

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNABE E. ADILA, JR., ACCUSED-APPELLANT.

G.R. No. 133434. March 21, 2000

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PER CURIAM:

Once again, another woeful story of defloration unfolds before the Court. The victim, a child of tender age, would forever be haunted by a most unpleasant memory of Christmas, an unfortunate incident befalling her that fateful night of 25 December 1994.

Bernabe Adila, Jr., was convicted by the trial court of raping his 11-year old step-daughter, Sheila C. Baco, for having had carnal knowledge of her against her will. The trial court meted the penalty of death to accused Adila and ordered him to indemnify the victim in the amount of P50,000.00.

Hence, this automatic review by the Court pursuant to Republic Act No. 7659.

The information, charging accused Bernabe E. Adila, Jr., with the crime of rape, read:

"The undersigned, Provincial Prosecutor, upon a sworn complaint originally filed by the private offended party, accuses BERNABE E. ADILA, JR., of the crime of RAPE, committed as follows:

"That, in the evening, on or about the 25th day of December, 1994, in the municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one SHIELA C. BACO, and 11 year old girl and step-daughter of the accused, against her will and without her consent.

"Contrary to law. (Viol. of Art. 335, Revised Penal Code).

"Dipolog City, (for Sindangan, Z.N.)

"February 21, 1995."[1]

Sheila C. Baco, born on 17 September 1983, is one of two children of Loida Caber with her first husband, Crispin Baco, who died on 01 June 1984. On 18 May 1990, Loida married accused-appellant, Bernabe Adila, Jr., with whom she begot three other children, namely, Bernabe III, Florin Kris, and Bernadeth.

Sheila had been living with her maternal aunt, Elizabeth Villarin, since she was five years old. In December 1994, Sheila's mother, Loida, took Sheila from her aunt at Salug, Zamboanga del Norte, to live with the family residing in Bonbon, Tinaplan, Zamboanga del Norte.

Sheila testified that in the evening of 25 December 1994, she was at home. Her mother was in Sindangan for a medical check-up while the accused was attending a benefit dance then being held at the public market. At roughly seven o'clock that evening, she went to bed with her three-year-old stepbrother and two-year old stepsister. Later that night, at about ten o'clock, she was awakened by the presence of the accused posted "near her feet." She was alarmed and started to cry when the accused began to methodically took off her shorts and panty,

then lay on top of her and forthwith inserted his penis into her vagina. Sheila felt pain and noticed blood oozing from her vagina. Her efforts to resist his advances proved to be futile with the latter holding both her hands, covering her mouth and pinning her down. After satisfying his lust, the accused asked Sheila for forgiveness but warned her not to tell her mother about what had just happened, threatening to kill her and her mother if she were to reveal the incident to anyone. Still suffering from shock, Sheila narrated the dastardly act to a neighbor. Her mother was still then in Sindangan while her aunt Elizabeth was in Salug.

It was only during the following month, in January 1995, when Sheila finally narrated to her Aunt Elizabeth the fate that befell her. The latter lost no time in reporting the matter to the authorities and in having Sheila medically examined.

Dr. Nardiza Cabillo, a resident physician at the Sindangan District Hospital, conducted a medical examination on Sheila. The findings of Dr. Cabillo revealed that the victim's hymen had suffered lacerations at 7:00 o'clock and 5:00 o'clock positions. The doctor testified that the lacerations could have been caused by the insertion of a male organ into the private part of Sheila some two to three weeks prior to the medical examination on 20 January 1995.

The defense placed at the witness stand Loida C. Adila, the mother of the complaining victim and wife of accused-appellant Bernabe Adila, Jr., who testified that Sheila arrived at their house in Bonbon in the morning of 23 December 1994 to celebrate the Christmas season with them. In the afternoon of even date she went with her husband, Bernabe, to Sindangan, Zamboanga del Norte, for a medical check-up following her miscarriage. She claimed that, from December 23 to the 26th, she and her husband had constantly been together. It was only on the 27th of December that she was reunited with Sheila and her two other children with the accused, after the latter had fetched the children in the morning of that date. According to her, it was her brother Ebenezer who told her on 30 December 1994 that Sheila was molested by a man. When she confronted Sheila about it, the latter admitted that she was indeed raped, but that she was unable to ascertain the identity of the culprit.

Testifying in his own defense, accused Bernabe Adila, Jr., asserted that, from 23 to 30 December 1994, he was in Sindangan, Zamboanga del Norte, with his wife who was then recuperating from a miscarriage. He was the only one attending to the needs of his wife.

The trial court saw for the prosecution; it concluded:

"WHEREFORE, the accused Bernabe E. Adila, Jr. is hereby found guilty beyond reasonable doubt of the crime of Statutory Rape, as defined and penalized under Article 266-A and Article 266-B of Republic Act 8353, and taking into account the aggravating qualifying circumstance 'that the victim is under eighteen (18) years of age and the offender is step-parent,' the said accused is hereby sentenced to suffer the supreme penalty of DEATH, and to indemnify the complainant Shiela C. Baco in the amount of P50,000.00." [2]

In this appeal, accused-appellant bewails his conviction, capitalizing on his defense of denial and alibi.

The Court has closely looked into the case and, like the trial court, it is convinced that the evidence presented by the prosecution satisfies the test of moral certainty required to convict the accused-appellant of the crime charged.

The victim gave a detailed account of her harrowing experience that night of Christmas in 1994. She testified:

"Q.

Now, you said on December, 1994 you were then 11 years old because you were born on September 17, 1983, will you tell the Court where you were on December 25, 1994?

"A.

In the house of my mother.

"Q.

Where is that house of your mother located?

"A.

At Bonbon, Tinaplan, Sindangan, Z.N.

"Q.

In the house of your mother who is her companion there in the house?

"A.

My younger brothers and sister and my stepfather.

"Q.

What is the name of your stepfather?

"A.

Bernabe Adela.

"Q.

Now, in the evening of that day, December 25, 1994, where were you?

"A.

In the house of my stepfather. Kycalr

"Q.

In the house of your I withdraw my question your honor.

"Q.

That evening when you were in the house of your stepfather, who were present there?

"A.

My younger brothers and sisters and I.

"Q.

How about your stepfather?

"A.

He was in the public market attending the benefit dance.

"Q.

How about your mother?

"A.

She was in Sindangan for medical check-up.

"Q.

What time did you go to sleep that evening of December 25, 1994?

"A.

7:00 o'clock in the evening.

"Q.

When you went to sleep at about 7:00 o'clock in the evening of December 25, 1994, where was your father?

"A.

He was in the public market.

"Q.

He was attending public benefit dance at that time?

"A.

Yes, sir. Calrky

"Q.

Now, you said that you went to sleep at about 7:00 o'clock in the evening of December 25, 1994 and late in the evening what did you notice when you were lying asleep?

"A.

I was awakened because he was near my feet.

"Q.

Who was that person who was near your feet when you were awakened later that evening?

"A.

My stepfather.

"Q.

You mean Bernabe Adila, Jr.?

"A.

Yes, sir.

"Q.

Now will you please tell us what time was that when you first noticed the accused Bernabe Adila, Jr. near your feet while you were asleep in his house at Bonbon, Sindangan, Z.N.?

"A.

About 10:00 o'clock.

"Q.

Now, you said you notice him at about 10:00 o'clock in the evening when you were awakened he was already

near in your feet, what happen then?

"A.

He took off my short pant and panty.

"Q.

How did he take off your short pant and panty?

"A.

He took off.

"Q.

What did you do when he took off your short pant and panty?

"A.

I cried.

"Q.

After he took off your pant and panty, what happen next?

"A.

He laid on top of me.

"x x x.....X x X.....X x X.

"Q.

Now, when he was already on top of you what did you notice while he was already on top of you?

"A.

He inserted his penis into my vagina.

"Q.

When he managed to have his penis inserted your vagina, what did you feel?

"A.

Pain.

"Q.

What else did you notice?

"A.

There were blood oozing. Slxmis

"Q.

The first time he was on top of you, what did you do?

"A.

I could not move because of his superior strength.

"Q.

Now, you said that he inserted his penis inside your vagina you felt pain and you notice blood oozing from your private part, what happened next?

"A.

He asked forgiveness and after that he warned me not to tell anybody and not to tell the incident to my mother and if I will reveal the incident both of us will be killed."[3]

The victim positively identified accused-appellant as being the culprit who committed the sexual assault upon her. He was her own stepfather. Her testimony was free from any serious inconsistency or contradiction. No ulterior motive was offered to explain why the victim would concoct a story of defloration against her own stepfather.

The defense of alibi interposed by the accused-appellant hardly deserves any serious consideration. For this defense to prosper, the accused must prove, among other things, that not only has he been at some other place at the time of the commission of the crime but that it would have also been physically impossible for him to be at the locus criminis at the time thereof.[4] By accused-appellant's own admission, Sindangan is a mere hour away from Bonbon. The distance could be traversed by motorcycle locally known as "habal-habal" or by logging truck. Even on the assumption then that appellant was indeed with his wife in Sindangan, it would not have been impossible for him to have returned to Bonbon to commit the crime and to go back to Sindangan without anyone being aware that he had done so. Accused-appellant claimed that from December 23 to 30 December 1994, he and his wife stayed in the house of his sister-in-law, Faith Sotomayor, at Dapaon, Sindangan, Zamboanga del Norte, but Sotomayor was not presented to corroborate this alibi.

Neither can the Court give much credence to the testimony of Loida, who has admitted being biased in his favor. Quoted hereunder is her testimony on cross-examination:

"Q.

Did not Ebenezer told you that Sheila told him that it was your husband Bernabe Adila who sexually molested her in the evening of December 25?

"A.

I will not believe on that because during that time my husband was with me.

"Q.

You will not believe that, despite the fact that you were told by Ebenezer that Sheila told him that it was your husband who sexually molested her?

"A.

According to Sheila that the person who was responsible of sexually molesting her is not known to her.

"Q.

Considering that this is an incident, involving your own daughter and your own husband which do you prefer to help, your husband or your daughter?

"A.

My daughter is my daughter and my husband is my husband who is the breadwinner of the family, and the one

fed our family.

"Q.

Tell the Court which you prefer to help, your daughter or your husband?

"A.

My husband because he is the bread winner of my family and the one who fed us daily."[5]

At all events, the Court sees no cogent reason to deviate from the well-entrenched rule that in matters of credibility of witnesses, the assessment made by the trial court should be respected and given preponderant weight.[6]

There was clear error on the part of the trial court when it applied the onerous provisions of Republic Act 8353, otherwise known as the Anti-Rape Law of 1997, considering that the crime here involved occurred in 1994. Nonetheless, the provisions of Republic Act 7659, the Death Penalty Law, effective as of 31 December 1993,[7] could succinctly apply to the instant case.

Section 11, of Republic Act 7659 provides:

"Sec. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"X X X.....X 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."

Sheila Baco, born in 1983, was barely eleven (11) years of age when she became the victim of rape from the hands of her own stepfather, accused-appellant Bernabe Adila, both of which circumstances of age and relationship were properly alleged in the information. The penalty of death was thus correctly imposed.

Four justices of this Court, while maintaining their position that Republic Act. No. 7659, insofar as it prescribes the death penalty is unconstitutional, they submit nevertheless to the ruling of the majority of the Court which holds the law to be constitutional and that the death penalty can be imposed.

The trial court has ordered the appellant to indemnify the victim in the sum of P50,000.00. The Court has 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, instead of only P50,000.00, and an additional award of P50,000.00 by

way of moral damages is to be awarded in favor of the victim who suffers that injury.[8]

WHEREFORE, the decision of the Regional Trial Court, 9th Judicial Region, Branch 11, Sindangan, Zamboanga del Norte, in Criminal Case No. S-2536, finding the accused-appellant Bernabe Adila, Jr., guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of death is AFFIRMED. The civil indemnity of P50,000.00 awarded by the trial court is increased to P75,000.00. Accused-appellant is likewise ordered to pay to the victim another sum of P50,000.00 by way of moral damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for a possible exercise of the pardoning power.

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, p. 8.

[2] Rollo, p. 33.

[3] TSN. October 27, 1995, pp. 5-7.

[4] People vs. Torrefiel, 256 SCRA 369; People vs. Dimapilis, 300 SCRA 279.

[5] TSN., February 14, 1997, p. 20.

[6] People vs. Cajambab, 240 SCRA 643; People vs. Lorenzo, 240 SCRA 624; People vs. Sibug, 229 SCRA 489.

[7] People vs. Simon, 234 SCRA 555.

[8] People vs. Dimapilis, 300 SCRA 279; People vs. Omar Medina, 300 SCRA 98.

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