PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANICO NUEVO @ “SANY,” ACCUSED-APPELLANT.

G.R. No. 132169. October 26, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the decision[1] of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, finding accused Sanico Nuevo @ "Sany" guilty of rape and sentencing him to death.

His conviction stemmed from the following information:[2]

> That, in the evening, on or about the 4th day of December, 1994, in the municipality of Godod, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one ROBERTA CIDO, a 20 year old married woman, against her will and without her consent.
>
> CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).

A plea of not guilty was entered upon arraignment.

During trial, the prosecution presented three witnesses, namely: (1) complainant Roberta Cido; (2) Anselmo Cido, Jr., the complainant's husband; and (3) Dr. Esmeralda Nadela, a resident physician of the Sindangan District Hospital, Sindangan, Zamboanga del Norte. They testified as follows:

ROBERTA CIDO[3] recalled that at about 9:00 o'clock in the evening of December 4, 1994, Sanico Nuevo passed by their house and invited her husband Anselmo Cido, Jr., to a drinking spree at the house of Anselmo, Sr., her father-in-law.[4] She was left at home with her 10-month-old daughter and her nine-year-old niece Gemma Atis. They slept in the living room, cum bedroom, the only room in the house.[5] At around 11:00 P.M., appellant surreptitiously returned and entered their room. She was awakened when appellant held her neck, pinned down her arms and took off her clothing. While Sanico was removing her panties, she struggled to extricate herself but to no avail. She was unable to shout because appellant was covering her mouth. While she was lying on her back, appellant laid on top of her and proceeded to forcibly have sexual intercourse with her, at the same time pinning her down with a bolo. As this was happening her niece Gemma, who was present, witnessed what was being done to her. Appellant even warned Gemma not to reveal what she saw and at the same time threatened Roberta not to tell her husband about the incident or else he would kill her.[6] He thereafter left the house.

Roberta further testified that her husband Anselmo, Jr., returned home only the morning after. She immediately told her husband about the previous night's incident. The latter hastened to the house of Sanico but did not find him. Appellant was arrested that same afternoon.[7]

Although Roberta testified on cross-examination, that she did not see him because it was very dark that night, she identified him through his voice.[8] She was certain it was he because she was very familiar with appellant's

voice. Not only have they been neighbors since childhood, she also heard the appellant when he invited her husband earlier that evening, and when he warned her and her niece not to tell anyone what happened.

For his part, ANSELMO CIDO, JR., corroborated part of his wife's story. He narrated that at around 9:00 P.M., December 4, 1994, Sanico with companions dropped by their house and invited him to a drinking spree in his father's (Anselmo, Sr.) house, about 50 meters away from theirs. While there, they drank until dawn. Sanico left his father's place at around 11:00 P.M., purportedly to answer the call of nature, and returned only at around 1:00 A.M. of December 5, 1994. At the time Sanico left, Anselmo, Jr., observed that he was carrying an 18-inch bolo. When Anselmo, Jr., arrived home early in the morning, his wife told him of her ordeal.[9]

DR. ESMERALDA NADELA testified on her medical findings contained in her Medico-Legal Certificate dated December 6, 1994, which document[10] she brought along and read in open court. She said Roberta told her that the latter was submitting herself for medical examination because she was raped, and that her last sexual contact with her husband was a week before the incident. Nadela testified further that based on her examination conducted two days after the alleged incident, no fresh injuries were actually found on the victim; that only old lacerations were present; that such absence was possible due to the victim's previous child birth;and that no spermatozoa was found on the victim, which was likely because the examination was conducted only two days after the alleged rape.[11]

For the defense, two witnesses were presented. First was the appellant himself, SANICO NUEVO. He declared that he knew Roberta since they were schoolmates in grade school and she was a former neighbor. He lived about 100 meters from her house. Moreover, her husband Anselmo, Jr., was his "barkada". He recounted that at about 6:30 P.M., December 4, 1994, his father and he went to the house of Anselmo, Sr., to buy Tanduay Rum and drank with their friends Rudy and Ami Tinambakan. On the way, they had to pass by the house of Anselmo, Jr. He denied he invited the younger Anselmo to go drinking as the latter's house was already close by. It was Anselmo, Jr., who later followed and joined them until around 10:30 P.M. Appellant said he stayed in the house of Anselmo, Sr., where he slept at around 12:00 o'clock midnight. It was already 6:30 A.M. the following day when he woke up. He denied raping Roberta. He added that the house of Anselmo, Sr., was only about 35 meters from the house of Roberta.[12]

The second witness for the defense was EMELIO[13] NUEVO, brother of appellant. He claimed that he was with his brother Sanico and two neighbors the night of the incident. He corroborated his brother's story that they were drinking at the house of Anselmo, Sr., and he noticed his brother asleep on the upper floor of Anselmo Sr.'s house, when he left at around 5:00 A.M. early in the morning while the others were still dancing downstairs. He admitted, however, that he told no one of seeing his brother sleep in the house of Anselmo Sr., even when he found out that his brother was to be arrested, and even when he saw him tied up and already in the custody of the police. He did not disclose this fact, even when he was already alone with his other brother who was a councilor of their place. It was only in his testimony during trial that he chose to reveal these facts in Sanico's defense. He also said he was not aware of any misunderstanding between his brother and the spouses Roberta and Anselmo, Jr.[14]

The trial court found the prosecution's version of events credible and disbelieved that of the defense. It rendered judgment as follows:

> IN VIEW OF THE FOREGOING, the Court finds the accused SANICO NUEVO guilty beyond reasonable doubt of the crime charged in the above-quoted information with aggravating circumstances of dwelling (Article 14, (3) of the Revised Penal Code; People vs. Padilla, 242 SCRA 629) and committed in full view of the relative within the third degree of consanguinity (Sec. 11 R.A. 7659), but since no mitigating circumstances (sic) to offset the above aggravating circumstances, the Court hereby sentences the accused Sanico Nuevo to

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> suffer the maximum penalty provided by law which is DEATH and to pay the private offended party in the sum of P50,000.00.
>
> COSTS de officio.
>
> SO ORDERED.[15]

In his brief, appellant assigns one error only:

> THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SANICO NUEVO OF COMMITTING RAPE AGAINST ALLEGED VICTIM ROBERTA CIDO DESPITE INSUFFICIENT EVIDENCE OF HIS POSITIVE IDENTIFICATION.[16]

In resolving cases of rape, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the appellant, although innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense (People vs. Quijada, 321 SCRA 426 [1999]); and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying (People vs. Maglente, 306 SCRA 546 [1999]).

In our view, the first issue for our resolution here is whether appellant was sufficiently identified by the offended party based only on her recognition of the sound of his voice. The second issue is whether the prosecution's evidence suffices for the conviction of rape and the imposition of the death penalty on him.

Appellant denies he raped Roberta Cido. He questions the certainty of his identification as the offender. He avers that the night of the rape, there was no moon and it was very dark. Nor was there any showing of illumination from any source in and out of the house of the victim. Further, she averred that she identified her rapist only because she recognized his voice. According to appellant, such voice identification is insufficient to prove he was the rapist.

In People vs. Reyes,[17] we held that once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance. In a number of cases, we ruled that the sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[18] Appellant did not deny that he and Roberta had known each other since childhood[19] and that appellant and Roberta's husband were "barkada."[20] It is not impossible then that complainant could immediately recognize appellant through his voice alone. In addition, appellant's face was very near the victim[21] such that the victim could not have misidentified him, even only by voice recognition.

According to appellant, Roberta claims she smelled marijuana on the rapist but she patently made a mistake since he should have smelled of Tanduay Rum instead, because that was what he drank. In addition, he argues that since no physical injury was found on Roberta to show that there was force or intimidation inflicted on her, therefore, no rape had happened.

As testified to by Dr. Nadela, however, lacerations or signs of injury may not be present in this case due to the fact that the victim had already given birth to a child.[22] Moreover, according to the victim,[23] appellant's penis was relatively small in size, about two and a half inches long. This is consistent with Dr. Nadela's testimony that in some cases of women who have already given birth, it would take an "extra-large" male organ to cause lacerations. According to her, healed lacerations or the absence of spermatozoa in the vaginal canal do not negate

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rape.[24] We are, thus, constrained to say that appellant's bland conclusion that no rape happened for lack of physical injuries on the person of the victim is clearly a non-sequitur.

Appellant's claim that Roberta should have smelled him reeking of liquor instead of marijuana is beside the point and deserves scant consideration. Note that appellant and his five other companions shared only four bottles of pocket-sized Tanduay mixed with softdrinks.[25] Thus, it was not unlikely that he did not smell strongly of liquor. Further, note that the drinking spree started at 8:30 P.M., and it was barely two hours thereafter when appellant left the group, according to prosecution witnesses. Besides, that Roberta said she detected the smell of marijuana on her abuser does not change the fact that she identified him positively and without any reservation as the perpetrator of the offense.

Considering the circumstances in this case, in the light of the testimony by the victim and her witnesses as well as of those for the defense, we agree with the trial court that Roberta had sufficiently identified appellant as the person who raped her, by means of force, violence and intimidation, against her will and without her consent. Appellant is guilty beyond reasonable doubt of the crime charged.

We are, however, constrained to disagree concerning the penalty imposed on him. An appeal in a criminal case throws the entire case wide open for review and it is the duty of the appellate court to correct errors, as may be found in the appealed judgment, even if unassigned.[26] This salutary principle governs our automatic review of death penalty cases as well.

Although not assigned as an error, it is our view that the trial court erred in appreciating the qualifying circumstance under par. 3, Section 11, R.A. 7659,[27] concerning the presence of a relative, to justify the imposition of the death penalty.

In People vs. Amadore, we held that the attendance of any of the circumstances under the provisions of Section 11 of Republic Act No. 7659, mandating the death penalty are in the nature of qualifying circumstances and the absence of proper averment thereof in the complaint will bar the imposition of that extreme penalty.[28] The information in this case did not allege the qualifying circumstance, that the rape was committed in full view of a niece (a relative within the third degree of consanguinity). Because of this deficiency, appellant was not properly apprised of the extent of the punishment which the charges against him entailed. Thus, it was an error to consider the foregoing circumstance in the imposition of the proper penalty on appellant.

Further, while the decision of the trial court held that dwelling and the use of a deadly weapon aggravated the crime committed, we find that these were not averred in the information. The Revised Rules of Criminal Procedure, effective December 1, 2000, provides that every complaint or information must state not only the qualifying but also the aggravating circumstances with specificity.[29] This requirement of procedure has retroactive effect and is applicable to actions pending and undetermined at the time of their passage insofar as it is favorable to the appellant. Procedural laws are retroactive in that sense and to that extent.[30] Here, it was error to appreciate dwelling and the use of a deadly weapon as aggravating circumstances in the commission of the offense. In sum, we find that no aggravating as well as qualifying circumstances have been properly pleaded and proved by the prosecution in this case. The result is that the crime committed by appellant is only simple rape, which under Article 335 of the Revised Penal Code as amended by R.A. 7659, the law prevailing at the time of commission thereof, is punished only with reclusion perpetua.

Moreover, on the civil aspect, modification is also in order. Private complainant is entitled not only to P50,000 as civil indemnity, but following current jurisprudence, also to P50,000 as moral damages and P25,000 as exemplary damages.

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WHEREFORE, the decision of the trial court is MODIFIED. The appellant is declared GUILTY of the crime of simple rape beyond reasonable doubt, and he is hereby sentenced to suffer the penalty of reclusion perpetua. Conformably with prevailing jurisprudence, appellant is also ordered to pay the offended party P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Vitug, J., on official leave.

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[1] Rollo, pp.12-27.

[2] Records, p. 9.

[3] Also spelled as SEDO in the TSN. TSN, Oct. 27, 1995, p. 2.

[4] Id. at 3.

[5] Id. at 8-9.

[6] Id. at 4-6.

[7] Id. at 7.

[8] Id. at 12.

[9] TSN, June 21, 1996, pp. 3-5.

[10] Exhibit "A", Rollo, p. 37.

[11] TSN, September 15, 1995, pp. 3-4.

[12] TSN, May 9, 1997, pp. 3-8.

[13] Sometimes spelled "Emilio" in the Records.

[14] TSN, July 11, 1997, pp. 7-9, 15.

[15] Rollo, p. 27.

[16] Id. at 38.

[17] G.R. No. 120642, 309 SCRA 622, 634-635 (1999).

[18] People vs. Gayomma, G.R. No. 128129, 315 SCRA 639, 646 (1999); People vs. Enad, et al., G.R. No. 122934, January 5, 2001, p. 11, citing People vs. Avillano, G.R. No. 111567, 269 SCRA 553, 562 (1997).

[19] TSN, October 27, 1995, p. 16.

[20] TSN, June 21, 1996, p. 4.

[21] TSN, October 27, 1995, p. 13.

[22] TSN, December 8, 1995, p. 3.

[23] TSN, October 27, 1995, pp. 13-14.

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[24] People vs. Espinoza, G.R. Nos. 113521-31, 247 SCRA 66, 73 (1995).

[25] TSN, May 9, 1997, p. 9.

[26] People v. Nuñez, G.R. No. 128875, 310 SCRA 168, 181 (1999).

[27] The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x

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.

x x x

[28] People vs. Amadore, G.R. Nos. 140669-75 & 140691, April 20, 2001, pp.15-16.

[29] Rule 110, Section 8 states in pertinent part: Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[30] People vs. Arrojado, G.R. No. 130492, January 31, 2001, p. 21 citing Ocampo vs. Court of Appeals, G.R. No. 79060, 180 SCRA 27 (1989); Alday vs. Camilon, L-60316, 120 SCRA 521 (1983); People vs. Sumilang, L-49187, 77 Phil. 764 (1946).

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