

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL CULA Y BANDILLA, AND JOSELITO LOPEZ Y ROCO, ACCUSED-APPELLANTS.

G.R. No. 133146. March 28, 2000

Ponente: MELO, J.

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MELO, J.:

Before the Court on automatic review is the decision dated March 16, 1998 of the Regional Trial Court of the National Capital Judicial Region (Branch 219, in Quezon City), convicting accused~appellants of rape, as follows:

WHEREFORE, finding both accused guilty beyond reasonable doubt of the crime of rape as charged in the Information and defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, the Court hereby sentences accused MANUEL CULA (1) to suffer the penalty of death; (2) to pay the complainant P50,000.00 as moral damages and P30,000.00 as exemplary damages; and (3) to pay the costs; and accused JOSELITO LOPEZ (1) to suffer the penalty of Reclusion Perpetua; (2) to pay the complainant the amount of P50,000.00 as damages; and (3) to pay the costs.

The Branch Clerk of Court is hereby directed to immediately transmit the entire records of the case to the Supreme Court for automatic review.

SO ORDERED.

(p. 24, Rollo.)

Accused~appellants were charged with the crime of Rape in a complaint dated August 27, 1996, which alleged:

That on or about the 24th day of August, 1996, in Quezon City, Philippines, the above~named accused, one Manuel Cula y Bandilla, being then the father of the undersigned, conspiring together, confederating with and mutually helping with his co-accused JOSELITO LOPEZ Y ROCO, by means of force, violence and intimidation, to wit: by then and there, wilfully, unlawfully and feloniously gave her fistic blows on the stomach and at the point of a bladed weapon, carried her to a double deck type room, stripped off her clothes and underwear and thereafter took turns in having carnal knowledge of the undersigned, a minor, 16 years of age, against her will and without the undersigned's consent.

CONTRARY TO LAW.

(p. 5, Rollo.)

Accused~appellants, with the assistance of counsel de oficio, pleaded not guilty upon arraignment.

At the ensuing trial, the prosecution presented the victim Maricel Cula; Dra. Olga Bausa, a medico~legal officer; Philip Villanueva, Maricel's friend; SPO3 Benjamin Elenzano, the officer who took down Maricel's statement; and Er linda Cula, Maricel's mother.

Private complainant Maricel bravely recounted her harrowing experience at the hands of her father and his companion. Her testimony was faithfully summarized by the Solicitor General in this wise:

In the evening of August 23, 1996, complainant Maricel Cula, then 16 years old, was in their house located at No. 23, Zambales Street, Barangay San Martin de Porres, Cubao, Quezon City together with her live-in partner, Daniel Sto. Tomas, and his friend, Philip Villanueva. The two men were engaged in a drinking spree with Maricel's father, appellant Manuel Cula and his friend and neighbor, co-appellant Joselito Lopez. After the drinking session ended at about midnight, all went to sleep. Maricel Cula slept in a wooden bed in her room at the lower deck of their house beside Daniel while Philip Villanueva slept beside Daniel. Appellants Manuel Cula and Joselito Lopez slept at the upper deck of the house (TSN, pp. 4~9, October 4, 1996).

At about 1 o'clock in the early morning of August 24, 1996, Maricel was awakened when she felt someone mashing her breast. When she opened her eyes she was aghast to see her father on top of her. Maricel kicked appellant Manuel hard, who retaliated by punching her on the stomach three times. Appellant Manuel then lifted her bodily and passed her on to co-appellant Joselito Lopez who was standing near the door. Appellant Joselito carried Maricel to the upper deck of the house. Appellant Manuel then undressed Maricel. Maricel resisted but appellant Manuel instead poked a knife at her and threatened her with harm. Petrified with fear, Maricel gave up all resistance. Appellant Manuel went on top of Maricel and handed the knife he was holding to appellant Joselito. He then raped Maricel. After satisfying his lust on his own flesh, he yielded Maricel to appellant Joselito Lopez. Appellant Joselito poked the knife at Maricel and then took his turn in raping her. Maricel likewise was unable to resist as appellant Joselito gagged her mouth and threatened her with harm. Appellant Joselito warned her that he would kill her if she would report the matter to anyone. Maricel tried to struggle free but given her weakened condition as a result of the blows to her stomach delivered by her father all resistance was futile (tsn, October 14, 1996, pp. 4~15).

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Undaunted, Maricel reported the incident to her grandmother, Irene Antonio, the following morning. Philip Villanueva told Daniel Sto. Tomas what he saw. They went to Lagro and reported the matter to Maricel's mother. Accompanied by her mother, Daniel and Philip, Maricel went to the police station to report the incident. At the police station, Maricel executed a sworn statement before the police investigator accusing her father and Joselito Lopez of rape (ibid, pp. 15~20).

(pp. 4~5, Appellee's Brief; pp. 88~89, Rollo.)

Maricel's friend, Philip Villanueva, corroborated Maricel's testimony and narrated that while he was sleeping together with Maricel and Daniel at Maricel's house, he heard a noise. When he opened his eyes, he saw accused-appellant Manuel mashing Maricel's breast. He saw Maricel kick her father who retaliated by punching her stomach three times. Manuel then pointed a knife at Maricel, lifted her and passed her on to accused-appellant Joselito who brought her to the upper deck of the room. Then he heard Maricel crying. He tried to awaken Daniel but the latter was too drunk to get up. He was unable to help Maricel because he was afraid of Manuel as the latter was holding a knife. The following morning, Maricel confirmed to him what he saw (tsn, June 16, 1997, pp. 2~8.)

Dra. Olga M. Bausa, a medico-legal officer of the Philippine National Police (PNP), examined the victim and found that she sustained "a congested vestibule with shallow healed laceration at 7 o'clock position and deep healed laceration at 6 o'clock position" which might have been caused by the insertion of a hard blunt object which includes an erected penis (tsn, June 9, 1997, p. 8).

Accused-appellants advanced alibi and denial. Manuel Cula claimed that the charge against him was a fabrication

by Maricel upon the instigation of her mother, Erlinda Cula, because the latter was mad at him and they usually quarrelled with each other while they were still living together (tsn, February 2, 1998, p. 11). He testified that on the night of August 24, 1996, following a drinking spree with Joselito Lopez, Daniel Sto. Tomas, and Philip Villanueva, he scolded Maricel and told her to get out of the house together with Daniel and Philip. At this juncture, Erlinda's mother arrived and supported Maricel. Thereafter, they had an argument (ibid, p. 7).

For his part, Joselito Lopez, maintained that he left the house of Manuel Cula one hour after joining Manuel, Daniel, and Philip in a drinking spree, and that he never returned. He said he did not know of any reason why Maricel would charge him with rape (tsn, January 19, 1998, pp. 4 & 8).

In their Brief, accused~appellants essentially assail the credibility of Maricel Cula. They argue that it was impossible for them to have committed rape in a room where there were several other occupants, and where the victim was sleeping beside her live~in partner and the latter's friend. To them, the fact that it was only Philip Villanueva who was awakened by the commotion caused by Maricel's resistance is highly incredulous. Misjuris

Accused~appellants fail to persuade us. We have repeatedly declared that "lust is no respecter of time and place" (People vs. San Juan, 270 SCRA 693 [1997]; People vs. Cabillan, 267 SCRA 258 [1997]; People vs. Burce, 269 SCRA 293 [1997]). Rape can be committed in a house where there are many other occupants (People vs. Escobar, 281 SCRA 498 [1997]), and even in the same room where there are other members of the family who are sleeping (People vs. Gabayron, 278 SCRA 78 [1997]). It is also not impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed (People vs. Sangil, Sr., 278 SCRA 532 [1997]). Obviously, complainant's live~in partner, Daniel Sto. Tomas, was too drunk to notice what was happening at that time, while her siblings were still young and because of their tender ages, one may suppose that children sleep more soundly than grown~ups and are not easily disturbed by the gyrations and exertions of adults in the night (People vs. Faigano, 254 SCRA 10 [1996]). Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons (People vs. Manuel, 236 SCRA 577 [1994]).

Likewise, accused~appellants fault the trial court for giving too much credence to the testimony of complainant despite it being fraught with inconsistencies and contradictions as to how she was sexually abused. Accused~appellants lay stress on complainant's testimony during the direct examination that she slept beside Daniel Sto. Tomas while the latter was beside Philip Villanueva (tsn, October 14, 1996, pp. 8 & 28); whereas during the ocular inspection, she declared that she slept between Daniel and Philip (tsn, April 1, 1997, p. 3). Also, at one point, Maricel claimed that when she woke up, she saw her father naked and already on top of her (tsn, October 14, 1996, p. 10). Later, she testified that when Manuel undressed her, Manuel was still wearing a T~shirt (tsn, April 30, 1997, p. 4).

We have punctiliously scrutinized the testimony of complainant and we can only agree with the trial court's observation that she was candid, spontaneous, and straightforward in her testimony both during the direct and cross~examination. It is a basic rule, founded on reason and experience, that when the victim testifies that she has been raped, she says in effect all that is necessary to show that rape was committed. Thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof (People vs. Antido, 278 SCRA 425 [1997]; People vs. Butron, 272 SCRA 352 [1997]). The alleged inconsistencies cited by accused~appellants are not sufficient to render complainant's testimony doubtful nor do they negate the commission of rape. Said inconsistencies are inconsequential considering that they refer to trivial details which have nothing to do with the essential fact of the commission of the crime of rape, that is, carnal knowledge through force or intimidation. The testimony of a witness must be considered and calibrated in its entirety and not in truncated portions or isolated passages (People vs. Natan, 193 SCRA 355 [1991]).

Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious or subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone (*People vs. Rabosa*, 273 SCRA 142 [1997]). With more reason must we bestow greater understanding and sensitivity to herein complainant, who was ravished by the very person who is supposed to shield and protect her from harm - her own father. Verily, complainant's failure to give a perfect and flawless account of every grisly detail of the crime for which she seeks retribution should not be taken against her.

Accused~appellants point out that the examining physician did not report any sign of injury in any part of the body of Maricel, even as she alleged that she was punched in the abdomen by her father a total of five times (tsn, April 30, 1997, p.1 2). Granted that there were indeed no traces of these body blows, this does not render improbable the occurrence of rape because the absence of external signs or physical injuries does not necessarily negate the commission of rape since proof of injuries is not an essential element of the crime (*People vs. Alimon*, 257 SCRA 658 [1996]; *People vs. Casipit*, 232 SCRA 638 [1994]). And, of course, blows at the abdominal area usually leave no marks. Medical authorities vouch that when force is applied on that region, no marks of violence may be detected (*People vs. Mercado*, 275 SCRA 581 [1997]).

Too, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety (*People vs. Peñerto*, 276 SCRA 564 [1997]). Moreover, complainant testified that she was overpowered by her father as he was holding a knife with which he threatened to kill her (tsn, December 9, 1996, pp. 6~8). Certainly, the use of death threats constituted sufficient intimidation to cow Maricel into submitting, especially so since such threats emanated from her father who has moral ascendancy and parental influence over her.

In a bid to exculpate himself, accused~appellant Manuel also theorizes that Maricel lodged a complaint for rape against him merely upon the instigation of her mother with whom Manuel was oftentimes in disagreement. We reject this hypothesis. It is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation if the rape did not really happen. No mother in her right mind would possibly wish to stamp her child with the stigma that follows a despicable crime of rape (*People vs. Sabellina*, 238 SCRA 492 [1994]). Neither would Maricel fabricate a story of rape which would put her own father on Death Row. It bears noting that accused~appellant Manuel and Maricel's mother, Erlinda, have been separated for more than 10 years already, as in fact Erlinda is currently living with her new family (tsn, February 2, 1998, p. 8). So, it is quite surprising why a fabricated complaint for rape was filed just now, if Manuel's contention were to be given merit.

Further, accused~appellant Manuel admitted that he and Erlinda have had more serious quarrels in the past but no case was filed against him (tsn, February 2, 1998, p. 11). Likewise, the instant case was filed not only against Manuel, but also against Joselito Lopez whom the victim met only on the very same night when the rape happened. As a matter of fact, Joselito declared that no previous altercation had occurred between him and Maricel, thus his shock when Maricel implicated him in the case (tsn, January 19, 1998, pp. 7~8). Moreover, Maricel lost no time in immediately reporting the rape the following day to the police authorities (tsn, October 14, 1996, pp. 16~20). All these circumstances strengthen Maricel's credibility and lack of ill~motive to charge and to testify against accused~appellants. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence (*People vs. Malabago*, 271 SCRA 464 [1997];

People vs. Gagto, 253 SCRA 455 [1996]).

Accused-appellants vainly try to discredit Philip Villanueva's testimony for being highly unbelievable. True it is that Philip was awake at the time Manuel bodily carried Maricel and gave her to his friend. He could not, however, protest because he could not possibly have suspected that Manuel was out to rape his own flesh and blood. Aside from this, Philip unequivocally stated that he was afraid as Manuel was holding a bladed weapon (tsn, June 16, 1997, pp. 6 & 29). In light of the circumstances prevailing at the time of the incident, it would rather have been imprudent on the part of Philip to attract the attention of accused-appellants, as this would mean courting physical harm upon himself. The workings of a human mind placed under emotional stress are unpredictable and people react differently - some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion (People vs. San Juan, 270 SCRA 693 [1997]; People vs. Malunes, 247 SCRA 317 [1995]).

Accused-appellants' defense of alibi and denial cannot prevail over Maricel's unwavering and positive identification of accused-appellants as her abusers and tormentors. Their posturings are feeble, flimsy, self-serving, and uncorroborated (People vs. Cabiles, 284 SCRA 199 [1998]). Manuel could not have been mistakenly identified by his own daughter. Because of their relationship, Maricel could not have erred in identifying her father because of the proximity of their relationship and their natural familiarity with one another. For his part, accused-appellant Joselito utterly failed to establish the impossibility of his presence at the situs of the crime. He merely claimed that he went home after consuming two bottles of gin and never returned to Maricel's house. Considering the fact that Joselito's residence in Cubao, Quezon City is beside the house where Maricel lives (tsn, January 19, 1998, p. 2), it is, therefore, not impossible for him to have been physically present at the crime scene at the time the rape was committed. It is an indispensable element in the invocation of alibi that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it was physically impossible for him to be at the scene of the crime at that time (People vs. Juachar, G.R. No. 111630, December 6, 1999).

On all these premises, we are impelled to affirm the trial court's conviction of accused-appellants for the rape of Maricel Cula. Given the facts and circumstances of the case found to be clearly extant, conspiracy between accused-appellants Manuel Cula and Joselito Lopez attended the commission of the offense. They acted in concert in committing the crime of rape, as inferred from their conduct before, during, and after the commission of the crime, which indubitably shows a community of criminal design. Consequently, each of them should be held responsible not only for his unlawful act but also for that of his co-conspirator for, in conspiracy, the act of one is the act of the other (People vs. Dado, 244 SCRA 655 [1995]; People vs. Calixtro, 193 SCRA 303 [1991]). Thus, accused-appellants must each be convicted of two crimes of rape.

At this juncture, the Court deems it necessary to throw light upon certain aspects of this case which are essential in its task of administering justice to all parties. Corrolarily, it is a well-established rule in criminal procedure that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct an error in the appealed judgment, whether this is assigned as an error or not (People vs. Calayca, G.R. No. 121212, January 20, 1999).

In the case at bar, the trial court, pursuant to Section 11 of Republic 7659, imposed the penalty of death upon accused-appellant Manuel Cula, taking into account the minority of Maricel as she is said to have been only 16 years old at the time of the rape incident, as well as the relationship of father and daughter between them. However, in a similar and recent case (People vs. Javier, G.R. No. 126096, July 26, 1999), this Court pronounced:

However it is significant to note that the prosecution failed to present the birth certificate of the complainant. Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary

in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16~year old girl and an 18~year old one insofar as physical features and attributes are concerned. A physically developed 16~year old lass may be mistaken for an 18~year old young woman, in the same manner that a frail and young looking 18~year old lady may pass as a 16~year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659.

At all events, it is the burden of the prosecution to prove with certainty the fact that the victim was below 18 when the rape was committed in order to justify the imposition of the death penalty. The record of the case is bereft of any independent evidence, such as the victim's duly certified Certificate of Live Birth, accurately showing private complainant's age. The fact that accused~appellant Manuel has not denied the allegation in the complaint that Maricel was 16 years old when the crime was committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Because of this lapse, as well as the corresponding failure of the trial court to make a categorical finding as to the minority of the victim, we hold that the qualifying circumstance of minority under Republic Act No. 7659 cannot be appreciated in this case, and accordingly the death penalty cannot be imposed.

Under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act No. 7659, the penalty shall be reclusion perpetua to death whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons. In the case at bar, two circumstances are present, namely: (1) use of deadly weapon and (2) two persons committing the rape. Both circumstances were alleged in the complaint and proved at the trial. In *People vs. Garcia* (105 SCRA 6 [1981]), the Court had occasion to rule that where these two circumstances are present, there is no legal basis to consider one circumstance as a qualifying circumstance and the other as a generic aggravating circumstance, so as to impose the higher penalty of death. Under the law, either circumstance is always a qualifying circumstance and cannot be regarded as a generic aggravating circumstance for either is not among the aggravating circumstances enumerated in Article 14 of the Revised Penal Code.

The penalty of reclusion perpetua to death is composed of two indivisible penalties. Article 63 of the RPC provides:

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Thus, applying the above Article 63, the lesser penalty of reclusion perpetua shall be imposed upon accused-appellants there being no aggravating or mitigating circumstance that can be appreciated in their case.

Finally, the award of damages made by the trial court should likewise be modified. As regards the civil indemnity,

this Court has to date consistently ruled that if, in the crime of rape, the death penalty is imposed, the indemnity ex delicto for the victim should be in the amount of P75,000.00; and if the death penalty is not decreed by the Court, the victim would instead be entitled to P50,000.00 (*People vs. Victor*, 292 SCRA 186 [1998]). Accordingly, accused~appellants shall each pay the amount of P50,000.00 as civil indemnity for each count of rape. In addition, as held in *People vs. Prades* (293 SCRA 411 [1998]), both accused~appellants must each indemnify the victim the amount of P50,000.00 as moral damages for each count of rape without the need of pleading or proof as the basis thereof. Lastly, accused~appellant Manuel is also liable to pay the sum of P20,000.00 as exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters (*People vs. Javier*, supra; *People vs. Sangil, Sr.*, supra).

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the MODIFICATION that accused~appellants Manuel Cula and Joselito Lopez are each sentenced to suffer the penalty of reclusion perpetua for each count of rape and ordered to pay Fifty Thousand Pesos (P50,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as moral damages, also for each count of rape. In addition, Manuel Cula shall indemnify the victim the amount of Twenty Thousand Pesos (P20,000.00) as exemplary damages for each count of rape.

SO ORDERED.

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

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