

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY CORTES Y CABALLERO, ACCUSED-APPELLANT.

G.R. No. 129693. January 24, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court for automatic review is the Decision[1] of the Regional Trial Court of Masbate, Branch 46, in Criminal Case No. 7978, convicting the accused-appellant, Rudy Cortes y Caballero, of the crime of rape committed against Analiza Germina y Banculo, sentencing him to suffer the supreme penalty of death, and disposing thus:

"WHEREFORE, the Court finds the accused Rudy Cortes y Caballero guilty beyond reasonable doubt of the crime of rape defined under Art. 335 of the Revised Penal Code with three (3) attendant aggravating circumstances a crime penalized under R.A. No. 2632 and R.A. No. 411, and hereby imposes to the accused the supreme penalty of DEATH and to indemnify the victim, Analiza Germina, the sum of P50,000.00 as moral damages, and to pay the costs.

SO ORDERED."[2]

Filed on January 16, 1996, the Information charging the accused-appellant with the crime of rape, alleges:

"That on or about September 29, 1995, at about 12:00 o'clock midnight, at Sitio Balik-Balik [sic], Barangay Poblacion, Municipality of Baleno, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with Analiza Germina y Banculo against her will and consent.

CONTRARY TO LAW."[3]

The inculpatory facts and circumstances complained of can be culled as follows:

The private Complainant, Analiza Germina y Banculo, seventeen years old (17), was the lone occupant of her parents' house at Sitio Balik-Balik [sic], Poblacion, Baleno, Masbate, as she was studying in the nearby Baleno High School. Her parents were then staying in another house at Barangay Batuila, Baleno, Masbate.[4]

At around midnight of September 22, 1995, Analiza was suddenly awakened by a heavy weight pressing down upon her.[5] Since the house was lighted, she recognized her attacker, Rudy Cortes y Caballero, who is her brother-in-law. Accused-appellant pointed a knife at her throat and covered her mouth with a handkerchief.[6]

Despite Analiza's struggle to free herself, the accused-appellant succeeded in removing her underpants.[7] With his one hand poking a knife near her throat, and the other holding her hand, he positioned his legs on top of the legs of Analiza and forcibly inserted his penis into her vagina even as the latter felt a strange onslaught of pain.[8] After consummating his crime, accused-appellant warned Analiza to keep the incident to herself or he would kill her; wielding his knife to signify the threat.[9]

On November 12, 1995, Analiza had gathered enough courage to report the incident to her mother such that on November 17, 1995, she was brought to Dra. Marilou A. Hernandez for medical examination.[10] The pertinent portion of the medical report dated November 11, 1995, stated:

"hymenal healed laceration at 6:00 o'clock position Vaginal os admits two fingers with ease."[11]

Accused-appellant interposed alibi as a defense. He declared that in the night of September 29, 1995, he was inside his house in Sog-ong, Baleno, Masbate. According to him, the victim had a misunderstanding with her older sister, Elsa Cortes, (his wife) because they advised the victim not to allow her boyfriend to sleep in their parents' house in Balic-Balic.[12] This version of accused-appellant was corroborated by his wife Elsa Cortes, who testified that from 6:00 o'clock in the evening of September 29, 1995 until the following morning, accused-appellant was in their house. Elsa likewise confirmed the alleged misunderstanding between her and Analiza.[13]

On April 28, 1997, the trial court came out with the judgment of conviction under automatic review. The defense contends that:

I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

II

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE VICTIM IN THE AMOUNT OF P50,000.00 AS MORAL DAMAGES AND TO PAY THE COSTS.[14]

It is doctrinal that the evaluation by the trial court of the testimony of a witness is accorded with highest respect because the trial court had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying and therefore, competent to determine whether or not the witness is telling the truth.[15] In the case under scrutiny, the trial court gave credence to the testimony of the rape victim, ratiocinating thus:

"The victim in testifying how the crime of rape was committed against her was straightforward and direct on the material facts which has all the earmarks of truthfulness"[16]

Indeed, the victim's truthfulness can be gleaned unerringly from her testimony, to wit:

"xxx

Q While you were sleeping on that date September 29, 1995 at about 12 midnight inside your house, will you tell us if something unusual happened?

A I was awakened when somebody was on top of my stomach and he was pointing a knife at my throat and he covered my mouth with a handkerchief ... and he removed already my shorts and panty.

Q What did you do when you realized that somebody was on was already removing your shorts?

A I struggled.

Q How did you struggle?

A I tried to wiggle.

Q Did you shout for help?

A I could not shout because my mouth was covered with a handkerchief.

Q Were you able to recognize that person?

A Yes, sir.

Q Who is that person?

A That one (witness pointed to somebody inside the courtroom)

Q You pointed to somebody inside the courtroom, will you tell us the name of that person you have just pointed, if you know?

A Rudy Cortes.

xxx

Q Alright, going back to the sexual assault against you, what happened next after you said you struggled when you realized that he was sexually molesting you?

A I cannot do anything because he was stronger.

Q What happened when you failed in your struggle to resist the sexual assault of Rudy Cortes?

A His sexual organ penetrated in (sic) my sexual organ.

Q How many times?

A Only once.

Q After Rudy Cortes succeeded in molesting you sexually, what happened next?

A He walked away and he told me that if I will tell my parents of what he did to me he will kill me.

Q He was still holding that knife?

A Yes, sir.

Q What kind of bladed weapon was that?

A It was a knife, I don't know how long is it (sic).

Q Did you sustain injury on your throat when a knife was poked at you by Rudy Cortes?

A None, sir.

xxx xxxx xxx

xxx xxx xxx

Q What did you feel when the sex organ of Rudy Cortes penetrated your sex organ?

A I felt pain.

Q Was it the first time that you experienced that?

A Yes, sir.

xxx xxx xxx"[17]

Even on cross examination, the probings of the defense failed to disturb the firm and straightforward testimony of

the victim:

"xxx xxx xxx

Q When you woke up you were still in your evening wear or with your clothes on?

A Yes, sir.

Q These were not taken away by the alleged assailant?

A He was not able to take off my t-shirt.

Q How about your shorts?

A He took off my shorts.

Q Did you try to assist him in taking out your shorts?

A No, sir.

Q How did he take off your shorts without your assistance?

A While he was pointing the knife at me that was the time he took off my shorts.

Q Where was the knife pointed at?

A At my throat.

Q Was your throat lacerated at all?

A No, sir.

Q So the knife was not placed so near your throat, it was at a distance?

A Very near.

Q How about your hands, where were your hands situated all along?

A While I was aslept, (sic) my hands were on my chest and when I woke up I pushed him.

Q Did you push him hard?

A Yes, sir.

Q So because you pushed him hard you were able to stand up?

A No, sir.

Q Why not?

A Because I cannot overcome because he is stronger as a man.

Q Because you cannot push him by the use of your hands, what did you do with your hands while he was raping you?

A I used my hands by pushing him.

Q You continued to push him until after the incident?

A Yes, sir.

Q How were you able to know that the sex organ of the assailant entered your sex organ?

A Because it was painful.

Q It was only painful so you presumed that the sex organ of the assailant entered your sex organ?

A Yes, sir.

Q Are you sure it was not the fingers of the assailant which entered your sex organ?

A No, sir.

Q How could you be so sure?

A Because his one hand was pointing a knife at me and I was very sure that his sex organ was the one that penetrated my sex organ.

Q What was he doing with his free hand?

A He was holding my other hand.

Q How did he open your legs when he was preoccupied with his hands?

A His two legs were at the top of my legs.

Q How many minutes was the assailant on top of you?

A One hour.

Q From 12 midnight to 1:00 o'clock in the morning?

A Yes, sir.

Q You were talking to each other, whispering with each other so that it took you one hour?

A No, sir.

Q He was lying on top of you for one hour with a knife pointing at your neck?

A At first he was on top of me and until one hour that he raped me ... It took one hour from the time he was on top of me until he was able to rape me.

Q So, from the time that he was on top of you it was approximately one hour up to the time he went away?

A It was one hour.

Q Considering the time that the assailant was on top of you, was he kissing you?

A No, sir.

Q How about you, did you kiss him?

A No, sir.

xxx xxx xxx

Q Did he tell you anything?

A Yes, sir.

Q What did he tell you?

A That if I will tell my father he will kill me.

Q I am asking you while he was on top of you?

A Yes, sir.

Q What?

A That if I will tell my father he will kill me.

Q What did you tell him in return?

A I did not tell him anything.

Q He just laid down ... He just laid on top of you for approximately one hour he did not do anything else?

A There was, he raped me.

Q After one hour he just left?

A Yes, sir.

Q What did you do when he stood up?

A I kept on crying.

xxx xxx xxx"[18]

The testimony of the rape victim was reinforced by the findings of Dra. Marilou A. Hernandez, who opined that the healed laceration at 6:00 o'clock position on the victim's hymen could have been caused by sexual intercourse.[19]

Against the tale of Analiza, accused-appellant put up alibi as a defense. Time-honored is the rule that alibi is inherently weak and easily contrived.[20] Accused-appellant must therefore prove with clear and convincing evidence that it was physically impossible for him to be at the place and approximate time of commission of the felony,[21] which quantum of proof he failed to come forward with.

The house of accused-appellant is approximately three kilometers from the locus criminis, a distance which could be negotiated in less than an hour hike.[22] It was not then physically impossible for accused-appellant to leave and after raping Analiza, to return to his house without his wife noticing his brief absence.

What is more, the defense of alibi cannot prevail over the positive testimony of the prosecution witness and her clear identification of accused-appellant as the perpetrator of the crime.[23] In the case under scrutiny, since accused-appellant was positively identified by the rape victim, his defense of alibi cannot prevail.

Accused-appellant theorized that the lower court did not consider infirmities in the testimony of Analiza which should have warranted his acquittal. He argued[24] that it was highly improbable for him (accused-appellant) to have been on top of the victim for one long hour before he was able to consummate the rape.

The Court discerns no basis for deviating from the settled rule that testimonies of rape victims who are young and immature are credible.[25] Inconsistencies in their testimonies on minor details do not affect the substance of their declaration, veracity and weight of their testimony. As aptly held by the trial court, "Although the length of time might be too long, the precise length of time would be of no moment since it could have been only be an error in her approximation of the length of time." [26] Verily, the length of time during which accused-appellant was on top of the victim is only a minor detail which cannot detract from the fact of rape. It could simply mean that due to the resistance of the victim, it took a long time before accused-appellant succeeded in consummating his crime. So also, the mistake in the calculation of time could have been engendered by the natural fickleness of memory

which tends to strengthen rather than weaken credibility as it erases any suspicion of rehearsed testimony and does not destroy the substance of her testimony.[27] Besides, it is not unlikely that accused-appellant stayed that long on top of the victim considering the apparent impunity which the surrounding circumstances afforded him. It bears stressing that the victim was all alone in her house, not to mention the fact that her mouth was covered by a handkerchief, and her cries could not have possibly caught the attention of the neighbors who, at twelve midnight, were presumably in deep slumber.

Accused-appellant argued further that if the rape was consummated only after an hour, "then he runs the risk of being seen in the house in a very compromising situation considering that it was night time and the victim was alone in the house." [28] In a long line of rape cases, the Court has consistently held that lust is no respecter of time and place, and rape can be and has been committed in even the unlikeliest of places. Venues of rape have been inside a house where there were other occupants, in a room adjacent to where the victim's family members were sleeping or even in a room which the victim shares with the sister of the offender. There is no rule that rape can be committed only in seclusion.[29] With more reason therefore that the aforesaid ruling should be applied in this case. As stressed upon by the Solicitor General, the situation of the victim is practically an open invitation to the criminally deviant, like the accused-appellant who, being the brother-in-law of the victim, knew her isolation.[30] Contrary to the claim of accused-appellant, the time and place of commission of the crime sued upon actually created a very nil chance for him to be caught because the victim was alone in the house and the people in the neighborhood could not be expected to be all awake and roaming around the streets at midnight.

Neither does the Court find convincing the claim of delay on the part of the victim in reporting the sexual assault against her. This Court has consistently held that delay in reporting rape incidents in the face of threats of physical violence, cannot be taken against the victim. A rape victim's action is oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build up a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness.[31] The case of *Analiza* appears to be no exception. The threat of accused-appellant on her life generated fear in her mind which for a period of more than a month cowed her into silence.

No tenability can be fathomed in the supposed ill-motive imputed on the victim by accused-appellant and his wife. It would take more than an advice which allegedly angered the victim for the latter to subject her family to humiliation, and herself to embarrassment and life-long stigma. No woman, especially of tender age, would concoct a story of defloration, allow the examination of her private parts, and thereafter, pervert herself by being subjected to a public trial if she was not motivated solely by the desire to vindicate her honor.[32]

The trial court correctly found that the rape was committed with the use of a deadly weapon and consequently, the imposable penalty therefor is reclusion perpetua to death.[33] Reclusion perpetua and death are indivisible penalties. Article 63 of the Revised Penal Code provides the rules for their application, one of which, pertinent to the case under consideration, is that when in the commission of the crime only one aggravating circumstance was present, the graver penalty is to be imposed.

In the present case, the aggravating circumstances of nocturnity, dwelling and relationship were considered by the lower court. But the aggravating circumstance of nocturnity cannot be appreciated since the evidence does not convincingly show that nighttime was purposely sought by the accused-appellant to ensure its execution.[34]

So also, the aggravating circumstance of relationship cannot be appreciated in this case because relationship,[35] which is a special aggravating circumstance, must be specifically alleged in the Information.[36] Since the prosecution failed to state in the Information that the accused-appellant is the victim's brother-in-law (a relative by affinity within the second civil degree), being the husband of the victim's eldest sister, Elsa Germina, the

aggravating circumstance of relationship cannot be considered to aggravate the penalty of accused -appellant.

On the question of whether or not the aggravating circumstance of dwelling attended the commission of the crime, a ruling in the affirmative has not been reached. Consequently, absent any modifying circumstance, the lesser penalty provided by law should be imposed.

Under prevailing jurisprudence, the victim is entitled to an indemnity ex delicto in the amount of Fifty Thousand (P50,000.00) Pesos, in addition to the P50,000.00 moral damages awarded by the trial court.

WHEREFORE, the judgment of Branch 46 of the Regional Trial Court of Masbate in Criminal Case No. 7987, finding accused-appellant Rudy Cortes y Caballero guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, is **AFFIRMED** with the modification that the penalty of reclusion perpetua is imposed.

Accused-appellant is further sentenced to pay the victim, Analiza Germina y Banculo, the amount of Fifty Thousand (P50,000.00) Pesos, as indemnity ex delicto, apart from moral damages of Fifty Thousand (P50,000.00) Pesos. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Panganiban, J., in the result.

[1] Penned by Judge Narciso G. Bravo.

[2] Decision, Rollo, p. 17.

[3] Original Record (O.R.), p. 1.

[4] Tsn, September 4, 1996, p. 2.

[5] Ibid.

[6] Ibid., pp. 2-3.

[7] Ibid., p. 2.

[8] Ibid., p. 12.

[9] Ibid., p. 4.

[10] Tsn, Sept. 4, 1996, p. 5.

[11] Exhibit "A-2, O.R. p. 36.

[12] Tsn, March 3, 1997, p. 3.

[13] Tsn, March 4, 1997, p. 2.

[14] Appellant's Brief, Rollo, pp. 31 - 32.

[15] People vs. Padilla, January 20, 1999, citing: People vs. Raptus, 198 SCRA 433 (1991)

[16] Decision, Rollo, p. 15.

[17] Tsn, September 4, 1996, pp. 2 - 7.

[18] Ibid., pp. 11 - 13.

[19] Tsn, January 15, 1997, p. 9.

[20] People vs. Oliver, February 11, 1999, citing: People vs. Pareja, 265 SCRA 429, 440; People vs. Balamban, 264 SCRA 619, 631; People vs. Layno, 264 SCRA 558, 574; People vs. Magana, 259 SCRA 380, 391; People vs. Ocsimar, 253 SCRA 689, 695; People vs. Danao, 253 SCRA 146, 153; People vs. Lapuz, 250 SCRA 250, 255.

[21] Ibid., citing: People vs. Villaruel, 261 SCRA 386, 396; People vs. Tazo, 260 SCRA 816, 820; People vs. Ramos, 260 SCRA 402, 410; People vs. Caguioa, Sr., 259 SCRA 403, 408; People vs. Bracamonte, 257 SCRA 380, 392; People vs. Porras, 255 SCRA 514, 526; People vs. Canada, 253 SCRA 277, 286.

[22] Decision, Rollo, p. 16.

[23] People vs. Fuertes, September 29, 1998, 296 SCRA 602, 613, citing: People vs. Obzunar, et al., 265 SCRA 547.

[24] Appellant's Brief, Rollo, p. 35.

[25] People vs. Esquila, 245 SCRA 140, p. 145, citing: People vs. Guibao, 217 SCRA 64 (1993); People vs. Bruca, 179 SCRA 64 (1989); People vs. San Buenaventura, 164 SCRA 150 (1988); People vs. Remoto, 244 SCRA 506 (1995)

[26] Decision, Rollo, p. 14 - 15.

[27] People vs. Esquila, supra, at p. 146, citing: People vs. Cayago, 158 SCRA 586 (1988) and People vs. Aragon, 164 SCRA 78 (1988)

[28] Appellant's Brief, Rollo, p. 35.

[29] People vs. Talaboc, 256 SCRA 441, p. 449 (1996), citing: People vs. Codilla, 224 SCRA 104 (1993); People vs. Guibao, 217 SCRA 64 (1993); People vs. Dabon, 216 SCRA 656 (1992); People vs. De los Reyes, 203 SCRA 707 (1991); People vs. Viray, 164 SCRA 135 (1988)

[30] Brief for the Appellee, Rollo, p. 60.

[31] People vs. Melivo, 253 SCRA 347, p. 356 (1996), citing: People vs. Ibay, 233 SCRA 15; People vs. Lucas, 181 SCRA 316 (1990); People vs. Valdez, 150 SCRA 405 (1987); People vs. Ibal, 143 SCRA 317 (1986); People vs. Sculles, 132 SCRA 653 (1984)

[32] People vs. Bernaldez, 294 SCRA 317, 333, citing: People vs. Derpo, 168 SCRA 447, 457 1988]; People vs. Magpayo, 266 SCRA 13 (1993)

[33] "Art. 335. When and how rape is committed. - x x x

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. x x x" (As amended by R.A. No. 7659).

[34] People vs. Prades, 293 SCRA 411, 429.

[35] Art. 335. When and how rape is committed.

x x x

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

- 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.

x x x (As amended by R.A. No. 7659)

[36] People vs. Ambray, G.R. No. 127177, February 25, 1999.

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