PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR PAILANCO, ACCUSED-APPELLANT.

G.R. No. 130986. January 20, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

It is a well entrenched principle in our jurisprudence that a qualifying circumstance must be expressly alleged in the criminal complaint or information; otherwise, it is to be considered as an ordinary aggravating circumstance which merely raises the penalty to be imposed in its maximum period.

For automatic review is the decision of the Regional Trial Court of Parañaque, Metro Manila, Branch 259 in Criminal Cases Nos. 96-787 and 96-788, finding accused-appellant Victor Pailanco guilty beyond reasonable doubt of two (2) counts of rape committed against his daughter, Nonily Pailanco, on August 10 and 24, 1996, and sentencing him to suffer the supreme penalty of death for each count of rape.[1]

Accused-appellant Victor Pailanco is married to Editha Perez. The couple owns a two-room house in 001 Jerusalem Street, Sitio Nazareth, San Isidro, San Antonio Valley 2, Parañaque, Metro Manila. They have five (5) children, complainant Nonily being the second from the eldest. In 1992, accused-appellant started having an affair with another woman. Two years later, Editha packed her belongings and relocated to Nueva Ecija. She brought with her all her children except Nonily and their eldest child, Victoria, who were left behind in Parañaque. Victoria later left home to live in with a lover, leaving Nonily alone in the care of their father.

On August 10, 1996, at about 5:30 o'clock in the morning, 14-year old Nonily was roused from her sleep inside her room when she felt somebody fondling her breasts. Nonily tried to evade the wandering hands, and was aghast to find out that her molester was her own father. Despite her pleas, her father continued to fondle her and proceeded to kiss her. When the bewildered girl continued to struggle, accused-appellant boxed her arms and legs.[2] He then undressed her hastily, took off his own clothes and succeeded in having sexual intercourse with her. She was wracked with pain inasmuch as she was a virgin[3] and he was of strong build.

After the sexual assault, Nonily went back to sleep. When she went to the bathroom the next morning, she noticed that her underwear was stained with blood.

On August 24, 1996, at around 1:00 o'clock in the morning, Nonily was again sexually molested by accused-appellant. She was kissed, embraced, undressed and then ravished by accused-appellant as before. Nonily could only succumb to the lustful demands of her father inasmuch as he threatened her with a bolo at that time.[4] An hour after the sexual assault, Nonily went to the bathroom to clean herself. On her way to the bathroom, she saw "Kuya Tawi," the son of her father's compadre, in the living room. Kuya Tawi, who was seated in the sala which was located near the bedroom where the complainant was raped, apparently had an inkling as to what had earlier happened because he asked her how many times she had been abused by accused-appellant. Complainant, however, felt embarrassed by the question and feigned ignorance.[5] The next morning, upon being asked the same question again by her Kuya Tawi, she took courage and confessed that she had been twice abused by

accused-appellant.[6]

On the same day, Kuya Tawi brought her to Las Piñas to see a member of the Sangunniang Kabataan named Jennifer Arce. At first, Jennifer advised Nonily to report the incident to the barangay where she resided. Nonily, however, was hesitant since accused-appellant knew a number of people in their barangay. Consequently, Jennifer decided to accompany Nonily to the police station where she was asked to execute a sworn affidavit.[7] Accused-appellant was then invited by the police for questioning while Nonily submitted herself for medical examination at the Medico-Legal Division of the National Bureau of Investigation (NBI).

The medical examination conducted on complainant revealed the following findings:

> GENITAL EXAMINATION:
>
> Pubic hair, fully grown, abundant. Labia majora and minora coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, tall, thick, intact, distensible. Hymenal orifice admits a tube 2.5 cms. in diameter with moderate resistance. Vaginal walls, tight. Rugosities prominent.
>
> CONCLUSIONS:
>
> 1). No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
>
> 2). Hymen, intact but distensible and its orifice wide (2.5 cms. in diameter) as to allow complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury.[8]

On August 27, 1996 two separate informations for rape were filed against accused-appellant. Thus:

> That on or about the 10th day of August 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Nonily Pailanco against her will and consent.
>
> CONTRARY TO LAW.[9]

and

> That on or about the 24th day of August 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Nonily Pailanco against her will and consent.
>
> CONTRARY TO LAW.[10]

Accused-appellant pleaded not guilty to both charges upon arraignment.[11] The cases were then consolidated and tried jointly. Accused-appellant testified that he is married to Editha Perez, the mother of complainant. They have three sons and two daughters, complainant being the second child. In 1994, after the couple had a slight misunderstanding, Editha decided to relocate to Nueva Ecija together with their three boys. The two girls were left behind to continue their studies. Accused-appellant claimed that Nonily was a stubborn girl who spent most of the time with her "barkadas." Worried that she might follow in the footsteps of her sister who left home in the early part of 1996 to live in with her lover because she became pregnant, accused-appellant tried to be more strict with Nonily but to no avail. In June of 1996, Nonily left home to live with her friends.[12] After that time, he rarely saw his two daughters. He was thus surprised to learn that Nonily filed a complaint against him for two counts of rape. He claimed he was all alone sleeping in his room in Parañaque during the early morning hours of August 10 and 24, 1996 and stated that he could not think of any reason why his daughter could impute such a

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grave offense against him.[13]

The trial court gave no credence to accused-appellant's testimony, and on September 30, 1997 rendered a decision, finding accused-appellant Victor Pailanco, guilty beyond reasonable doubt of two counts of rape committed against his daughter Nonily Pailanco, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, finding accused Victor Pailanco GUILTY BEYOND REASONABLE DOUBT for the crime of rape for two (2) counts and defined and penalized under Article 355 of the Revised Penal Code as amended by Section 11 of RA 7659, this Court hereby sentences him to each count of the penalty of DEATH and to suffer the accessory penalties provided by law specifically Art. 40 of the Revised Penal Code. For the civil liability he is further condemned to indemnify the victim the amount of P50,000.00 in each of the two crimes or a total of P100,000.00 in line with the existing jurisprudence; P50,000.00 moral damages or a total of P100,000.00; and P50,000.00 as exemplary damages for each crime or a total of P100,000.00.
>
> The Clerk of Court of this Court is directed to prepare the Mittimus for the immediate transfer of accused Victor Pailanco from the Parañaque Municipal Jail to the Bureau of Corrections in Muntinlupa City and finally to forward all the records of these cases to the Supreme Court for automatic review in accordance with Section 9 Rule 122 of the Rules of Court and Art. 47 of the Revised Penal Code as amended by Section 22 of Republic Act No. 7659.
>
> SO ORDERED.[14]

Accused-appellant contends that the trial court erred in convicting him based on the inconsistent and incredible testimony of complainant Nonily Pailanco. He avers that complainant's testimony is full of inconsistencies as to merit any credence. For instance, while Nonily testified that her brothers were sleeping in their house in Parañaque on August 10, 1996,[15] she later declared that she was alone with accused-appellant when she was first raped in the early morning of that date.[16] Accused-appellant also pointed out that while complainant said that at 2:00 o'clock in the morning of August 24, 1996, a certain Kuya Tawi tried to ask her if she was being abused by her father, she later testified that Kuya Tawi talked to her at 7:00 o'clock in the morning of August 24, 1996. Accused-appellant insists that these inconsistencies in the statements of the complainant are fatal for the prosecution.

We do not agree.

The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[17] As to the alleged inconsistency in the statement of the complainant that her brothers were living in their house in Parañaque on August 10, 1996, she explained that she misunderstood the question propounded to her by the defense counsel. Hence:

> Q:
>
> Nonily, sabi mo na noong August 10 ay natutulog sila yung mga kapatid mo doon sa kuwarto ninyo habang ikaw ay hinahalay ng iyong ama. Pagkatapos ay binago mo and iyong statement na wala na sila doon at sila ay nandoon sa Nueva Ecija. Ang tanong ko sa iyo ay isang importanteng sitwasyon and naganap noong ikaw ay hinahalay noong araw na iyon. Bakit ka nagkamali sa parteng iyon?
>
> A:
>
> Akala ko po kasi 1995.
>
> Q:
>
> 1996 ngayon?

A:

Last year po. Akala ko po, 1995.

Q:

Pero di ba ang tanong noon ay noong gabing hinalay ka? Sabi mo na nandoon ang mga kapatid mo ng gabing iyon at natutulog din doon at binago mo sa sunod na tanong ng taga-usig at sinabi mo na wala pala sila doon at nasa Nueva Ecija pala sila noon . Ang tanong, bakit iyong napakaimportanteng araw na nangyari sa iyo na sinabi mo na ikaw ay hinalay ng tatay mo, bakit ka nagkamali?

A:

Ang pagkakaalam ko pong tanong ay 1995.

Q:

Hinalay ka ba ng 1995?

A:

Hindi po. Bale po, wala po talaga sila noon at wala pong lahat ng kapatid ko ako ang naiwan dahil nag-aaral pa po ako noon.[18]

Complainant's confusion as regards the question propounded to her was understandable considering that before the counsel for the prosecution inquired as to the whereabouts of her siblings at the time the first incident of rape occurred, the line of questioning was as follows:

Q:

Since 1994, your mother already left your house here in Parañaque and proceed (sic) to Nueva Ecija, is that correct?

A:

Yes, sir.

Q:

And from then on, your mother never came back here in Parañaque?

A:

Nag-aabot na lang po siya ng panggastos.

Q:

When was the last time she went here in Parañaque?

A:

Every Christmas, sir.

Q:

What year?

A:

1995.

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Q:

What about 1996? Did your mother came back (sic) here in Parañaque?

A:

Yes, sir.

Q:

When?

A:

January.

Q:

After that, where did she go?

A:

Bumalik na siya sa Nueva Ecija.

Q:

What about in August 1996, where was your mother at that time?

A:

At Nueva Ecija, sir.

Q:

Together with your brothers and sisters?

A:

Yes, sir.

Q:

How many?

A:

I have one sister and two brothers.

Q:

Do you know where did your brothers and sisters on August 1996 (sic)?

A:

Opo, sa bahay po namin kung saan ako nakatira.

Q:

Noong August 1996 kung saan ka nakatira?

A:

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Opo, dahil nag-aaral pa po sila.[19]

Having been asked where her mother was in 1995 and then in 1996, Nonily was probably confused when she was also asked as to the whereabouts of her siblings during those years. It might not be amiss to note that even before she was cross-examined, Nonily corrected herself and clarified that her brothers were in Nueva Ecija at the time she was first raped by her father. Thus:

Fiscal Ramolete:

You made mention that you were sleeping together with your brothers and sisters and you also stated that your father was on top of you for half an hour, did you notice that your brother was able to wake?

Nonily:

Wala po pala sila noon dahil nasa Nueva Ecija po sila.

Q:

You mean to say that your brothers and sisters were not there on August 10, 1996 , they were in Nueva Ecija?

A:

Yes, sir.

Q:

Are you sure?

A:

Yes, sir.

Q:

We are referring to August of 1996.

A:

Yes, sir.[20]

During cross-examination, Nonily repeated her testimony that her brothers were with their mother in Nueva Ecija on August 10, 1996 at the time the incident happened.

Q:

Noong August 10, 1996 , kayo lang ang nandoon sa kuwarto at wala ang mga kapatid mo?

A:

Opo.

Q:

Dahil nandoon sila sa Nueva Ecija?

A:

Opo.

Q:

Dahil doon sila nag-aaral?

A:

Opo.

Q:

Dahil hiwalay na sila noon ?

A:

Opo.[21]

Accused-appellant, however, maintains that complainant again contradicted her own testimony that Kuya Tawi talked to her at around 2:00 a.m. of August 24, 1996 because she later said that she talked to her Kuya Tawi at 7:00 o'clock in the morning of August 24, 1996. We find no contradiction in complainant's testimony. Records reveal that complainant testified that at 2:00 o'clock in the morning of August 24, 1996, an hour after her father raped her, she went to the bathroom with the intention of cleaning herself. On her way to the bathroom, she met Kuya Tawi who tried to ask her if her father abused her. Embarrassed, complainant feigned ignorance and did not bother to answer her Kuya Tawi's inquiry.[22] The next morning, upon waking up, Kuya Tawi asked her once more if she was being abused by her father. On the second inquiry, complainant decided to confess that she had been abused by her father twice. Complainant explained that she did not want to reveal her ordeal to her Kuya Tawi at first because she was ashamed.[23] She later changed her mind and decided to reveal her sad ordeal to Kuya Tawi.

Accused-appellant points out that complainant contradicted herself when she said during cross-examination that she woke up at 2:00 o'clock in the afternoon of August 24, 1996, and not 2:00 o'clock in the morning. We find, however, complainant to be steadfast in her declaration that she got up from the bed and went to the bathroom at 2:00 in the morning of August 24, 1996, an hour after she was sexually assaulted. When she testified that she woke up at 2:00 o'clock in the afternoon, she had just been subjected to lengthy direct and cross-examination. Thus, it is understandable that complainant may have been tired and confused then. Unfortunately, at the time of the trial, her Kuya Tawi, who could have clarified this point, had gone abroad to work. In any case, whether complainant meant 2:00 o'clock in the morning or afternoon is but a minor inconsistency which tends to bolster rather than weaken her testimony. We find that complainant's testimony was not contrived. We cannot expect a rape victim to remember every ugly detail of the outrage.[24]

Moreover, the medical examination conducted on complainant buttressed her testimony that she was raped. Dr. Armie Soreta Umil, NBI Medico Legal Officer, testified that although complainant's hymen was intact, it was distensible, meaning it was fleshy and elastic, and its orifice of 2.5 cms. in diameter was wide so as to allow complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury.[25]

Accused-appellant's testimony, on the other hand, is laden with inconsistencies to merit credence. Although he first testified that he had been living alone in his house since the end of May 1996,[26] he subsequently changed his testimony and claimed that his two daughters left home in the latter part of June.[27] Although he testified that his eldest daughter, Victoria, moved out when she got pregnant to live with her lover, he later testified that both his daughters left home when he hit Victoria. Accused-appellant's version as to when the two girls left is, in fact, confusing. While he testified that both of his daughters left their residence when he got violent with Victoria before August 1996,[28] he also testified that as of August 1996, he warned Nonily not to be so careless as to also get pregnant and give him additional headache, implying that Nonily had not really left home after all.[29]

Significantly, accused-appellant himself could find no reason why complainant would impute to him so grave a crime as rape. This lack of motive on the part of the complainant to impute such serious offense to her own father can only serve to militate against accused-appellant's claim of innocence. It is settled that a candid narration by a victim of rape can bear the earmarks of credibility particularly where no motive is attributed to the rape victim that would make her testify falsely against the accused.[30] Verily, it is difficult to believe that a 14 year old would spin a sordid tale of defloration against her own father, brave the rigors of public trial and expose her family to humiliation were she not so motivated by an earnest desire to bring her molester to justice.

Be that as it may, the supreme penalty of death cannot be imposed upon accused-appellant for the two counts of rape committed against his daughter because the two (2) informations filed against him failed to state his relationship with the complainant as well as the latter's age. Under Section 11 of Republic Act No. 7659 which amended Article 335 of the Revised Penal Code, the death penalty shall 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 or victim.

- When the victim is under the custody of the police or military authorities.

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

- When the victim is a religious or a child below seven (7) years old.

- When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

- hen by reason or on occasion of the rape, the victim has suffered permanent physical mutilation.

We have consistently held that these seven attendant circumstances are in the nature of special qualifying circumstances. Unlike generic aggravating circumstances which may be appreciated and proved even if not alleged, special qualifying circumstances cannot be considered as such unless so alleged in the information even if proved.[31] The special qualifying circumstances increase the penalties by degrees in contrast with aggravating circumstances which affect only the period of penalty but do not increase it to a higher degree.

We have already emphasized in the case of People vs. Ramos[32] that to effectively prosecute an accused for the crime of qualified rape, the elements of minority of the victim and her relationship to the offender must concur. Failure to allege the age of the victim and her relationship to offender in an information for rape is a bar to the imposition of death penalty since age and relationship in this particular form of rape is qualifying and not merely aggravating. The death penalty cannot be imposed when the qualifying circumstances are not alleged in the information for it would be violative of accused-appellant's constitutional right to be informed of the nature and the cause of accusation against him.

In the same vein, neither can we impose the death penalty for the second incident of rape when complainant was threatened with a bolo by accused-appellant.[33] Although under Article 355 of the Revised Penal Code, as amended by R.A. No. 7659, the penalty of reclusion perpetua to death is imposable when the rape is committed with the use of a deadly weapon, however, in the case at bar, the use of a deadly weapon during the second incident of rape was not alleged in the information. As earlier mentioned, a qualifying circumstance may only be

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taken into account as an ordinary aggravating circumstance when it is not alleged in the information.[34] The next lower penalty to death being the single indivisible penalty of reclusion perpetua, only the same may be imposed regardless of the presence of ordinary aggravating circumstances. Consequently, accused-appellant can only be held liable for two (2) counts of simple rape punishable with the single indivisible penalty of reclusion perpetua for each count.

WHEREFORE, the decision of the Regional Trial Court of Parañaque, Branch 259 in Criminal Case Nos. 96-787 and 96-788, finding accused-appellant Victor Pailanco guilty beyond reasonable doubt of two (2) counts of rape, is AFFIRMED with the MODIFICATION that accused-appellant is sentenced to suffer the penalty of RECLUSION PERPETUA in each of Criminal Case Nos. 96-787 and 96-788; and to pay complainant Nonily Pailanco in each of the two counts of rape the sum of P50,000.00 or a total of P100,000.00 by way of indemnity; P50,000.00 or a total of P100,000.00 as moral damages; and P50,000.00 or a total of P100,000.00 as exemplary damages and costs.

SO ORDERED.

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

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[1] Penned by Judge Zosimo V. Escano.

[2] TSN, December 10, 1996, p. 13.

[3] Records, p. 5.

[4] TSN, December 10, 1996, p. 13.

[5] TSN, December 10, 1996, pp. 26-27.

[6] TSN, December 10, 1996, pp. 11; 26-27; 29-30.

[7] Records, p. 5.

[8] Records, p. 10.

[9] Records, p. 1.

[10] Records, p. 3.

[11] Records, p. 13.

[12] TSN, April 2, 1997, pp. 20-21.

[13] TSN, April 2, 1997, p. 14.

[14] Rollo, pp. 17-18.

[15] TSN, December 10, 1996, p. 5.

[16] TSN, December 10, 1996, p. 6.

[17] People vs. Garcia, 281 SCRA 463 (1997)

[18] TSN, December 10, 1996, pp. 21-22.

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[19] TSN, December 10, 1996, pp. 4-5.

[20] TSN, December 10, 1996, pp. 7-8.

[21] TSN, December 10, 1996, p. 29.

[22] TSN, December 10, 1996, pp. 10; 26-27.

[23] TSN, December 10, 1996, pp. 27; 29-30.

[24] People vs. Sagiaco, 277 SCRA 183 (1997)

[25] TSN, January 30, 1997, pp. 3-6.

[26] TSN, April 2, 1997, p. 6.

[27] TSN, April 2, 1997, p. 10.

[28] TSN, April 2, 1997, p. 20.

[29] TSN, April 2, 1997, p. 14.

[30] People vs. Alimon, 257 SCRA 658 (1996)

[31] People vs. Larena, G.R. Nos. 121205-09, June 29, 1999; People vs. Dimapilis, G.R. No. 128619-21, December 17, 1998.

[32] G.R. No. 129439, September 25, 1998.

[33] TSN, December 10, 1996, p. 13.

[34] People vs. Entes, 103 SCRA 162 (1981)

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