PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR NOGAR Y MACEDA, ACCUSED-APPELLANT.

G.R. No. 133946. September 27, 2000

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-133946/

VITUG, J.:

Elevated to this Court for automatic review is the decision, dated 16 February 1998, of the Regional Trial Court of Pasig City, Branch 166,[1] the decretal portion of which reads:

> "WHEREFORE, the Court finds accused Oscar Nogar y Maceda guilty beyond reasonable doubt of the Crime of Rape and considering that the victim Roselle Labenia was under eighteen (18) years old and related to the accused within the third civil degree of affinity, he is hereby sentenced to suffer the supreme penalty of DEATH and indemnify the victim the sum of P50,000.00, as moral damages, plus the cost of suit.
>
> "SO ORDERED."[2]

The case originated from an Information filed by the City Prosecutor of Pasig against Oscar Nogar y Maceda, charging the latter with statutory rape; viz:

> "On or about February 8, 1996, in the City of Pasig and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with Roselle Lavenia y Cabalha, a minor, nine (9) years old, against her will and consent."[3]

When arraigned, the accused pled "not guilty" to the accusation; trial on the merits ensued.

The trial court culled the evidence submitted to it by, respectively, the prosecution and the defense.

> "Evidence for the Prosecution
>
> "Private complainant Roselle Labenia testified, in the main, that she is 12 years old; that her father is already dead; that her mother left and married again; that she resides at Marilac Hills, Muntinlupa City; that in February, 1996 she resided in a house on Kamagong Street, Manggahan, Pasig City, owned by her aunt Aida Nogar and uncle Oscar Nogar; that at about 2:00 o'clock in the morning of February 8, 1996, while she and four (4) children of Aida and Oscar, the eldest of whom was twelve (12) years old, were sleeping inside a room in the house, Oscar Nogar entered the room, undressed her, removed his shorts, went on top of her and tried to insert his penis inside her vagina; that while Oscar was stripping her of her clothes, she woke up; that she struggled and tried to extricate herself from the body of Oscar but failed to do so because he was too heavy; that she could not shout for help because Oscar ordered her to keep quiet; that Oscar succeeded in inserting a part of his penis insider her vagina, so that she felt pain; that after Oscar ejaculated, he stood up and left the room; that immediately she washed her sex organ and then went back to sleep; that while she was being sexually assaulted the other children in the room were sound asleep; that later that morning she attended her class at the Rosario Elementary School in Pasig City; that from her school she went to the house of her friend and slept there; that the following day she, accompanied by a barangay tanod, went to the NBI, Manila, where

she gave her statement; that her sex organ was examined by a doctor; that she was brought to the DSWD house in Marilac Hills, Muntinlupa, where she has stayed until now.

"Victor Rendal, Jr., testified, inter alia, that he is a member of the Barangay Security Force; that on February 12, 1996, Brgy. Tanod Venancio Dacallos brought Roselle Labenia to the barangay hall because of her complaint that she was raped by her uncle Oscar Nogar; that at about 7:30 o'clock in the evening, upon instruction of the barangay captain, he and some barangay tanods went to the house of Oscar Nogar and invited him to go with them to the barangay hall; that when told about the complaint of Roselle, Oscar did not say anything; that, thereafter, Oscar Nogar was brought to the police headquarters in Pasig City; that Roselle was brought to the PNP CLS, Camp Crame, Quezon City for medico-legal examination.

"Dr. Jesusa Vergara of the PNP CLS, who examined Roselle on February 14, 1996, prepared and submitted a Medico-Legal Report with the following findings:
"`GENERAL AND EXTRAGENITAL:

- Fairly nourished, fairly developed and coherent female child. Breasts are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

"GENITAL:

There is lanugo-type growth of pubic hair, labia majora are full, convex and coaptated with the light brown labia minora presenting in between. On separating the sale disclosed an elastic, fleshy-type hymen with shallow healed lacerations at 3 and 5 o'clock. External vaginal orifice admits tip of examining index finger with strong resistance.

"CONCLUSION:

`Subject is in non-virgin state physically.

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

"REMARKS:

`Periurothral smears are negative for gram-negative diplococci and for spermatozoa.'

"x x x x x x x x x

"Evidence of the Defense

"Accused Oscar Nogar testified, in the main, that he resides at No. 943 Kamagong Street, Manggahan, Pasig City; that he is a fish vendor and has a stall at the Taniman Bayan Talipapa, Pasig City; that he buys his fish in the Navotas Fish Port; that on February 8, 1996, at about 2:00 o'clock in the morning he was at the Navotas Fish Port where he bought from Divina dela Cruz P1,500.00 worth of Galunggong; that he left his residence at about 11:00 o'clock in the evening of February 7, 1996, and arrived at the Fish Port at about 12:00 o'clock midnight; that he left the Fish Port at about 3:00 o'clock in the morning and arrived in Pasig City at about 4:00 o'clock in the morning of February 8, 1996; that in going to Navotas Fish Port and in returning to Pasig City he rode in the taxicab driven by his neighbor and kumpadre Abner Quiñones; that his taxi fair was P600.00; that Roselle is fond of going out and sometimes spend some nights away from home; that in 1995, his parents-in-law intrusted to him the custody of Roselle, so that he could instill discipline in her; that in doing so, he used to spank Roselle just like what he does with his own children; that the room where Roselle and the four (4) children slept was very small; that Roselle asked his forgiveness for falsely accusing him of raping her.

"Divina dela Cruz testified, among other things, that she is engaged in buying and selling fish at the Navotas Fish Port; that she has known Oscar Nogar for about five (5) years; that on February 8, 1996, at about 2:00 o'clock in

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

the morning, she sold to Oscar Nogar galunggong worth P1,500.00; that she issued the corresponding receipt to Oscar Nogar; that Nogar left the Fish Port at about 3:00 o'clock in the morning; that she learned of the rape charge against Nogar in the first week of August, 1997, when Nogar's wife requested her to testify in court and bring with her some duplicate receipts.

"Abner Quiñones testified, inter alia, that he is a taxicab driver; that Oscar Nogar is his neighbor and Kumpare; that on February 8, 1996, between 10:00 and 11:00 o'clock in the evening, he drove Nogar to the Navotas Fish Port; that he and Nogar arrived at the Fish Port between 12:00 o'clock midnight and 1:00 o'clock in the morning; that after staying in the Fish Port for about three (3) to four (4) hours, he and Nogar returned to Pasig City and arrived thereat between 4:00 o'clock and 5:00 o'clock in the morning."[4]

Assessing the evidence before it, the trial court gave the case for the prosecution, found the accused guilty beyond reasonable doubt of the crime charged, and imposed upon him the penalty of death.

In this automatic review of the case by the Court, the defense disputes the findings of the trial court and its imposition of the death penalty on accused-appellant.

In an attempt, firstly, to prove that the victim was already over twelve (12) years of age at the time of the commission of the offense, the defense presented, among other things, the birth and baptismal certificates, as well as a progress report card, of Roselle. The trial court rejected these documents as being of doubtful probative value. It observed that the Certificate of Live Birth was filed only on 24 July 1996 or after the filing of the Information in this case; the "baptismal certificate" was a mere certification by the Parish Registrar, Mr. Edgar S. Amistoso, and the Parish Priest, Rev. Rolando M. Guiuan, to the effect that the baptismal record of Roselle could not be found in the office of the parish but that "according to some reliable persons" she was baptized on 16 July 1984; and the progress report card for the school year 1992-1993, stating that Roselle was 10-1/4 years old, did not indicate the person who supplied the information. Be that, as it might be, Roselle herself testified that she was over twelve (12) years old at the time of the commission of the offense.

> "CROSS-EXAMINATION BY ATTY. KARAAN:
>
> "Q
>
> During the direct examination of the good Fiscal, you claimed that you were born on October 5, 1983, is that correct?
>
> "A
>
> That is correct, sir.
>
> "Q
>
> And, in fact Roselle you even have a certificate of live birth showing that you were born on that day October 5, 1983?
>
> "A
>
> Yes, sir.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

"ATTY. KARAAN:

And, may I request that the birth certificate of the herein complainant be marked as our Exhibit `1' and the date of birth which is October 5, 1983 be bracketed and marked as Exhibit `1-A' and the name of the private complainant Roselle Lavenia be bracketed and marked as Exhibit `1-B' Your Honor.

"COURT:

Mark them.

"ATTY. KARAAN:

Do you recall if you studied in Sta. Rita Elementary School in Samar?

"A

Yes, sir.

"Q

And, If I show you proof that you actually studied in Sta. Rita Elementary School in Samar, can you see this progress report card?

"A

This is my card, sir.

"Q

In this progress report card for school year 1992-1993 where your name appeared Roselle Labenia, the age that was placed here is 10 1/4, are you aware of that?

"A

Yes, sir.

"ATTY. KARAAN:

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

May I, therefore, request that the progress report card as admitted by the witness, be marked as Exhibit `2' and the name of Roselle Labenia as Exhibit `2-A' and the age as 10 1/4 as Exhibit `2-B,' Your Honor.

"COURT:

Mark them.

"ATTY. KARAAN:

In other words, Roselle, at the time of the commission of the offense on February 8, 1996, you were already more than twelve (12) years old or to be exact, you were almost 12, 4 months and 3 days?

"Q

Yes, sir."[5]

Given the above testimony, the Court scarcely would be in any position to state, let alone with moral certainty, that Roselle Labenia was below 12 years of age when the rape took place.

Accused-appellant now asks: Can he still be convicted of simple rape when the charge against him is for statutory rape? Accused-appellant claims that because the information has also alleged the sexual intercourse with Roselle Labenia to have been "against her will and consent," the Information, in effect, has charged not one but two offenses which violates the proscription in Section 13, Rule 110, of the Revised Rules on Criminal Procedure against duplicity of offenses. The Court need not belabor this issue. If accused-appellant feels there has been such an infringement, it is now too late in the day for him to still challenge the duplicitous character of the Information. This kind of an objection should be raised in a motion to quash before a plea to the Information is made; otherwise, like here, the defect is deemed waived,[6] and the court, pursuant to Section 3 of Rule 120, of the 1985 Rules on Criminal Procedure, could convict the accused of as many offenses as are charged and proved and thereupon impose on him the penalty for each and every one of them.[7]

The real point of contention is whether, based on the testimony of the witnesses and the evidence presented, the conviction of accused-appellant can be sustained by this appeal.

This Court will disturb the factual findings of a trial court only when the latter evidently has overlooked, misapprehended or misapplied facts of weight and substance which, if properly considered, would warrant a different conclusion and justify an acquittal of the accused.[8] Unfortunately for accused-appellant, the Court finds nothing in the records that can support a judgment different from that reached by the trial court.

True, the testimony of Roselle was not without any inconsistency. She stated that four children were in the room with her[9] but, in a subsequent account, she said that five, instead of four, children were with her.[10] She averred that she was born on 05 October 1983[11] but later said that she did not know her exact age.[12] Nevertheless, these minor inconsistencies did not adversely affect Roselle's testimony; on the contrary, it strengthened, rather than impaired, her credibility,[13] by effectively erasing any suspicion of a rehearsed testimony.[14] The victim was a young woman, barely in her teens, when subjected to an assault on her

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

innocence, and she should not be expected to narrate vividly her sad experience.[15] Indeed, a rape victim would rather forget than keep to memory the ugly details of her appalling outrage.

Roselle, at all events, was sufficiently straightforward in recounting her ordeal; she testified:

"Q

Now, do you recall if there was any unusual incident that happened on that early morning?

"A

Yes, sir.

"Q

Can you inform this Court about that incident?

"A

While I was asleep, I sensed that somebody was coming near me and that somebody held my legs and arms and then removed my clothes, sir.

"Q

After that, what happened next?

"A

And, then that person after removing my clothes removed his shorts, sir.

"Q

After that, what happened next?

"A

He went on top of me, sir.

"Q

Do you know what did he do on top of you?

"A

He tried to insert his penis inside my vagina, sir.

"Q

Did he succeed in inserting his penis?

"A

A little only, sir.

"Q

What did you do after that?

"A

I cried, sir.

"Q

Now, at the time when the accused lied on top of you, what did you do?

"A

I was fighting him but I could not move away from him because he was too heavy for me, sir.

"Q

Did you shout?

"A

No.

"Q

Why did you not?

"A

He ordered me to keep quiet, sir.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

"Q

You said that the accused have successfully inserted a little of his penis, to your vagina, how did you feel?

"A

I felt pain, sir.

"Q

What did you do at that time?

"A

I just cried and cried, sir.

"Q

How about the accused, what did the accused do after you cried?

"A

He kept on inserting his organ to mine, sir.

"Q

This time, did he successfully insert all his penis to your vagina?

"A

No, sir.

"Q

After that, what did the accused do, if any?

"A

He left, sir.

"Q

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Did you feel any liquid after he left?

"ATTY. KARAAN:

Very leading, Your Honor.

"COURT:

Reform.

"PROSEC. PAUDAC:

What did you feel after he left?

"A

I stood up and washed myself, sir.

"Q

Why did you wash yourself?

"A

Because something came out of him, sir.

"Q

And, what part of your body did you wash?

"A

My sex organ, sir."[16]

The fact that Roselle has been with her cousins in the crime scene cannot discount the possibility of the rape having been there committed. Time and again, the Court has declared that lust is no respecter of time and place[17] and rape can be committed even in places where people congregate: in parks, along the roadside, within the school premises, inside a house where there are several occupants and even in the same room where other

members of the family are sleeping.[18]

It is also not required, for the commission of rape, that there be marks of physical violence on the victim's body.[19] Intimidation is addressed to the mind of the victim and, being subjective, its presence cannot be tested by any hard and fast rule but should, instead, be viewed in the light of the victim's perception and judgment at the time of the commission of the crime.[20] The moral influence of accused-appellant over the victim, such as in this case, could even be enough in cowering the young girl to submission.

The defense of alibi proffered by accused-appellant is unacceptable. Alibi cannot prevail over the positive identification made by the victim of her offender.[21] Moreover, accused-appellant has failed to prove physical impossibility on his part of being present at the time and place of commission of the crime. As has so aptly been pointed out by the trial court, "at midnight or early in the morning when vehicular traffic is very light the distance between Pasig City and the Navotas Fish Port can be negotiated in less than an hour."[22]

Finally, the Court must deny to the defense any significant value on the supposed letter of Roselle to her uncle asking for forgiveness. Apparently, the letter has merely been copied by the victim from another letter at the instructions of another uncle.[23] The letter, moreover, merely states the phrases, "pasinsiya na po kayo," "mali pala ako," and "(p)atawad po,"[24] without specifying what it is that she asks forgiveness for.

The Court agrees, however, with accused-appellant, as well as the Office of the Solicitor General, that the penalty of death could not be imposed in this case. The special qualifying circumstance of the relationship of accused-appellant with the victim has not at all been alleged in the Information for it to be considered in the imposition of the death penalty.[25]

In line with prevailing jurisprudence, an additional award of civil indemnity ex delicto of P50,000.00, aside from the P50,000.00 moral damages, should be awarded in favor of the victim.

WHEREFORE, the decision of the Regional Trial Court of Pasig City, Branch 166, finding Oscar Nogar y Maceda guilty beyond reasonable doubt of the crime of Rape is AFFIRMED with MODIFICATION by reducing the penalty of death imposed by the court a quo to Reclusion Perpetua and granting an additional award, aside from the P50,000.00 moral damages given by the trial court, of civil indemnity in the like amount of P50,000.00. Costs against accused-appellant.

SO ORDERED.

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

---

[1] Judge Jesus G. Bersamira presiding.

[2] Rollo, p. 21.

[3] Rollo, p. 16.

[4] Rollo, pp. 16-19.

[5] TSN, 04 March 1997, pp. 2-3.

[6] Reodica vs. Court of Appeals, 292 SCRA 87.

[7] People vs. Conte, 247 SCRA 583.

[8] People vs. Albao, 287 SCRA 129; People vs. Ramos, 297 SCRA 618.

[9] TSN, 21 January 1997, p. 5.

[10] TSN, 04 March 1997, p. 5.

[11] TSN, 04 March 1997, p. 2.

[12] TSN, 04 March 1997, p. 4.

[13] People vs. Carullo, 289 SCRA 481; People vs. Gaorana, 289 SCRA 652.

[14] People vs. Alfeche, 294 SCRA 352.

[15] People vs. Tumala, Jr., 284 SCRA 436.

[16] TSN, 21 January 1997, pp. 5-7.

[17] People vs. Gementiza, 285 SCRA 478.

[18] People vs. Lusa, 288 SCRA 296.

[19] People vs. Ulzoron, 286 SCRA 741.

[20] People vs. Luzorata, 286 SCRA 487.

[21] People vs. Ravanes, 284 SCRA 634.

[22] Decision of the trial court, p. 5.

[23] TSN, 04 March 1997, p. 6.

[24] Exhibit "3," Folder of Exhibits.

[25] People vs. Dimapilis, 300 SCRA 279.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.