

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO POÑADO, ACCUSED-APPELLANT.

G.R. No. 130334. July 28, 1999

Ponente: VITUG, J.

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VITUG, J.:

In the recent case of *People vs. Dimapilis*,^[1] the Court spared a convicted accused from the penalty of death because the information charging him with rape mistakenly alleged the victim to be his stepdaughter. The latter, it turned out later when the evidence came in, was the daughter of one with whom the accused merely had a common-law relationship. Here again, for a like thesis, another convicted felon would cheat the extreme punishment of death.

The accused, Reynaldo Poñado, was charged with three counts of rape under Article 335 of the Revised Penal Code in consonance with the amendatory provisions of Republic Act ("R.A.") No. 7659. The corresponding information read:

In Criminal Case No. 3529 -

"The undersigned Assistant Provincial Prosecutor of Albay, upon written complaint of the offended party, Merinor Bombales, hereby accuses the person of REYNALDO POÑADO of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act 7659, committed as follows, to wit:

"That on September 8, 1996 at about 7:00 o'clock in the evening, at Sitio Tibangray, Brgy. Tinampo, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of his parental authority, through force and intimidation, and with lewd design, did then and there wilfully, unlawfully and criminally had sexual intercourse with his stepdaughter Merinor Bombales, who is of tender age, she being only 13 years old, against her will and consent, to her damage and prejudice."

"ALL ACTS CONTRARY TO LAW."^[2]

In Criminal Case No. 3530 -

"The undersigned Assistant Provincial Prosecutor of Albay, upon written complaint of the offended party, Merinor Bombales, Hereby accuses the person of REYNALDO POÑADO of the crime of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act 7659, committed as follows, to wit:

"That on October 7, 1996 at about 7:00 o'clock in the evening, at Sitio Tibangray, Brgy. Tinampo, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of his parental authority, through force and intimidation, and with lewd design, did then and there wilfully, unlawfully and criminally had sexual intercourse with his stepdaughter Merinor Bombales, who is of tender age, she being only 13 years old, against her will and consent, to her damage and prejudice."

"ALL ACTS CONTRARY TO LAW."[3]

In Criminal Case No. 3531 -

"The undersigned Asst. Provincial Prosecutor of Albay, upon written complaint of the offended party, Merinor Bombales, hereby accuses the person of REYNALDO POÑADO, of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal Code as amended by Republic Act 7659, committed as follows, to wit:

"That on October 8, 1995 at about 7:00 o'clock in the evening at Sitio Tibangray, Brgy. Tinampo, Municipality of Ligao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and criminally had sexual intercourse with his stepdaughter, Merinor Bombales, who is of tender age, she being only 12 years old at that time, against her will and consent, to her damage and prejudice."

"ALL ACTS CONTRARY TO LAW."[4]

At his arraignment on 29 January 1997, the accused pleaded NOT GUILTY to all three charges. Upon agreement of the prosecution and the defense, a joint trial was conducted by the court a quo.

The spouses Marcelino Bombales and Librada Rectin, 43 years old, had four legitimate children, namely, Maria Ana, Danilo, Merinor, and Marlon. Rectin broke up with and separated from her husband in 1985 when their youngest child was barely six months old. About two years later, Librada started living with appellant, bringing with her the four children, initially in Tablon, then in San Vicente, of the town of Oas, Albay. Reynaldo Poñado himself had four children, Victor, Alvin, Hedgi, and Rosalie, begotten with his wife, since deceased. The union between Poñado and Rectin bore three more children, namely Mark, Andrew, and Angelica.

Merinor Bombales, also known as Marilou and a grade six pupil of San Vicente Elementary School, is the complainant in the three criminal cases.

The young Merinor looked up to accused Reynaldo Poñado like a "stepfather" from the time the latter started to care for the family following the separation of her biological father, Marcelino Bombales, from her mother. Narrating the first incident, she testified that at about seven o'clock in the evening of 08 October 1995, she was at home, alone with three-month old Andrew and the accused, studying her lessons for the next school day. Her mother Librada, Marlon and Mark were watching television at a neighbor's house. Ana and Danilo were not in town. Unexpectedly, the accused came in to her room. Without too much ado, he undressed her, made her lie on the bed and then laid on top of her. The accused inserted his penis into her vagina, and there was nothing that she could do about it but cry. She could not shout because the accused covered her mouth. The sexual assault was repeated on 08 September 1996, while she was again alone in the house studying. The accused went into her room, undressed her and made her lie on the bed. He kissed her on the lips and then on the breast down to the vagina until finally taking her. Like before she could only suffer the ordeal in silence. On 07 October 1996, not much different from the two previous occasions, the accused again took the victim in similar fashion. She tried to resist by closing her legs but the accused persisted. He parted her legs, pulled her to the bed and tied her hands and feet with a rope. The accused repeatedly kissed her before entering her.

On 08 October 1996, the day following the third incident, she went to school as usual but this time she spoke to her classmates and her teachers, Mrs. Aquid, Lea Camba and Mrs. Rempillo, about the sexual molestations she had undergone. The group lost no time in relaying the matter to the barangay officials who, in turn, reported the case to the police.

The cross-examination gave additional details on the sexual assaults. Merinor testified that during the 07[th] October 1996 incident, the accused held her by the feet, dragged her through the rough cemented floor with her arms touching the surface and then pushed her hard on the bed. He tied her legs and feet with an abaca rope. In

the incident of 08 September 1996, she said that she had wanted to go with her mother to watch television but her stepfather did not allow her. Merinor admitted that Victor and his brood were staying with the family at San Vicente around 08 October 1995 and 08 September 1996, and that Victor left their residence only sometime after 07 October 1996. The house in San Vicente, according to her, had two rooms one of which she occupied.

Dr. Lea Remonte who conducted a medico-legal examination on Merinor on 08 October 1996 gave a fairly exhaustive report on the result of her medical examination. Thus -

"A medium built individual about 4 ft. and 8 inches tall, weighing 38 kgs., brown complexioned-with above shoulder-length straight hair, clad in white blouse and blue skirt over pink underwear. Patient is conscious, coherent, ambulatory, oriented but most of the time refuses to answer questions.

"Breast: conical, nipples prominent, pinkish in color, surrounded by areola

"Abdomen: flat soft, no visible signs of violence such as hematoma or abrasions

"Genitalia:

"External Examination: Normal external genitalia, nulliparous introitus, absence of pubic hair over mons pubis.

"- labia minora slightly projecting beyond the labia majora

"- clitoris noted, pinkish in color

"Internal Examination:

"- Hymen not intact, presence of superficial laceration at 10'clock position

"- two fingers inserted with ease

"- presence of whitish fluid with milk-like consistency coming out of the vaginal canal

"- absence of blood upon withdrawal of examining finger

"Obstetrical and Gynecological History:

"Menarche - at 13 years old date: June 9, 1996

"Subsequent menses regular, occurring every month.

"Last Menstrual Period - September 29, 1996 to October 5, 1996."[5]

In her testimony, Dr. Remonte explained that the "labia minora slightly projecting beyond the labia majora" could have been caused by the passage of clotted menstrual blood, by sexual intercourse or by heavy physical exercise. The presence of a hymenal superficial laceration at a 1 o'clock position and the admission with ease of two fingers when inserted in Merinor's vagina would display a condition consistent with a woman who could have had sexual intercourse. She noted the presence of milk-like fluid coming out of the vaginal canal and upon close examination proved to be "artifacts or debris" not found in the normal discharge of a woman. No spermatozoa, however, nor signs of violence, like hematoma or scratches on the body of Merinor, were noted.

The accused denied having raped Merinor. He asserted that he was not at home, but in Bacong, Ligao, Albay, during the early evening of 08 October 1995 working with one Celedonio Repeque in fixing the leaking roof of the latter's house. On 08 September 1996, although he was at home that night, he said he could not have raped Merinor since the whole family was there at the time. He gave the same reason to dispute the rape allegedly committed on 07 October 1996. The victim's story, he asseverated, was only concocted and it was really Merinor's

own brother, Danilo, who had raped her.

Artemio Poñado, father of the accused, declared that he had been staying with his son, Nanding (Reynaldo Poñado), in 1993, 1995 and 1996 and on five occasions, he had chanced upon Danilo and Merinor apparently having an illicit affair. On cross-examination, he said that he had failed, however, to tell his son about it due to illness.

Hadji Poñado, a son of the accused by his deceased wife, testifying for his father, stated that Merinor was like a sister to him although he had known her to be an unfortunate flirt. He intimated that Danilo and Merinor could have been having an illicit relationship. When asked on cross examination why he had thought Merinor to be a flirt, he did not answer but, pressed about it, he explained that Meray was "chasing all the children there." [6]

Assessing the evidence respectively adduced by the prosecution and the defense, the trial court gave this concluding disquisition:

"After a careful scrutiny of the evidence adduced the Court finds there is not an iota of doubt that the accused Reynaldo Poñado sexually ravished his 14-year old stepdaughter Merinor or Marilou Bombales on three (3) occasions as charged in the three (3) separated informations. It is said that when a woman says she had been raped in effect says all that is necessary to constitute the commission of the offense. This is because human experience tells us, no woman would concoct a story of defloration and allow herself to be subjected to a public trial, if she was not motivated solely by the desire to have the culprit apprehended and punished.

"With the innocence and naivety of a barrio lass, talking sometimes inaudibly with tears in her eyes head bowed, Marilou or Merinor, as she is more popularly called, narrated how from 1993 to 1996 she was abused by her own stepfather, Reynaldo Poñado. In a candid and straightforward manner Merinor described how in October 1995 when almost everybody in their house was out watching TV at their neighbor's house except for 3-month old brother Andrew who was a sleeping, the accused sexually attacked her by covering her mouth she could not shout. Marilou testified that her stepfather again sexually attacked her on September 8 and October 7 both in the same year of 1996 when both her mother, Librada, and brother, Danilo, were in Manila, at 7:00 in the evening when everybody in the house was [a]sleep and all she could do, as her stepfather laid on top of her and satisfied his lust, was cry and cry because her mouth was covered. When on the night of October 7, 1996 again the accused wanted to satisfy his bestial desire, Merinor tried to resist by closing her legs but her stepfather pushed her and pulled her to bed and tied both her hands and feet with an abaca rope and then laid on top of her again and parted her legs." [7]

Whereupon, the trial court held the accused guilty beyond reasonable doubt of the crime of rape and ultimately disposed of the case; thus:

"WHEREFORE, in view of the foregoing consideration and finding the accused guilty beyond any reasonable doubt of the crime of rape committed against his 14-year old common-law daughter Marilou or Merinor Bombales, the Court hereby sentences Reynaldo Poñado:

"1. In Criminal Case No. 3529 to suffer the penalty of DEATH; and

"2. In Criminal Case No. 3530 to suffer the penalty of DEATH; and

"3. In Criminal Case No. 3531 to suffer the penalty of DEATH.

"The accused is hereby ordered likewise to indemnify the offended party in the amount of P150,000.00 and to pay the costs.

"And may God have mercy on his soul.

"SO ORDERED." [8]

With the imposition by the trial court of the death penalty, the records were elevated to this Court for automatic review conformably with Republic Act No. 7659.

Appellant submits that -

"I

"THE TRIAL COURT (HAS) ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF RAPE ON 3 COUNTS.

"II

"THE TRIAL COURT (HAS) ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED CONSIDERING THAT THE DEATH PENALTY LAW VIOLATES THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION." [9]

The Court affirms the judgment of conviction.

A careful scrutiny and evaluation of the evidence satisfies the Court that the guilt of appellant has indeed been established beyond reasonable doubt. The young Merinor, who has subjected herself to the rigors of a public trial, allowed herself and her family to suffer humiliation, and agreed to testify in court and thereby relive the outrageous deed done to her, did give a most convincing account of her harrowing experience. Her testimony of the sexual abuse, committed by a person whom she has treated like a second father, is most straightforward and forthright. The Court likewise sees no cogent reason to discard the assessment made by the trial court on Merinor's credibility. Her testimony -

"Q. Now, while studying your lesson in the evening of October 8, 1995, what happened?

"A. He entered my room.

"Q. Who entered your room?

"A. My stepfather.

"Q. Will you please mention again the name of your stepfather?

"A.

Reynaldo Poñado.

"Q. The person whom you had just pointed a while ago?

"A. Yes, sir.

"Q. When Reynaldo Poñado entered your room while you were studying, what did he do in the room?

"A.

He undressed me and made me lie on the bed.

"Q. After the accused made you lie on the bed, what else did he do?

"A. He laid on top of me.

"Q. After lying on top of you, what did the accused do?

"A. He placed his penis, he inserted his penis into my vagina.

"Q. What did you do when your stepfather had his penis entered into your vagina?

"A. I just cried and cried. I could not shout because he covered my mouth.

"Q.

Who were the persons inside the house at that time while your stepfather inserted his penis into your vagina?

"ATTY. MACASINAG:

"It is leading. There was no testimony given by the witness that there were other persons inside the house.

"COURT:

"Allowed.

"WITNESS:

"A. No one except myself.

"PROSECUTOR:

"Q.

Where was your mother at that time?

"WITNESS:

"A. Watching TV.

"Q. Where?

"A. Neighbor.

"Q. How about your full-blood brothers and sister?

"COURT:

"There is no qualification. You will be objected to again because you are using full-blood. You have to establish. The Court wonders why you did not ask.

"PROSECUTOR:

"Q. Where was Ana at that time?

"WITNESS:

"A. She was then in Manila

"Q. What was she doing then in Manila at that time ?

"A. Working.

"Q. How about your brother Marlon, where was he at that time?

"A. He was also watching TV.

"Q. How about this Danilo?

"A. In Manila.

"Q. Where was Andrew at that time?

"A.

Sleeping.

"Q. How old was Andrew at that time?

"A. Around three (3) months old.

"Q. How about Mark, where was he at that time?

"A. Also watching TV.

"Q. How old was Mark at that time, on October 8, 1995, if you know?

"A. About eight (8) years old.

"Q. On September 8, 1996 at about 7:00 o'clock in the evening, where were you at that time?

"A. In my house.

"Q. In your house. Were you alone in your house at that time?

"A. During that time I was in the house studying also.

"Q.

That is why, were you alone at that time?

"A. Yes, sir.

"Q. Now, what happened while you were studying at that time?

"A.

My stepfather got inside the room again.

"Q. What did he do in your room?

"a. Again he undressed me.

"Q. After undressing you, what did he do?

"A. He made me lie on the bed.

"Q. And then, what happened next?

"A. He kissed me on my lips.

"Q. Where else?

"A. Here. (Witness pointed from her chest down)

"Q. And after kissing your lips, and the sensitive parts of your body, what else did he do if any?

"A. He inserted his penis into my vagina.

"Q. Now, while your stepfather was doing the carnal act, what did you do if any?

"ATTY. MACASINAG:

"That is not carnal act, it is only kissing.

"COURT:

"He inserted his penis.

"WITNESS:

"A. I just cried and cried again. I could not shout because he covered my mouth.

"PROSECUTOR:

"Q. Aside from covering your mouth, what else did he do?

"WITNESS:

"A. He again kissed my breast and also my vagina."[10]

The denial of the accused, sought to be corroborated, rather vainly, by his father, Artemio Poñado, and son, Hadji, or Hedgi, is nothing really but a self-serving statement, and it is no match compared to the testimony of the victim who has recounted in good detail the ordeal suffered by her in the hands of appellant.[11] The attempt to point the accusing finger on Merinor's own brother Danilo is unfortunate but, even if true cannot erase appellant's own liability. The argument that rape cannot be committed in a house where other members of the family reside or may be found around is a contention of time and place.[12] The initial reluctance and hesitation of a rape victim to come forward and report the sexual abuse against her, pointed out by appellant, is itself a natural reaction, and nothing less can be expected, like here, of a victim yet in her tender age. This phenomenon appears even more particularly true when the malefactor is a relative of, or has a close personal attachment to, the victim.[13]

From the evidence, it should be quite evident that young Merinor was cowed into submission and, even if strong physical force was not employed against her, the influence and ascendancy of the accused would suffice to make out the crime of rape.[14]

This Court, in *People vs. Echegaray*, [15] has extensively deliberated on the constitutionality of Republic Act No. 7659, and the Court, with its present membership, is not disposed to re-examine at this point its ruling on the

matter. In any case, as so hereinafter discussed, the penalty of death imposed by the court a quo is considered in this instance to be flowed.

The applicable law is Section 11 of Republic Act No. 7659, which amended Article 335 of the Revised Penal Code, and it reads:

"SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

"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 punishable 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.

'When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

'When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

'When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

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

'1. 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.

'2. when the victim is under the custody of the police or military authorities.

'3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

'4. when the victim is a religious or a child below seven (7) years old.

'5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

'6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

'7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

The defense, in its Reply Brief, aptly points out, that in all three informations the victim has been stated to be the stepdaughter of the accused; yet, the evidence would indubitably show that Reynaldo Poñado is but a "live-in partner" of the victim's mother, the latter being, in fact, lawfully married to one Marcelino Bombales.

In *People vs. Dimapilis*,^[16] the Court explained:

"x x x. This Court has successively ruled^[17] that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659, the attendance of any which mandates the single indivisible penalty of death

instead of the standard penalty of reclusion perpetua to death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying aggravating cannot be proved as such unless alleged,[18] a qualifying aggravating cannot be proved as such unless alleged in the information although it may be proved as a generic aggravating circumstance if so included among those enumerated in the Code.[19] Obviously, the technical flaw[20] committed by the prosecution in this instance is a matter that cannot be ignored, and it constrains the Court to reduce the penalty of death imposed by the trial court to that of reclusion perpetua."

Just recently the Court, in *People vs. Nuñez*, [21] has had occasion to give counsel on the matter. Thus -

"Taking into account the growing number of cases where qualified rape under Section 11 of R.A. 7659, although proven during trial, could still not be properly penalized because of defects in the Information, We urge the prosecuting fiscals who are charged with the responsibility of preparing Informations to state with particularity the attendant circumstances provided for under Section 11 of R.A. 7659. More specifically, in qualified rape, both the fact of minority of the victim and the actual relationship between the parties, as worded in R.A. 7659, must be alleged in the Information. Otherwise, We shall continue to fail both the law and the victims whom the law have sought to protect."

Given the circumstances in the case at bar, the imposable penalty is reclusion perpetua. The failure to allege accurately the relationship between appellant and his victim in the information bars his conviction in its qualified form that is punishable with death.[22] The death sentence meted out by the court a quo must, forthwith, be reduced.

As regards the civil indemnity, this Court has to date consistently ruled that if, in the crime of rape, the death penalty is imposed, the indemnity ex delicto for the victim should be in the amount of P75,000.00; if the death penalty is not decreed by the Court, the victim would instead be entitled to P50,000.00. An Additional award of P50,000.00 by way of moral damages is awarded in favor of a victim who suffers that injury.[23]

WHEREFORE, the decision of the RTC, 5th Judicial Region, Branch 13, Ligao, Albay in Criminal Case No. 3529, No. 3530, and No. 3531 finding the accused Reynaldo Poñado guilty beyond reasonable doubt of rape, on three counts, is **AFFIRMED**, with the **MODIFICATION** that the sentence is reduced in each case from **DEATH** to **Reclusion Perpetua**. The civil indemnity of P150,000.00 awarded by the trial court for the three counts of rape, is **AFFIRMED**; in addition, an amount of P50,000.00 for moral damages is hereby awarded.

SO ORDERED.

Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Qusumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, J., on leave.

[1] G.R. No. 128619-21, 17 December 1998.

[2] Rollo, p. 8.

[3] Rollo, p. 9.

[4] Rollo, p. 10.

[5] Records, p. 4.

[6] TSN, pp. 15-16, 11 March 1997.

[7] Rollo, p. 28.

- [8] Rollo, p. 31.
- [9] Rollo, p. 63.
- [10] TSN, Merinor Bombales, 13 February 1997, pp. 8-11.
- [11] People vs. Guibao, 217 SCRA 64.
- [12] People vs. Alimon, 257 SCRA 658; People vs. Dones, 254 SCRA 696.
- [13] People vs. Abad, 268 SCRA 246.
- [14] People vs. Bugarin, 273 SCRA 384; People vs. Rabosa, 273 SCRA 142.
- [15] G.R. No. 117472, 07 February 1997.
- [16] G.R. No. 128619-21, 17 December 1998.
- [17] People vs. Ilao, G.R. No. 129529, 29 September 1998; People vs. Ramos, G.R. No. 129439, 25 September 1998; People vs. Garcia, 281 SCRA 463.
- [18] People vs. Godinez, 106 Phil. 597; People vs. Butler, 120 SCRA 281.
- [19] People vs. Guba, 42 SCRA 109; People vs. Lacao, 60 SCRA 89.
- [20] United States vs. Campo, 23 Phil. 369; People vs. Borbano, 76 Phil. 702; People vs. Jovellano, 56 SCRA 156; People vs. Cantre, 186 SCRA 76; People vs. Buka, 205 SCRA 567, People vs. Vergara, 221 SCRA 611, People vs. Rodico, 249 SCRA 309.
- [21] G.R. No. 128875, 08 July 1999.
- [22] People vs. Dimapilis, G.R. No. 128619-21, 17 December 1998; People vs. Omar Medina, G.R. No. 126575, 11 December 1998.
- [23] People vs. Prades, 293 SCRA 411.

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