

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISPIN CANONIGO Y SANTARIN, ACCUSED-APPELLANT.*G.R. No. 133649. August 04, 2000*

Ponente: DE LEON, JR., J.

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Before us for automatic review is a decision rendered by the Regional Trial Court (RTC) of Pasig City, Branch 262 finding Crispin Canonigo y Santarin guilty beyond reasonable doubt of the crime of rape committed against Carla Jean Malanay, thereby sentencing him to suffer the supreme penalty of death.

The facts of the case are as follows:

Carla Jean Malanay was born on August 21, 1984. She lives with her family in a rented room located at the second floor of a house in 208 F. Manalo Street, Carzada Tipas, Taguig, Metro Manila, just three houses away from accused-appellant's house.

On May 9, 1996, at around 2:00 o'clock in the afternoon, while Carla and her five (5) year old sister, Cay Jorelle, were keeping watch over their five (5) month old baby sister, accused-appellant Crispin Canonigo arrived and inquired from Carla if her Kuya Bert was around. Upon learning that Carla's older brother was not around, accused-appellant closed the door, and on the pretext of telling Cay that Carla's feet had many wounds, approached Carla and immediately held her feet. He proceeded to kiss Carla on the lips and on her neck. Remembering news accounts that rapists often kill their victims, the frightened girl kept silent and did not offer any resistance. Accused-appellant then lifted Carla's skirt, pulled her undergarment and began to lick her vagina, prompting her to kick him. Undeterred, accused-appellant unzipped his pants and attempted to insert his organ in Carla's anus. When his attempt proved unsuccessful, accused-appellant tightly held the skirt of the girl to keep her from moving and forced his organ into her genitals.[1]

Cay Jorelle, Carla's five (5) year old sister, was able to witness the entire incident since accused-appellant reportedly asked the five year old to hold his organ while he was licking Carla's private part.[2]

His bestial lust having been satisfied, accused-appellant left. Carla and her sister Cay Jorelle then hurried out of the room leaving their five (5) month old baby sister behind to report the incident to their mother. They found their mother, Salome Malanay, a manicurist, tending to a customer at Palingon Tipas, Taguig, Metro Manila. When told about the grisly incident, a distraught Salome decided to report the matter to the Barangay Captain immediately. Celestino Sanga, a barangay investigator, attended to Carla and Salome. Thereafter, Sanga, and some companions arrested the accused-appellant and brought him to the barangay hall.

Accused-appellant's stepmother, Dolores Canonigo, arrived later at the barangay hall to settle the case amicably with Salome. Salome, however, reported the matter to the Taguig Police Station where she executed a sworn statement in support of the complaint.[3] At the police station, she was advised to bring Carla to the Philippine National Police (PNP) Crime Laboratory for the requisite medical examination. Salome brought Carla to the PNP

National Headquarters at Camp Crame, Quezon City for medical examination that same day.

The medical examination conducted on Carla by Dr. Jesusa Nieves Vergara, the Medico-Legal Officer of the PNP Crime Laboratory at Camp Crame revealed the following findings:

GENERAL AND EXTRAGENITAL:

Fairly nourished, fairly developed, and coherent female child. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed congestion on the vestibula, laceration at the posterior fourchette, and an elastic, fleshy type hymen with fresh shallow laceration at 6 o'clock position. External vaginal orifice offers strong resistance to the introduction of the examiner's smallest finger.

CONCLUSION:

Findings are compatible with recent loss of virginity.

There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.[4]

Dr. Vergara testified that she found a fresh shallow laceration at 6:00 o'clock position in Carla's genitals brought about by the forcible entry of a hard blunt object, which could be in the form of an erect male sex organ. Although the vaginal smears taken from Carla did not show the presence of spermatozoa, Dr. Vergara opined that it was possible that there might have been no actual ejaculation in the victim's organ. Vergara further explained that some men suffer from the abnormal absence of spermatozoa in their seminal fluid.[5]

On May 13, 1996, an information was filed before the RTC of Pasig against accused-appellant which reads as follows:

That on or about the 9th day of May, 1996 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge to the complainant, CARLA JANE MALANAY a minor 12 years of age, against her will and consent.

CONTRARY TO LAW.[6]

Accused-appellant pleaded not guilty upon arraignment.[7] He testified that Carla offered no resistance when he started to kiss her and when he took off his shorts and pulled down his briefs. He admitted that he intended to have sexual intercourse with Carla. In fact, he already had his genitals exposed and had Carla's undergarments pulled down but he was troubled by his conscience so he changed his mind. He then left Carla and went to the plaza where he gambled and played "tanching" with his friends.[8]

Accused-appellant maintains that it was not possible for Cay Jorelle, the five (5) year old sister of Carla, to witness the entire incident because the little girl had her back turned against them at the time.[9] He said that his stepmother was trying to settle the matter amicably with Salome but Salome was demanding the inordinate sum of P100,000.00.[10]

Dolores Canonigo testified that accused-appellant is the son of her husband with another woman. Dolores,

however, has always treated accused-appellant like her own son. Dolores said that she first saw accused-appellant on July 14, 1980. She surmised that he was about one (1) year old at that time. She remembers, however, her father-in-law mentioning that accused-appellant was born on January 7, 1979. Accused-appellant reportedly lived with Dolores when Dolores got married to accused-appellant's father sometime in December 1981. Accused-appellant was already about one and a half (1½) years old at that time. Dolores tried to have accused-appellant's birth recorded with the Office of the Local Civil Registry but the civil registrar refused saying that only accused-appellant's natural mother could request for the registration.[11]

Accused-appellant presented Macaria C. Estacio, the Officer-In-Charge of the Office of the Local Civil Registry of Taguig, Metro Manila to testify that his birth was not duly recorded in the Local Civil Registry. Consequently, when some relatives of the accused-appellant asked for a copy of the latter's birth certificate, Estacio issued a Certificate attesting to the fact that his birth was not duly recorded. She, however, suggested to the relatives of the accused-appellant to obtain a copy of his baptismal certificate for the purpose of ascertaining the true and actual date of his birth.[12]

A baptismal certificate was issued by the Archdiocese of St. Anne in Taguig, Metro Manila on December 20, 1996 indicating that accused-appellant was born on January 11, 1978 and was baptized on February 26, 1978. However, when the defense was to formally offer in evidence its documentary exhibits, the trial court was informed by the defense counsel that the Baptismal Certificate which was previously marked as Exhibit "2" was taken by the father of accused-appellant and has since refused to return it. Despite the fact that the trial court gave the defense ample time to make a formal offer of the said exhibit, the defense did not bother to do so.

On February 16, 1998, the trial court rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime of rape committed in full view of a relative within the 3rd degree of consanguinity, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered finding accused Crispin Canonigo y Santarin guilty beyond reasonable doubt of the crime of rape, and sentencing said accused to: a) suffer the death penalty; and b) suffer the accessory penalties consequent thereto; c) pay the private offended party the sum of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity and d) pay the costs.

SO ORDERED.[13]

Hence, the present petition.

Settled is the rule that an appellate court will generally not disturb the assessment of the trial court on matters of credibility, considering that the latter was in a better position to appreciate the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial, unless the trial court has plainly overlooked certain facts of substance and value, which if considered, may affect the result of the case.[14]

That accused-appellant made sexual advances to Carla is not disputed. Accused-appellant, however, posited the claim before the trial court that he did not have carnal knowledge of the complainant since he voluntarily desisted from consummating his lustful desires at the last minute. The trial court brushed aside accused-appellant's claim, saying that it is incredible and improbable under the circumstances.

We find no reason to overturn the findings of the trial court. As noted by the court a quo, Carla testified in a straightforward manner which demeanor, taken with her "apparent immaturity, youthfulness and lack of malice" impelled it to rule in her favor. When the offended parties are young and immature girls from the age of twelve (12) to sixteen (16), courts are inclined to lend credence to their version of what transpired, considering not only

their relative vulnerability but also the shame and embarrassment to which they would be exposed by the trial court if the matter about which they testified is not true.[15] Indeed, no woman, much less a child of such tender age, would willingly submit herself to the rigors, humiliation and stigma attendant in the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[16] Moreover, Carla's testimony that accused-appellant succeeded in having forcible sexual intercourse with her is corroborated by the medical examination, conducted a few hours after the incident, which revealed a fresh shallow laceration at 6:00 o'clock position in Carla's vagina.

Significantly, accused-appellant in the present petition does not question the trial court's findings except the penalty imposed upon him for the rape of Carla Jean. Accused-appellant, in his lone assignment of error, contends that the trial court erred in imposing the death penalty since the information filed against him did not allege the qualifying circumstance that the rape was committed in full view of a relative within the third degree of consanguinity of the victim.

We find merit in accused-appellant's contention.

Under Republic Act (R.A.) No. 7659, the death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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 or victim.
- When the victim is under the custody of the police or military authorities.
- 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.
- When the victim is a religious or a child below seven (7) years old.
- When the offender knows that he is affected with Acquired Immune Deficiency Syndrome (AIDS) disease.
- When committed by any member of the Armed forces of the Philippines or the Philippine National Police or any other law enforcement agency.
- When by reason or on occasion of the rape, the victim has suffered permanent physical mutilation.

We have already held in the case of *People vs. Garcia*[17] and in other subsequent cases that these seven attendant circumstances under Section 11 of R.A. No. 7659 are in the nature of special qualifying circumstances which, unlike generic aggravating circumstances which may be appreciated and proved even if not alleged, cannot be considered as such unless so alleged in the information even if proved.

In the case at bar, the attendant aggravating circumstance that the victim was raped in full view of a relative within the third degree of consanguinity was not alleged in the information filed against the accused. Even in the subsequent motion of the prosecution to amend the information against accused-appellant which was filed after arraignment and during trial, and later denied by the trial court, the amendment sought was to clarify that the age

of the victim was eleven (11) at the time she was raped and not twelve (12) years old.

Consequently, the qualifying circumstance that Carla was raped in full view of a relative within the third degree of consanguinity cannot be considered against the accused. The reason for this, as enunciated in *People vs. Ramos*[18] is simple. The Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and the charge against him. Since the facts stated in the body of the information determine the crime for which the accused stands charged and for which he must be tried, every element of the criminal offense must be alleged in the complaint or information to enable the accused to suitably prepare for his defense.

In the same vein, the trial court should not have considered the charge filed against accused-appellant as statutory rape. The trial court said that the evidence on record showed that the complainant, Carla Jean, was born on August 12, 1984 and was less than 12 years old at the time the crime was committed in May 9, 1996. The trial court accordingly held that the presence or absence of force during the sexual congress is immaterial.

The information filed against accused-appellant, however, charged that he

x x x by means of threats, force and intimidation, did there and then willfully, unlawfully and feloniously have carnal knowledge to the complainant, CARLA JANE MALANAY, a minor 12 years of age, against her will and consent. x x x

To effectively prosecute accused-appellant for statutory rape, its elements must be set out in the complaint or information to apprise the accused of the crime of which he is being charged. The gravamen of the offense of statutory rape is in having carnal knowledge with a girl under 12 years of age.[19] When the victim is under 12 years of age, the law recognizes that any consent to the carnal embrace that the female minor may have manifested, or is alleged to have manifested, would be irrelevant. Such consent, if any, is conclusively presumed to be non-intelligent consent on the part of the woman under twelve years of age.[20] In the case at bar, although it was established during the trial that Carla was only eleven (11) years old at the time the crime was committed, the information filed against the accused-appellant charged him with having carnal knowledge of a girl who is twelve (12) years of age. Consequently, the trial court erred when it held the accused-appellant liable for statutory rape.

This notwithstanding, accused-appellant may be held liable for the crime of rape under Article 335, par 1 of the Revised Penal Code (RPC) inasmuch the sexual congress was done forcibly against complainant's will. Under Article 335, par 1 of the RPC, rape is committed by having carnal knowledge of a woman by using force or intimidation. Records show that complainant kept silent at first when accused-appellant began to kiss her since she was reminded of news accounts that rapists often kill their victims. Despite her fear for her life, however, complainant began kicking accused-appellant when the latter started to lick her genitals. Accused-appellant succeeded in consummating his bestial desires only after he firmly held Carla's skirt to keep her from moving her legs. In any event, we have stated in the case of *People vs. Mostrales* that "Physical resistance is not the sole test to determine whether or not a woman involuntarily succumbed to the lust of the accused. Jurisprudence holds that even though a man lays no hand on a woman, yet if by an array of physical forces he so overpowers her mind that she does not resist or she ceases resistance through fear of greater harm, the consummation of unlawful intercourse by the man is rape." [21]

The trial court, however, did not err in holding that accused-appellant may not avail of the mitigating circumstance of minority. Accused-appellant testified during trial that at the time of the commission of the crime, he was still under eighteen (18) years of age, he having been born on January 7, 1979. Notwithstanding his allegations, however, and that of his stepmother, accused-appellant presented as a witness, Macaria Estacio, an employee of the office of the Local Civil Registrar of the Municipality of Taguig to testify that

accused-appellant's birth was not registered but she was able to obtain a certificate of baptism, issued by the Archdiocese of Taguig, Metro Manila, which certificate reflects the true date of birth of the accused-appellant as January 11, 1978.[22] If accused-appellant was born on January 11, 1978, then he was already of legal age when he committed the crime on May 9, 1996. Even if we were to compute his age from the date of his baptism, i.e., February 26, 1978, accused-appellant would still have already attained the age of eighteen at the time of the commission of the crime.

As earlier discussed, the birth certificate of the accused-appellant, although marked as an exhibit, was never formally offered in evidence inasmuch as when the defense was about to formally offer its exhibits, the defense counsel manifested to the trial court that accused-appellant's father took hold of the said certificate and has since refused to return it. Consequently, the said documentary exhibit may not be taken cognizance of pursuant to Section 34 of Rule 132 of the Rules of Court which provides that "The court shall consider no evidence which has not been formally offered x x x."

Nevertheless, despite the fact that the baptismal certificate which reflected accused-appellant's date of birth has not been formally offered in evidence, the court may take note of the said date of birth as reflected in the baptismal certificate. Not only was it the subject of the testimony of accused-appellant's own witness, Ms. Macaria Estacio, but during the course of the trial, repeated references have been made by the counsel for accused-appellant to the latter's date of birth as appearing in the said baptismal certificate.[23] In the case of *People vs. de Roxas*[24] and *People vs. Tanjutco*[25], we held that the absence of any formal presentation of certain exhibits does not render their consideration thereof a reversible error, if repeated references thereto in the course of trial by counsel for accused and of the court convincingly show that the documents were part of prosecution's evidence. Prescinding from the foregoing, it is with more reason that we could take cognizance of the accused-appellant's date of birth as appearing in the baptismal certificate inasmuch as repeated references thereto have been made in the course of trial by the counsel for the accused-appellant and by the court, which fact convincingly show that the said document was part of the evidence of the defense. The fact that the defense did not bother to formally offer in evidence the said document although it was given ample time to do so, only bolsters the presumption that the presentation of that document was suppressed by the defense because it contained a fact or declaration that was adverse to the accused-appellant.

Finally, while the Solicitor General has manifested that he agrees with the stand of accused-appellant that the death penalty cannot be imposed on him for the failure to allege the qualifying circumstances in the complaint, it recommended that the sum of P50,000.00 as indemnity be increased to P75,000.00, citing the case of *People vs. Prades*. [26]

The Solicitor General, however, has misread the case of *Prades*. In the aforesaid case, we stated the indemnification for the victim shall be the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws. Inasmuch as we cannot impose the death penalty on accused-appellant due to the deficiency in the allegations of the information against him, we cannot increase the civil indemnity to P75,000.00. Complainant is, however, entitled to an additional P50,000.00 as moral damages in line with existing jurisprudence. The fact that in this case of rape, complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages, is too obvious to still require the recital of the details thereof by the victim during the trial.

WHEREFORE, the decision of the Regional Trial Court of Pasig City, Metro Manila, Branch 262 convicting accused-appellant CRISPIN CANONIGO y SANTARIN beyond reasonable doubt of the crime of rape is **AFFIRMED** with the **MODIFICATION** that he is sentenced to suffer the penalty of reclusion perpetua and to pay

complainant Carla Jean Malanay the sum of P50,000.00 by way of indemnity and the additional sum of P50,000.00 as moral damages.

SO ORDERED.

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

[1] TSN, June 4, 1996, pp. 13-15.

[2] TSN, June 4, 1996, pp. 18-19.

[3] Records, p. 5.

[4] Records, p. 109.

[5] TSN, August 14, 1996, pp. 5-6.

[6] Records, p. 1. Note, however, that complainant's name is spelled as Carla Jean Malanay in her birth certificate.

[7] Records, p.13.

[8] TSN, July 21, 1997, p. 7.

[9] TSN, July 21, 1997, p. 16.

[10] TSN, July 21, 1997, p. 10.

[11] TSN, September 17, 1997, pp.3-6.

[12] TSN, January 14, 1997, pp.3-6.

[13] Rollo, p.28.

[14] People vs. Bawar, 262 SCRA 325 (1996)

[15] People vs. Clopino, 290 SCRA 432 (1998)

[16] People vs. Cabebe, 290 SCRA 543 (1998)

[17] 281 SCRA 463, 486 (1997)

[18] 296 SCRA 559 (1998)

[19] People vs. Soan, 243 SCRA 627, 639 (1995)

[20] People vs. Montefalcon, 243 SCRA 617,622 (1995)

[21] 294 SCRA 701, 710-11 (1998)

[22] TSN, January 14, 1997, p.3.

[23] TSN, January 14, 1997, pp. 3, 6-8.

[24] 116 Phil 977, 980-981 (1962)

[25] 23 SCRA 361, 366 (1968)

[26] 293 SCRA 411,430 (1998)

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