

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO RAMOS Y MAGPALE, ACCUSED-APPELLANT.*G.R. No. 129439. September 25, 1998*

Ponente: REGALADO, J.

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Consequent to the Attended provisions, of Article 47 of the Revised Penal Code and Section I(e), Rule 122 of the Rules of Court, the judgement in Criminal Case No. V-0646 is now before us for automatic review of the death penalty imposed upon accused-appellant Feliciano M. Ramos by the Regional Trial Court, Branch 50, of Villasis, Pangasinan.[1]

On October 16, 1995, one Elizabeth T. Ramos filed a criminal complaint[2] or rape against appellant in the 11th Municipal Circuit Trial Court (MCTC) of Villasis-Sto. Tomas, at Villasis, Pangasinan. It was alleged therein that appellant was able to perpetrate the felony against the minor complainant through the use of force and intimidation in its execution.

After preliminary investigation, the judge designate[3] of the MCTC found appellant probably guilty of the accusation and issued a warrant of arrest for his immediate apprehension.[4] However, before that warrant could be duly implemented, the circuit judge[5] of the said MCTC issued a subpoena to appellant granting him the opportunity to file his counter affidavits in answer to the complaint against him.[6] The subpoena was, however returned unserved when appellant could not be located at his given address in Barangay San Nicolas, Villasis, Pangasinan.[7]

In the absence of any controverting affidavit and testimony, an information[8] for rape was then filed on February 1, 1996 against appellant in the trial court where it was docketed as Criminal Case No. V-0646. It was likewise alleged therein that the crime was committed through appellant's employment of force and intimidation against the minor Elizabeth. In detail, the accusatory portion of the information[9] alleges --

That during the month of April, 1995 at Barangay San Nicolas, Municipality of Villasis, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Elizabeth T. Ramos, a minor of 14-years old (sic) against the latter's will and consent, to the damage and prejudice of said Elizabeth T. Ramos.

Upon the filing of the information, the trial court issued a warrant for the arrest of appellant on February 27, 1996.[10] Since appellant had changed his residence Tuao, Cagayan,[11] an alias warrant of arrest[12] was issued against appellant, the same to be valid and enforceable as long as he remained at large. The case was then archived pending his apprehension.[13]

On March 31, 1996, the Chief of police of the Villasis Municipal Police Station sent an indorsement to the trial court on the alias warrant, reporting that appellant was arrested on March 29, 1996 at Barangay Naruangan, Tuao, Cagayan. [14] When later brought before the lower court on April 19, 1996 for arraignment, appellant pleaded not

guilty to the accusation against him. [15]

Collated from the testimony of complainant Elizabeth[16], 3-12; November 6, 1996, 15-24; November 18, 1996, 2-5.16 given on different days of the hearing, the prosecution established the following facts to wit:

Complainant's family was sleeping in their house at Barangay San Nicolas, Villasis, Pangasinan one night in April, 1995 when the rape complained of was committed by appellant.

On this particular night, complainant's mother and youngest sister slept inside the lone bedroom of their house while she, her brother and two other sisters slept outside of this room in an adjoining area. Sleeping together with them at that time was complainant's father, appellant in this mandatory review.

Complainant woke up when appellant carried her brother and two sisters and transferred them for where they were sleeping to another area of the house. After appellant had lain down beside complainant, he held both of her hands and proceeded to undress her. Appellant also removed his own clothes and then inserted his penis into complainant's vagina. Complainant could only wail as her father forcibly committed sexual congress with her. She was warned by appellant not to report the matter to anyone or he would kill her. All these took place while complainant's sibling continued sleeping nearby.

From this night on, appellant would repeat his dastardly acts against his daughter a number of times. In fact, appellant's sexual abuse of his daughter would not have been discovered had complainant not suffered an abortion of the fetus she was carrying in her womb.

Experiencing profuse vaginal bleeding, complainant went to the clinic of Dr. Feliciano U. Nario[17] on the night of September 4, 1995 for treatment. Dr. Nario, an obstetrician and gynecologist, found after examination that complainant was pregnant. Due to the heavy bleeding, complainant was transferred to the Urdaneta Sacred Heart Hospital where, after a caesarian section, complainant delivered a dead male fetus.

Appellant's counsel de officio earnestly tried to impeach complainant during her cross-examination by presenting her previous sworn declaration and answers inconsistent with her testimony in court. Said statements were given by complainant during the preliminary investigation of the case on October 16, 1995. [18]

Particularly, appellant counsel pointed out during the hearing that (1) while complainant said in open court that she was raped at nighttime, she declared in the preliminary examination that the assault took place in the daytime; [19] (2) complainant was not certain who accompanied her to the doctor on September 4, 1995, intimating at first that it was her mother and then changing her answer to the effect that it was her grandmother; [20] and (3) while complainant testified on the witness stand that her brother and sisters were with her at the time of the rape, she stated in the preliminary examination that they were at their grandparents' house at that time. [21]

The intense cross-examination of complainant that followed had to be suspended by the trial court when complainant could not be pacified and prevented from bitterly and uncontrollably crying in court. To enable her to regain her composure, the court ordered the resumption of the hearing on November 20, 1996. [22]

On the scheduled continuation of complainant's cross-examination, counsel for appellant manifested to the lower court that appellant wanted to change his earlier plea of not guilty to guilty. He accordingly moved for re-arraignment of appellant.

After the court a quo explained to appellant the consequences of such a plea to a capital offense and after the information was read and translated to him in Ilocano, a regional language which he fully understood, appellant entered a plea of guilty. On the same day, a date set by the lower court giving appellant the chance to prove mitigating circumstances in his favor. [23]

To establish the mitigating circumstance of voluntary surrender, appellant presented the testimony of SPO4 Samuel Aban,[24] the police officer responsible for appellant's arrest at Cagayan.

Aban testified that at the time of appellant's arrest on March 29, 1995, appellant was feeding some ducks in front of his house in Tuao, Cagayan. Aban then approached appellant and showed him the warrant of arrest. Thereafter, he asked appellant if he is Feliciano Ramos. After appellant answered in the affirmative, Aban introduced himself as a police officer. Appellant, according to Aban, then "went with him." This witness added that the execution of the warrant of arrest against appellant entailed expenses of about P2,500.00.

After considering the evidence presented during the trial and the arguments presented by appellant in his memorandum, [25] the court a quo condemned appellant to death, the penalty prescribe for the crime of rape by a father of his minor daughter under the amendatory provisions introduced by Republic Act No. 7659 to Article 335 of the Revised Penal Code. The lower court further ordered appellant to indemnify his victim in the amount of P50,000.00 and to pay her moral damages of P25,000.00 and exemplary damages in the sum of P25,000.00.

As he had heretofore done in the court below, appellant continues to assail in this automatic review the credibility of complainant by referring to the inconsistencies between her testimony and sworn statement. We have carefully gone through the records of this case and we find that such inconsistencies do not, and cannot in any way affect the credibility of complainant.

The inconsistencies refer only to minor matters and do not advert to the elements of the rape or to the identification of appellant indubitably proven by the testimony of complainant. The supposed conflicts pointed out have nothing to do with the proven fact that appellant had sexual intercourse with complainant through force and intimidation. The detailed narration by complainant in court of how she was sexually assaulted by appellant overshadows the minor lapses found in her sworn answers. Between her testimony in court and said extrajudicial statements, we rely on the former.

Generally, an affidavit taken ex parte is considered inferior to the testimony given in open court and does not affect the credibility of the witness. [26] Discrepancies and inconsistencies between statements in an affidavit and those made on the witness stand do not necessarily discredit a witness. [27]

The evident and realistic reason is that testimonies given during trial are much more exact and elaborate than those stated in sworn statements. Ex parte affidavits are usually incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstanding by the writer are not infrequent. [28]

Complainant gave a candid and direct account in court of the events that unfolded one night in April, 1995. For such creditable manner of narration, complainant's testimony deserves full faith and credence from the courts. In believing the story of complainant, we are also guided by the principle that the crying of the victim during her testimony is evidence of the credibility of the rape charge, [29] a matter of judicial cognizance.

Still on the plausibility of the story presented by complainant, appellant contends that it was impossible for the rape to have happened in April, 1995 because the expert witness of the prosecution figure in the open court that complainant was seven to eight months pregnant at the time of her examination. Following this finding of the physician, appellant calculated that the rape complained of should have happened in January to February of 1995.

What is material in a rape case, however, is the occurrence of the rape committed by appellant against

complainant. Also, the transcript of stenographic notes reveals that the doctor was not sure of his estimate when asked by appellant's counsel to give the date of conception. His answer was based only on his physical examination of complainant. He did not get from complainant the last menstrual period she had prior to the pregnancy. [30]

Just as in other rape cases, appellant raises the argument that rape could not have happened because complainant's siblings were sleeping beside them when the alleged crime was committed. Yet, it is common judicial experience that the rapist are not deterred from committing their odious act by the presence of people nearby. As revealed in our review of rape cases, rape can be committed in a house where there are other occupants. [31]

In a similar case involving the rape of a minor daughter by her father, [32] we rejected the contention of accused therein that it was impossible for the rape to happen inside a twenty by twelve feet bamboo house, particularly at the sala where complainant was sleeping in the middle of her six other brothers and sisters.

This Court has held that rape is not impossible even if committed in the same room while the rapist's spouse was sleeping, or in a small room where other family members also slept. [33] We have accepted the fact that it is neither impossible nor incredible for complainant's family members to be in deep slumber and not to be awakened while the sexual assault was being committed. [34]

Appellant insists that his plea of guilt made after the presentation of the People's evidence should have been taken as a mitigating circumstance by the court a quo as it was done not out of fear of conviction but rather allegedly based on his conscience. Appellant's supposed repentance after the presentation of the evidence for the prosecution will not beget in his favor the appreciation of the mitigating circumstance of plea of guilty.

To effectively alleviate the criminal liability of an accused, a plea of guilty must be at the first opportunity, indicating repentance on the part of the accused. [35] In determining the timeliness of a plea of guilty, nothing could be more explicit than the provisions of the Revised Penal Code requiring that the offender voluntarily confess his guilt before the court prior to the presentation of the evidence for the prosecution. [36] It is well settled that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. [37]

Appellant also claims that the lower court should have considered the mitigating circumstance of voluntary surrender in his favor because he voluntarily gave himself up when the police officer showed him the warrant of arrest.

Surrender is said to be voluntary when it is done by an accused spontaneously and made in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture. [38] There is no indication in the record that appellant had, on his own volition, come forward and presented himself before the authorities, signifying his desire to spare the Government the time, effort and expense of seeking him out.

What is on record is that appellant changed his residence after the incident, preventing the service of the subpoena and the enforcement of the first warrant of arrest. And, when shown alias warrant at his new residence, appellant simply went with the arresting officer. Such passive act cannot be considered in his favor. It is axiomatic that when the accused surrenders only after the warrant of arrest is served upon him, the surrender is not mitigating. [39] And, the fact that appellant did not resist but went peacefully with the lawman does not mean that he voluntarily surrendered. [40]

Further, the return on the warrant categorically states that appellant was arrested. Such statement clearly supports the fact that appellant was actually taken and held in custody under authority of the law. He did not, therefore,

voluntarily surrender as he claims to have done.

Having arrived at the culpability of appellant beyond reasonable doubt, we now determine the proper crime imputable to appellant and the penalty imposable upon him.

A re-reading of the accusatory portion of the information reveals that appellant was charged with rape in its simple form, that is, having carnal knowledge of a woman by using force or intimidation, with the additional allegation that the victim was only 14 years of age at the time of the incident. Such criminal act and its mode of commission is now punished under Article 335 of the Revised Penal Code with the penalty of reclusion perpetua.

The same article, as amended by Republic Act No. 7659, further provides that the death penalty shall be imposed if the rape victim is under eighteen years of age and the offender is a parent of the victim. Obviously, believing that the case of the People against appellant falls squarely under the last mentioned provision of Article 335, the lower court sentenced appellant to the supreme penalty of death.

The court a quo arrived at this conclusion under the notion that the particular rape involved is punishable by reclusion perpetua to death. Then, taking the relationship of appellant and complainant as a generic aggravating circumstance, the trial court imposed the higher of the two indivisible penalties.

For the trial court, relationship in the rape case before it cannot be considered a qualifying circumstance because it does not alter the nature of the crime of rape. As it rationalized, whether such circumstance is alleged in the information or not, the crime remains to be rape, unlike in the crime of parricide. Hence, treating relationship as a generic aggravating circumstance, the court below considered the relationship of appellant and complainant as attendant in the case despite the absence of any allegation thereof in the information.

Appellant takes issue in this point, by asserting that since the fact of relationship was not alleged in the information, only the penalty prescribe for simple rape can be imposed upon him. This is where we depart from the conclusions of the lower court and agree with appellant's position.

A rape by a father of his minor daughter is punishable by the single indivisible penalty of death and not by reclusion perpetua to death, as the lower court erroneously believed.

In explaining the nature of the seven new attendant circumstances instituted by Republic Act No. 7659 in Article 335 of the Revised Penal Code, this Court held in *People vs. Garcia*[41] that these attendant circumstances partake of the nature of qualifying circumstances, and not merely aggravating circumstances, since they increase the penalties by degrees. Aggravating circumstances affect only the period of the penalty but do not increase it to a higher degree.

In *People vs. Bayot*, [42]we gave the reminder that a qualifying circumstance or an inherent aggravating circumstance should not be mistaken for a generic aggravating circumstance in the crime of robbery. This Court then distinguished the two circumstances by stating that generic aggravating circumstance, not offset by any mitigating circumstances, increases the penalty which should be imposed upon the accused to the maximum period, but without exceeding the limit prescribed by law. A qualifying circumstance, on the other hand, not only gives the crime its proper and exclusive name but also imposes on the author thereof no other penalty but that specially prescribed by law for said crime.

While Republic Act No. 7659 did not give a legal designation to the crime of rape attended by any of the seven new circumstances introduced in Article 335 on December 31, 1993, this Court has referred to such crime as qualified rape in a number of its decisions. However, with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender give a different character to the rape defined in

the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special qualifying circumstance.

As this qualifying circumstance was not pleaded in the information or in the complaint against appellant, he cannot be convicted of qualified rape because he was not properly informed that he is being accused of qualified rape. The Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him. [43] This right finds amplification and implementation in the different provisions of the Rules of Court. [44] Foremost among these enabling provisions is the office of an information.

The facts stated in the body of the information determine the crime of which the accused stands charged and for which he must be tried. [45] This recital of the essentials of a crime delineate the nature and cause of accusation against an accused.

It is fundamental that every element of which the offense is composed must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. [46]

An accused person cannot be convicted of an offense higher than that with which he is charged in the complaint or information on which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, but an accused cannot be convicted of any offense, unless it is charged in the complaint or information on which he is tried or is necessarily included therein. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial. To convict an accused of a higher offense than that charged in the complaint or information on which he is tried would be an unauthorized denial of that right. [47]

To be more precise, we declared in *Garcia* that it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charge with simple rape and be convicted of its qualified form punishable with death although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned.

Contrary, therefore, to the pose of the lower court and the Solicitor General, the non-allegation of the relationship between appellant and offended party in an information for a rape is a bar to the imposition of the death penalty since relationship in this particular form of rape is a qualifying and not merely aggravating. Having been informed only of the elements of simple rape, appellant can only be convicted of such crime and accordingly be punished with reclusion perpetua.

Now, it is accepted that qualifying circumstances not pleaded in the indictment but duly proven without objection during the trial may be considered as aggravating circumstances. [48] The general principles of criminal law provide that aggravating circumstances, even if not alleged in the information, may be proven during the trial over the objection of the defense and may be appreciated in imposing the sentence. Such evidence merely forms part of the proof of the actual commission of the offense and its consideration by the courts do not violate the constitutional right of the accused to be informed of the nature and cause of the accusation against him. [49]

However, in the case before us, the aggravating circumstance of relationship becomes inconsequential in view of the nature of reclusion perpetua prescribe for the felony of simple rape. Our general criminal code states that in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. [50]

Again, we are constrained by the law to impose the lighter penalty of reclusion perpetua on a man who, in fact and after due proof, actually deserves the capital punishment. The information sufficiently charged appellant with the crime of simple rape, but a conclusion of qualified rape cannot be legally justified from the allegations of such information.

We, therefore, call the attention of the members of the prosecution service and peace officers charged with the preparation of informations and complaints, that the attendant circumstances provided by Republic Act No. 7659 must be specifically alleged in an information for rape in order that they may properly qualify the crime to the penalty specially prescribed by the law.

Finally, we note that there was no proof presented during the trial showing the basis for the award of moral damages to complainant. However, in view of the recent ruling of this Court in *People vs. Prades*[51], we maintain the award made therefor by the lower court. Also, the presentation by the prosecution of proof of relationship between complainant and appellant has not been in vain since the presence of aggravating circumstances is vital in the matter of civil damages.

We find the award of exemplary damages made by the lower court in favor of complainant as proper because complainant has been correctly granted compensatory damages and the offense against her was committed with the aggravating circumstance of relationship. [52] Exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances after proof that the offended party is entitled to moral, temperate or compensatory damages. [53]

WHEREFORE, the judgement of conviction of the Regional Trial Court, Branch 50, of Villasis, Pangasinan in Criminal Case No. V-0646 is hereby **AFFIRMED**, with the modification that appellant is sentenced to suffer the penalty of reclusion perpetua.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Martinez, Quisumbing, and Purisima, JJ. concur.

Mendoza, J., (on official leave)

[1] Presided over by Judge Rosario C. Cruz.

[2] Original Record, 1.

[3] Judge Designate Eduardo U. Jovellanos.

[4] Original Record, 18-19.

[5] Circuit Judge Saturnino D. Bautista.

[6] Original Record, 20.

[7] *Ibid.*, 21.

[8] Filed by 4th Asst. Provincial Prosecutor Ely R. Reintar.

[9] Original Records, 29.

[10] *Ibid.*, 31-34.

[11] *Ibid.*, 34.

- [12] Ibid., 37-39.
- [13] Ibid., 36.
- [14] Ibid., 40.
- [15] Ibid., 47.
- [16] TSN, September
- [17] Ibid., November 6, 1996, 2-14.
- [18] Exhibit 1, Original Record, 9-16.
- [19] Exhibit 1-A-1, Original Record, 11.
- [20] Exhibit 1-B-1, id., 12.
- [21] TSN, November 6, 1996, 24.
- [22] Original Record, 83.
- [23] Ibid., 84.
- [24] TSN, December 2, 1996, 2-6.
- [25] Original Record, 95-97.
- [26] People vs. Sumbillo et al., G.R. No. 105292, April 18, 1997, 271 SCRA 428.
- [27] People vs. Pontilar, Jr., G.R. No. 104865, July 11, 1997, 275 SCRA 338; People vs. Traverro, G.R. No. 110823, July 28, 1997, 276 SCRA 301.
- [28] People vs. Traverro, *supra*.
- [29] People vs. Joya, et al., G.R. No. 79090, October 1, 1993, 227 SCRA 9.
- [30] TSN, November 6, 1996, 9.
- [31] People vs. Quinevista, Jr., G.R. No. 110808, May 31, 1995, 244 SCRA 586.
- [32] See People vs. Devilleres, G.R. No. 114387, March 14, 1997, 269 SCRA 716.
- [33] People vs. Manuel, G.R. No. 107732-33, September 19, 1994, 236 SCRA 545.
- [34] See People vs. Tan, Jr., 264 SCRA 425; People vs. Quinevista, *supra*, Fn. 31.
- [35] People vs. Derilo, et al., G.R. No. 117818, April 18, 1997, 271 SCRA 633.
- [36] Article 13(7), Revised Penal Code.
- [37] People vs. Lungbos, et al., G.R. No. L-57293, June 21, 1988, 162 SCRA 383.
- [38] People vs. Deopante, G.R. No. 102772, October 30, 1996, 263 SCRA 691.
- [39] People vs. Roldan, G.R. No. L-22030, May 29, 1968, 23 SCRA 907.
- [40] See People vs. Deopante, *supra*, Fn. 38.
- [41] G.R. No. 120093, November 6, 1997.

[42] 64 Phil. 269 (1937).

[43] Section 14(2), Article III, Constitution.

[44] Section 1(b), Rule 115; Sections 3, 4, 6-14, Rule 110; Rule 116; Rule 117; Sections 3, 4, 5, 11, Rule 120, Rules of Court.

[45] People vs. Lim San, 17 Phil. 273 (1910).

[46] Balitaan vs. CFI of Batangas, Branch II, et al., G.R. No. L-38544, July 30, 1982, 115 SCRA 729.

[47] Matilde, Jr., vs. Jabson, etc., et al., G.R. No. L-38392, December 29, 1975, 68 SCRA 456.

[48] People vs. Garcia, *supra*, Fn. 41.

[49] People vs. Ang, et al., G.R. No. 62833, October 8, 1985, 139 SCRA 115.

[50] Article 63, Revised Penal Code.

[51] G.R. No. 127569, July 30, 1998.

[52] People vs. Tabugoca, G.R. No. 125334, January 28, 1998.

[53] Articles 2230 and 2234, Civil Code.

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