

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MODESTO MAMAC Y CAMINERO, ACCUSED-APPELLANT.

G.R. No. 130332. May 31, 2000

Ponente: PUNO, J.

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PUNO, J.:

In two informations filed with the Regional Trial Court of Davao City, Branch 15,[1] Modesto C. Mamac was accused of raping Bernadette U. Enguito on two separate occasions. The informations were respectively docketed as Criminal Case No. 35,662-95 and Criminal Case No. 35,663-95.

After a joint trial, the trial court found Mamac guilty beyond reasonable doubt on both indictments.[2] Accordingly, it sentenced him as follows:

"WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, Modesto Mamac y Caminero is hereby sentenced as follows:

Crim. Case No. 35,662: To suffer the penalty of reclusion perpetua as the crime was committed in 1991 and the applicable law is the Penal Code, not RA 7659 which became a law only in December 1993 and to indemnify Bernadette (Enguito) into (sic) Forty thousand (P40,000.00) Pesos.

Crim. Case No. 35,663: To be put to death as the crime of rape was committed on August 14, 1995 when RA 7659 was already a law and indemnify Bernadette Enguito Forty thousand (P40,000.00) Pesos.

SO ORDERED.

Davao City, Philippines, April 28, 1997."

Appellant did not contest his conviction in Criminal Case No. 35,662-95. Only Criminal Case No. 35,663-95 is before this Court on automatic review.

The information in Criminal Case No. 35,663-95 dated August 21, 1995 reads:[3]

"That on or about August 16, 1995, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court the above-mentioned accused did then and there wilfully unlawfully and feloniously, by means of intimidation, that is by then and there threatening and intimidating Bernadette Enguito by killing her should she not agree to submit herself to his criminal design and by his moral ascendancy over said Bernadette Enguito, did then and there wilfully, unlawfully and feloniously lie and have carnal knowledge of said Bernadette Enguito against her will and consent.

Contrary to law."

The records reveal that Bernadette[4] was sleeping inside their house located at Toril, Davao City at 9 o'clock in the evening of August 14, 1995 when appellant came and woke her up. To rouse Bernadette from her sleep,

appellant poked her with a long stick while she was lying alongside her brother and sister. When she opened the window to check, Bernadette saw appellant outside brandishing a bolo. Appellant then menacingly ordered Bernadette to go out of the house and brought her towards the Lipada River. Upon reaching the bank of the river, appellant commanded Bernadette to take off her clothes while pointing the bolo at her. Bernadette complied in fear. Then with appellant sticking the bolo at Bernadette's neck, appellant forced himself upon Bernadette despite the latter's resistance and plea. Bernadette was only sixteen (16) years of age at the time of the sexual attack.

Bernadette's mother, Segunda U. Enguito,[5] noticed Bernadette coming back into the house. When Segunda asked Bernadette where she had been, Bernadette answered that she just went out to urinate.

The following day, Bernadette revealed her harrowing experience to her boyfriend. To avoid the perverse advances of appellant, Bernadette and her boyfriend ran away to Butuan City. Segunda followed them and Bernadette disclosed to her mother the depraved acts of appellant. Segunda brought Bernadette back to Toril and accompanied her to the police to file a complaint. In her affidavit[6] filed before the police, Bernadette referred to appellant as her grandfather.

On August 19, 1995, Dr. Uldarico C. Casquejo[7] examined Bernadette and found a healed wound at her vaginal opening. Dr. Casquejo also noted that a vaginal speculum easily penetrated her vagina without any effort. Vaginal smear examination showed the presence of spermatozoa and pus cells.

Appellant pleaded not guilty to the accusation lodged against him.[8] Already 64 years of age at the time of his examination in court, appellant[9] denied having raped Bernadette on August 14, 1995. He stated that at his age, he could no longer have sex with his 48-year old common law wife, more so with a younger woman. During his cross examination, appellant failed to give any reason why Bernadette would file a rape charge against him.

Appellant himself provided the circumstances of his relationship to Bernadette. He said that Segunda is the daughter of his common-law wife with another man. Although Bernadette calls him lolo, appellant declared that he never treated Bernadette as his granddaughter.

In his Brief,[10] appellant asserts that:

"I

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF COMPLAINANT, BERNADETTE ENGUITO; and

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE INSUFFICIENCY OF THE PROSECUTION EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In support of the above contentions, appellant maintains that there is no reason for Bernadette to be cowed into going out of their house by his mere act of stabbing her with a stick as she was very much secure inside the house.

We clarify first that Bernadette categorically stated in open court that she went out of the house because appellant threatened to kill her family.[11] With the display of the bolo and the utterance of foreboding Words by appellant, it is easy to understand why Bernadette left the safety of their house. Fear simply overwhelmed Bernadette. She twice stressed that she was afraid when appellant ordered her to go out of the house.[12]

There is nothing incomprehensible about Bernadette's reaction. We have long recognized that different people

react differently to a given type of situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. One person's spontaneous response may be aggression, while another person's reaction may be cold indifference.[13]

Appellant also attempts to discredit Bernadette by pointing to an inconsistency in her testimony as compared to her mother's narration in court. It is emphasized that Bernadette declared that it was to her boyfriend that she first reported the incident while Segunda stated on the witness stand that it was to her that Bernadette first reported the crime. It is settled that conflict in testimonies of witnesses in describing details of an event may be due to differences in observations and memory which does not necessarily imply falsehood on their part.[14] Such seeming inconsistency does not detract from the main thrust of Bernadette's testimony that she was raped by appellant. An inconsistency which pertains only to minor and trivial details not touching on the why's and wherefore's of the crime strengthens rather than diminishes a witness's credibility as it erases suspicion of a rehearsed testimony.[15]

Be that as it may, we do not agree with the trial court's imposition of the penalty of death upon appellant. It appears that the trial court considered appellant as Bernadette's step-grandfather. On the other hand, the Solicitor General[16] justifies the imposition of the death penalty because of appellant's employment of a deadly weapon to consummate the rape.

The different modes of committing rape and the special circumstances qualifying the offense are laid down in Article 335 of the Revised Penal Code, as amended, viz:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

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

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

1. 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."

Rape with the use of a deadly weapon was introduced in Article 335 by Republic Act No. 4111[17] on June 20, 1964 and the rape of a minor by a relative was introduced by Republic Act No. 7659[18] on December 31, 1993. Both types of rape were recognized as qualified rape in *People vs. Tabugoca*.[19]

A reading of the information will reveal that appellant was only charged with simple rape under the first circumstance provided in Article 335. Unadorned of its auxiliary words, the information accuses appellant of

employing threat and intimidation and of abusing his moral ascendancy over Bernadette to carry out the rape. The information does not contain any allegation of relationship and minority nor the use of a deadly weapon. The information therefore does not charge appellant with qualified rape and he cannot be sentenced to death.

We have held that 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 to warrant imposition of the death penalty.[20] Minority and relationship are treated as special qualifying circumstances and not merely as aggravating circumstances because they increase the imposable penalties by degrees.[21]

Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying aggravating cannot be proved as such unless alleged in the information.[22] It must be properly pleaded in order not to violate the constitutional right of the accused to be properly informed of the nature and cause of accusation against him.[23] Needless to state, appellant will be denied due process if after being charged with simple rape, he is convicted of its qualified form punishable with death.[24]

We hasten to add that appellant is not a step-grandfather of Bernadette. Appellant himself admitted that he co-habited and lived with the maternal grandmother of Bernadette without the benefit of marriage.[25] The word "step", when used as prefix in conjunction with a degree of kinship, is repugnant to blood relationship and is indicative of a relationship by affinity.[26] Since no relationship by affinity can be established between Bernadette and appellant, appellant cannot be considered as the step-grandfather of Bernadette.

At the most, appellant can be described as the common law husband of Bernadette's grandmother. As such, appellant is not 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 Bernadette.[27] In a similar case, we ruled that courts must not bring cases within the provision of a law which are not embraced by it to the end that no person who, is clearly not within the terms of statute can be brought within them.[28] *Expressio unius est exclusio alterius*.

On the other hand, while the employment of a bolo was sufficiently established by the prosecution, such clear showing cannot justify the imposition of the death penalty in the absence of an aggravating circumstance.[29] Appellant's crime is only punishable by reclusion perpetua.

Since appellant should only be punished with reclusion perpetua, we decline to raise the indemnity awarded to Bernadette by the trial court to P75,000.00 as prayed for by the Solicitor General. Such award is only warranted where the crime of rape is qualified by any of the circumstances under which the death penalty is imposed by law.[30] The offended party is entitled to P50,000.00 in accordance with prevailing jurisprudence.[31] She may also be given moral damages without need of proof.[32]

WHEREFORE, the judgment of the court a quo in Criminal Case No. 35,663-95 is **AFFIRMED** with the modification that accused-appellant Modesto Mamac y Caminero is sentenced to suffer reclusion perpetua and to pay the victim, Bernadette Enguito, the additional amount of P50,000.00 by way of moral damages. The amount of P40,000.00 awarded to the victim as indemnity is increased to P50,000.00. Costs against accused-appellant.

SO ORDERED.

Bellosillo, Melo, Vitug, Kapunan, Mendoza, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Davide, Jr., C.J., on official leave.

Panganiban, Quisumbing, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

- [1] Presided over by Judge Jesus V. Quitain.
- [2] Decision, pp. 1-7; Rollo, pp. 14-20.
- [3] Original Record, p. 1.
- [4] TSN, August 22, 1996, pp. 1-11 & November 7, 1996, pp. 21-32 and Exhibit A (Complaint-Affidavit), Original Record, pp. 2-3.
- [5] TSN, December 12, 1996, pp. 33-50.
- [6] Exhibit A, *supra*.
- [7] TSN, September 13, 1996, pp. 12-20 and Exhibit B (Medical Certificate), Original Record, p. 6.
- [8] Original Record, p. 19.
- [9] TSN, February 19, 1997, pp. 51-62.
- [10] Rollo, pp. 62-74.
- [11] TSN, November 7, 1996, p. 30.
- [12] TSN, August 22, 1995, p. 8 and November 7, 1996, p. 29.
- [13] *People vs. Perez*, 296 SCRA 17 (1998)
- [14] *People vs. Briones*, 266 SCRA 675 (1993)
- [15] *People vs. Tan*, 264 SCRA 425 (1996)
- [16] Appellee's Brief, p. 11; Rollo, p. 109.
- [17] An Act to Amend Article Three Hundred and Thirty-Five of the Revised Penal Code.
- [18] An Act to Impose the death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes.

[19] 285 SCRA 312 (1998)

- [20] *People vs. Cantos, Sr.*, 305 SCRA 786 (1999). See also *People vs. Manggasin*, 306 SCRA 228 (1999) and *People vs. Nuñez*, G. R. No. 128875, July 8, 1999.
- [21] *People vs. Ramos*, 296 SCRA 559 (1998)
- [22] *People vs. Dimapilis*, 300 SCRA 279 (1998)
- [23] *People vs. Ambray*, 303 SCRA 697.
- [24] *People vs. Bayya*, G. R. No. 127845, March 10, 2000.
- [25] TSN, February 19, 1997, p. 52.
- [26] *Black's Law Dictionary* 4th Edition, citing *Grossenbacher vs. State*, 197 N.E. 382.
- [27] See *People vs. Atop*, 286 SCRA 157 (1998)
- [28] *Ibid*.

[29] People vs. Padilla, 301 SCRA 265 (1999)

[30] People vs. Ambray, *supra*.

[31] People vs. Salazar, 258 SCRA 55 (1996); People vs. Caballero, 258 SCRA 541 (1996); People vs. Abordo, 258 SCRA 571 (1996)

[32] People vs. Prades, 293 SCRA 411 (1998)

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