

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEOPOLDO ILAO Y MARAGA, ACCUSED-APPELLANT.*G.R. No. 129529. September 29, 1998*

Ponente: REGALADO, J.

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Before us for automatic review is the decision[1] of the Regional Trial Court of Tanauan, Batangas, Branch 6,[2] in Criminal Case No. 3078 finding accused-appellant Leopoldo M. Ilao guilty of raping his eleven-year old daughter, Jonalyn Ilao. Purportedly in accordance with Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, appellant was sentenced by the trial court to suffer the penalty of death and to indemnify his victim in the amount of P50,000.00.

The records of this case reveal that appellant and his wife Ruby de Mesa Ilao[3] had a fight inside their hut located at Purok 3, Barangay Talaga, Tanauan, Batangas in the afternoon of February 7, 1995. Apparently, Ruby berated appellant for drinking the whole morning although he had a new job waiting for him that day. Thereafter, to avoid the ire of appellant, Ruby spent the night at the nearby house of her brother-in-law, bringing along with her two of her five children.

Left behind with appellant in the hut were the couple's children Jonalyn, Jovelyn and Richard. As of that time, Jonalyn was eleven years of age, while Jovelyn was eight, and Richard, four years old. Jonalyn had a mental deficiency brought about by meningitis which she contracted when she was seven months old.

At around 9:30 P.M. of that day, appellant instructed his daughter, Jovelyn, and son, Richard, to go out of the hut. He then closed the door of their shack. Fearful that her drunken father might do something bad to Jonalyn, Jovelyn[4] peered into the hut through a two and a half-inch opening in the wall thereof.

Through that hole, Jovelyn saw appellant remove Jonalyn's underwear while the latter was lying on the floor. She then saw the naked appellant climb atop the body of Jonalyn. Once on top of Jonalyn, appellant, in the innocent words of Jovelyn, did to Jonalyn what he does to her mother. Jovelyn then heard her sister scream in pain ("umaaray"). When Jovelyn was asked where appellant's penis was at that time, she answered that appellant's sexual organ was on top of Jonalyn's vagina ("Sa puke po ni Ate nakapatong"). After appellant dismounted from Jonalyn, Jovelyn went away from their shack.

When Ruby went back to their house in the morning of February 8, Jovelyn revealed to her the incident she witnessed the night before. Ruby immediately checked the physical condition of Jonalyn and found her daughter's vaginal lips (labia) reddish in color. She also noticed bloodstains on the shirt[5] and undershirt[6] of Jonalyn. Ruby then went to the police to file a complaint against appellant.

Appellant was arrested by P02 Juan Gonzales,[7] SPOI Regalado Molinar[8] and two other members of the Tanauan police force at his house in the afternoon of February 8, 1995. Appellant was asked to remove his clothes at the police station, and the policemen discovered bloodstains on his underwear[9]

Dr. Adel S. Bautista.[10] Municipal Health Officer of Tanauan, Batangas, examined Jonalyn on February 8, 1995 at five o'clock in the afternoon. The doctor found a laceration of Jonalyn's hymen and an abrasion on the upper side of the vaginal canal of the child[11]. On cross-examination, this witness ruled out other causes of the injuries, such as masturbation or accidental falling, and concluded that only sexual intercourse could have caused the injuries she found on Jonalyn. Based on the fresh injuries of Jonalyn, Dr. Bautista surmised that the laceration and abrasion could have been caused in the evening of February 7, 1995.

The same doctor also declared in court that after she conducted another examination on November 14, 1995, she found Jonalyn to be suffering from mental retardation since infancy, with the latter having the mental capacity of a seven-year old child.

The prosecution presented Jonalyn[12] to prove the fact of the rape and to establish her mental deficiency. However, Jonalyn narrated on the witness stand an incomprehensible rambling account of the incident, as she gave unresponsive and unrelated answers to the simple and even leading questions of the prosecutor and the trial court. Her two-hour long testimony reveals that she did not understand the questions propounded to her during her direct examination.

On March 6, 1995, Prosecutor Cristino E. Judit filed an information[13] for rape against appellant with these allegations:

The undersigned Third Assistant Provincial Prosecutor upon complaint of Ruby de Mesa-Ilaos mother of Jonalyn Ilaos y de Mesa, an eleven year old minor, accuses Leopoldo Ilaos v Maraga of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

That on or about the 7th day of February, 1995, at about 9:00 o'clock in the evening, at Purok 3, Barangay Talaga, Municipality of Tanauan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court the above-named accused, by means of force and intimidation did then and there wilfully, unlawfully and feloniously lie with and have carnal knowledge of said Jonalyn Ilaos y de Mesa against her will and consent.

Contrary to law.

Upon arraignment on May 15, 1995,[14] appellant, duly assisted by his counsel de oficio, pleaded not guilty to the charge of rape against him. At the trial which was conducted thereafter, appellant raised the defense that was impossible for him to commit the alleged rape because he was already in jail at the time of the commission of the felony.

According to appellant,[15] he and his wife, Ruby, had an altercation over financial matters at around 5:00 A.M. of February 7, 1995. Appellant's father, Antonio Ilaos, then came and tried to pacify the two protagonists. Appellant resented the intervention of his father and pushed the latter towards the stairs. As a result, Antonio's face hit a part of said stairs.

Antonio then went to their barangay captain and to the police to complain against his son. At around 2:00 P.M. of the same day, policemen came to appellant's house and brought him to their headquarters. He was then detained at the municipal jail from 3:00 P.M. of February 7 up to the presentation of his testimony in court. Appellant added that it was only on February 8, 1995 that he learned of the complaint filed against him by Ruby.

Appellant's brother, Eric and their father, Antonio, corroborated appellant's narration of his quarrel with Ruby and of his arrest on February 7, 1995. Eric[16] testified that he accompanied Ruby to the Tanauan police station at around three o'clock in the afternoon of February 8, 1995. Ruby requested him to take care of her son, Christian, at the police station. While at the police station, he saw appellant in jail. When he asked appellant why he was in

prison, appellant answered that their father had filed a complaint against him.

For his part, Antonio[17] declared on the witness stand that he was inside his house in the morning of February 7, 1995 when he heard his son, herein appellant, and daughter-in-law, Ruby, fighting over money. When he went to the house to intervene, he was pushed by appellant, causing him to hit the stairs.

Thereafter, he went to barangay captain Cosme Rodriguez who later accompanied him to the police. After he had reported the incident to the police his son was arrested. This witness claims that he executed a formal complaint at the police station but could not identify the policeman who took, down his statement. Antonio admitted that he did not have a copy of his own complaint.

Cosme Rodriguez[18] testified that Antonio went to his house at around 7:30 A.M. on February 7, 1995 to complain about appellant who had just pushed him down the stairs. He declared that he went with Antonio to the police station but did not see the latter sign a complaint.

All the foregoing representations or, more accurately, misrepresentations are unavailing. The intent to provide appellant with an alibi is too apparent, but the inefficacy of such efforts is likewise too evident. As the trial court trenchantly observed in its decision in refutation thereof:

x x x The said version of alibi does not deserve credence. P02 Gonzales testified that he arrested Leopoldo Ilao on February 8, 1995 on the complaints of rape of his daughter Jonalyn by Ruby Ilao and that he even placed the identifying mark "2-7-95" on the latter's brief (Exhibit E) to refer to the date the crime complained of was allegedly committed. Gonzales particularly declared that when he invited Ilao on February 8, 1995 to go to the police headquarters because of the complaint of his wife, he asked him what happened on February 7 and the latter answered that he did not remember anything he did on that day. Furthermore, the accused and his witnesses did not present any police records to support their claim that Antonio Ilao had filed a complaint against the accused on February 7, 1995 resulting in his arrest on that day.[19]

After the trial, the lower court rendered a decision, which as earlier mentioned, convicted appellant of raping the eleven-year old Jonalyn, with the crime being qualified by the minority of the latter and her relationship to appellant, and sentenced him pursuant to the provisions of Republic Act No. 7659 amending 335 of the Revised Penal Code.

As his lone assignment of error, appellant rebukes the trial court for finding him guilty of the crime charged despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt.[20]

Although we withhold reliance from the testimony of the victim herself, for the reasons hereinbefore stated, we conclude after a thorough and intensive review that the prosecution was able to establish beyond reasonable doubt the rape committed by appellant on the 11-year old Jonalyn, through the credible testimony of Jovelyn corroborated by the medical conclusions of the expert witness for the prosecution.

Notwithstanding her tender age, Jovelyn was able to give a detailed and vivid account of what she witnessed on the night of February 7, 1995. She candidly and guilelessly answered the questions propounded to her at the trial of this case. Her simple, direct and positive answers denote candor and sincerity. As we have held, a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[21]

With the illumination yielded by the single light bulb[22] inside their house, it is highly credible that Jovelyn was able to distinctly observe what occurred inside the hut and positively identify Jonalyn's attacker. Her credibility was further enhanced by the fact that she testified on intimate matters that she would not have known of by reason of her tender years, and she could testify thereto only because she actually saw the same.

It should be noted that appellant never objected to or in questioned Jovelyn's competency to take the witness stand during trial. However, in support of his assignment of error, he now challenges the credibility of this principal witness of the prosecution.

Appellant doubts Jovelyn's statement that she saw his and Jonalyn's sexual organs since, in her own statement, she said she only saw the sides of her father's and sister's bodies. He also argues that if Jovelyn had really seen their sexual act, she should have stated in open court that his father parted her sister's legs and should have noted some movement on appellant's part.

We see nothing implausible in Jovelyn's declaration that she saw the reproductive organ of appellant and Jonalyn when she peeped through the hole in the wall. It was clearly explained by Jovelyn that from the place where she was standing and peeking, she saw the private parts of her Ate Jovelyn and father.[23] From her point of observation, Jovelyn could certainly have a clear view of the genital organs of her father and sister.

Moreover, Jovelyn did not state in her testimony that she only saw the sides of her father's and sister's bodies. What Jovelyn stated on the witness stand was that she was able to observe her father and sister from their sides, which refers to the direction from where she viewed them. Jovelyn also spelled out that, in relation to the feet and head of her father, it was her father's body which was closest to the hole which she was peeping through.[24]

There was no need for Jovelyn to declare that appellant made any movement or spread Jonalyn's legs in order to show that appellant had sexual intercourse with Jonalyn. The corresponding exertion or action on appellant's part can be deduced from Jovelyn's declaration that she witnessed her father do to Jonalyn what he does to her mother.[25] Besides, Jovelyn's categorical assertion that he saw her father's penis over her sister's vagina[26] and Dr. Bautista's finding of a fresh laceration and abrasion on the sexual organ of Jonalyn sufficiently establishes that coitus did take place inside the hut.

Appellant also contends that the charge of rape against him was a mere fabrication of Jovelyn and Ruby in revenge for the beatings they received from him. The admission of Jovelyn that appellant hit her even if she did not do anything wrong,[27] and Ruby's statement that she and appellant always fought,[28] do not prove that Jovelyn and Ruby contrived the rape of Jonalyn to get even with appellant. Their declarations do not imply that they were moved by their desire for vengeance into making up the story of rape. In fact, the witnesses' honesty in admitting their hatred against appellant should be considered in their favor.[29]

While motive, bias or interest of the witness in testifying affects his credibility,[30] the presence of personal motives on the part of a witness to testify in favor of the victim and against the accused should be supported by satisfactory proof in order that his testimony may be considered biased.[31] Appellant failed to discharge this burden to support his hypothetical argument. We are, therefore, not persuaded that Jovelyn and Ruby would falsely accuse appellant of a very grave offense as they would be more interested in securing the conviction of the guilty, thus deterring them from implicating persons other than the culprit.[32]

Jonalyn's detailed testimony, given in a simple, straightforward manner, indicates sincerity in her narration of the facts and may not in the least be considered as concocted.[33] Being an eyewitness, Jovelyn is presumed not to have been impelled by any improper motive and absent any proof from the defense that she had personal motives of her own in testifying against appellant, her testimony is entitled to full faith and credit.[34]

We find it difficult to accept appellant's claim that Ruby filed her complaint out of revenge, knowing as she did that it would expose her daughter, Jonalyn, to humiliation and public curiosity. We have held that a mother would not sacrifice her daughter's honor to give vent to a grudge knowing that such an experience would damage her daughter's life psyche and tar her for life.[35] Ruby could only have been motivated by an honest desire to have

the culprit punished.[36]

Lastly, to disprove the People's case against him, appellant posits in this mandatory review that the bloodstains found on Jonalyn's shirt[37] and undershirt,[38] as well as these discovered on his underwear[39] are inconclusive as to the source thereof because the same were never submitted for analysis.

We agree. The bloodstains on the shirt and undershirt of Jonalyn and on the underwear of appellant do not indubitably link appellant to the crime. The presence of bloodstains on the garments, without further proof that the same are necessarily the by-products of the rape committed on February 7, 1995, and that they are the dried blood of either appellant or Jonalyn, cannot for lack of connecting proof be considered, even as part of circumstantial evidence, in determining appellant's culpability.

The conclusion of the trial court that the bloodstains were indicia of the rape is speculative and conjectural because there is no evidence showing that blood was exuded from appellant or Jonalyn during or after the sexual intercourse in question. With the failure of the prosecution to show that copulation necessarily leads to bleeding and that the stains were Jonalyn's or appellant's dried blood, other circumstances and events cannot be excluded. as the possible sources thereof.

Nonetheless, we deem these putative physical evidence to be dispensable because, despite the failure of the prosecution to confirm the origin of the same, we have already accepted earlier, as we hereby reaffirm, the weight of the positive identification of appellant as Jonalyn's sexual molester through the eyewitness testimony of Jovelyn.

Despite the testimony of Jovelyn, however, but in light of the indictment in this case, only appellant's criminal liability for raping an 11-year old woman was what was established. Such crime of statutory rape is defined in Article 335 of the Revised Penal Code, as amended, and is punishable by reclusion perpetua under the same provision. A mistake was, therefore, committed by the court a quo in imposing the capital punishment on appellant. This error can be traced to the trial court's equally incorrect appreciation and application of the relationship of Jonalyn and appellant as a qualifying circumstance in the case at bar.

We have already pointed out that the special circumstances instituted by Republic Act No. 7659 on December 31, 1993 increasing the penalty for rape to death are in the nature of qualifying, and not aggravating, circumstances.[40] However, to be properly appreciated as a qualifying circumstance, the relationship between appellant and his victim should have been specifically pleaded in the information against appellant as declared in our recently promulgated decision of *People vs. Ramos*. [41]

In that case, which is similar to the present one under review, accused therein was charged with raping a 14-year old woman through force and intimidation employed against the said minor. We held therein that the trial court could not convict accused of qualified rape under the first circumstance introduced by Republic Act No. 7659 because the information made no reference, in any manner, to the qualifying fact of relationship between the accused and his victim, although it was proved during the trial that said accused is the father of the offended.

Analyzing the information filed in the instant case, we find it to be a classic example of an indictment flawed by both a superfluity and a deficiency in allegations. Appellant was accused of raping Jonalyn, who was described therein merely as an eleven year old minor, yet it then superfluously states that the felony was committed by means of force and intimidation, which allegation was even unnecessary in statutory rape. However, the same information did not contain the requisite allegation on the relationship of appellant and Jonalyn, either by specifying that appellant is the father of Jonalyn or that Jonalyn is the daughter of appellant. Even the criminal complaints[42] filed by Ruby fails to indicate appellant and Jonalyn's relationship.

Adopting our pronouncements in *People vs. Ramos*, we perforce have to rule that appellant can only be convicted of simple statutory rape and cannot be held liable for qualified rape for want of the allegation of relationship in the present information. Even if relationship was duly proved during the trial, still such proof cannot be considered to convict appellant of qualified rape and to consequently impose on him the death penalty since he would thereby be denied his constitutional and statutory right to be informed of the nature and the cause of accusation against him.[43]

To emphasize such substantial and procedural irregularity in simple terms of dialectics, to charge appellant with rape in one of its simple forms and then try and convict him of rape in one of its qualified forms would be a prosecution which leads to a trial and conviction without a valid accusation.

We repeat, therefore, that the attendant circumstances introduced by, Republic Act No.7659 must be specifically pleaded in an information for rape in order that the same may correctly qualify the crime and to justify the penalty prescribed by the law.[44] If it is the prosecution's goal to have appellant adjudged guilty of raping his minor daughter, such conviction is not possible under the wordings of the information herein. With the failure of the information to state the qualifying circumstance of relationship between appellant and Jonalyn, the death penalty cannot be imposed upon appellant, just as in *People vs. Ramos*.

After determining that a corresponding modification and reduction of the penalty of death imposed upon appellant by the trial court is in order and called for, we now dwell on the civil liability of appellant.

While we have already set an award of P75,000.00 as indemnity to victims of rape,[45] we decline in this particular case, increase the P50,000.00 awarded to Jonalyn by the lower court. An award of compensatory damages in the sum of P75,000.00 is justified when the crime of rape is committed or effectively qualified by, any of the circumstances under which the death penalty is authorized by law.[46] Sans an allegation in the information as to the relationship of appellant and Jonalyn, we maintain the lower court's award of P50,000.00 as compensatory damages to Jonalyn.

Still on appellant's civil liability, appellant must, nonetheless pay an additional sum for moral damages to his victims in accordance with this Court's pronouncement in *People vs. Prades*,[47] without the need of further proof. And, since the relationship between appellant and Jonalyn was adequately proved, we treat such fact as a generic aggravating circumstance without violating appellant's right to be priorly informed thereof.[48] With the presence then of one aggravating circumstance and the establishment of Jonalyn's entitlement to compensatory and moral damages, appellant is also liable for exemplary damages.[49]

Before we end, it must be clarified and reemphasized that the aggravating circumstance of relationship which we here appreciate against appellant cannot affect the indivisible penalty of reclusion perpetua imposable upon him as provided in our general criminal law[50] and should be served for the duration prescribed therefor.

WHEREFORE, the judgement of the lower court convicting accused-appellant Leopoldo Ilao y Maraga of qualified rape is MODIFIED in the sense that appellant is declared guilty of simple rape and is hereby sentenced to suffer the penalty of reclusion perpetua, as well as to additionally pay Jonalyn Ilao the sum of P50,000.00, as and by way of moral damages, and P25,000.00, as and for exemplary damages, with costs against accused-appellant in all instances.

SO ORDERED

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

Narvasa, C.J., and Mendoza, JJ. on official leave.

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- [1] Rollo, 37-45.
- [2] Presided over by Judge Flordelis Ozaeta Navarro.
- [3] TSN, June 26, 1995, 2-11; June 17, 1996, 2; August 19, 1996, 2-6; Exhibit A, Original Record, 2.
- [4] Ibid., July 24, 1995, 2-19. She is named in the transcripts as Jocelyn Ilao.
- [5] Exhibit D.
- [6] Exhibit B.
- [7] TSN, July. 17, 1995, 2-9; Exhibit F, Original Record, 4.
- [8] Ibid., July 10, 1995, 4-7.
- [9] Exhibit E.
- [10] TSN, July 3, 1995, 3-12; November 23, 1995, 2-5.
- [11] Exhibit C, Original Record, 5.
- [12] TSN, July 31, 1995, 3-10.
- [13] Original Record, 15.
- [14] Ibid., 23.
- [15] TSN, July 15, 1996, 3-10; August 26, 1996, 2.
- [16] Ibid., July 22, 1996, 2-5; July 29, 1996, 2-4; August 26, 1996, 3.16
- [17] Ibid., September 5, 1996, 2-8.
- [18] Ibid., September 23, 1996, 2-5.
- [19] Original Record, 191-192; see also TSN, July 17, 1995, 3, 6-7.
- [20] Appellant's Brief, 1; Rollo, 63.
- [21] People vs. Nuestro, G.R. No. 111288, January 19, 1995, 240 SCRA 221.
- [22] TSN, June 26, 1995., 5, July 24, 1995, 17.
- [23] TSN, July 24, 1995, 7.
- [24] Ibid., id., 16.
- [25] Ibid., id., 15.
- [26] Ibid., id., 8.
- [27] Ibid., id., 13.
- [28] Ibid., June 26, 1995, 9.
- [29] People vs. Ramos, et al., G.R. No. 110600, August 7, 1996, 260 SCRA 402.
- [30] People vs. Cabiling, et al., G.R. No. L-38091, December 17, 1976, 74 SCRA 285.

- [31] *People vs. Renegado*, G.R. No. L-27031, May 31, 1974, 57 SCRA 275.
- [32] *People vs. Cabiles, et al.*, G.R. No. 113785, September 14, 1995, 248 SCRA 207.
- [33] *People vs. Daquipil, et al.*, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314.
- [34] *Esteban, et al. vs. Court of Appeals, et al.*, G.R. No. 101671, February 9, 1993, 218 SCRA 757.
- [35] See *People vs. Cura*, G.R. No. 112529, January 18, 1995, 240 SCRA 234.
- [36] See *People vs. Tabao*, G.R. NO. 111290, January 30, 1995, 240 SCRA 758.
- [37] Exhibit D-2 and D-3.
- [38] Exhibit B-1.
- [39] Exhibit E-2.
- [40] *People vs. Garcia*, G.R. No. 120093, November 6, 1997.
- [41] G.R. No. 129439, September 25, 1998.
- [42] Original Record, I-A.
- [43] *People vs. Ramos*, *supra*, Fn.41.
- [44] *Id.*, *id.*
- [45] *People vs. Victor*, G.R. No. 127903, July 9, 1998.
- [46] *Id.*, *id.*
- [47] G.R. No. 127569, July 30, 1998.
- [48] *People vs. Ramos*, *supra*, Fn. 41.
- [49] *Id.*, *id.*
- [50] Article 63, Revised Penal Code.

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