

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY R. GUTIERREZ, ACCUSED-APPELLANT.

G.R. No. 132772. August 31, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

On automatic review before us is the decision[1] of Branch 259 of the Regional Trial Court of Parañaque, Metro Manila, in Criminal Cases Nos. 96-917 and 96-918 finding accused-appellant Joey R. Gutierrez (hereafter JOEY) guilty beyond reasonable doubt of two counts of rape and sentencing him in each count to suffer the penalty of death, indemnify the victim, Gina Lequigan (hereafter GINA), the amounts of P50,000 as indemnity, P100,000 as moral damages and P100,000 as exemplary damages.

The Informations in Criminal Cases Nos. 96-917[2] and 96-918[3] charged JOEY of rape allegedly committed as follows:

Criminal Case No. 96-917

That on or about the 6th day of July 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, a minor, 9 years of age, against her will.

CONTRARY TO LAW.

Criminal Case No. 96-918

That on or about the 6th day of October 1996, in the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, who is a minor, 9 years of age, against her will and consent.

CONTRARY TO LAW

JOEY was likewise charged with the violation of Section 10, Article VI of R.A. No. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act in Criminal Case No. 96-916. The accusatory portion of the Information[4] in said case reads:

That on or about the 6th day of September 1996, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of the child Gina Lequigan, whose love, care and protection are incumbent upon him, did then and there willfully, unlawfully and feloniously inflict cruel and unusual punishment upon the said child, a minor, 9 years of age, by then and there assaulting and employing personal violence upon her person by beating here, thereby causing her trauma and physical injuries which required medical attention for a period of less than nine days.

CONTRARY TO LAW.

The cases were consolidated, and at his arraignment JOEY entered a plea of not guilty in each case.

GINA declared before the trial court that in the afternoon of 6 July 1996, she celebrated her ninth birthday by going to church with her mother, Clarissa Gutierrez, who is the common-law wife of JOEY. They later returned to their house in Multinational Village, Parañaque. JOEY was in the house at the time. GINA's mother left shortly for the market. At around 3:00 p.m. that day, JOEY, then alone with GINA inside the bedroom, started kissing the latter on the lips. He then inserted his finger into her vagina. JOEY spread her legs and tied them to the bedposts, put baby oil on his penis and tried inserting it into her vagina. GINA felt pain in her vagina. JOEY was only partially successful in penetrating it. GINA cried. JOEY stopped forcing his penis in only when he heard a knock on the door. He removed the bindings on her legs and the covering on her mouth.

On 6 October 1996, JOEY repeated the same dastardly act on GINA.

GINA informed her teacher about that incident, who then reported it to the school principal. GINA's mother, Clarissa, was summoned by the principal to the school to hear what happened to her daughter, but her mother refused to believe it. Thus, it was the principal and GINA's teacher who accompanied her to the police, which led to the filing of the criminal cases against JOEY.[5]

The witnesses presented by the defense were Clarissa Gutierrez, Mary Grace Patino, Flordeliza Patino, Epifania Gutierrez, and Narciso Gutierrez.

JOEY denied raping GINA and said he did not know why she would file a complaint for rape against him. He asserted, however, that he had beaten her up for lying.[6]

Clarissa declared that GINA could not have been raped by JOEY, her common law husband, because she was in the house at the time.[7] Mary Grace, GINA's aunt, said that she was with GINA at her cousin's birthday party on 6 July 1996, the date of the alleged first rape incident; she did not notice GINA behaving unusually; and that GINA even seemed to be very happy playing with the other children.[8] Flordeliza testified that GINA was in a jovial mood on her birthday as evidenced by the pictures she herself took (Exhibits "1-A-aa," "I-C-2" and "1-E").[9]

Epifania and Narciso both stated that JOEY was with them on 6 October 1996, so the rape could not possibly have occurred.[10]

The trial court gave full faith and credit to the testimony of GINA, and convicted JOEY of rape on two counts. However, it dismissed the child abuse case against him for lack of evidence.

In the Appellant's Brief, JOEY contends that the trial court erred:

- I. ... IN NOT APPRECIATING THE JOVIAL MOOD OF THE VICTIM IMMEDIATELY FOLLOWING THE ALLEGED ASSAULT.
- II ... IN NOT FINDING THAT THE PRIVATE COMPLAINANT MADE AN INCONSISTENT STATEMENT ON A MATERIAL FACT.
- III. ... IN FINDING THAT THE DEFENSE MADE AN INCONSISTENT STATEMENT ON A MATERIAL FACT.
- IV. ... WHEN IT RULED THAT "IT WAS NOT IMPOSSIBLE FOR THE ACCUSED TO HAVE ABUSED THE VICTIM EVEN IF A PARTY WAS GOING ON."

In support of the first assigned error, JOEY maintains that the victim was seen in a happy mood attending birthday parties on 6 July 1996 and 6 October 1996, and argues that a victim of a traumatic experience such as rape,

“would not have time and spirit to be merry.” As proof of her happy mood, he points to the pictures taken during the occasion by her aunt, Mary Grace Patino. As for the incident on 6 October 1996, he maintains that he could not have raped GINA because he was in the house of witness Epifania Gutierrez the whole afternoon of that day.

We find nothing incomprehensible about GINA’s reaction. We have long recognized that different people react differently to a given situation and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. One person’s spontaneous response may be aggression while another person’s reaction may be cold indifference.[11] The psychiatric term for such a condition is “Post-traumatic stress disorder.” It is defined as follows:

The essential feature is the development of characteristic symptoms after the experiencing of a psychologically traumatic event or events outside of human experience usually considered to be normal.

x x x

(It) has been described as a response to an enormous variety of overwhelmingly stressful situations -- prisoners of war, death camps, combat, auto accidents, industrial accidents, such mass catastrophes such as Hiroshima, as well as rape, and severe accidents in the home.

x x x

In general, the very young and the very old have more difficulty in coping with traumatic events than do those experiencing them in midlife.

x x x

Presumably, young children have not yet developed adequate coping mechanisms to deal with the physical and emotional insults of the trauma.

x x x

This disorder may begin anytime after the occurrence of an extreme or catastrophic stress. In many persons, the disorder begins hours or days after experiencing the stressor; but in some persons the reaction may be delayed by months or even years.[12] (Underscoring supplied).

What is most damaging to JOEY is the extremely candid, straightforward and detailed testimony of GINA establishing his guilt beyond reasonable doubt. Thus:

Q: Doon sa reklamo noong July 6, 1996 na meron ginawa sa iyo si Joey Gutierrez, natatandaan mo ba kung ano ang ginawa niya sa iyo?

A: Hinahalikan po ako sa labi.

Q: Noong ginawa niya sa iyo iyon, hapon ba iyon o umaga?

A: Hapon po. Mga 3:00 p.m.

Q: Bakit saan ba iyong nanay mo noong hinahalikan ka ni Joey Gutierrez?

A: Umalis po siya. Namalengke po siya.

Q: Noong hinahalikan ka ni Joey Gutierrez, saan ang mga kapatid mo noon?

A: Nasa labas po at ang kapatid kong bunso ay nasa duyan po.

Q: Meron kayong katulong noon o wala?

A: Wala po.

Q: Di ba sinabi mo na hinahalikan ka ni Joey Gutierrez, saan parte ng bahay ka niya hinalikan?

A: Sa loob po ng kwarto.

Q: Kaninong kwarto?

A: Sa aming kwarto po.

Q: Ilan ba ang kwarto doon sa bahay ninyo?

A: Isa lang po.

Q: Pagkatapos ka niya halikan ano ang ginawa niya pagkatapos?

A: Iyong daliri po niya ipinasok sa ari ko.

Q: Pagkatapos niyang maipasok ang kamay niya sa ari mo, ano naman ang ginawa mo?

A: Tinakpan po niya ang bibig ko.

Q: Ano ang ginawa niya sa pagtakip ng bibig mo?

A: Damit niya po.

Q: Bakit itinali niya ang damit niya sa bibig mo?

A: Hindi po. Tinakpan po niya ng kamay niya.

Q: Pagkatapos, saan niya ipinasok ang daliri niya?

A: Sa ari ko po.

Q: Naipasok ba niya ang daliri niya sa ari mo?

A: Ang ari niya ay nilagyan niya ng baby oil at pinilit niyang ipasok.

Q: Ibig sabihin, noong ginagawa niya ang pagpasok ng daliri niya sa ari mo hinuhubaran ka niya?

A: Opo.

Q: Tinanggal na niya ang panty mo at siya rin ay naghubad na?

A: Opo.

Q: Tinanggal na niya ang pantalon niya pati ang damit niya?

A: Opo.

Q: Pagkatapos, sabi mo na bago niya pinasok ang ari niya sa ari mo ay nilalagyan niya muna ng baby oil.

Paano mo nasabi na nilagyan niya ng baby oil?

A: Kasi po ang baby oil ay nasa plastic at binalik niya rin sa plastic ang baby oil.

Q: 'yung plastic ba ay may nakalagay ng baby oil?

A: Doon po nakalagay ang mga gamit sa plastic.

Q: Pagkatapos niyang lagyan ng baby oil ang ari niya, ano ang sumunod niyang ginawa?

A: Pinipilit po niyang ipasok.

Q: Bakit nakabukaka ka ba?

A: Itinali po niya ang dalawa kong binti.

Q: Paano niya itinali ang dalawa mong binti?

A: Nakabukaka po at itinali niya at dahil ayaw kong ibuka ang binti ko ay sinusuntok niya.

Q: Saan parte ng binti ka niya sinusuntok?

A: Sa kaliwang binti po.

Q: Pagkatapos niyang suntukin ang binti mo, ano ang ginagawa niya?

A: Pinipilit po niya.

Q: Naipasok ba niya ang ari niya sa ari mo?

A: Konti lang po pero pinipilit niya po.

Q: Pinipilit niya pero hindi niya maipasok at iyong ari niya ay nakatutok sa ari mo?

A: Opo, konti po.

Q: Noong pinipilit niyang ipasok, ano ang nararamdaman mo?

A: Masakit po.

Q: Dahil nasasaktan ka na, ano ang ginagawa mo?

A: Umiiyak po ako.[13]

Anent JOEY's second assigned error, we find the inconsistency in GINA's statements to be too minor to affect the credibility of her testimony. Being too trivial, such inconsistency does not rock the pedestal upon which GINA's credibility rests. In fact, it enhances her credibility as it manifests spontaneity and lack of scheming.[14]

JOEY also contends that the rapes could not have been committed because, on both occasions, a party was going on. Such a situation, he claims, can create the expectation that anyone – particularly his wife – might enter the house and witness the rape.

It is not necessary for rape to be committed in an isolated place, as JOEY contends. We have said that rapists bear no respect for locale and time when they carry out their evil deed. Rape has been successfully consummated in places where people congregate, like parks or school premises and even in a house where there are other occupants.[15]

JOEY was unable to prove any ill-motive on the part of GINA. Where there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or falsely implicate him in a heinous crime, the said testimony is worthy of full faith and credit.[16]

We will not disturb the finding of the trial court that there was a material contradiction in the testimony of Mary Grace Patino, who claimed to have been the one who brought GINA to Baclaran Church, that affected her credibility. Time and again, we have said that we will not interfere with the judgment of the trial court in determining the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[17]

As the Office of the Solicitor General stated:

The trial court cannot be faulted in its observation that the testimony of defense witness Grace Patino could not be given credence because of contradiction between her testimony and the testimonies of appellant and his wife. Thus:

Nonetheless, the statement of Mary Grace Patino did not fail to catch the attention of the Court. While the accused and his wife stated that in the afternoon of July 6, 1996, They went to Baclaran Church to hear mass, Mary Grace, the victim's aunt without hesitation also insisted that she brought the victim (at the same time and date) to Baclaran Church. This apparent inconsistency affected the cause of the defense.

(Decision, p. 9)[18]

However, JOEY should only be convicted of one count of rape and not two, as the trial court had earlier ruled. We find the evidence insufficient to prove beyond reasonable doubt his guilt for the rape allegedly committed on 6 October 1996. As to that incident, GINA's testimony is simply too general to be given evidentiary weight. This is all that the prosecution had proven:

Q: Ano naman ang ginawa niya noong October 6, 1996?

A: Ganoon din po.

Q: Hinubaran ka ulit at tinalian bunganga mo at binti mo?

A: Opo.

Q: At naglagay rin ulit siya ng baby oil ulit?

A: Opo.

Q: Ngayon, noong sabihin sa iyong ganoon ay natakot ka at hindi mo sinumbong sa nanay mo?

A: Opo.

Q: Bakit kung magsusumbong ka ba sa nanay mo, magagalit kaya ang nanay mo sa kanya?

A: Hindi ko po alam.[19]

It is settled that in the review of rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) 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.[20]

Considering the severity of the penalty involved here, the Court must take extreme care in weighing the evidence and we find that the foregoing evidence is insufficient to hold JOEY criminally liable for the 6 October incident.

Under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, the death penalty shall also be imposed for the crime of rape if the victim is under eighteen 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. The decision of the trial court in this case does not state the qualifying circumstance it appreciated in imposing the death penalty. It can only be assumed that what it considered was the fact that JOEY is the common-law spouse of GINA's mother. But since this circumstance was not alleged in the Information in Criminal Cases Nos. 96-917 and 96-918, it cannot be appreciated as a qualifying circumstance. We have ruled in a number of cases[21] that the circumstances provided for in the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of any of which would mandate the single indivisible penalty of death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances. Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying circumstance cannot be proved as such unless alleged in the Information although it may be proved as an ordinary aggravating circumstance if so included among those enumerated in Article 14 of the Code.

JOEY then can only be held liable for simple rape, whose prescribed penalty is reclusion perpetua.

We reduce the award of moral and exemplary damages to P50,000 and P25,000, respectively.

Moral damages are imposed in rape cases involving young girls between 13 to 19 years of age, taking into account the immeasurable havoc wrought on their youthful feminine psyche. It may be awarded without need of showing that the victim suffered mental anguish, fright, serious anxiety and the like.[22] Exemplary damages may also be imposed in criminal offenses when the crime was committed with one or more aggravating circumstances.[23] In this case it is obvious that the crime was committed with the aggravating circumstance of abuse of confidence.[24]

WHEREFORE, the assailed judgment of the Regional Trial Court of Parañaque, Branch 29, in Criminal Cases Nos. 96-917 and 96-918 is hereby MODIFIED. As modified, accused-appellant JOEY GUTIERREZ is ACQUITTED in Criminal Case No. 96-918, but found guilty beyond reasonable doubt of the crime of simple rape

in Criminal Case No. 96-917 and is sentenced in said case to suffer the penalty of reclusion perpetua and ordered to pay the offended party, Gina Lequigan, the amounts of P50,000 as indemnity, P50,000 moral damages and P25,000.00 as exemplary damages.

Costs against accused-appellant.

SO ORDERED.

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

[1] Rollo, 56. Per Judge Zosimo V. Escano.

[2] Rollo, 7.

[3] Ibid., 8.

[4] Id., 6.

[5] TSN, 12 February 1997, 10-20.

[6] TSN, 18 June 1997, 7.

[7] TSN, 17 July 1997, 6-7.

[8] TSN, 16 September 1997, 11-13.

[9] TSN, 6 October 1997, 7-13.

[10] TSN, 21 October 1997, 23; TSN, 30 October 1997, 6-8.

[11] People v. Mamac, G.R. 130322, 31 May 2000, citing People v. Perez, 296 SCRA 17 [1998] .

[12] KAPLAN and SADOCK, Modern Synopsis of Comprehensive Textbook of PSYCHIATRY/III, [Third ed., 1981], 446-448.

[13] TSN, 12 February 1997, 10-16.

[14] People v. Cristobal, 252 SCRA 507, 516-517 [1996] .

[15] People v. Leuterio, 264 SCRA 608, 615 [1996] .

[16] People v. Cristobal, supra note 13.

[17] People v. Malunes, 247 SCRA 317, 324 [1995] .

[18] Appellee's Brief, 21, Rollo 133.

[19] TSN, 13 February 1997, 16-20.

[20] People v. Excija, 258 SCRA 424, 438-439 [1996] ; People v. De Guzman, 265 SCRA 228, 241 [1996] .

[21] People v. Garcia, 281 SCRA 463 [1997] ; People v. Ramos, 296 SCRA 559 [1998] ; People v. Ilao, 296 SCRA 658 [1998] ; People v. Dimapilis, 300 SCRA 279 [1998] .

[22] People v. Erese, 281 SCRA 316, 329 [1997] ; People v. Prades, 293 SCRA 411, 430 [1998] ; People v. Padilla, 301 SCRA 265, 277 [1999]; People v. Balutete, 303 SCRA 711, 732 [1999] ; People v. Guzman, G.R.

No. 124368, June 8, 2000.

[23] Article 2230, Civil Code.

[24] Article 14(4), Revised Penal Code.

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