

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO CANTOS Y ASISTIO, SR., ACCUSED-APPELLANT.***G.R. No. 129298. April 14, 1999*

Ponente: MENDOZA, J.

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This case is here on appeal from the decision,[1] dated February 26, 1997, of the Regional Trial Court, Branch 1, Borongan, Eastern Samar, finding accused-appellant Rolando A. Cantos guilty of having raped his stepdaughter Remedios E. Cabiad and sentencing him to death in addition to ordering him to indemnify Remedios in the amount of P50,000.00 and to pay the costs.

Accused-appellant is the second husband of Loreta Esquerdo. Remedios, who was 15 years old at the time the offense was alleged to have been committed, is the eldest daughter of Loreta by her first husband Rafael Cabiad. The information filed against accused-appellant by the provincial prosecutor alleged

That on January 29, 1996, at about 9:00 o'clock in the morning at Barangay Libas, San Julian, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with a bolo and by means of force, violence and intimidation with lewd designs, did then and there wilfully, unlawfully and feloniously have carnal knowledge of REMEDIOS E. CABIAD, fifteen (15) years old, against her will and consent, to the damage and prejudice of the offended party.[2]

The prosecution presented evidence showing that, on January 29, 1996, at nine in the morning, accused-appellant Cantos was alone with Remedios in their house in Libas, San Julian, Eastern Samar. His wife Loreta was in Borongan at the Eastern Samar Provincial Hospital looking after her youngest daughter Irene (she was confined there), while the two other children from the previous marriage were in school.[3]

On that day, accused-appellant Cantos was in the front yard sharpening a bolo while Remedios was making nipa shingles in the living room. After sharpening his bolo accused-appellant went inside the house and approached Remedios. Then he held her hands and threatened to kill her with the bolo if she shouted. He dragged her near the window, undressed her, and pushed her to the floor. He then took off his pants and underwear, went on top of Remedios, and inserted his penis into her vagina and began having sexual intercourse with her. Remedios resisted, but accused-appellant proved too strong for her. Accused-appellant succeeded in ravishing her.[4]

Afterwards, Remedios, distraught and not feeling well, went to the house of a cousin, where she stayed from ten in the morning to four in the afternoon. That evening, Remedios went to the house of her aunt, Esther Esquerdo, and related what had happened to her. Esther lost no time in taking Remedios to the police station at the Municipal Hall Building of San Julian where they reported the incident. The following day, January 30, 1996, she took Remedios to the Municipal Health Center of San Julian. However, Dr. Artemia Barlongay, the Municipal Health Officer, was unavailable. They returned the next day, January 31, 1996. The physical examination of Remedios was actually conducted by Dr. Barlongay at the Eastern Samar Provincial Hospital as the Municipal Health Center lacked the necessary facilities.[5] Dr. Barlongay issued a medical certificate, dated January 31,

1996, containing the following findings:

Findings:

Complete deep hymenal lacerations at 3:00 o'clock, 9:00 o'clock, and 11:00 o'clock.[6]

Accused-appellant testified on his behalf. He admitted having sexual intercourse with Remedios on the date in question but claimed that they had been engaging in consensual sexual intercourse since April 13, 1993.[7]

In its decision, dated February 26, 1997, the trial court held:

The question therefore that the court is called upon to resolve is whether or not the sexual intercourse of the accused with the complainant was against the latter's will.

On close and careful perusal, the testimony of Mr. Cantos that he had previous acts of sexual intercourse with Remedios Cabiad is incredible anent the testimony of Dra. Balongay that Remedios had no sexual experience prior to the incident as the victim's labia majora was still intact.

. . . .

The accused in his defense claimed that he and the victim are lovers and they have been such since April 13, 1993 and that what transpired between them on January 29, 1996 was voluntary and that complainant filed the rape charge because of insinuations coming from some barangay officials. However, it is the opinion of the court that the straight-forward and candid narration by the victim of how she was raped as borne out by the records and the transcript of stenographic notes bears the true earmarks of credibility. The contention of the defense that the accused and the complainant are sweethearts has not been proven by the accused. Rolando Cantos, Sr. has the burden of proving that he and Remedios Cabiad are sweethearts. No substantial evidence, such as lovenotes or pictures was presented to support his claim.

Also, while the medical report shows that complainant had no external signs or physical injuries, this does not negate the commission of the dastardly act against her.

. . . .

The failure on the part of the complainant to shout for help at the earliest opportunity cannot be considered against her because at the time of the incident, accused was sticking a bolo near her and consequently, fear for her life was her paramount concern. If she did not cry out for help, evidently, it was in obedience to the accused's order and the apprehension that greater harm would befall her if she defied him.

That the victim did not tell anyone what was done to her by her step-father is understandable considering the fact that a death threat hangs over her head.

. . . .

It has also not been shown by the prosecution that any ill-motive can be ascribed to complainant other than her desire to seek justice for the terrible wrong inflicted upon her. . . . Moreover, as testified to by the accused, the victim even called him "Tatay" and it is for this reason that the act of sexual assault perpetrated by the accused on his young victim is all the more repulsive and perverse.

. . . .

WHEREFORE, in view of the foregoing facts and circumstances, accused ROLANDO CANTOS Y ASISTIO, SR., is hereby found guilty beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 of the Revised Penal Code, as amended, and further amended by Republic Act No. 7659, and he is hereby sentenced to suffer the maximum penalty of death. Further, accused is hereby ordered to pay the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) pursuant to the latest jurisprudence handed down by the

Supreme Court. (People vs. Roger Laray, et. al, G.R. No. 101809, February 20, 1996) and to pay the costs of the proceedings.[8]

In his lone assignment of error, accused-appellant contends that --

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant maintains that the sexual intercourse between him and Remedios was consensual. He contends that the evidence of the prosecution does not show the use of force or intimidation in committing the rape as it has not been shown that in fact she suffered injuries or that her clothes were torn as a result of the commission of the crime.[9]

Accused-appellant's allegations are without merit.

First, since the trial court had the opportunity of observing the demeanor of the witnesses while testifying, its findings should be upheld in the absence of evidence to the contrary.[10] Indeed, the following testimony of Remedios leaves no room for doubt that she had been forced by accused-appellant to have sexual intercourse with him:

PROSECUTOR CATUDIO:

Q:

At that time, 9:00 o'clock in the morning of January 29, 1996, while you and your stepfather were in your house at barangay Libas, San Julian, Eastern Samar, do you remember of anything unusual that happened?

A: Yes, sir.

Q: Please inform the court what was that unusual incident that happened?

A:

The unusual incident that had happened on January 29, 1969, at 9:00 o'clock in the morning is, that my stepfather was sharpening a bolo near our door and I was making nipa shingles inside our house near the door and my back was facing the door then my stepfather went inside the house to change his clothes as he was going to the farm.

....

Q: Now, before he actually change his clothes, what happened?

A:

When he get inside our house he placed his bolo near me where I was making nipa singles and then he held my hand and brought me near the window and then he undressed me completely and laid me to the floor and then he also undressed himself completely.

Q: Now, after he undressed you and he followed also with undressing himself, what did he do then next?

A: He inserted his penis into my vagina.

Q: What was his relative position to you when he was on the act of inserting his penis to your vagina?

A:

While my stepfather was on the act of inserting his penis into my vagina I was lying flat and he was on top of me then he inserted his penis:

Q: You said he tried to insert his penis into your vagina, did that penis in fact got inside your vagina?

A: Yes, sir.

Q: And, will you please inform the court how big was the penis which he tried to insert into your vagina?

A: Big. (the witness is demonstrating the circumference of the penis a little bigger than a flashlight battery)

Q: Did that penis easily got inside into that vagina of yours?

A: That was so hard.

Q:

Can you estimate more or less how many seconds or minutes before he actually succeeded in inserting his penis into your vagina?

A: I cannot estimate, sir.

Q:

You said he succeeded in inserting that penis into your vagina, will you please inform the court how long was that penis been inside your vagina from the time it was placed inside your vagina?

A: It was quite long, I cannot estimate.

. . . .

Q: When the accused held your hand, did you not shout?

A: I did not.

Q: Why did you not shout?

ATTY. GO:

Already answered.

COURT:

Let the witness answer.

WITNESS:

A: Because I was afraid he threatened me that he will kill me.

PROS. CATUDIO:

Q: When was that threats made, before he held your hand or after he held your hand?

A: During the time he was already holding my hands.

Q: Now about when he undressed you, did you not attempt to free yourself or to shout?

A:

I was unable to shout because the hand of my stepfather was placed on my mouth and he was threatening me that if I will shout he will kill me and I tried to free myself but I cannot because he was much stronger than me and I am still a child so he can defeat me.

Q:

Now about while he was in the act of inserting his penis into your vagina, did you not shout or did you not try to free yourself from him?

A:

I did not because I was afraid because that bolo was just near me and he was telling me that he will kill me.[11]

On further questioning by the trial court, Remedios answered:

COURT:

Q: Before the sex organ of Rolando Cantos was inserted into your vagina, did Rolando Cantos insert his finger first?

A: Yes, sir.

....

Q: Now, you said that when the male organ of your stepfather was inside of your vagina, what did he do to you?

A: He was pumping his hips.

Q: Up and down?

A: Yes.

Q: Did you not struggle as it was painful while Rolando was having a carnal relation with you?

A: I was struggling.

Q:

Because science is very clear that buttocks of a woman is very strong, will you please explain to the court how Rolando was able to continually assault and his organ was inside of your vagina when science prove that woman hips is very strong?

A:

Because he was doing it strongly I was overpowered by the strong hold of my stepfather Rolando.[12]

Epefanio Jundarino is the brother-in-law of Loreta Cabiad (his wife is the sister of Loreta).[13] He lived next to the Cantos family. He testified:

Q:

While you were in your house at 9:00 o'clock in the morning of January 29, 1996, do you remember of anything unusual that happened?

A: Yes, sir.

Q: Please inform the court what was that unusual incident that happened?

A:

As the sun was already hot and warm and while I was about to open the window I saw one Rolando Cantos naked on top of Remedios Cabiad who was also naked.

Q:

Now, you said you were only about to open your window when you saw Rolando Cantos naked on top of Remedios Cabiad who was also naked, how were you able to see the two (2) when you did not yet open your window?

A: I saw the duo because there was a hole on my window and I can see through that hole.

Q: Why, what is your window shutter made of which you were about to open when you saw them?

A: That is made of nipa and wood.

....

Q: Why there is a hole in that nipa shingle?

A: Because it was already dilapidated and there are holes on that nipa shingles and I cannot repair it due to old age.

Q:

You said you saw Mr. Rolando Cantos naked on top of Remedios Cabiad, please inform the court what was the position of Mr. Rolando Cantos when you first saw him on top of Remedios Cabiad, was his face facing down or up?

A: I did not see actually their faces what I only saw was waist down.

Q:

And you saw Mr. Rolando Cantos on top of Remedios Cabiad, what was he doing while on top of Remedios Cabiad?

A: He was pumping.

....

Q:

You said that you only saw them from their waist to their legs, how were you able to recognize that it was Rolando Cantos who was on top making an up and down movement of his hips or buttocks and Remedios Cabiad likewise naked. How were you able to recognize?

A: I know them because we are neighbors and they are the only one living in that house.

....

Q:

You said you peeped through that hole in your window while witnessing or seeing the two inside their house in the act of sexual intercourse or in the act as you have testified, for how long have you been peeping them while they were in that act?

A: More or less thirty (30) seconds or more.

Q:

After that 30 seconds that you have been peeping them, you have been peeping through your window, seeing or witnessing what they were doing, what did you do?

A:

Because I cannot afford to be witnessing said incident, I went out of the house and then went to the farm to gather firewood.

Q:

You said you happened to peep at them while about to open your window, were you in fact able to open that window where you peeped through that window?

A: I did not continue to open my window.

Q: Why did you not open that window?

A:

What was in my mind that I did not continuously open my window because I was afraid Rolando might know that I was peeping he might be angry with me also, he might hurt me.[14]

Accused-appellant admitted that he had sexual intercourse with Remedios on the day and at the time mentioned by Jundarino. Accused-appellant further admitted that the door of their house, which was about five meters from the house of Jundarino,[15] was left open while he was having sexual intercourse with Remedios.[16] He contends, however, that he was not then raping Remedios but having sex with her.[17]

To be sure, Jundarino himself was not certain that accused-appellant and Remedios were not engaging in consensual sex at the time. But this is because he was in no position to determine whether there was force or intimidation. Precisely, the prosecution presented his testimony only for the purpose of corroborating Remedios'

testimony that accused-appellant had sexual intercourse with her on January 29, 1996. The trial court relied not on Jundarino's testimony but on the victim's testimony for its conclusion that the act was not consensual.

Accused-appellant further claims that Jundarino's testimony is improbable considering that the latter did not make any attempt to rescue Remedios.[18] As already noted, Jundarino was not certain accused-appellant and Remedios were not engaging in consensual sex at the time. In fact, he said he was afraid that accused-appellant might discover that he had been peeping through a hole in the window of his house.[19] For this reason, he did not come to the rescue of Remedios who was in trouble. Instead, he reported the matter to Remedios' aunt, Esther Esquerdo. As Jundarino put it:

A I informed and told Esther Esquerdo to ask her niece Remedios Cabiad of what had happened and what I have witnessed because I could not imagine that this Remedios Cabiad will do this act.[20]

Accordingly, when Remedios went to her aunt's house, the latter "confronted" her about the incident related by Jundarino.[21] Had Jundarino known for certain at the time that Remedios was being raped he would undoubtedly have come to her rescue.

Second, the claim of accused-appellant that he and Remedios had had sexual intercourse about 15 times before[22] is belied by the medical finding that the labia majora of Remedios was still intact. According to Dr. Barlongay, this is an indication that Remedios could not have engaged in several acts of sexual intercourse prior to her rape by accused-appellant Cantos.[23] To the contrary, Dr. Barlongay found fresh lacerations in the hymen of Remedios, which, according to her, were probably caused by the forcible insertion of accused-appellant's penis.[24]

It is noteworthy that there is not even a claim by accused-appellant that he and Remedios had a love affair as indeed there were no love letters, keepsakes, or mementoes to show for it.

Indeed, the law does not impose a burden of proving resistance on the rape victim.[25] The fact that the victim did not resist the accused-appellant by struggling or shouting for help does not negate the use of force and intimidation.[26] The use of a bladed weapon and the threat of harm may be sufficient to intimidate the victim to obedience.[27] Remedios, being a minor, cannot be expected to react under such circumstances like an adult woman. Because of her tender age, she could be easily intimidated by a strong man like accused-appellant Cantos. We are convinced that Remedios was forced by accused-appellant to have sexual intercourse with him, and she only submitted to him out of fear.

However, we hold that the trial court erred in imposing the death penalty on accused-appellant. Art. 335 of the Revised Penal Code, as amended by §11 of R.A. 7659, otherwise known as the Death Penalty Law, imposes the death penalty on the offender in a rape case if "the victim is under eighteen (18) years of age and the offender is a . . . step-parent . . . of the victim." But as we held in several recent cases, the concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance which should be alleged in the information in order to warrant imposition of the death penalty.[28] Since the information against accused-appellant alleged only the minority of Remedios but not her relationship to him, accused-appellant should be held guilty of rape with the use of a deadly weapon, which is punishable by reclusion perpetua to death.[29] There being no aggravating circumstance, the lesser penalty of reclusion perpetua should be imposed.[30]

The trial court also erred in ordering accused-appellant Cantos to pay the complainant only the civil liability arising from the offense in the amount of P50,000.00. In addition, it should have ordered accused-appellant to pay the offended party moral damages, which is automatically granted in rape cases without need of any proof.[31] Currently, the amount of moral damages for rape is fixed at P50,000.00.[32]

WHEREFORE, the decision of the Regional Trial Court, Branch 1, Borongan, Eastern Samar is hereby AFFIRMED with the MODIFICATION that accused-appellant Rolando A. Cantos is sentenced to suffer the penalty of reclusion perpetua and ordered to pay P50,000.00 to Remedios E. Cabiad by way of moral damages, in addition to the amount of P50,000.00 which the trial court ordered him to pay as indemnity.

SO ORDERED.

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

[1] Per Executive Judge Celso F. Lorenzo, Sr.

[2] Rollo, p. 8.

[3] TSN, pp. 4-5, Oct. 11, 1996.

[4] Id., pp. 5-9.

[5] Id., pp. 11-15.

[6] Records, p. 7.

[7] TSN, Nov. 13, 1996, pp. 8, 19-23, 25-28.

[8] Rollo, pp. 65-77.

[9] Appellant's Brief, Rollo, pp. 55-57.

[10] People v. Excija, 258 SCRA 424 (1996); People v. Raptus, 198 SCRA 425 (1991); People v. Mengote, G.R. No. 130491, March 25, 1999.

[11] TSN, pp. 5-9, Oct. 11, 1996.

[12] Id., pp. 37-42.

[13] TSN, pp. 3, 15-16, Oct. 2, 1996.

[14] TSN, pp. 4-10, Oct. 2, 1996.

[15] TSN, p. 11, Oct. 2, 1996.

[16] TSN, pp. 17-18, Nov. 13, 1996.

[17] Appellant's Brief, Rollo, pp. 55-57.

[18] Id., Rollo, p. 55.

[19] TSN, p. 10, Oct. 2, 1996.

[20] TSN, pp. 12-13, Oct. 2, 1996.

[21] TSN, p. 13, Oct. 11, 1996.

[22] TSN, pp. 8, 19-23, 25-28, Nov. 13, 1996.

[23] TSN, pp. 9-10, Aug. 28, 1996.

- [24] TSN, pp. 1-4, 12-15, Aug. 25, 1996.
- [25] *People v. Talaboc*, 256 SCRA 441 (1996).
- [26] *People v. Pada*, 261 SCRA 773 (1996).
- [27] *People v. Adlawan, Jr.*, 217 SCRA 489 (1993).
- [28] *People v. Ramos*, G.R. No. 129439, Sept. 25, 1998; *People v. Ilao*, G.R. No. 129529, Sept. 29, 1998.
- [29] Revised Penal Code, Art. 335, as amended by R.A. No. 7659.
- [30] Revised Penal Code, Art. 63(2); *People v. Padilla*, G.R. No. 126124, January 20, 1999.
- [31] *People v. Prades*, G.R. No. 127569, July 30, 1998.
- [32] *People v. Malapo*, G.R. No. 123115, Aug. 28, 1998; *People v. Padilla*, G.R. No. 126124, Jan. 20, 1999.

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