

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO DEL MUNDO, SR. Y ONGOCO, ACCUSED-APPELLANT.

G.R. No. 132065. April 03, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This case is before this Court on automatic review in view of the imposition of the death penalty on accused-appellant for the rape of his fifteen-year old daughter.

Private complainant Michelle del Mundo was born on September 16, 1981. She is the youngest of four children. They resided in Sto. Niño, San Pedro, Laguna, but intended to transfer to Sta. Rosa, Laguna. On May 27, 1996, at around 6:00 o'clock in the evening, Michelle was fetched by her father, accused-appellant, at her cousin's house in Malitlit, Sta. Rosa, Laguna. Her two older brothers were left behind in Sta. Rosa. Michelle and her father proceeded to their house in San Pedro. They arrived there at around 8:00 o'clock in the evening. They were alone in the house because Michelle's mother was working as a domestic helper in Hong Kong. After having dinner, Michelle watched television in the living room. Accused-appellant told her to sleep in the bedroom. Later, while Michelle was sleeping, she suddenly woke up and found her father on top of her. She pleaded with him, but accused-appellant ignored her and forcibly spread her legs. Michelle cried but he warned her not to shout. Thereafter, accused-appellant removed the victim's shorts and panties. He removed his briefs, and then, while holding both her arms, forcibly inserted his penis into her vagina. After sexually abusing his daughter, accused-appellant wiped her vagina with the blanket, then put back her shorts and panties.

According to Michelle, she had been repeatedly raped by accused-appellant since she was eight years old, when her mother first left for Hong Kong. Her mother was not aware of this although she came home every two years, because Michelle was threatened by her father not to tell anyone, or else he will kill her and her brothers.

The following morning, accused-appellant and Michelle went to their other house in Sta. Rosa, Laguna. For fear that accused-appellant will make good his threats to kill them, Michelle kept silent. However, the last act of rape committed on her caused her to conceive a child. Eventually, she had to quit school to hide her pregnancy. Her friends visited her at home. When they asked about her condition, she was forced to tell them that her father raped her. Her friends advised her to tell her older brother, Gilbert, which she did. Gilbert, together with their aunt, Leonora del Mundo, who was accused-appellant's sister, advised her to file a complaint against Norberto del Mundo, Sr.

Following her aunt's advice, Michelle filed a complaint for rape against accused-appellant. Dr. Rosanna Soledad Cunanan, the municipal health officer, examined Michelle and found multiple healed lacerations in her vagina with minimal whitish discharge and vulvar varicosities. She also found Michelle to be eight months pregnant, and placed the first month of gestation between April and May 1996. In March 1997, Michelle gave birth in Urdaneta, Pangasinan.

An information for rape was filed against accused-appellant before the Regional Trial Court of San Pedro,

Laguna, Branch 31, which alleges:

That on or about May 27, 1996 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court accused Norberto del Mundo, Sr. y Ongoco, with lewd design and by means of force, threats, violence and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with Michelle del Mundo y Tomines, 15 years old, against her will and consent.

When arraigned, accused-appellant pleaded not guilty. After trial, the lower court rendered its Decision dated November 7, 1997, the dispositive portion of which reads:

WHEREFORE, the Court hereby sentences accused Norberto del Mundo y Ongoco to suffer the death penalty, to pay the private complainant the sums of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages, and to pay the costs.[1]

Accused-appellant contends that the accusations were made by her daughter upon the instigation of his own sister, since they had a quarrel over a piece of land. Accused-appellant also invoked alibi, arguing that he reported for work on the alleged day of rape but was told by his foreman to go home since he arrived late.

After a careful evaluation of the evidence on record, we find no convincing reason that would justify the reversal of accused-appellant's conviction by the trial court. In rape cases, the three guiding principles are: (1) an accusation for rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[2]

At the time of the commission of the crime herein, the gravamen of the offense of rape was sexual congress of a woman by use of force or intimidation or when the woman is under twelve years of age.[3] In the case at bar, the elements of sexual intercourse and the employment of force or intimidation upon the young victim concur. These were duly established by the prosecution through Michelle's testimony:

Q Did you wake after that?

A Yes, because I felt something heavy on my body and when I opened my eyes, I saw my father, sir.

Q Where was your father when you opened your eyes?

A He was on top of me, sir.

Q How did you know that it was your father on top of you considering that it was night time?

A The television was turned on and I saw him, sir.

Q When you noticed that your father was on top of you, what did you do?

A I pleaded to him to pity me but he told me not to make any noise, sir.

Q What else happened after that?

A I cried and he tried to separate my legs but I resisted, sir.

Q And after your father removed your shorts and panty, what did he do with himself?

A He removed his brief, sir.

Q After he removed his brief, what did he do?

A He then placed himself on top of me and inserted his private organ into my private organ, sir.

Q Was he able to insert his private organ to yours?

A Yes, sir.

Q Did he make any movement while his private part is inside your private part?

A He held my both arms, sir.

Q How about his body? Was it making any movement while on top of you?

A No, sir.

Q How long did your father remain on top of you?

A For a while, sir.

Q Did you feel anything while his private part was inside your private part?

A I felt pain, sir.

Court:

Was that the first time your father abused you?

A No, ma'am.

Q How many times did he abuse you prior to that date?

A

I cannot count anymore, ma'am.

Q Why? How old are you when you were first abused by your father?

A Eight (8) years old ma'am?[4]

The foregoing open court declarations of Michelle sufficiently prove the consummation of the sexual act. It has been ruled that when a victim, more so if she is minor, says that she was raped, she in effect says all that is necessary to prove the rape.[5] An intimidated young barrio girl is almost always afraid to resist the evil done to her. The employment of force and intimidation in rape need not be so great or of such character as not to be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. In this case, there is enough showing that accused-appellant succeeded in instilling fear in Michelle's mind.[6] Thus:

Court:

By the way, why did you not complain before to the authority regarding the abuses committed by your father?

A

I was afraid of my father because he told me that he will kill me and my brothers, ma'am.[7]

Moreover, it has been ruled that in cases of incestuous rape, the accused-appellant's moral ascendancy over the victim takes the place of violence and intimidation.[8] Considering the masculine strength of accused-appellant, whether armed or not, the victim obviously knew that resistance would be futile. Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the rapist

because of fear. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[9] Whether the victim resisted the habitual assault on her honor is immaterial for the law does not impose upon the rape victim the burden of proving resistance.[10]

Accused-appellant disclaims ravishing his own daughter. His bare denial, however, cannot withstand his positive identification by the victim as the person who forcibly had sexual intercourse with her on several occasions. Likewise, accused-appellant's invocation of alibi cannot prevail over his positive identification as the rapist by no less than the victim herself, who was not shown to have harbored any ill motive against the former.[11] Being inherently weak and unreliable,[12] accused-appellant's alibi must fail.[13] The victim's failure to immediately reveal his father's incestuous acts is not indicative of fabricated charges.[14] She was being sexually ravished since she was only eight years old. The fear of being killed was instilled in her innocent mind and young heart by her own father, who had the moral obligation to nurture her. Until she reached the age of fifteen, Michelle never told anyone that she was continuously being victimized sexually by accused-appellant. Only when she became pregnant was she compelled to speak out. Her unavoidably embarrassing situation impelled her to reveal the barbarous acts not only to his family but also to friends.

Ultimately, the issue boils down to credibility of witness. Time and again, this Court has repeatedly ruled that matters affecting credibility is best left to the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, an opportunity denied to the appellate courts[15] which usually rely on the cold pages of the silent records of the case. As mentioned above, it was not convincingly shown that the court a quo had overlooked or disregarded significant facts and circumstances which when considered would have affected the outcome of the case,[16] or justify a departure from the assessments and findings of the court below. The absence of any improper or ill-motive on the part of the principal witness for the prosecution all the more strengthens the conclusion that no such motive existed.[17] Besides, the tender age of complainant further lends to her credibility.[18] Apparent from the Court's decision in rape cases, where the offended parties are young and immature girls from the ages of twelve to sixteen, is the rule that:

[C]onsiderable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control.[19]

It takes depravity for a young girl, such as the victim herein, to concoct a story which would have placed her own father on the death row and drag herself and the rest of her family to a lifetime of shame.[20]

Notwithstanding the guilt of accused-appellant for the bestial act of incestuous rape, the death penalty cannot be imposed on him. In order to warrant the death penalty, the information must allege the qualifying and modifying circumstance that would justify its imposition. In particular, not only must the information allege the minority of the victim but it must also state the relationship of the offender to the offended party.[21] For purposes of qualified rape under Republic Act No. 7659, the concurrence of minority of the victim and her relationship to the offender constitute one special qualifying circumstance which must both be alleged and proved.[22] In case of failure to specify these qualifying circumstances in the information, the accused cannot be subjected to the death penalty. Otherwise, his constitutional right to be informed of the nature and cause of the accusation against him will be infringed. The fact that it was proven during trial that the victim was only fifteen years of age, hence a minor, and that accused-appellant was her own biological father does not suffice.

Accordingly, accused-appellant should be sentenced to the lesser penalty of reclusion perpetua, not because of

technicality but because of his basic right to due process as guaranteed by the Constitution.[23] Simple rape is punishable only with reclusion perpetua,[24] which is imposed regardless of any mitigating or aggravating circumstance.[25] In addition, though several rapes were proven during trial, only one conviction can prosper since only one rape is charged in the information;[26] namely, the one committed on May 27, 1996.

The civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 awarded by the trial court are proper.[27] Moral damages are automatically awarded to rape victims without need of proof for it is assumed that they have suffered moral injuries entitling them to such award.[28] The Solicitor-General's suggestion that the indemnity be increased to P75,000.00 cannot be allowed herein since this rape case does not call for the application of the death penalty.[29] However, the award of exemplary damages, which is based on the attendance of aggravating circumstances, should be deleted.[30]

WHEREFORE, the Decision of the Regional Trial Court of San Pedro, Laguna, Criminal Case No. 0463-SPL, finding accused-appellant guilty beyond reasonable doubt of rape, and sentencing him to pay private complainant the sums of P50,000.00 as civil indemnity and P50,000.00 as moral damages, is AFFIRMED with the MODIFICATION that the penalty imposed on him is reduced to reclusion perpetua. The award of exemplary damages is DELETED.

SO ORDERED.

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

[1] Penned by Judge Stella Cabuco Andres.

[2] *People v. Aliviano*, G.R. No. 133985, July 10, 2000.

[3] *People v. De Lara*, G.R. No. 124703, June 27, 2000.

[4] TSN, September, 4, 1997, pp. 9-12.

[5] *People v. Diasanta*, G.R. No. 128108, July 6, 2000, citing *People v. Correa*, 269 SCRA 76 [1997]; *People v. Malabago*, 271 SCRA 464 [1997].

[6] *People v. Moreno*, 294 SCRA 728 [1998], cited in *People v. Maceda*, G.R. No. 138805, February 28, 2001.

[7] TSN, September 4, 1997, p. 15.

[8] *People v. Sancha*, 324 SCRA 646 [2000].

[9] *People v. Cuadro*, G.R. No. 124704, February 22, 2001.

[10] *People v. Silvano*, 309 SCRA 122 [1999].

[11] *People v. San Agustin*, G.R. Nos. 135560-61, January 24, 2001; *People v. Sta. Ana*, 291 SCRA 188 [1998].

[12] *People v. Lopez*, G.R. No. 131151, August 25, 1999 citing *People v. Andal*, 344 Phil. 889; *People v. Garcia*, 281 SCRA 463 [1997]; *People v. Abellanos*, 264 SCRA 722 [1996]; *People v. Alcantara*, 240 SCRA 122 [1995]; *People v. Cortes*, 226 SCRA 91 [1993].

[13] *People v. Cañada*, 253 SCRA 277 [1996], cited in *People v. Ulgasan*, G.R. No. 131824-26, July 11, 2000.

[14] *People v. Silvano*, *supra*.

- [15] *People v. Mahinay*, 302 SCRA 455 [1999], citing *People v. Tan, Jr.*, 264 SCRA 425 [1996].
- [16] *People v. Matrimonio*, 215 SCRA 613 [1992].
- [17] *People v. Ravanes*, 284 SCRA 634 [1998].
- [18] *People v. Tan, Jr.*, 332 Phil. 465.
- [19] *People v. Alipayo*, 324 SCRA 447 [2000]; *People v. Molina*, 53 SCRA 495 [1973]; *People v. Egot*, 130 SCRA 134 [1984]; *People v. Quidilla*, 166 SCRA 778 [1988].
- [20] *People v. Guntang*, G.R. No. 135234-38, March 8, 2001; *People v. Magdato*, 324 SCRA 785 [2000].
- [21] *People v. Villar*, G.R. No. 127572, January 19, 2000.
- [22] *People v. Sabalan*, G.R. No. 134529, February 26, 2001; *People v. Maglente*, 306 SCRA 546 [1999].
- [23] *People v. Mauricio*, G.R. No. 133695, February 28, 2001.
- [24] *People v. Campaner*, G.R. Nos. 130500 & 143834, July 26, 2000.
- [25] *People v. Baybado*, G.R. No. 132136, July 14, 2000.
- [26] *People v. Surilla*, G.R. No. 129164, July 24, 2000.
- [27] *People v. Duranan*, G.R. Nos. 134074-75, January 16, 2001.
- [28] *People v. Alba*, 305 SCRA 811 [1999]; *People v. Bolatete*, 303 SCRA 709 [1999].
- [29] *People v. Mangompit*, G.R. No. 139962-66, March 7, 2001.
- [30] *People v. Mauricio*, *supra*.

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