

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALIWANG BUMIDANG, ACCUSED-APPELLANT.

G.R. No. 130630. December 04, 2000

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PER CURIAM:

Accused-appellant Baliwang Bumidang (hereafter BALIWANG) was charged before the Regional Trial Court of Bayombong, Nueva Vizcaya, with the crime of rape in an information[1] the accusatory portion of which reads as follows:

That on or about September 29, 1996, in the Municipality of Villaverde, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of superior strength, and by means of force, violence, threat and intimidation and with the use of spear, did then and there wilfully, unlawfully and have carnal knowledge of Gloria Imbat y Bumatay against her will, to the damage and prejudice of said Gloria Imbat y Bumatay.

CONTRARY TO LAW.

The information was docketed as Criminal Case No. 3170 and was assigned to Branch 27 of the court.

The prosecution of the case was commenced with the filing on 8 October 1996 of a complaint for rape with the Municipal Circuit Trial Court (MCTC) of Villaverde-Quezon, Nueva Vizcaya. After appropriate proceedings, the MCTC, having found a prima facie case against BALIWANG, forwarded the records of the case to the Office of the Provincial Prosecutor.[2]

At the arraignment[3] on 14 May 1997 BALIWANG entered a plea of not guilty and thereafter trial ensued.

On 2 June 1997 at around 2:30 a.m., BALIWANG escaped from jail. By reason thereof, the trial court issued an order to proceed with the trial of the case in absentia.[4]

After trial on the merits, the trial court rendered a decision[5] on 10 July 1997, the dispositive portion of which reads as follows:

WHEREFORE, finding the accused GUILTY of rape with the use of a deadly weapon under Art. 335 of the Revised Penal Code, accused Baliwang Bumidang is hereby sentenced to death by lethal injection and to pay the victim the sum of P30,000.00.

SO ORDERED.[6]

The evidence in chief for the prosecution consisted mainly of the testimonies of Gloria Imbat, the offended party (hereafter Gloria); Melencio Imbat y Reyes, father of Gloria; and Dr. Elpidio Quines, Municipal Health Officer of the Municipality of Villaverde, Nueva Vizcaya.

Since BALIWANG had escaped and has remained at large, the defense did not present any evidence.

The facts of the case are aptly summarized by the trial court in its decision which is herein quoted verbatim:

On September 29, 1996, at around 2:00 a.m. while father and daughter, namely, Melencio and Gloria Imbat, were already asleep in their house, the accused Baliwang Bumidang y Baohan aged 19 years and half-naked, loudly called Melencio Imbat and asked the latter to open the door. Melencio was aroused from his sleep and he opened the door downstairs because Bumidang threatened to kill them if the door was not opened. Accused Bumidang entered and asked the old man to bring him upstairs. While they were upstairs, Bumidang asked him where he was sleeping. When Melencio indicated that he slept at the place where they were, Bumidang got a spear at the side of his (Melencio's) bed. Pointing the weapon at him in a threatening manner, the accused ordered him to lie in a prone position which he obeyed because he was afraid. Then Bumidang asked the room of his unmarried daughter, Gloria, aged 56. Melencio, 80 years old, pointed the room of his daughter which was in the same room but separated by an aparador. Bumidang went to Gloria's room, still carrying the spear. Suddenly, Gloria screamed for help, but the octogenarian remained in a prone position as Bumidang threatened to kill him if he would help his daughter. Bumidang, a betel nut-chewing man, approached Gloria and poked the spear at her. She recognized him because he was lighting the room with a flashlight. The accused ordered her to stand up and removed her pajama, with the panty going along with it. While the accused was removing her clothes, she sat and struggled. Bumidang then removed his shortpants and became completely naked. He used the flashlight to examine her genital. He placed the spear beside her and whenever she attempted to move, he would point the spear at her. The accused then went on top of her, inserted his penis into her pudenda. At this instant, Gloria shouted to her father but the accused pointed the spear at her, and told her, "can you see this?" The accused then made a pumping motion. After he was sated, having satisfied his lust, the accused held her breast and kissed her lips. After resting on top of her, he went to the door and left. Melencio helplessly saw the accused on top of her daughter but he could not move because he was too afraid and weak. He did not see how the accused consummated his beastly desire because he was too ashamed to look at what he was doing to her daughter. Before the accused left, he made the following threat: "If you will report to the authorities, I will come back and kill all of you." Gloria then put on her dress. She was trembling. So she went to her father and slept with him as she was afraid to be alone. She did not immediately report the incident in the morning because they were afraid of the threat. She reported her ordeal to Kagawad Rodolfo Pontillan who handed a note to be given to the authorities (security). The accused was immediately arrested. Gloria submitted herself to the examination of Dr. Quines on October 1, 1996. Dr. Quines conducted a vaginal examination which is an internal examination of the vagina. When the physician introduced his index finger, severe pain was suffered by Gloria. This was due to the laceration of the hymen at 6:00 o'clock. No spermatozoa was [sic] obtained. The laceration was about 3 to 5 days old at the time of the examination.[7]

The trial court appreciated against BALIWANG the aggravating circumstances of (a) dwelling, because the crime was committed inside the house of the victim; (b) nighttime, because the sexual assault was perpetrated at about 2:00 a.m. to facilitate the commission of the offense; and (c) ignominy, because he used his flashlight to examine Gloria's vagina and raped her in the presence of her old father, thereby making its effects more humiliating.

The trial court then concluded that since the crime was committed with a deadly weapon, the prescribed penalty therefor under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659,[8] is reclusion perpetua to death, and considering the presence of three aggravating circumstances, the greater penalty of death should be imposed pursuant to Article 63 of the same Code.

Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659, the record of the case was forwarded to this Court for automatic review.

In the Brief for the Appellant, BALIWANG submits that the trial court erred in

- ...CONVICTING [HIM] DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
- ...HOLDING THAT THE AGGRAVATING CIRCUMSTANCE OF DWELLING, NIGHTTIME AND

IGNOMINY ATTENDED THE COMMISSION OF THE CRIME.

BALIWANG contends that the declarations of complainant Gloria and of her father Melencio were inaccurate and of doubtful veracity. Specifically, the allegations in their sworn statements dated 3 October 1996 that: (1) they allowed BALIWANG to enter their house in order to forestall the latter from making good his warning of setting their house on fire; (2) Gloria was awake when BALIWANG made his threats; and (3) Gloria had identified BALIWANG through his voice; which are different from or inconsistent with their testimonies during the trial. Such being the case, the trial court should not have given credit to their testimonies in court.

BALIWANG further argues that the imposition of the death penalty is without factual and legal basis. The aggravating circumstances of dwelling, nighttime and ignominy were absent in the instant case. The fact that the alleged crime was committed inside the house of Gloria cannot be considered as an aggravating circumstance because the prosecution has failed to show clearly that BALIWANG committed the crime with the intention to violate the sanctity of Gloria's abode. There was no showing that BALIWANG purposely sought the cover of darkness or that nocturnity facilitated the commission of the crime. The fact that BALIWANG shouted and used a flashlight thereby revealing his identity to the victim negated the presence of nighttime as an aggravating circumstance. Ignominy was not present since the alleged examination of Gloria's private parts by BALIWANG did not in any manner make the effects of the crime more humiliating and disgraceful.

In the Appellee's Brief the Office of the Solicitor General (OSG) asserts that BALIWANG's criminal complicity was established beyond reasonable doubt through Gloria's testimony of her sordid experience which was corroborated by her father's declaration that he witnessed BALIWANG heap his sexual depravity on Gloria, and Dr. Quines' opinion that the fresh lacerations on Gloria's hymen may have been caused by an erect penis. Furthermore, BALIWANG's unexplained flight erased whatever doubt there may be on his guilt. The inconsistencies in the sworn declarations of the prosecution witnesses vis-a-vis their testimonies in open court did not diminish their credibility for the following reasons: firstly, during the trial, prosecution witnesses Gloria and Melencio were not confronted with the alleged inconsistencies, pursuant to Section 13, Rule 132, Revised Rules of Court, in order to afford them an adequate opportunity to explain the discrepancies; secondly, the sworn statements or affidavits which are usually taken ex parte do not truly reflect the state of mind of the declarant and are often inaccurate and incomplete; and, lastly, the inconsistencies pointed to by the defense refer only to minor details, which all the more strengthen the value of the testimonies of the witnesses.

The OSG argues that the trial court did not err in holding that dwelling, nighttime and ignominy were present in the instant case. That BALIWANG committed the crime of rape inside the house of Gloria, without the latter giving provocation, was sufficient to support a finding of the presence of the aggravating circumstance of dwelling. It was not necessary to show that BALIWANG entered the dwelling of the offended party with the intention to commit the crime thereat. The circumstance of nighttime was conclusively established by the fact that nocturnity allowed BALIWANG to perpetrate his dastardly deed with impunity thereby facilitating the commission of the crime. Ignominy should also be considered because BALIWANG by his acts of examining the genital of GLORIA and raping her in the presence of her father made the effects of the crime more humiliating and outrageous.

Finally, the OSG stresses that the severity of the offense committed justifies an award of P75,000 to the victim as civil indemnity pursuant to current case law.

After a careful and thorough review of the record of the case and of the transcripts of the testimonies of the witnesses for the prosecution, the Court finds no acceptable reason to reverse the judgment of the trial court.

It is this Court's common observation drawn from judicial experience that in most rape cases the criminal

responsibility of the offender almost always depends on the declaration of the complainant considering that the crime of rape is not usually committed in the presence of witnesses.[9] Like in many other rape cases, the guilt or innocence of the accused depends to a large extent on the truthfulness of the offended party's testimony. It is therefore axiomatic in rape cases that the testimony of the offended party be subjected to a careful scrutiny. This particular case is not an exception. In ascertaining whether to believe the version of the prosecution or that of the defense, this Court calls to mind the well-entrenched principle that the conclusion of the trial court as regards the assessment of the credibility of witnesses is generally viewed as correct and is accorded the highest respect considering that it is in a better position to discern and weigh the conflicting testimonies of the witnesses during trial. There are exceptions to this rule, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which if considered would affect the result of the case.[10] None of the exceptions is present in this case.

Gloria was clear, categorical and convincing when she testified on how she was sexually ravaged by BALIWANG. She declared:

Q:

Do you recall where you were in the evening morning of September 29, 1996 at around 2:00 o'clock?

A:

Yes, sir.

Q:

Where were you?

A:

I was in our house sleeping, sir.

Q:

Were you alone?

A:

We were two with my father, sir.

Q:

While you were sleeping on that time and date, what happened?

A:

I felt the accused went near me, sir.

Q:

How did you come to know that it was the accused who went near you?

A:

He had a flashlight and I recognized him, sir.

x x x

Q:

What transpired next after Baliwang Bumidang was already at that place where you were then sleeping?

A:

He went near me and suddenly he poked the spear to me and ordered me to stand up, sir.

Q:

What else happened when you were ordered to stand?

A:

Upon standing he immediately removed my pajama and that my panty went with it, sir.

Q:

What did you do while the accused was removing your pajama including the panty?

A:

I sat and struggled, sir.

Q:

What did the accused Bumidang do while you were already sitting and struggling?

A:

He removed his pants. He got his flashlight and used it in examining my genital, sir.

Q:

Where was the spear while he was examining your private parts?

A:

He placed it at my side and if I would move he would point the spear at me, sir.

Q:

What did the accused do after he removed his pants as you have stated?

A:

He went on top of me and inserted his penis into my vagina, sir.

Q:

What did you do when the accused was on top of you inserting his penis?

A:

I called my father but he said (referring to the accused) can you see this? (referring to the spear).

Q:

What was your purpose in calling your father?

A:

I do not know because after inserting his penis to my vagina I said, "Amang."

Q:

After the accused inserted his penis into your vagina, what else did he do next?

A:

He made a pumping motion, sir.

Q:

For how long had he been doing that?

A:

I did not count and I was not in my right mind at that time, sir.

Q:

After the pumping, what did he do?

A:

He held my breast and kissed my lips, sir.

Q:

After that, what transpired next?

A:

He rested on top of me and then went down, sir.

Q:

Where did he go if he went somewhere?

A:

He proceeded towards the door and left, sir.[11]

On the basis of the foregoing narration of events, the Court sees no material flaw sufficient to discredit Gloria's testimony which the trial court found convincing enough and which remains unrebutted by the defense. Surely, nothing can be more credible and persuasive than the testimony of the defiled woman and her old father who were one in spirit in fighting for truth and justice to prevail.

There is no merit in the argument of BALIWANG that the trial court should not have given credence to the testimonies of Gloria and her father as they were allegedly fraught with inconsistencies. The argument is anchored on the alleged disparity between their testimonies given in open court and their statements in their affidavits. However, the alleged inconsistencies are too minor to affect the credibility of Gloria and Melencio. Settled is the rule that discrepancies or inconsistencies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty. Such inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the witness because they erase any suspicion of rehearsed testimony.[12] Likewise, BALIWANG cannot capitalize on the alleged flaws in the affidavits. Being taken ex parte, affidavits are generally considered to be inferior to the testimony given in open court, are almost always incomplete and often inaccurate, sometimes from partial suggestion or for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.[13]

We shall now dissect the trial court's appreciation of the aggravating circumstances of dwelling, nighttime and ignominy.

The trial court correctly appreciated the aggravating circumstance of dwelling.[14] There was a clear violation of the sanctity of the victim's place of abode when Gloria, who apparently did not give any provocation, was raped in her own house. Dwelling is considered an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode.[15]

Nighttime is an aggravating circumstance[16] when (1) it is especially sought by the offender; (2) it is taken advantage of by him; or (3) it facilitates the commission of the crime by ensuring the offender's immunity from capture.[17] In this case, other than the fact that the crime was committed at about 2:00 o'clock in the morning, nothing on the record suggests that BALIWANG deliberately availed himself or took advantage of nighttime nor proved that BALIWANG used the darkness to facilitate his evil design or to conceal his identity.

The aggravating circumstance of ignominy[18] shall be taken into account if means are employed or circumstances brought about which add ignominy to the natural effects of the offense; or if the crime was committed in a manner that tends to make its effects more humiliating to the victim, that is, add to her moral

suffering.[19] It was established that BALIWANG used the flashlight and examined the genital of Gloria before he ravished her. He committed his bestial deed in the presence of Gloria's old father. These facts clearly show that BALIWANG deliberately wanted to further humiliate Gloria, thereby aggravating and compounding her moral sufferings. Ignominy was appreciated in a case where a woman was raped in the presence of her betrothed,[20] or of her husband,[21] or was made to exhibit to the rapists her complete nakedness before they raped her.[22]

The crime of rape is defined and penalized under Article 335 of the Revised Penal Code, as amended. In the case at bar, the prosecution established that BALIWANG committed the crime charged with the use of a deadly weapon, i.e., with a spear. Accordingly, pursuant to the 3rd paragraph of Article 335, of the Revised Penal Code, as amended, a rape committed with the use of a deadly weapon is punishable by reclusion perpetua to death. The aggravating circumstances of dwelling and ignominy having been duly proven, the greater penalty of death shall be imposed, applying Article 63, paragraph 2, no. 1, Revised Penal Code, which provides that when an aggravating circumstance is present in the commission of an offense, the penalty for which is composed of two indivisible penalties, the greater penalty should be imposed.

The Court finds it fitting to award Gloria the sum of P20,000 as exemplary damages since the crime was committed with at least one aggravating circumstance, pursuant to Article 2230 of the Civil Code. Likewise, it is appropriate to award Gloria an amount of P50,000 by way of moral damages even in the absence of proof therefore in accordance with the ruling in *People v. Prades*.^[23] Lastly, the civil indemnity of P30,000 awarded by the trial court is hereby increased to P75,000 pursuant to the policy enunciated in recent case law.^[24]

WHEREFORE, the 10 July 1997 decision of the Regional Trial Court, Branch 27, of Bayombong, Nueva Vizcaya, in Criminal Case No. 3170 finding accused-appellant BALIWANG BUMIDANG guilty of rape with the use of a deadly weapon and sentencing him to suffer the penalty of death is hereby AFFIRMED, subject to the MODIFICATION that accused-appellant is hereby ordered to pay the victim Gloria Imbat, the sums of P75,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the certified true copies of the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

Cost de oficio.

SO ORDERED.

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

[1] Original Record (OR), 30.

[2] OR, 25-26.

[3] Id., 35.

[4] Id., 43.

[5] Id., 59-62; Rollo, 11-14. Per Judge Jose B. Rosales.

[6] Id., 62; Rollo, 14.

[7] OR, 59-61; Rollo, 11-13.

[8] An Act Imposing 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.

[9] *People v. Matrimonio*, 215 SCRA 613, 628 [1992].

[10] *People v. Teves*, 310 SCRA 788, 797 [1999]; *People v. Patriarca*, G.R. No. 132748, 24 November 1999; *People v. Jimmy Antolin a.k.a. James Alonzo*, G.R. No. 133880, 12 April 2000.

[11] TSN, 11 June 1997, 2-4.

[12] *People v. Cristobal*, 252 SCRA 507, 516-517 [1996]; *People v. Diaz*, 262 SCRA 723, 732 [1996].

[13] *People v. Patilan*, 197 SCRA 354, 367 [1991]; *People v. Marcelo*, 223 SCRA 24, 36 [1993]; *People v. Conde*, 252 SCRA 681, 690 [1996].

[14] Article 14 (3), Revised Penal Code.

[15] *People v. Fabon*, G.R. No. 133226, 16 March 2000; *People v. Sapinoso and Recreo*, G.R. No. 122540, 22 March 2000.

[16] Article 14(6), Revised Penal Code.

[17] *People v. Lomerio*, G.R. NO. 129074, 28 February 2000; *People v. Espina*, G.R. No. 123102, 29 February 2000.

[18] Article 14(17), Revised Penal Code.

[19] *People v. Jose*, 37 SCRA 450, 476 [1971]; *People v. Velez Diaz*, G.R. No. 130210, 8 December 1999; *People v. Alfanta*, G.R. No. 125633, 9 December 1999; *People v. Valla*, G.R. No. 111285, 24 January 2000.

[20] *U.S. v. Casañas, et al.*, 5 Phil. 377-378 [1905].

[21] *U.S. v. Iglesia, and Valdez*, 21 Phil. 55 [1911]; *People v. Adlawan*, 83 Phil. 194 [1949].

[22] *People v. Jose*, 37 SCRA 450, 476 [1971].

[23] *People v. Prades*, 293 SCRA 411.

[24] *Id.*

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