

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN R. DECENA, ACCUSED-APPELLANT.

G.R. No. 131843. May 31, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Upon the complaint of Renelyn Ude, assisted by her mother Erlinda T. Aguirre, the following information for rape was filed against Edwin Decena y Romero:

"That on or about the 9th day of March, 1995, in the afternoon, in Barangay Dumga, Municipality of Makato, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with the offended party, RENELYN UDE, a woman, against her will and without her consent thereby inflicting upon the latter, physical injuries, to wit:

"IE FINDINGS:

Admits 1 finger with ease

Old laceration-3:00 o'clock

position (labia minora)

No sign's of external physical

injuries."

as per Medico-Legal Report on Physical Injuries issued by Dr. Emma T. Cortes, Medical Specialist II of Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as Annex "A" and forming an integral part of this complaint.

That by reason of the criminal acts of the accused, the private offended party suffered actual and compensatory damages in the amount of P50,000.00.

CONTRARY TO LAW."[1]

The accused entered a plea of not guilty.

The prosecution presented Renelyn and Dr. Emma T. Cortes, who rendered the medico legal report on the examination conducted on Renelyn on March 12, 1995. The accused testified in his defense, denied the charge and claimed he was working in the house of Perseverancia Tubao on the date and time in question. Perseverancia Tubao testified to corroborate the defense of alibi.

The evidence for the prosecution was summarized by the trial court as follows:

"From the evidence for the prosecution it appears that at around 10:00 o'clock in the afternoon of March 9, 1995 at Barangay Dumga, Makato, Aklan, Erlinda Aguirre was asked by her common-law husband Edwin Decena to borrow the fishing net ("hudhud") of her uncle Rogelio Tiongson (Tsn., August 18, 1995, p. 3, Exh. "I") whose house is around one (1) kilometer from their house (Tsn., May 8, 1997, p. 3). She was accompanied by her husband to her uncle's place but he just brought her there and left ahead. She was not able to borrow the fishing net so she returned home immediately and was shocked and angered to see, while on the stairs of her small nipa house, her naked husband on top of her equally naked daughter Renelyn Ude, having sexual intercourse with her. On her daughter's neck was a scythe held by Edwin: Renelyn's hands were bound by a towel. After watching them for about five (5) seconds, she left and went to the back of her house for air. She was so angry she vented her anger on a banana plant which she boloed (Tsn., Aug. 18, 1995, p. 7). However, she did not use the bolo she was holding on the accused because she was afraid he might use the scythe which he was already holding on her daughter's neck (Tsn., Aug. 24, 1995, p. 12) Later when she confronted her husband why he did that to her child he answered that he would not let her daughter go to any other man for she is for him (Tsn., Aug. 18, 1995, p. 7) Renelyn corroborated her mother's declarations on material points regarding the incident of March 9, 1995. She told the Court that in the afternoon of the incident she was alone in their house. Her mother had gone some place but she did not know where. First the accused whom she called her father (Tsn., Oct. 12, 1995, p. 4), took off the top part of her clothing and then totally undressed her. He tied her hands with a towel. Holding his scythe on her neck, he succeeded in having sexual intercourse with her. Her mother saw her cry that afternoon but when she was asked by her mother why she was crying, Renelyn did not tell her anything.

She went on to declare during cross examination that before the incident of March 9, 1995, the accused had been having sexual intercourse with her. In fact he had been "using" her for around six (6) months and for more than forty (40) times. (Tsn., October 13, 1995, p. 3)

In the afternoon of March 12, 1995, the accused again wanted to have sexual intercourse with Renelyn but she ran away and hid under the Dumga Bridge until her mother found her. Renelyn was crying. She told her mother that her vagina was swelling and that she did not want to go back to their house. Together they went to the Barangay Captain of Dumga to report the incident. Then the Barangay Captain accompanied them to the Makato Police Station. At about 5:00 o'clock in the afternoon on that day, the accused was arrested by the policemen of their town. Only then did complainant and her mother return home.

On March 14, 1995, Erlinda Aguirre filed a complaint for rape against her live-in partner before the Provincial Prosecutor of Aklan. On May 22, 1995, Renelyn Ude, with the assistance of her mother and Third Assistant Provincial Prosecutor Dominador V. Briones, Jr., filed a complaint for rape before the Regional Trial Court of Aklan.

Renelyn Ude is the 12-year old daughter of Erlinda Aguirre by her legal spouse, Ramon Ude, from whom she is separated in fact. She was only in Grade 3 when the accused started to live with her and her mother. That was 2 years before she testified on May 23, 1996 (Tsn., May 23, 1996, p. 9).

The accused is her mother's common-law spouse. He accompanied Erlinda to Dumga, Makato, Aklan, when she returned from Manila in 1994. According to the accused it was Erlinda and her grandmother Magdal who made him go with them to Dumga. He is from Barangay Masalom, Municipality of Labo, Camarines Sur. (Tsn., Sept. 25, 1996, p. 12). When he met Erlinda, she was working for her grandmother who lives in St. Michael Village while he was a security guard of Camella Homes in Las Piñas.

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On March 12, 1995 at 5:45 o'clock in the afternoon, Renelyn Ude was examined by Dr. Emma Cortes of the Dr.

Rafael S. Tumbokon Memorial Hospital in Kalibo, Aklan. Her internal examination (IE) findings as stated in the medico-legal report she issued (Exh. "A") were as follows:

Admits 1 finger with ease

Old laceration – 3:00 o'clock position

(Labia Minora)

No signs of external physical injuries.

She testified that when she examined the offended party, her index-finger was admitted easily when inserted into the victim's vaginal canal. She found an old laceration at 3:00 o'clock position on her hymen, not on her labia minora (Tsn., Aug. 14, 1995, p. 5). Her hymen was quite thick and the old laceration was deep, involving the whole thickness of the hymen. It was not a superficial one. The old laceration was not connected with the rape which according to the mother of the victim occurred on March 8 or 9 because a new laceration on the hymen would have healed in two (2) to three (3) days. The old laceration, in the doctor's opinion, was inflicted more than two weeks before examination of the patient. The vaginal smear revealed no semen."^[2]

Edwin Decena denied having raped Renelyn on March 9, 1995. He stated that he was at the house of Perseverancia Tubao working on her kitchen from 7:00 o'clock in the morning to 5:00 in the afternoon of that day. He testified that Erlinda had a motive against him in filing the case, as she wanted to reconcile with her husband but the accused refused. He alleged that he could not have been responsible for Renelyn's defloration because if he were then Renelyn's sexual organ would not have admitted with ease only one finger.

The trial court found Renelyn's testimony credible. She gave "straightforward, consistent and intelligent answers" even when subjected to rigid cross-examination by the defense counsel, and broke down several times during the trial, revealing that she was traumatized by the experience of the sexual assault she suffered in the hands of the accused who exercised some kind of moral ascendancy on her as the live-in-partner of her mother.

The defense of alibi was rejected by the court. The house of Perseverancia Tubao was only fifty to one hundred meters from the house of Erlinda, where the rape took place. Moreover, Perseverancia was found to be not a credible witness because of material inconsistencies in her testimony.

The trial court convicted the accused, the dispositive portion of the judgment reads:

"WHEREFORE, judgment is hereby rendered finding accused Edwin R. Decena guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (Death Penalty Law), Section 11 thereof, aggravated by the fact that said accused is the common-law spouse of the mother of Renelyn Ude, the victim. He is sentenced to suffer the ultimate penalty of DEATH. He is also ordered to indemnify Renelyn Ude the amount of P50,000.00 as actual damages and P50,000.00 as exemplary damages.

SO ORDERED."^[3]

The case is now before this Court on automatic review.

The accused-appellant raises a lone argument in his appellant's brief, i.e., that:

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED CONSIDERING THAT THE SUPPOSED ATTENDANT QUALIFYING CIRCUMSTANCES WERE NOT ALLEGED IN THE INFORMATION.^[4]

Accused-appellant claims that the qualifying circumstances that a girl should be eighteen years of age and that the offender is "the common-law spouse of the parent of the victim" were not alleged in the information. In his reply brief, accused-appellant reiterates his plea for reduction of the penalty for the reason that the information charges only simple rape.

The Solicitor-General agrees. In a "Manifestation in Lieu of Brief" appellee prays for an affirmance of the judgment of conviction with the recommendation that instead of the death penalty, the penalty of reclusion perpetua should be imposed.

We find appellee's prayer and recommendation to be well-taken.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659, reads 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 or is demented.

The crime of rape shall be punishable by reclusion perpetua.

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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."

This Court has ruled in a long line of cases that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659, the attendance of any of which mandates the single indivisible penalty of death are in the nature of qualifying circumstances which cannot be proved as such unless alleged with particularity in the information unlike ordinary aggravating circumstances which affect only the period of the penalty and which may be proven even if not alleged in the information.[6] It would be a denial of the right of the accused to be informed of the charge against him and consequently, a denial of due process, if he is charged with simple rape and will be convicted of its qualified form punishable by death although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment under which he was arraigned.[7] Procedurally,

then, while the minority of Renelyn and her relationship to the accused-appellant were established during the trial, the accused-appellant can only be convicted of simple rape because he cannot be punished for a graver offense than that with which he was charged. Accordingly, the imposable penalty is reclusion perpetua.

In addition to civil indemnity in the amount of P50,000.00 the accused-appellant is likewise liable to pay P50,000.00 as moral damages.[8] Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases. However, the award of P50,000.00 as exemplary damages is deleted, there being no aggravating circumstance.[9]

WHEREFORE, the judgment finding Edwin Decena guilty of rape beyond reasonable doubt is hereby affirmed, with the modification that the penalty is reduced to reclusion perpetua and the accused-appellant is directed to pay Renelyn Ude the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Purisima, Pardo, and Buena, JJ., concur.

Davide, Jr., C.J., on official business abroad.

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

[1] Record, p. 1.

[2] Rollo, pp. 21-23.

[3] Rollo, p. 38.

[4] Rollo, p. 66.

[5] Rollo, pp. 113-114.

[6] People vs. Nuñez, G. R. No. 128875, July 8, 1999; People vs. Dimapilis, 300 SCRA 279; People vs. Perez, 296 SCRA 17.

[7] People vs. Garcia, 281 SCRA 463; People vs. Calayca, 301 SCRA 192.

[8] People vs. Alcala, 307 SCRA 330; People vs. Villamor, 297 SCRA 602; People vs. Prades, 293 SCRA 411; People vs. Victor, 292 SCRA 186; People vs. Gementiza, 285 SCRA 478.

[9] Article 2230, New Civil Code; People vs. Mengote, 305 SCRA 380; People vs. Reyes, 287 SCRA 229; People vs. Estares, 282 SCRA 524.

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