

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO BAYBADO, ACCUSED-APPELLANT.

G.R. No. 132136. July 14, 2000

Ponente: PUNO, J.

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PUNO, J.:

Accused Rolando Baybado stands charged with the crime of Rape in an Information[1] dated August 15, 1995, committed as follows:

"That on or about the 14th day of May, 1994, in the Municipality of Ramon, Province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously, by means of force and intimidation and with lewd designs, have carnal knowledge with his own daughter Helen O. Baybado, against the latter's will and consent.

CONTRARY TO LAW."

Upon arraignment, appellant pleaded not guilty to the offense charged, hence, trial ensued.

Evidence for the prosecution shows that on the night of May 14, 1994, appellant Rolando and his children, namely, Rudy, Ronald, Remigio, Cristina, Teresita, and herein complainant, Helen, had just finished eating supper at their house at Bugallon Norte, Ramon, Isabela. Aurelia Obra Baybado, wife of appellant and mother of complainant, was not home at that time because she was harvesting palay at Munoz, Nueva Ecija where she has been staying for the past two weeks. The family watched TV for a while and at 10:00 p.m., they all went to sleep on a mat spread out in the sala. Helen stayed between her two sisters, Cristina and Teresita, while appellant slept at the far end beside his youngest son Remigio.

At about 12:00 midnight, Helen felt appellant transfer beside her, and then shared her blanket and raised her dress. At that point, Helen tried to push appellant away from her but could not because she was lying flat on her back. Appellant removed her panty and then he removed his shorts, mashed her breasts and had sexual intercourse with her. Helen struggled with appellant but the latter repeatedly pinched her. She cried but she could not shout because appellant was kissing her on the lips. After satisfying his lust on Helen, appellant warned her not to tell anyone about the incident otherwise he would kill her and her mother, brothers and sisters. Then appellant moved back to his place and slept. Helen could only cry herself to sleep.

On May 16, 1994, Helen was at the house of her employer, Mrs. Sagun, where she worked as a baby sitter during Saturdays and Sundays, when appellant arrived, apparently drunk, and ordered her to go home. Afraid of what he might do to her again, Helen refused. Visibly irked, appellant scolded Helen and started to pinch her as she clung to Mrs. Sagun. After a while, appellant was forced to leave when he realized that he could not convince Helen to go with him. Unable to keep her silence any longer, Helen revealed to Mrs. Sagun that her father had raped her. That same day, Mrs. Sagun informed Helen's grandmother, Concepcion Obra, about the incident. Concepcion then talked to her daughter Aurelia, but the latter simply ignored her.

The medical report submitted by Dra. Roselyn Dadural who examined the victim on May 17, 1994 shows the following findings:

IE

= Hymen old lacerations at 3:00, 5:00, 7:00, 1:00 & 11:00 position

= Hematoma posterior aspect arm left

= Admits two fingers easily without pain

= Abrasions left hand."[2]

Dra. Dadural explained that the old healed lacerations on different positions could mean that Helen has been abused several times in the past, although it is possible that multiple lacerations on different positions could also be inflicted on a woman having her first sexual encounter. The abrasions and hematoma on Helen's posterior left arm could have been caused by force used during the intercourse while the victim was in a lying position.

On May 18, 1994, Helen, accompanied by her grandmother and Mrs. Sagun, went to the police station at Bugallon West, Ramon, Isabela where she executed a sworn statement.[3] As soon as appellant came to know that Helen had filed a complaint against him, he hurriedly left for Munoz, Nueva Ecija. A week later, his entire family, except Helen, followed. Helen was brought by her grandmother to PAMANA, an orphanage at La Salette, Santiago City, where she continues to stay up to the present.

Helen, who was 15 yrs. old at the time of the incident,[4] testified on cross that appellant raped her several times in the past starting when she was only 13 or 14 years old, but that she failed to disclose this to her mother because of appellant's threat that he would kill them. Nevertheless, when her mother came to know about the May 14 rape incident, she refused to believe Helen's story and even threatened to disown Helen.

Appellant, on the other hand, denied that he was at their house at Bugallon, Ramon, Isabela on that fateful day. He testified that he worked as a farm helper at the farm of a certain Boyet Fernando in Munoz, Nueva Ecija from 1992 up to 1996; that not once did he go home to Bugallon, Ramon, Isabela during this entire period because he had so much work to do and it was his wife who visited him in Nueva Ecija; that he went back to Bugallon only in 1996 after his wife told him that a case had been filed against him; that he surrendered to Kagawad Cesario Pempil of Bugallon who accompanied him to the Municipal hall; and that Helen filed a rape case against him upon the prodding of his in-laws who did not like him because he was poor and could not provide for his family.

Appellant's wife, Aurelia, and daughter, Cristy, sought to corroborate his testimony and alleged that on May 14, 1994, Helen was staying at Mrs. Sagun's house where she worked as a baby sitter. Aurelia further testified that Helen filed this case against appellant because he whipped and scolded her every time she came home late.

On November 24, 1997, the Regional Trial Court, Second Judicial Region, Santiago City, Branch 21, rendered a decision finding appellant Rolando Baybado guilty beyond reasonable doubt of the crime of rape and sentenced him to the extreme penalty of death and to indemnify the victim in the amount of P50,000.00.[5]

By reason of the death penalty imposed, the case was elevated to this Court on automatic review, under the lone assignment of error that the trial court erred in finding the appellant guilty beyond reasonable doubt of the crime of rape.

The primordial issue in this case devolves on the credibility of the testimonies of the witnesses. Appellant contends that the trial court erred in not considering the defense evidence that Helen was not in their house on that particular night, and that Helen was angry with appellant for scolding and whipping her every time she came

home late, which accounts for the rape charge she filed. It is likewise averred that a mother would not testify against her daughter and deny the rape charge if it were true. Also, the fact that appellant voluntarily surrendered upon learning about the case filed against him is an indication of his innocence. Appellant argues that it would have been impossible for him to have raped Helen who was lying between her sisters Cristina and Teresita without waking them up; and that it was unlikely for appellant to have pinched Helen repeatedly for that is characteristic only of a woman.

We affirm the judgment of conviction.

Appellant basically seeks to discredit the testimony of Helen. This Court has remained steadfast to the rule that the trial court's assessment of the credibility of complainant's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.[6] The trial court in this case found the testimony of complainant Helen to be persuasive although it lacked in details. It observed that "she was able to convey a clear message that she was raped against her will. She testified haltingly, ashamedly, but in a forthright manner even breaking into tears. It showed that it was really very painful and embarrassing for her to narrate what happened. And there is nothing incredible in her narration." [7] We have carefully scrutinized the testimony of the complainant and we find no compelling reason to disturb the trial court's assessment of her credibility. Her testimony was clear and convincing, to wit:

Q

On the night of May 14, 1994, do you recall if there was anything unusual that happened to you?

A

There was, sir.

Q

Tell us what was that that happened to you?

A

That was about in the evening of May 14 after we have eaten our supper we watched t.v. then about 10:00 o'clock then we went to bed and then about 12:00 he came close to me and lay down beside me. He bring (sic) my brothers and sisters a little bit away and then he came close to me and he is (sic) trying to start a conversation, sir.

x x x x x

Q

Now, when your father went near you and he tried to start conversation with you, what did he tell you?

A

Nothing, sir. He shared with my blanket and raised my dress.

Q

By the way, what were you wearing that night when you slept?

A

I was wearing a dress, sir.

Q

When your father tried to raise your dress, what did you do?

A

I pushed and pushed him but he also pinched me, sir.

Q

And then after your father pinched you, what did you do?

A

.I cried and then he removed my panty, sir.

Q

And then after that, what did your father do to you?

x x x x x

ATTY. CHANGALE:

We would like to make it on record that the witness could hardly answer, your Honor.

A

He removed his shorts and then placed his penis on (sic) my vagina, sir.

Q

After your father placed his penis to your vagina, what happened?

A

He mashed this, sir.

INTERPRETER:

Witness holding her breasts.

Q

After that, what happened?

A

After that he returned to where he previously laid and went to sleep, sir.

Q

What about you, what did you do?

A

I was just crying, sir."[8]

Appellant tries to impute ill-motive on complainant alleging that she filed this rape charge against him because he often scolded and whipped her whenever she came home late. We are not persuaded. Parental punishment is not a good reason for a daughter to falsely charge her father with rape.[9] Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which would put her own father for the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame.[10]

Just as in other rape cases, appellant raises the argument that rape could not have happened because complainant's siblings were sleeping beside them when the alleged crime was committed. Yet, it is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby.[11] Rape is not always committed in seclusion.[12] Rape may take only a short time to consummate, given the anxiety of discovery, especially when committed near sleeping persons oblivious to the goings-on. Thus, the Court has repeatedly ruled that rape is not impossible even if committed in a small room where other family members also slept.[13]

The testimony of the victim that appellant repeatedly pinched her when she tried to wrestle with him is substantially corroborated by the medical findings of prosecution witness Dra. Roselyn Dadural who conducted an examination on the victim. This witness testified that the victim sustained abrasions on the left hand at the back of the palm near the elbow, and that at the time of examination these were just beginning to heal. As keenly observed by the trial court, "Dra. Dadural said that contusions and abrasions heal within three to four days. Thus, the contusions and abrasions on her arms are compatible with her statement that she had been pinched in the evening of May 14, 1994."[14]

Appellant's main line of defense consists of denial and alibi. He testified that he stayed in Munoz, Nueva Ecija where he worked as a farm helper of a certain Boyet Fernando from 1992 up to 1996; that during all those years not once did he go home to Bugallon, Ramon, Isabela; and that he returned to Bugallon only in 1996 after his wife informed him about the rape charge. We find the testimony of appellant incredulous and unbelievable.

In trying to exculpate himself from liability, appellant insists that from 1992 up to 1996, he never went home to Bugallon; that during the Christmas of 1992, he did not go home because he was working and that no one in his family went to Munoz to visit him; that they never wrote letters to each other; that he had no communication at all with his children from the time he went to Munoz in 1992; that although he missed his wife and children, he could not leave the farm because his employer would get mad; that in 1993 he never went to Bugallon because of financial hardship although his wife visited him twice that year to get provisions; that in 1994 he did not also go home and his wife visited him twice.

It is indeed perplexing how a father could bear not to see his entire family for a very long period of time, four years to be exact, on a very flimsy and incredulous excuse that there was so much work to do and that his employer would get mad if he left. In the same breath, appellant would want this Court to believe that when he left in 1992, they had no family problem and that they were a very happy and closely-knit family. Appellant attributes his prolonged absence to a heavy workload and his not so good relationship with his in-laws. However appellant admitted that his in-laws are not staying with them and, hence, there is nothing to stop appellant from

going home to visit his family. Not even his purported heavy workload will sustain his alibi since appellant has also admitted that they usually have a two-month rest period in-between harvest seasons.

For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. The test to determine the value of the testimony of a witness is whether such is in conformity with knowledge and consistent with the experience of mankind. Whatever is repugnant to these standards becomes incredible that lies outside of judicial cognizance.[15] In this wise, the testimony of appellant barely meets the minimum standard of credibility.

Contrary to appellant's asseverations, it is the defense evidence which is replete with inconsistencies, to wit:

1. By appellant's own admission, his in-laws did not like him because he was poor and could not provide for the needs of his family. This only serves to bolster complainant's testimony that at the time of the incident her mother was not home and had been staying in Munoz, Nueva Ecija for the past two weeks because appellant had sent her there to harvest palay. As plainly put by the trial court, "if he was working in Munoz and providing for his family then there would have been no reason for his mother-in-law to dislike him."
2. According to appellant, when he left in 1992, their fifth child Ronald was not yet born, making it appear that there were only four children at the time he went to Munoz, Nueva Ecija. However, Aurelia testified that in 1992 she already had six (6) children. Also, appellant said that their sixth child, Romeo, was born in Ramon, Isabela whereas Aurelia stated that he was born in Munoz, Nueva Ecija, thereby prompting the trial court to wonder how they could contradict each other on such a major event as the birth of their youngest child.
3. Appellant stated that in 1994, his wife visited him in Munoz only twice but he could only recall her visit in July 1994 when she brought along their daughter Cristina. Rather than contradict, this statement of appellant actually strengthens the declaration of Helen that her mother and her siblings left for Munoz in June 1994 right after she filed her complaint against appellant. It even substantially corroborates the testimony of Aurelia that she and her children, except Helen, followed appellant to Munoz about the end of June 1994 and that they stayed there continuously from 1994 to 1996.
4. Daughter Cristy Baybado could not explain how she was able to recall that on May 14, 1994, Helen was not at their house and that her father was in Munoz. She could not remember any unusual or extraordinary incident that transpired which would have made her commit to memory an otherwise very trivial matter such as her sister not sleeping at the house. On the other hand, she claims to be unaware of this far more important rape charge filed by Helen against their father. The only thing she knows is that this case was filed because her father whipped her sister Helen when the latter went to the dance.
5. Aurelia testified that she and her children, except Helen, stayed with appellant in Munoz continuously from 1994 to 1996 and that they all returned together to Ramon, Isabela in 1996. On further questioning, she contradicted herself by saying that she learned about the rape charge against appellant in November 1995 when the police came looking for her husband at their house at Bugallon, Ramon, Isabela. Appellant did not fare any better. Initially, he testified that he returned to Bugallon in 1996 together with his wife and children, making it appear that prior thereto, his family was staying with him in Munoz, Nueva Ecija. To a subsequent question, however, he answered that he was the only one who returned to Bugallon, Isabela to join his wife and children who were then living there.

The improbabilities and inconsistencies in the testimonies of the defense witnesses cast serious doubt on their veracity. Appellant's defense of alibi, already considered inherently weak, is at the very least, highly suspect. It

cannot prevail over the straightforward, direct and candid testimony of the complainant.

We shall now discuss the proper penalty to be imposed. The trial court meted out the death penalty on appellant pursuant to Article 335 of the Revised Penal Code, as amended by R.A. 7659, which reads:

"Article 335. When and how rape is committed. -

x x x x x

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 civil 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."

In *People vs. Garcia*,^[16] this Court ruled that the additional attendant circumstances introduced by Republic Act No. 7659 should be considered as special qualifying circumstances specifically applicable to the crime of rape considering that they have changed the nature of simple rape by increasing the penalty one degree higher through the imposition of the death penalty. These attendant circumstances were considered as equivalent to qualifying circumstances since they increase the penalties by degrees, and not merely as aggravating circumstances which affect only the period of the penalty but do not increase it to a higher degree.^[17] This Court further ruled that 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 and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned.^[18]

Prescinding from this ratiocination, in the subsequent case of *People vs. Ramos*,^[19] where the information merely alleged the age of the victim but not the fact of relationship, this Court ruled that "with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender gives a different character to the rape defined in the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special qualifying circumstance."

This doctrine has since been reiterated in a phletora of cases^[20] with the Court consistently holding that the accused is guilty only of simple rape and thereby imposing the penalty next lower in degree, which is reclusion perpetua, where the information has failed to allege the twin requirement of the minority of the victim and her filial relationship to the accused.

In the case at bar, the Information failed to allege the minority of the complainant, hence, the trial court erred in appreciating this qualifying circumstance and in imposing the death penalty. Appellant can only be convicted of simple rape punishable with reclusion perpetua.

Lastly, there is no truth to appellant's contention that he surrendered voluntarily. In a 2nd Indorsement issued by PNP Ramon Police Station Chief Arnold A. Apostol on August 19, 1996, the alias warrant of arrest issued against appellant was returned to the Regional Trial Court Second Judicial Region, Branch XXI, Santiago City "with the information that the accused was already arrested." [21] There can be no voluntary surrender if the warrant of arrest showed that the defendant was in fact arrested. [22] Moreover, in the decision of the trial court, it was stated that the accused was arrested on August 19, 1996 and, hence, he was arraigned only on September 9, 1996 wherein he pleaded not guilty to the offense charged. [23] His self-serving statement that he surrendered to a Kagawad of Ramon, Isabela, is uncorroborated. It follows that this mitigating circumstance cannot be appreciated in his favor.

In any event, this circumstance, even if proved, will not affect the imposable penalty in this case. As earlier adverted to, appellant can only be held liable for simple rape which is punishable by the single indivisible penalty of reclusion perpetua. Corollarily, Article 63 of the Code provides that where the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. [24]

On the basis of the foregoing considerations, we are convinced that appellant is guilty of rape as found by the trial court. However, aside from the imposable penalty, the award of damages should also be modified. The trial court ordered appellant to pay the complainant P50,000.00 as civil indemnity. In accordance with current jurisprudence, [25] moral damages are now automatically awarded to victims of incestuous rape without need of proof, in the amount of P50,000.00.

WHEREFORE, the judgment appealed from convicting accused ROLANDO BAYBADO guilty beyond reasonable doubt of the crime of rape is hereby AFFIRMED subject to the MODIFICATION that he is hereby sentenced to suffer the penalty of reclusion perpetua, and to pay the complainant P50,000.00 as civil indemnity and P50,000 as moral damages.

SO ORDERED.

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

[1] Original Record, Criminal Case No. 21-2021, p. 1.

[2] Exhibit D; Original Record, p. 6.

[3] Original Record, p.5.

[4] She was born on January 10, 1979; Exhibit "A", Original Record, p. 96.

[5] Penned by Judge Fe Albano Madrid; Original Record, pp. 144-157.

[6] People vs. Sabredo, G.R. No. 126114, May 11, 2000.

[7] Decision, Criminal Case No. 21-2021, p. 7; Original Record, p. 150.

[8] TSN, December 2, 1996, pp. 7-14..

[9] *People vs. Cabanela*, 299 SCRA 153 (1998)

[10] *People vs. Guiwan*, G.R. No. 117324, April 27, 2000.

[11] *People vs. Ramos*, *supra*.

[12] *People vs. Silvano*, 309 SCRA 362 (1999); *People vs. Perez*, 296 SCRA 17 (1998)

[13] *People vs. Bayona*, G.R. Nos. 133343-44, March 2, 2000; *People vs. Escala*, 292 SCRA 48 (1998); *People vs. Manuel*, 236 SCRA 545 (1994); *People vs. Cervantes*, 222 SCRA 365 (1993)

[14] *Id.*, Criminal Case No. 21-2021, p. 10; *Ibid.*, p. 153.

[15] *People vs. San Juan*, G.R. No. 130969, February 29, 2000, citing *Cosep vs. People*, 290 SCRA 378 (1998), *People vs. Parazo*, 272 SCRA 512 (1997), and *People vs. Marollano*, 276 SCRA 84 (1997)

[16] 281 SCRA 463 (1997)

[17] This doctrine has since then been incorporated in R.A. 8353, "The Anti-Rape Law of 1997" which took effect on October 22, 1997, where the seven additional circumstances were classified as "aggravating/qualifying circumstances."

R.A. 8353 expanded the definition of the crime of rape and reclassified the same as a crime against persons and incorporated it into Title Eight under Chapter Three as Articles 266-A, 266-B, 266-C and 266-D. Regalado, *Criminal Conspectus*, First Ed., 2000, p. 611.

[18] *Supra*. at 488-489.

[19] 296 SCRA 559 (1998)

[20] *People vs. Sabredo*, G.R. No. 126114, May 11, 2000; *People vs. Fraga*, G.R. Nos. 134130-33, April 12, 2000; *People vs. Ferolino*, G.R. Nos. 131730-31, April 5, 2000; *People vs. Bayona*, G.R. Nos. 133343-44, March 2, 2000; *People vs. Pailanco*, G.R. No. 130986, January 20, 2000; *People vs. Panique*, G.R. No. 125763, October 13, 1999.

[21] Original Record, p. 25.

[22] *People vs. Conwi*, 71 Phil. 595 (1940)

[23] *Ibid.*, p. 144.

[24] *People vs. Siao*, G.R. No. 126021, March 3, 2000.

[25] *People vs. Atienza*, G.R. No. 131820, February 29, 2000.

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