and Dr. Arnold Anceno, medical officer at the Corazon Locsin Montelibano Memorial Hospital in Bacolod City.

Complainant Betty Vergara testified that she was born on April 24, 1982 to the spouses Lorna Dahil-dahil and Eddie Vergara. Her parents separated when she was barely two years old. Sometime in 1988, her mother started cohabiting with accused-appellant in the latter's house at the Reclamation Area in Bacolod City.[2]

Sometime in the same year, complainant, her mother, her two brothers, Argie, 10 and Eddie, 8, and accused-appellant paid a visit to complainant's grandmother at Isio Cauayan.[3]One night, while complainant was urinating at the back of her grandmother's house, accused-appellant approached her and held her hands. He then took off her shorts and panty, removed his briefs, and tried, but failed, to insert his penis into her vagina. When accused-appellant left her, complainant ran towards her grandmother's house. She did not report the incident to anyone because accused-appellant threatened to kill all of her family.[4]

The incident was repeated sometime in July 1994 in accused-appellant's house at the Reclamation Area in Bacolod City when complainant was already 12 years old.[5]Complainant was watching television alone at around two o'clock in the afternoon when accused-appellant arrived and ordered her to get inside the bathroom which was attached to the house. This bathroom was located outside, with walls made of sawali and nipa roofing and with a separate door made of thick jute bags.[6] Accused-appellant followed her inside the bathroom and

removed her shorts and panty. He then took off his briefs and inserted his penis into her vagina. Complainant did not shout for help because accused-appellant again threatened to kill her. She did not tell her mother about what transpired when the latter arrived home because of accused-appellant's threat.[7]

The incident was repeated several times thereafter. The last act of violation against complainant's honor occurred in October 1995.[8] On April 2, 1996, complainant told her mother that something was moving inside her stomach. Her mother brought her to a doctor who informed them that complainant was pregnant. Complainant was confronted by her mother and was asked to identify the person responsible for her pregnancy. Complainant revealed that it was accused-appellant, the common-law husband of her mother.[9] The following morning, complainant, accompanied by her mother, reported the matter to the police. Later on, she was brought to the Corazon Locsin Montelibano Memorial Hospital where she was examined by Dr. Arnold Anceno. On July 13, 1996, complainant gave birth to a baby girl.[10]

Lorna D. Vergara testified that on April 2, 1996, her daughter came to her complaining that there was something moving inside her stomach. She brought her daughter to the clinic of Dr. Pascua who, after examining the latter, found that she was pregnant. When they returned to their house, Lorna confronted her daughter and asked her who the father of the baby was. Complainant confessed that it was accused-appellant.[11] The following morning, Lorna accompanied complainant to report the matter to the police. They next went to the Corazon Locsin Montelibano Memorial Hospital where Dr. Arnold Anceno examined the complainant.[12] Later, accused-appellant was arrested by the police at his place of work.[13] On July 13, 1996, complainant gave birth to a baby girl but they gave the baby up for adoption to one Lina Gustilo.[14]

The last witness for the prosecution was Dr. Arnold John Anceno, Medical Officer III at the Corazon Locsin Montelibano Memorial Hospital. He testified that on April 3, 1996, he made a physical and gynecological examination of a certain Betty Vergara. The findings showed, among others, an enlarged uterus, about 5 to 6 months in size, although fetal heart beat was not appreciated. He also found the presence of hymenal tag which he explained to be the result of healed hymenal lacerations.[15]

The evidence for the defense, on the other hand, consisted of the testimonies of accused-appellant Raymundo Dizon, his sister Ligaya Ladrillo and accused-appellant's neighbors, Alice Quiatchon and Janeta Aquilesca.

In his testimony, Raymundo Dizon denied that he raped complainant Betty Vergara. He testified that he had been living with complainant's mother, Lorna Vergara, for almost eight years and that he treated her three children, including complainant, as his own as he was the one who reared them up.[16] Accused-appellant denied that he raped complainant in 1988 in Isio, Cauayan, Negros Occidental when she was only seven years old. He declared that he could not have done such a thing because there were several people staying in the house of complainant's grandmother at that time. The house was also surrounded by eight other neighboring houses.[17]Accused-appellant also denied that he raped complainant in the bathroom of their house at the Reclamation Area in Bacolod City sometime in 1994 and 1995. He claimed that the bathroom was situated right outside the house near the community pump where a lot of people in the neighborhood fetched water. Moreover, the bathroom was too small that it could only accommodate one person.[18] Accused-appellant asserted that he only came to know of the charge against him at the police headquarters.[19]He also denied that he was the father of the baby girl complainant gave birth to on July 13, 1996. When asked why complainant pointed to him as the person responsible for getting her pregnant, accused-appellant stated that the only reason he could think of was that complainant wanted her parents to reconcile and live together again.[20]

Alice Quiatchon, Janeta Aquilesca and Ligaya Ladrillo, gave substantially similar testimonies to the effect that they personally knew both the accused-appellant and complainant because they also resided at the People's

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Market, Reclamation Area in Bacolod City;[21] that they frequently saw complainant together with her friends at the seaside near the reclamation area or in the restaurant of witness Quiatchon;[22] and that they knew accused-appellant to be a good person.[23]

On November 29, 1996, the trial court rendered judgment convicting accused-appellant of rape and sentencing him to the penalty of death. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing and finding the evidence submitted by the complainant to be sufficient to establish the guilt of the accused, Raymundo Dizon, beyond reasonable doubt for violation of the crime of rape as punished by Article 335 of the Revised Penal Code as amended by Republic Act No. 7659, the Court hereby sentences the accused, Raymundo Dizon y Garota to suffer the penalty of death, the execution of which shall be done in accordance with law. The court further orders the accused to indemnify the complainant, Betty Vergara, the amount of P50,000.00 by way of civil indemnity.

In seeking the reversal of his conviction, accused-appellant avers that:

> THE LOWER COURT ERRED IN GIVING DUE WEIGHT AND CREDENCE TO THE TESTIMONY OF THE COMPLAINANT DESPITE APPARENT CONTRADICTIONS AND IMPROBABILITY IN THE COURSE OF HUMAN BEHAVIOR.
>
> THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INSUFFICIENCY OF PROSECUTION'S EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT AND/OR MORAL CERTAINTY.
>
> THE LOWER COURT FURTHER ERRED IN NOT APPRECIATING THE DEFENSE OF THE ACCUSED INASMUCH AS THE TESTIMONY OF THE COMPLAINANT, STANDING ALONE, WAS NOT SUFFICIENT NOR SUBSTANTIAL.

Accused-appellant alleges that the trial court erred in convicting him as the evidence for the prosecution was intrinsically weak and did not establish his guilt beyond reasonable doubt. He claims that the prosecution failed to show force and intimidation on his part and resistance on the part of complainant, which are essential elements of rape. Reliance is placed on the medical examination conducted by Dr. Arnold Anceno to the effect that there were no lacerations or scars on the external portion of the vaginal orifice. Accused-appellant also maintains that there was physical impossibility in committing the crime imputed to him as the bathroom where the rape allegedly happened was only a makeshift structure measuring 2 feet by 2-1/2 feet and was made of light materials such as sawali, nipa and jute sacks. Moreover, said bathroom was located outside the house near the community pump. Finally, accused-appellant alleges that complainant's actuation and behavior after the rape and while testifying in court lacked manifestations of fear, depression, melancholy and anger normally displayed by rape victims.

It bears stressing here that the evaluation by the trial court of the testimony of a witness is accorded the highest respect because it is the trial court that has the direct opportunity to observe the demeanor of the witness on the stand and determine if she is telling the truth or not.[24] Absent any grave or palpable error, the findings of facts of a trial court are binding upon this Court.[25]

After a careful scrutiny of the records of the case, the Court finds no cogent reason to reverse the ruling of the trial court.

Force or intimidation, as an essential element of rape, is subjective and must be viewed in the light of the victim's perception and judgment at the time of the crime.[26] It is addressed to the mind of the victim and its presence or absence cannot be tested by any hard-and-fast rule.[27] The Court could not agree with accused-appellant's contention that the prosecution failed to establish force or intimidation in the present case. Complainant categorically testified that she was twice cowed into submitting to accused-appellant's bestial desires when he

threatened to kill her and her family. She recounted:

Q Please tell this Honorable Court how did the accused rape you when you were still 7 years old when you were on vacation at the place of your grandmother at Isio, Cauayan?

A While on vacation at the house of my grandmother at Isio, Cauayan sir, one night I feel something to urinate and I went at the back of the house of my grandmother to urinate and after urinating I was approached by the accused and he held my hands. (At this juncture, the witness is making a demonstration pointing to her wrist.)

FISCAL ELUMBA:

Q

After the accused held your arms, what else had happened?

A

Then he took off my shorts and panty and after taking my panty the accused took off his brief and placed his penis inside my vagina and started on making pumping motions.

Q

After that what else had happened?

A

When I started crying sir because he cannot fully insert his penis inside my vagina, the accused placed me on the ground and I immediately ran towards the house of my grandmother.

Q

During that time when the accused placed his penis into your vagina and started pumping, did you shout for help?

A

No, sir.

Q

Why did you not shout for help?

A

Because he was threatening me that he will kill us all.

Q

Because of that incident did you not report the matter to your parents?

A

No, sir.

Q

Why?

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A

Because the accused was threatening me that if I will tell anybody he will kill us all.

xxx

Q

Will you please tell this Honorable Court how did the accused again rape you for the second time in 1994 here in Bacolod City?

A

While I was watching TV suddenly Toto arrived and he instructed me to get inside the bathroom.

Q

This Toto is the accused in this case?

A

Yes, sir.

Q

After you went inside the bathroom what happened?

A

While inside the bathroom sir, the accused took off my shorts and panty and after removing, he too removed his brief and immediately inserted his penis into my vagina.

Q

In other words there was sexual intercourse inside the bathroom?

A

Yes, sir.

FISCAL ELUMBA

Q

Did you not shout for help during that time?

A

No sir because he was threatening me that he will kill me.

Q

After that did you not report this incident to your mother?

A

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No, sir.

Q

Why did you not report this incident that happened between you and the accused to your mother?

A

Because if I will tell my mother he will kill us all.

xxx[28]

Although accused-appellant was not actually armed with a weapon at that time, to the mind of complainant, the threat to her life and to her family was so real and imminent that she was intimidated into submission. The threat and intimidation were continuing such that complainant was afraid to report the incidents to anyone. In People of the Philippines vs. Sagun,[29] this Court held that if by an array of physical forces, an accused so overpowers the victim's mind that she does not resist, or she ceases resistance through fear of greater harm, the consummation of the sexual act is rape.[30]

Accused-appellant's reliance on the medical examination of Dr. Anceno which reported no lacerations or scars in complainant's vaginal orifice is likewise unavailing. The Court has consistently ruled that the presence of lacerations in the victim's sexual organ is not necessary to prove the crime of rape[31] and its absence does not negate the fact of rape. A medical report is not indispensable in a prosecution for rape.[32] In fact, what could be a better evidence of penile penetration than the subsequent pregnancy of complainant?

As to accused-appellant's contention that there was no showing of resistance on the part of complainant, it should be emphasized that resistance is not an element of rape and the absence thereof is not tantamount to consent. If resistance would nevertheless be futile because of intimidation, then offering none at all does not mean consent to the assault so as to make the victim's submission to the sexual act voluntary.[33] In this case, the threat and intimidation used against complainant were so overpowering such that she was not able to offer any resistance. Equally significant is the fact that when complainant was raped for the first time she was only seven years old. She was already twelve when she was again ravished but accused-appellant was by then already in his thirties. This disparity alone between the ages and physical sizes of accused-appellant and complainant already produced sufficient intimidation in complainant's mind that would explain the lack of resistance on her part. Moreover, accused-appellant, being the common-law husband of complainant's mother and with whom the complaint and her siblings lived for almost eight years, certainly exercised tremendous moral ascendancy over complainant and this substitutes for intimidation.[34]

As regards accused-appellant's contention that complainant's behavior while testifying on the witness stand did not show emotions normally displayed by rape victims, this Court has no reason to discount the trial court's appreciation of the complainant-witnesses' truthfulness, honesty and candor.[35] As to her conduct after the commission of rape suffice it to state that different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[36] Contrary to accused-appellant's contention, complainant did display anger and hatred towards accused-appellant when her mother asked her to reveal the identity of the person who made her pregnant.

Thus:

xxx

Q After you have yourself examined by Dr. Pascua that you were pregnant what happened?

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A After we were informed that I was pregnant by Dr. Pascua, my mother asked me if who is the father (sic) and I answered that your common-law husband is the father who is boar. (botakal).

xxx[37]

This was affirmed by her mother who testified as follows:

FISCAL ELUMBA:

Q

After learning from Dr. Pascua that your daughter Betty Vergara was pregnant, what did you do if there was any?

A

We immediately went home to our house and I tried to make a thorough investigation on my daughter. I asked her if who is responsible of her pregnancy because for me she has no boyfriend. (sic)

Q

What did Betty tell you if there was any?

A

My daughter answered me, "your common law-husband who is boar ("botakal").

xxx[38]

Finally, as to the claim that it was physically impossible for accused-appellant to have committed the crime because the bathroom where it allegedly happened was too small and too near the community pump which was a public place, this Court has taken notice of the fact that crimes against chastity have been committed in many different kinds of places which many would consider as unlikely or inappropriate,[39] even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants.[40] Lust being no respecter of time and place, the nearby presence of other people in a certain place does not guarantee that the rape will not and cannot be committed.[41]

The Court, however, finds ground for modifying the penalty imposed by the trial court. Accused-appellant was sentenced to death pursuant to Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 which states in part:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. 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.

xxx

Since the circumstances under Section 11 of R.A. No. 7659[42] are in the nature of special qualifying

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circumstances, they cannot be considered as such and qualify the crime of rape to warrant the penalty of death unless so alleged in the information even if they were proved during the trial.[43] While the information properly alleged the minor age of complainant, her relationship with accused-appellant (that accused-appellant was the common-law husband of victim's mother) was not specifically pleaded in the information, albeit proven during trial. Relationship between accused and his victim, to be properly appreciated as a qualifying circumstance, should be specifically pleaded in the information,[44] otherwise, there would be a denial of the right of the accused to be informed of the charges against him.

In addition to the P50,000.00 awarded by the trial court as civil indemnity, accused-appellant should likewise be ordered to pay complainant moral damages in the amount of P50,000.00 without need of proof,[45] since it is recognized that the victim's injury is inherently concommittant to and necessarily results from the odiousness of the crime.[46]

WHEREFORE, the decision of the Regional Trial Court, Branch 44, Bacolod City, is AFFIRMED with the MODIFICATION that accused-appellant Raymundo Dizon y Garota is sentenced to suffer the penalty of reclusion perpetua. Furthermore, he is ordered to pay complainant Betty Vergara the amount of P50,000.00 as moral damages in addition to the amount of P50,000.00 awarded by the trial court as civil indemnity.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Records, p. 1.

[2] TSN of August 19, 1996, pp. 3 and 5.

[3] Id., at 10-11.

[4] Id., at 3-4.

[5] Id.., at 4-5.

[6] Id, at 17-18.

[7] Id, at 5-6.

[8] Id., at 6.

[9] Id, at 7.

[10] Id., at 7-9.

[11] TSN of August 20, 1996, pp. 4-5.

[12] Id., at 5.

[13] Id, at 7.

[14] Id., at 12-13.

[15] TSN of Sept. 18, 1996, pp. 1-9.

[16] TSN of Oct. 21, 1996, pp. 4-10.

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[17] Id., at 11.

[18] Id., at 12.

[19] Id., at 13.

[20] Id., at 30.

[21] Id., at 23-25; TSN of Oct. 24, 1996, p. 4, 7-8.; TSN of Oct. 30, 1996, pp. 3-4.

[22] Id., at 27.

[23] Id., at 30.

[24] People vs. Abuel, 261 SCRA 339 (1996).

[25] People vs. Maldo, 307 SCRA 424 (1999).

[26] People vs. Tabugoca, 285 SCRA 312 (1998).

[27] People vs. Luzorata, 286 SCRA 487 (1998).

[28] TSN of August 19, 1996, pp. 3-6.

[29] 303 SCRA 387 (1999).

[30] Ibid..

[31] People vs. Macosta, 320 SCRA 668 (1999).

[32] People vs. De la Cuesta, 304 SCRA 83 (1999); People vs. Quinagoran, 315 SCRA 508 (1999).

[33] People vs. Agbayani, 284 SCRA 315 (1998).

[34] People vs. Casil, 241 SCRA 285 (1995).

[35] People vs. Hernandez, 304 SCRA 186 (1999).

[36] People vs. Luzorata, 286 SCRA 487 (1998).

[37] TSN of August 19, 1996, p. 7.

[38] TSN of August 29, 1996, p. 5.

[39] People vs. Manggasin, 306 SCRA 228 (1999).

[40] People vs. Agbayani, 284 SCRA 315 (1998).

[41] People vs. Losano, 310 SCRA 707 (1999)

[42] Sec. 11 provides: 1) 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; 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution; 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity; 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime; 5) When the victim is a child below seven (7) years old; 6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV) /Acquired Immune

Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime; 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability; 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

[43] People vs. Larena, 309 SCRA 305 (1999); People vs. Velasquez, G.R. Nos. 132635 and 143872-75, February 21, 2001; People vs. Sayao, G.R. No. 124297, February 21, 2001; People vs. Empante, 306 SCRA 250 (1999).

[44] People vs. Ilao, 296 SCRA 658 (1998).

[45] People vs. Baygar, 318 SCRA 358 (1999).

[46] People vs. Tabanggay, 334 SCRA 575 (2000).

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