PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARMELITO S. ABELLA, ACCUSED-APPELLANT.

G.R. No. 131847. September 22, 1999

Ponente: VITUG, J.

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VITUG, J.:

Herein appellant, Carmelito S. Abella, was accused by his 15-year old daughter, Violeta Abella, of the crime of rape in a complaint filed before the court a quo.

The complaint against appellant reads:

> "C O M P L A I N T
> "The undersigned complainant, VIOLETA ABELLA, after having been duly sworn to in accordance with law accuses Carmelito Abella y Savella of the crime of Rape, committed as follows: "That on or about the 12th day of December, 1996 at about 12:00 midnight, more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, a father of the victim, Violeta Abella, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously did lie and succeed in having carnal knowledge of said Violeta Abella.
>
> "CONTRARY TO LAW.
>
> "Cebu City, Philippines, Jan. 7, 1997.
>
> "SUBSCRIBED AND SWORN TO before me this 7th day of January, 1997, in the City of Cebu, Philippines.
>
> "ATTESTED BY:
> "BAIL RECOMMENDED:
>
> "(SGD) LEONARDO P. CARREON
>
> "Prosecutor 1, Cebu City
>
> "APPROVED:
>
> "(SGD) PRIMO C. MIRO
>
> "State Prosecutor II
>
> "OIC-Dept. Order No. 296
>
> dated Oct. 1, 1996"[1]

When arraigned, the indictee pleaded not guilty to the charge.

The Case for the Prosecution. –

Complainant Violeta Abella, the fourth of seven children of accused Carmelito Abella, was just 15 years old. She was left alone with her father Carmelito and her two younger sisters, Andrea and Erlinda, at their house in Bocaue, Pamutan, Cebu City, by her mother and the other members of the family who attended a town fiesta celebration in Guadalupe, Cebu City. Shortly after nightfall of that day, the 12th of December, 1996, Violeta went to bed in the lone room of the house. The room was separated only by a curtain from the sala where her father and her two younger sisters stayed. Around midnight, Violeta was awakened when her father, who was half-naked, sat beside her. Violeta innocently asked what it was he wanted but he kept mum. Completely caught by surprise, she was suddenly held by the accused by her shoulders and forced to again lie down on the bed. Violeta vainly tried to struggle free from the firm hold of the accused. He succeeded in removing Violeta's underwear, then her dress, before finally mounting her. Violeta shouted for help but it was futile. The carnal knowledge of her lasted for about an hour. Crying, Violeta asked her father "why" but he could only say that he felt the urge for it (Ganahan siya[2]). Before going back to sleep in the sala, he threatened Violeta with death if she were to tell on him. Violeta spent the rest of the night awake numbly waiting for daybreak to come.

The following day, Violeta took her usual morning bath, dressed up and, without partaking of breakfast, went to school straightaway. Violeta simply ignored her father when he asked her to be home early from school. That afternoon, Violeta decided to tell her teacher about the incident. The latter lost no time in bringing Violeta to the office of the Department of Social Welfare and Development ("DSWD"). Violeta decided not to return home that afternoon; instead, assisted by the DSWD, she had herself examined by a medico legal officer of PNP Crime Laboratory 7, at Gorordo Avenue, Cebu City. The medical report of Dr. Nestor A. Sator, Police Senior Inspector and Head of the Medico Legal Branch of the PNP Crime Laboratory, disclosed:

> "General: Fairly developed, fairly nourished and coherent female subject. Breasts are conical with brown nipples and areola from which no secretions could be pressed out. Abdomen is flat and tight.
>
> "Genital: Pubic Hair is scanty. Labia majora is full, convex and coaptated with the light brown labia minora presenting in between. External vaginal orifice offers strong resistance to the introduction of the examining index finger. On separating the same disclosed and elastic and fleshly type hymen with shallow healing lacerations at 12 and 3 o'clock positions. The mucosal surface of the labia minora is inflamed.
>
> "CONCLUSION:
>
> "Subject is in non-virgin state physically.
>
> "There are no external signs of recent application of any form of physical trauma noted during the time of examination.
>
> "REMARKS:
>
> "The original copy of this report is retained with this Unit for future reference."[3]

The Case for the Defense.-

The accused claimed that on the night of 12 December 1996, he consumed one long bottle of Tanduay rhum and a stick of cigarette which, according to a stranger who gave it, had a "soothing effect." He wanted to drown his worries because the land he had been tilling for sometime was about to be taken over by its owner. After doing away with the rhum and the stick of cigarette, he felt like floating in the air. He had no recollection about his having supposedly entered the room of his daughter, let alone of having sexually abused her, that night. All he

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could remember was that he took supper with his children, drunk an entire bottle of Tanduay rhum and smoked a stick of cigarette. He was certain, however, that he went to sleep at about nine o'clock in the evening, together with his two young daughters, while Violeta slept in the only other room of the house. When he woke up the following morning he was still wearing his long pants and his underwear.

He later learned that Violeta had been brought by her teacher to the DSWD and that her daughter was readying to file a complaint for rape against him. Fearing that people would harm him, the accused sought the advice of barangay councilwoman Nida Bacus who, in turn, accompanied him to the barangay captain. The latter forthwith brought him to the Punta Prinsesa police precinct where he was investigated. Eventually, the case was indorsed to the Philippine National Police Headquarters at Camp Sotero Cabahug, Gorordo Avenue, Cebu City, where he was kept under detention.

After a protracted trial, the Regional Trial Court, Branch 14, of Cebu City, rendered a decision on 15 October 1997 finding accused Carmelito S. Abella guilty beyond reasonable doubt of the crime of rape. The trial court handed down its judgment, thus:

> "WHEREFORE, premises considered, the accused Carmelito Abella is hereby found guilty beyond reasonable doubt as principal of the felony of rape. In view of the attendant circumstances that he is the legitimate father of the victim and that the victim was under 18 years of age at the time he violated her, the accused is hereby sentenced to the supreme penalty of death, with the accessory penalties prescribed by law.
>
> "The accused is also condemned to pay unto the offended party civil indemnity in the amount of P100,000.00.
>
> "May God have mercy on your soul Carmelito Abella.
>
> "SO ORDERED."[4]

In his appeal brief, accused-appellant would seek to ascribe to the court a quo the following errors allegedly committed by it, i.e., that-

> "1. The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape.
>
> "2. Assuming arguendo that accused-appellant indeed committed the crime charged, the trial court, nonetheless, erred in imposing upon him the supreme penalty of death."[5]

The claim of appellant that the trial court has erred in finding the accused guilty beyond reasonable doubt of rape is not tenable; on the contrary, the evidence for the prosecution sustains, with moral certainty, the guilt of the accused in the perpetration of the crime charged.

The defense here now asserts that while Violeta has declared that her father employed force against her, nowhere in her testimony, however, did she mention about having sustained any external injury or suffered bodily harm. Appellant fails to realize that he enjoys moral ascendancy and influence over Violeta, his own daughter, a circumstance that has been held to substitute for physical violence or intimidation in an indictment for rape.[6] The matter, it should be stressed, is to be viewed in the light of the perception and judgment of the victim at the time of the commission of the offense, rather than that of the malefactor.[7] At all events, the absence of any external sign or physical injury does not necessary negate the occurrence of rape,[8] proof of injury not being an essential element of that crime.[9]

Neither availing to appellant is his contention that it would have been improbable for the rape to take place considering the presence of the two younger sisters of Violeta just outside the bedroom. The crime of rape is not always done in seclusion. The Court has more than once observed that rape can be committed in a room adjacent to where the other members of the family might be or even in a room which the victim might be sharing with

others.[10]

Appellant considers it rather strange that in the morning following the alleged rape, Violeta has not at all acted abnormally but that, in fact, she did her normal chores. It is not unusual, however, for a rape victim, immediately following the sexual assault, to conceal at least momentarily the incident. This attitude is understandable for a variety of reasons, such as because of great apprehension, a feeling of being completely lost or, like here, when the accused has moral ascendancy over the victim.[11] Indeed, different and varying degrees of behavioral responses, it is said, can be expected in the proximity of, or in confronting, an uncommon occurrence.[12] In any event, it is to be noted that Violeta did, in fact, report the incident to her teacher the day following the sexual assault.

The Court's attention has not been called to any dubious reason or improper motive on the part of Violeta that would have made her charge and testify falsely against appellant in so heinous a crime as rape. Violeta has had no record of sexual perversity to fabricate a story against her own father that could imperil his liberty or even his life.[13] Where no compelling and cogent reason is established that can explain that the complainant has been so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.[14]

Violeta gave a vivid and credible account of her ordeal in the hands of her father. By then already 17 years of age, she testified:

> "COURT INTERPRETER:
>
> Please state your name and other personal circumstances.
>
> "WITNESS:
>
> VIOLETA ABELLA, 17 YRS. OLD, SINGLE, WORKING STUDENT, RESIDING AT GUADALUPE, CEBU CITY.
>
> "x x x x x x x x x
>
> "PROS. SOLIMA:
>
> This witness Your Honor, is presented to prove that [s]he was raped by [her] own father.
>
> "COURT:
>
> You may proceed.
>
> "PROS. SOLIMA: DIRECT EXAMINATION:
>
> "Q Miss witness, how are you related to Carmelito Abella?
>
> A My father.
>
> "PROS. SOLIMA: DIRECT EXAMINATION:
>
> "Q Is he inside the court room now?
>
> "A Yes, sir.
>
> "Q Will you please point to him?
>
> "A The first man sitting.....
>
> "INTERPRETER:

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(Witness has pointed to the accused who responded to the name Carmelito Abella).

"COURT:

"Q By the way, Violeta what year are you in high school now?

"x x x x x x x x x

"PROS. SOLIMA:

"Q Could you tell us where were you on December 12, 1996, at about 12:00 o'clock midnight?

"A I was at home.

"Q Where is your house located?

"A Bocawe, Pamutan, Cebu City.

"Q Who were with you at that time?

"A My two younger sisters.

"Q How old are your two younger sisters?

"A Eight and 12 years old.

"Q What were you doing at that time together with your younger sisters?

"A We were asleep.

"Q While you were asleep together with your younger sisters what happened?

"A My father approached me and held me and so I tried to free myself. I shouted. Then he undressed me and mounted on me and then he performed the sexual act and warned me not to tell anybody or else he will kill all of us.

"COURT:

"Q By the way, where was your mother at that time?

"A She went to attend the fiesta at Guadalupe.

"COURT:

Continue.

"PROS. SOLIMA:

"Q How did your father mount on you and sexually abuse you?

"A He held me and then he performed the sexual act, the push and pull movement.

"Q How did he hold you?

"A He held my shoulders and he was strong.

"Q Was your father able to insert his penis in your vagina?

"A Yes, sir.

"COURT:

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"Q How?

"A He guided his penis.

"Q Did you fight back?

"A Yes.

"Q How did you resist him?

"A I pushed him hard but I was not able to repel him because he was too strong for me.

"COURT:

Continue.

"PROS. SOLIMA:

"Q At the time that he was able to insert his penis into your vagina, what did he do next?

"A Then he performed the push and pull movement.

"COURT:

"Q Did you bleed?

"A Yes, sir.

"Q Were you a virgin at that time?

"A Yes.

"COURT:

"Q Have you not known any man before that?

"A Yes.

"COURT:

Continue.

"PROS. SOLIMA:

"Q For how long did your father make that push and pull movement?

"A Maybe an hour.

"COURT:

"Q And what were you doing in that period of one hour, that is, you yourself on your part, what were you doing?

"A I cried.

"Q Did you box him?

"A Yes, sir.

"Q Did you kick him?

"A Yes.

"Q Did you say anything to him while he was performing the sexual act?

"A I asked him why you do this to me you are my father and I am your daughter but he said he just felt the urge of doing it."[15]

The testimony of the victim stands not alone in the records; her revelation is corroborated by the medical findings[16] of Dr. Nestor A. Sator. The latter himself has given testimony at the trial; thus:

"COURT INTERPRETER:

Please state your name and other personal circumstances.

"WITNESS:

DR. NESTOR A .SATOR, 38 YRS. OLD, SINGLE, MEDICO LEGAL OFFICER, PNP CRIME LABORATORY 7, GORORDO AVENUE, CEBU CITY.

"PROS. SOLIMA:

Your Honor, this witness is presented to identify the medico legal report.

"COURT:

You may proceed.

"PROS. SOLIMA:

Before proceeding your Honor, may I request counsel to admit the competence of the witness.

"ATTY. PORIO:

I admit, your Honor.

"COURT:

Alright, continue.

"PROS. SOLIMA: DIRECT EXAMINATION:

"Q Doctor Satur, have you examined Violeta Abella?

"A Yes, sir.

"Q When was that?

"A Last December 16, 1996.

"COURT:

"Q What year?

"A 1996, Your Honor.

Continue.

"PROS. SOLIMA:

"Q Who requested you to examine Violeta Abella?

"A DSWD, sir.

"Q What was the request about?

"A The request was about the examination of the victim whether the victim was sexually abused.

"Q Where did you examine Violeta Abella?

"A At our office at PNP Crime Laboratory.

"Q And what was the result of your examination?

"A The findings were positive.

"Q Do you have with you your findings?

"A Yes, sir.

"PROS. SOLIMA:

May I request Your Honor, please that the Medico Legal Report No. M-258-96, be marked as our Exhibit A.

"COURT:

Mark it so.

"PROS. SOLIMA:

"Q Please for the record, kindly read doctor your findings?

"PROS. SOLIMA: DIRECT EXAMINATION:

"A

Under the heading genital: The pubic hair is scanty. Labia majora is full, convex and coaptated with the light brown labia minora presenting in between. On separating the same disclosed an elastic and fleshy type hymen with shallow healing lacerations at 12 and 3 o'clock positions. The mucosal surface of the labia minora is inflamed. And the external vaginal orifice offers strong resistance to the introduction of the examining index finger. And the conclusion: subject is in non-virgin state physically.

"PROSECUTOR SOLIMA:

"Q There is a signature above your typewritten name Nestor A. Satur, M.D., whose signature is this?

"A This is my signature.

"PROS. SOLIMA:

May I request Your Honor, please that the signature of the medico legal doctor be bracketed and marked as our Exhibit A-1.

"COURT:

Bracket it and mark it accordingly.

"PROS. SOLIMA:

And the findings be marked as our Exhibit A-2.

"COURT:

Mark it so.

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"PROS. SOLIMA:

"Q In layman's language doctor does it mean that based on your findings Violeta Abella has been abused?

"A Based on the hymenal lacerations and the swelling of the labia minora, these indicate that the victim was sexually abused.

"PROS. SOLIMA:

That is all for the witness, Your Honor.

"COURT:

Alright, cross.

"ATTY. PORIO:

No cross, Your Honor."[17]

The Court, however, agrees with the accused-appellant that the trial court did err in imposing the death penalty. The pertinent provisions of Republic Act No. 7659 state:

"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 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.

'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 of 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.

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> '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 Court emphasizes anew that in decreeing the death penalty under the aforequoted law, the information or complaint must specifically allege the qualifying circumstances that would justify the imposition of that extreme penalty. In this case, the circumstances that would qualify the offenses are (a) that the accused-appellant is the father of the victim, and (b) that the latter is under 18 years of age at the time of the rape. While the criminal complaint in this case did state the fact that the victim is the daughter of the accused-appellant, it , however, has failed to mention her being under 18 years of age at the time of the commission of the offense. The omission is a fatal flaw in the imposition of the death penalty.

In recent rulings of the Court, among them the case of People vs. Dela Cuesta,[18] the doctrine has been laid down thus:

> "x x x The seven modes of committing rape introduced under R.A. 7659 and R.A. 4111 which warrant the automatic imposition of death penalty partake of the nature of a qualifying circumstance under the Revised Penal Code since it increases the penalty of rape to one degree. As such, this qualifying circumstance, that the child is under eighteen (18) and the offender is a guardian, should be alleged in the information to be appreciated as such. The informations filed against the accused do not specify such circumstance. It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape, on which he was arraigned, and be convicted of qualified rape punishable by death. Moreover, even considering it as an aggravating circumstance, it can not affect the imposable penalty since reclusion perpetua is a single indivisible penalty."

All then given, the finding of guilt by the trial court should be affirmed but the penalty warranted therefor is the lower indivisible penalty of reclusion perpetua. Correspondingly, the offended party is entitled to P50,000.00 by way of indemnity ex delicto, plus an amount of P50,000.00 in moral damages,[19] which accused-appellant must be ordered to pay. Actual damages has been neither claimed nor established; hence, the trial court did not err in failing to make an award therefor.

WHEREFORE, the decision of the Regional Trial Court, 7th Judicial Region, Branch 14, of Cebu City, in Criminal Case No. CBU-43104 is MODIFIED by now holding that accused-appellant is guilty only of simple rape and sentenced to suffer the penalty of RECLUSION PERPETUA. Accused-appellant shall indemnify the victim the amounts of P50,000.00 as civil indemnity and another P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

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

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[1] Records, pp. 1-2.

[2] TSN, Violeta Abella, 22 August 1997, p. 19.

[3] Records, p. 18.

[4] Records, p. 33.

[5] Rollo, p. 35.

[6] People vs. Burce, 269 SCRA 293.

[7] People vs. Edualino, 271 SCRA 189.

[8] People vs. Alimon, 257 SCRA 658.

[9] People vs. Pajaro, 265 SCRA 668.

[10] People vs. Burce, 269 SCRA 293, People vs. Tan, Jr., 264 SCRA 425

[11] People vs. Tan, Jr., 264 SCRA 425.

[12] People vs. Talledo, 262 SCRA 544.

[13] See People vs. Fuensalida, 281 SCRA 452.

[14] People vs. Oarga, 259 SCRA 90.

[15] TSN, 22 August 1997, pp. 5-8.

[16] People vs. Oarga, supra.

[17] TSN, 22 August 1997, pp. 2-4.

[18] G.R. No. 126134, 02 March 1999.

[19] People vs. Dimapilis, G.R. No. 128619-21, 17 December 1998.

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