

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BANIHIT ALIAS “BOBBY”, ACCUSED-APPELLANT.*G.R. No. 132045. August 25, 2000*

Ponente: YNARES-SANTIAGO, J.

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On November 7, 1997, the Regional Trial Court of Davao City, Branch 33,[1] convicted accused-appellant of rape in Criminal Case No. 39,591-97, sentenced him to death and ordered him to indemnify the victim in the sum of P50,000.00.

The victim, Glaiza Mae Banihit, is the niece of accused-appellant. Her father, Napoleon Banihit, is accused-appellant's older brother.[2] At the time of the incident, she was a day short of nine years in age.[3]

On September 7, 1997, at around 6:00 o'clock in the evening, Lucita Banihit, Glaiza's mother, was in her house located at Bagong Buhay, Agdao, Davao City, doing the laundry. Accused-appellant arrived looking for Napoleon. Lucita told him that Napoleon was not home. Accused-appellant asked for Glaiza, who was then in their neighbor's house watching television. A younger sister went to fetch her, and when she arrived, accused-appellant told her, "We will look for your father." [4]

Accused-appellant and Glaiza rode a motorcycle and went to a grassy lot in a place called Del Pilar. There, accused-appellant undressed Glaiza and made her lie down on a big tire. Accused-appellant took off his own clothes, went on top of Glaiza and had sexual intercourse with her. Glaiza was pinned between the big tire and accused-appellant.[5] She felt pain but was afraid to cry. After that, Glaiza put on her clothes, and she and accused-appellant walked home.[6]

Accused-appellant and Glaiza walked towards her grandmother's house. Meanwhile, Lucita, who was looking for her daughter, found her and accused-appellant along Dacudao Avenue. Together, they proceeded to the house of Glaiza's grandmother, followed by accused-appellant. Before they left, accused-appellant gave Glaiza P9.00 in coins to buy her pencils. When they reached the house, Lucita told her mother-in-law that she had already found Glaiza, and thereafter they went home.[7]

Glaiza did not tell her mother what happened. The next evening, September 8, 1997, Glaiza could not sleep because she felt pain in her vagina. She had to tell her mother what she felt.[8] Lucita examined Glaiza's vagina and saw that it was reddish and found a pus-like discharge.[9]

Lucita grilled her daughter to tell her what happened, and Glaiza said she was raped by her uncle. Since Lucita had no money, she told Glaiza that they will just go to the hospital to have her treated the following week. On September 16, 1997, Lucita brought Glaiza to the Regional Hospital, but they were advised to go to the City Health Office. There, Glaiza was examined by Dr. Danilo Ledesma, Medico-Legal Officer,[10] who stated in his findings that he found Glaiza's hymen to be "swollen with a healing deep laceration at 3 o'clock position corresponding to the face of a watch, edges congested, edematous, bleeds on slight manipulation".[11] Further,

Glaiza was found positive for gonorrhea which Dr. Ledesma confided to Lucita.[12]

From the City Health Office, Lucita and Glaiza proceeded to the Sta. Ana Police Station, where they were referred to the Child and Youth Relationship Section (CYRS). The police entered the incident in the blotter. Lucita wanted to keep the matter a secret from her husband, Napoleon, for fear that he might kill his own brother. But when they returned home that evening, she had to tell Napoleon that he was being summoned at the CYRS the following day. He asked why, and Lucita told him that she had Glaiza examined and they will find out what her disease was at the CYRS. Later that night, at around 9:00 o'clock, Napoleon noticed that Glaiza was crying and uneasy. He scolded Glaiza and whipped her with his belt because she was tossing and turning in bed. Finally, Glaiza told her father what her uncle had done.[13]

Napoleon left the house in anger. He went to the house of his mother to look for accused-appellant, who was living there. When he saw accused-appellant, he beat him up. He only stopped when he was pacified by their eldest brother, Benjamin, and ordered to leave.[14]

After Napoleon left, Lucita went to the house of the Barangay Captain and narrated the rape incident to him. The Barangay Captain asked that Glaiza be brought to him and she told him that she was raped by her uncle. All three of them went to Lucita's house where they found accused-appellant, quite drunk. The Barangay Captain brought accused-appellant to the CYRS and left him there. The following day, Lucita, Glaiza and the Barangay Captain returned to the CYRS to file a formal complaint for rape against accused-appellant.[15]

An Information was filed against accused-appellant on September 18, 1997. After he pleaded not guilty, the trial of the case ensued.

At the hearing of October 10, 1997, the prosecution moved that accused-appellant be medically examined to determine whether he was likewise afflicted with the venereal disease.[16] The trial court ruled that the examination would not violate accused-appellant's right against self-incrimination, and directed the Warden of the Davao City Jail to cause the examination of accused-appellant at the Davao Medical Center.[17]

Parenthetically, it is true that the constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. Hence, it has been held that an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim.[18]

Accordingly, a urethral smear was performed on accused-appellant on October 11, 1997, after which Dr. Oscar P. Grageda, Pathologist of the Davao Medical Center, diagnosed the "presence of extacellular (sic) gram-negative diplococci." [19] Explaining the meaning of these terms, Dr. Maria Fidela Hocson testified that the same was suggestive of venereal disease, specifically gonorrhea.[20]

The prosecution rested its case. On November 3, 1997, at the hearing scheduled for reception of defense evidence, defense counsel manifested that accused-appellant refused to testify and that he had no other witnesses to present. The trial court informed accused-appellant of the consequences if he failed to present evidence in his defense, specifically, in the event the prosecution is able to establish his guilt beyond reasonable doubt, he may be sentenced to death. Despite this, accused-appellant insisted that he does not intend to present evidence on his behalf.

On November 7, 1997, the trial court promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of RAPE, and considering that the victim is a minor, nine years of age, and taking into account the qualifying circumstance of relationship, the victim being his niece within the third degree of consanguinity, he is hereby sentenced to suffer the supreme penalty of DEATH with all the accessory penalties provided for by law, and to indemnify the offended party in the amount of P50,000.00.

His immediate confinement to the National Penitentiary is hereby ordered.

Costs de officio.

SO ORDERED.[21]

Accused-appellant appealed the Decision on the following lone assignment of error:

THE TRIAL COURT ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH FOR THE CRIME CHARGED DESPITE THAT ACCUSED WAS NOT PROPERLY INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM WHICH IS IN VIOLATION OF HIS CONSTITUTIONAL RIGHT.[22]

At the outset, it may not be amiss to state that the trial court was correct in its declaration that accused-appellant validly waived his right to present evidence. Although the right to present evidence is guaranteed by no less than the Constitution itself for the protection of the accused, this right may be waived expressly or impliedly.[23] This is in consonance with the doctrine of waiver which recognizes that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large.[24]

Going now to the assignment of error, accused-appellant contends in fine that the trial court erred when it imposed the death penalty on him for the rape of his minor niece, when the Information accused him of rape under Article 335, paragraph 3, of the Revised Penal Code, as amended by R.A. 7659, which provides:

Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

XXX.....XXX.....XXX.

3.....When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Thus, accused-appellant prays that the penalty imposed on him be modified from death to reclusion perpetua.[25]

The Information charges accused-appellant with the following acts:

That on or about September 7, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (sic) his niece Glaiza Mae Banihit, who is nine (9) years old.

CONTRARY TO LAW.[26]

It can readily be gleaned that the commission of rape by accused-appellant as described in the body of the Information was attended by one of the seven circumstances which qualify rape, enumerated in then Article 335 (now Article 266-B) of the Revised Penal Code. More specifically, accused-appellant's acts fall under the first

mode, viz:

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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Contrary to accused-appellant's contention, what is controlling in an Information should not be the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.[27]

x x x. In the event, however, that the appellation of the crime charged as determined by the public prosecutor, does not exactly correspond to the actual crime constituted by the criminal acts described in the information to have been committed by the accused, what controls is the description of the said criminal acts and not the technical name of the crime supplied by the public prosecutor. As this Court, through Justice Moreland's authoritative disquisition, has held:

"x x x.....X X X.....X X X.

"From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. x x x That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the matter therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. x x x For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, 'Did you perform the acts alleged in the manner alleged?' not, 'Did you commit a crime named murder?' If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute."

x x x.....X X X.....x x x."[28]

In other words, the real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of the law alleged to have been violated, they being conclusions of law which in no way affect the legal aspects of the information, but from the actual recital of facts as alleged in the body of the information.[29]

Indeed, it is not the designation of the offense in the Information that is controlling but the allegations therein which directly apprise the accused of the nature and cause of the accusation against him.[30] Therefore, accused-appellant's constitutional right to be informed of the nature and cause of the accusation against him was not violated, notwithstanding that the preamble of the Information stated that he was being charged with the rape of a woman who was under twelve years of age or who was demented. As stated above, this was a mere conclusion of law made by the prosecutor who prepared the Information. It must be stressed that the acts described in the body of the Information clearly accused him of raping his niece, a relative by consanguinity

within the third civil degree, who was a minor. That was sufficient to apprise him of the specific charge against him and to enable him to prepare his defense.

However, we find that accused-appellant's relationship to the victim within the third civil degree, while proven by competent evidence, was not sufficiently alleged in the Information.

We have consistently held that the seven attendant circumstances in Article 335 (now Article 266-B) of the Revised Penal Code, given that they alter the nature of the crime of rape and thus increase the degree of the penalty, are in the nature of qualifying circumstances. Plainly, these attendant circumstances added by R.A. 7659 are not ordinary aggravating circumstances, which merely increase the period of the penalty. These are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed.[31]

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.[32]

In *People v. Ferolino*,[33] we held that the allegation that the victim was the accused-appellant's niece is not specific enough to satisfy the special qualifying circumstances of relationship. If the offender is merely a relation --- not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim -- it must be alleged in the information that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." Even if that relationship by consanguinity or affinity was alleged in the informations in that case, it was still necessary to further allege that such relationship was within the third civil degree.

As such, accused-appellant can only be held liable for simple rape and sentenced to suffer the penalty of reclusion perpetua.

In addition to the trial court's award of civil indemnity, we award to the victim, Glaiza Mae Banihit, moral damages in the amount of P50,000.00, without need for pleading or proof of the basis thereof. The fact that the complainant in rape has suffered the trauma of mental, physical and psychological sufferings which constitute the basis for moral damages are too obvious to still require recital thereof at the trial by the victim since we assume and acknowledge such agony on her part as a gauge of her credibility.[34]

WHEREFORE, accused-appellant is found GUILTY beyond reasonable doubt of the crime of simple rape and is sentenced to suffer the penalty of reclusion perpetua. Accused-appellant is also ordered to pay the victim, Glaiza Mae Banihit, civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00.

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.

[1] Presided by Judge Wenceslao E. Ibabao.

[2] TSN, October 14, 1997, p. 4.

[3] She was born on September 8, 1988 per Certificate of Live Birth, Exh. "E".

[4] TSN, October 13, 1997, pp. 7-8.

- [5] TSN, October 10, 1997, pp. 14-18.
- [6] Ibid., pp. 4-6.
- [7] Ibid., pp. 6-7; TSN, October 13, 1997, pp. 9-14.
- [8] TSN, October 10, 1997, pp. 7-8.
- [9] TSN, October 13, 1997, pp. 15-16.
- [10] Ibid., pp. 17-19.
- [11] Medico-Legal Findings, Exh. "A".
- [12] TSN, October 13, 1997, p. 19.
- [13] Ibid., pp. 19-22; October 20, 1997, pp. 4-5.
- [14] TSN, October 20, 1997, pp. 5-7.
- [15] TSN, October 13, 1997, pp. 23-27; pp. 52-57.
- [16] TSN, October 10, 1997, p. 23.
- [17] Order dated October 10, 1997; Record, p. 27.
- [18] *People v. Gallardo*, G.R. No. 133025, February 17, 2000; *U.S. v. Tan Teng*, 23 Phil. 145 (1912)
- [19] Exh. "I".
- [20] TSN, October 30, 1997, p. 6.
- [21] Rollo, p. 34.
- [22] Ibid., p. 52.
- [23] Citing *People v. Dichoso* 96 SCRA 957 (1980); *People v. Angco*, 103 Phil. 33 (1958)
- [24] *People v. Hernandez*, 260 SCRA 25, 39-40 (1996)
- [25] *Id.*, p. 62.
- [26] Record, p. 1.
- [27] *People v. Taño*, G.R. No. 133872, May 5, 2000; *People v. Barrientos*, 285 SCRA 221, 244-45 (1998)
- [28] Citing *U.S. v. Lim San*, 17 Phil. 273, 278-281 (1910)
- [29] *Buhat v. Court of Appeals*, 265 SCRA 701, 715-717 (1996)
- [30] *People v. Elampano*, G.R. No. 121572, March 31, 2000; citing *People v. Resayaga*, 159 SCRA 426, 430-31 (1988)
- [31] *People v. Ferolino*, G.R. No. 131730-31, April 5, 2000.
- [32] *People v. Decena*, G.R. No. 131843, May 31, 2000; *People v. Nuñez*, G.R. No. 128875, July 8, 1999; *People v. Dimapilis*, 300 SCRA 279 (1998); *People v. Perez*, 296 SCRA 17 (1998)
- [33] *Supra*.

[34] People v. Magdato, G.R. 134122-27, February 7, 2000; People v. Prades, 293 SCRA 411, 431 (1998)

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