

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINICO LICANDA Y BOLANTI, ACCUSED-APPELLANT.

G.R. No. 134084. May 04, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an automatic appeal from the decision[1] of the Regional Trial Court, Branch 129, Caloocan City, finding accused-appellant guilty of raping his 13-year old daughter and sentencing him to death and to pay the victim P50,000.00 in damages.

The complaint, filed by Nelita Mahinay, on August 14, 1997 and adopted by the prosecution as Information, alleged:

That on or about the 11th day of August 1997 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, being then the natural father of the victim, NELITA MAHINAY Y MONTINO, a minor of 13 years old, with lewd design, and by means of threats and intimidation, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with his daughter, NELITA MAHINAY Y MONTINO against her will and without her consent.[2]

To the crime thus charged, accused-appellant pleaded not guilty, whereupon he was tried.

The prosecution presented evidence showing the following: Nelita Mahinay is one of the children of accused-appellant and Dioleta Mahinay. She was born on July 14, 1984 in Samar and reached only up to the third grade in school. In 1997, the family moved to Manila and, at the time material to this case, stayed in the house of Nelita's grandmother in Bagong Barrio, Caloocan City.[3]

Nelita testified that before her family moved to Manila, accused-appellant had already raped her on several occasions. The first incident occurred on September 21, 1996 when she was only 12 years old. With regard to the rape subject of this case, she testified that it took place in the evening of "August 4 or 5, 1997." [4] That night, she and a seven-year old cousin slept on the floor of the living room of her grandmother's house, while her parents slept near the terrace, about a meter from her. When her mother was already asleep, accused-appellant moved beside her. The following is her narration in open court of what subsequently took place:[5]

Fiscal Lomadilla

Q What happened after you said your father transferred near you?

A He put off my dress Sir.

Q What else?

A And then he told me not to make any noise because if not, he is going to stab me and my mother Sir.

Q Why? Was he holding anything at that time?

A No answer. . .

Atty. Ongteco

The question is leading your Honor.

Court

Because of the low intelligence of the witness, I can allow that. Sige, answer.

Witness

A A bladed weapon your Honor.

Fiscal Lomadilla

Q What did you do, if any?

A I cried Sir.

Q Why did you cry?

A Because of what he did to me Sir.

Q When he said that you should not make any noise, what did he do next?

A "Kinantot po niya ako".

(He raped me Sir.)

Q How did he rape you?

A He placed h[im] self on my top Sir.

Q What happened next after he placed h[im] self on top of you?

A He made sex with me Sir.

Fiscal Lomadilla

Q What was he wearing when he placed h[im] self on top of you?

A A brief Sir.

Q When you said he had sex with you, was his brief still on?

A No answer . . .

Atty. Ongteco

Leading you Honor.

Court

As I said earlier, because of the low intelligence of this witness, you can ask leading questions . . ., answer.

Witness

A Yes your Honor.

Fiscal Lomadilla

Q How long did he make sex with you?

A Less than an hour Sir.

Q Then, what did you feel [after] he had sex with you?

A Pain Sir.

Q What part of your body did you feel the pain?

A "Sa pekpek ko po."

(In my vagina Sir)

The following morning, she told her mother what happened. The latter sought the help of Nelita's uncle who accompanied them to the office of the Bantay Bata Foundation of the TV station ABS-CBN. There, they were advised that Nelita should be examined by a doctor.[6]

On the same day, Nelita underwent a physical examination conducted by Dr. Dennis Bellin, a medico-legal officer of the National Bureau of Investigation, who issued the following certification:[7]

FINDINGS:

GENERAL AND EXTRAGENITAL:

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

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 4 and 7 o'clock and shallow healed laceration at 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

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.

Dr. Bellin testified that in his opinion, the healed lacerations in Nelita's genitalia were more than three weeks old and had not been inflicted on the day prior to the examination. He added that these lacerations served as the basis for his conclusion that complainant is in a "non-virgin state." The lacerations, he continued, were caused by the introduction of a hard blunt object into the victim's genitalia such as an erect penis or a finger.[8]

The prosecution presented Nelita's mother, Dioleta Mahinay. She testified that at around 11 in the evening of August 11, 1997, she woke up and found her husband on top of her daughter (nakatumbaw) making some motions (gumagalaw), while her daughter was crying. She said she could not do anything because she was afraid of her husband who always carried a knife with him. However, she did confront him later about the incident, but her husband merely kept quiet. Dioleta corroborated her daughter's testimony that the following morning they sought assistance from the office of the Bantay Bata Foundation of ABS-CBN and that, upon advice, she had her daughter examined by a doctor that same day. Afterwards, they reported the incident to the police as a result of

which accused-appellant was arrested.[9]

Dioleta stated that when her husband was on top of their daughter, he had his briefs on while her daughter had on a pair of short pants and blouse. On cross-examination, she added that her husband had a knife tucked in his waist. The trial court noted the tendency of the witness to laugh whenever she was embarrassed by questions regarding the details of the rape of her daughter.[10]

Accused-appellant testified in his behalf. After stating that he was 53 years old, married, a construction worker and a resident of Bagong Barrio, Caloocan City, he only gave the following testimony:[11]

Atty. Ongteco

The witness your Honor will deny the charges filed against him. With the kind permission of the Honorable Court.

Q Mr. Witness, did you rape Ms. Nelita Mahinay?

A No, sir.

Atty. Ongteco:

No further questions your Honor.

On cross-examination, the defense objected to the questions concerning accused-appellant's filiation to Nelita and his relationship with Dioleta Mahinay, on the ground that this matter was outside the scope of the direct examination. But as accused-appellant himself stated that he is married, the lower court allowed the prosecution to question accused-appellant regarding his civil status. He testified that Dioleta Mahinay is his wife and that he has five children by her. When asked however whether he is related to, or knew Nelita, he did not answer but remained silent. The trial court took this to mean that accused-appellant was answering in the negative.[12]

On June 10, 1998, the trial court rendered its decision finding accused-appellant guilty. The dispositive portion of its decision reads:[13]

WHEREFORE, premises considered, this Court finds the accused DOMINICO LICANDA y BOLANTI guilty beyond reasonable doubt of Rape, as defined and penalized under Article 335 of the Revised Penal Code, as amended by Section 11, paragraph 1 of Republic Act No. 7659. Accordingly, he shall serve the penalty of Death.

By way of damages, and pursuant to Article 2202 of the Civil Code and Article 100 of the Revised Penal Code, the accused shall pay complaining witness Nelita Mahinay the sum of P50,000.00, without subsidiary imprisonment in case of insolvency.

. . . .

In this appeal, accused-appellant's sole assignment of error is that the trial court erred in convicting him despite the alleged failure of the prosecution to prove his guilt beyond reasonable doubt.[14]

First. Accused-appellant capitalizes on Nelita's testimony that her father had his briefs on when he went on top of her and raped her. He contends that this proves that the rape was not consummated.[15]

The contention has no merit. Admittedly, rape under the first paragraph of Art. 335[16] of the Revised Penal Code, as amended by Republic Act No. 7659, is consummated when there is penetration, no matter how slight, of the victim's genitalia[17] under any of the circumstances enumerated therein.[18] It is also settled that inconsistencies between two statements of a witness should be determined not by considering words or phrases

separately, but by the entire impression or effect of what has been said or done.[19]

In this case, Nelita categorically stated that accused-appellant was able to have sexual intercourse with her ("Kinantot niya ako") for less than an hour by threatening her with a bladed weapon, as a result of which she felt pain in her genitalia. This is an assertion that accused-appellant was able to consummate the rape. Her statement that her father was wearing briefs should be taken to mean, as the lower court said,[20] that accused-appellant was wearing briefs but he subsequently removed or lowered it during the sexual act to expose his penis. It is to be remembered that accused-appellant was sleeping beside his wife about a meter away from Nelita. It was unlikely then that he would pull down his briefs before moving over to Nelita's side. Indeed, when a woman $\frac{3}{4}$ in this case, a girl barely in her teens $\frac{3}{4}$ says she has been raped, she in effect says all that is necessary to show that she has been raped, provided her testimony is credible.[21]

In this case, the trial court noted:[22]

. . . . Despite her tender age and being unlettered, the complaining witness tearfully narrated the harrowing experiences she went through with her father, starting from the time she was only 12 years of age in Samar up to the time the family moved to Bagong Barrio, Caloocan City. Complainant's tearful testimony abundantly demonstrated her anguish, even anger. She was emotionally bruised and scarred for life. For instead of being protected and showered with the loving care of the very person who brought her into this world, the latter, her very own father, was the one who wrecked her future and shattered whatever dreams she might still have to survive her immense poverty

In a clear, direct and categorical manner, the complaining witness testified that her own father, the accused, raped her $\frac{3}{4}$ not only in Bagong Barrio, Caloocan City which gave rise to this case $\frac{3}{4}$ but also in Samar where the sexual assaults were "maraming beses na po." When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that the rape was committed. (People vs. Vitor, 245 SCRA 392.)

The trial court's evaluation of Nelita's credibility is entitled to the highest respect for it had the opportunity to observe the demeanor of the witness on the stand.[23] We have carefully examined the records of the case, and we find no ground for a reversal of the finding of the trial court. Lexjuris

Indeed, no woman, especially one of such tender age as Nelita, would contrive a rape story, allow an examination of her private parts and permit herself to be subjected to scrutiny at a public trial if she is not motivated solely by a desire to have the culprit apprehended and punished.[24] Her tale of sexual abuse is credible in the absence of a showing that she had cause to falsely implicate accused-appellant.[25]

On the other hand, the trial court correctly dismissed the claim of Nelita's mother that accused-appellant's knife was tucked in his waist while he was having intercourse with the child.[26] This is contrary to Nelita's testimony that accused-appellant held the knife in his hand and threatened her with it. For the same reason, Dioleta Mahinay's claim that accused-appellant was wearing briefs and that her daughter had a blouse and a pair of shorts on during the sexual act cannot prevail over Nelita's direct testimony that accused-appellant removed her clothes and then forcibly had intercourse with her. As Nelita was the victim, her account of the rape is more credible.

Accused-appellant points out alleged discrepancies in Nelita's testimony with regard to the date when the rape took place and when she reported it to her mother.

Nelita testified that the rape took place on "August 4 or 5, 1997." This is in conflict with the allegation in the Information that accused-appellant committed the rape on August 11, 1997. It appears, however, that the rape did take place on the latter date because the certification issued by Dr. Bellin states that complainant was examined by him on August 12, 1997, and Nelita and her mother had testified that she (Nelita) was examined by Dr. Bellin the

day after the rape. In any event, the mistake in Nelita's testimony does not impair her credibility, considering the proximity of the dates involved. Indeed, we have held that the failure of a victim to state the exact date and time of the commission of the rape is a minor matter which can be expected to happen when the witness is made to recount the details of a traumatic experience in open court and in the presence of other people.[27] Far from detracting from the truthfulness of her account, the mistake buttresses, rather than weakens, Nelita's credibility[28] since it shows that Nelita has not been rehearsed.[29]

The same reason applies with regard to Nelita's testimony that she informed her mother of the rape on July 24, 1997, which is obviously erroneous, since the rape took place on August 11, 1997. The Solicitor General says that this error may have been due to the fact that Nelita testified concerning several incidents of rape of which she was the victim, and/or to the lengthy direct examination on the stand which could have easily confused her as to the correct dates.[30] The Court agrees. Besides, as already intimated above, error-free testimonies cannot be expected, especially when a witness is narrating the details of a harrowing experience.[31] As long as the testimony is consistent on material points, slightly conflicting statements will not undermine the witness' credibility nor the veracity of the testimony.[32]

Second. Accused-appellant makes much of the findings of Dr. Bellin that the lacerations in the hymen were not inflicted on Nelita on the day prior to the examination.[33] To be sure, a medical examination is not indispensable for the successful prosecution of the crime of rape,[34] and the presence of healed hymenal laceration does not negate the commission of rape,[35] especially if, as in this case, Nelita claims to have been raped several times by accused-appellant prior to the conduct of a medical examination. If any, Dr. Bellin's findings further bolster Nelita's tale of the prior incidents of rape.

Third. The foregoing notwithstanding, the Court finds merit in accused-appellant's contention, to which the Solicitor General agrees,[36] that the prosecution failed to establish the qualifying circumstance of filiation between Nelita and accused-appellant as alleged in the Information.

In prosecutions for rape, where the penalty imposable is death by virtue of the presence of the circumstances[37] mentioned in Art. 335 of the Revised Penal Code, as amended by §11 of R.A. No. 7659, the pertinent circumstances must be alleged in the Information and proved during the trial. This is because these circumstances have the effect of increasing the imposable penalty from reclusion perpetua to death, and partake of the nature of qualifying circumstances of which the accused must be informed.[38]

In this case, the concurrence of the minority of the victim and her filiation with accused-appellant under §11(1) of R.A. No. 7659, as amended, are alleged in the Information, which states that accused-appellant is "the natural father of the victim" and that by means of threats and intimidation, he succeeded in having sexual intercourse "with his daughter" who was then "a minor . . . 13 years old." However, although Nelita's minority was established,[39] the filiation between accused-appellant and Nelita was not satisfactorily proven. The prosecution evidence fails to show that accused-appellant is the natural father of Nelita. It is noted that Nelita merely stated that accused-appellant is her father and Dioleta Mahinay her mother,[40] while the latter testified that accused-appellant is her husband and Nelita her daughter.[41] Accused-appellant, on the other hand, did not admit that Nelita is his daughter, although he did state that Dioleta Mahinay is his "wife." Considering that accused-appellant's surname is "Licanda" while that of Nelita and her mother is "Mahinay," there is ground to doubt, as the Solicitor General says,[42] whether appellant is legally married to Dioleta Mahinay and whether Nelita is their child. In cases of incestuous rape where complainant is the daughter of the common-law spouse of the accused, the complainant invariably bears the surname of her mother.[43] In this case, it is curious that Dioleta Mahinay did not testify that Nelita is her daughter by accused-appellant. On the other hand, although accused-appellant said that he has five children by Dioleta Mahinay, he did not say that Nelita is one of them, nor

did he answer questions concerning his filiation with complainant.

Nelita tried to explain the discrepancy by stating that accused-appellant had two surnames and that "Mahinay" is accused-appellant's other surname.[44] This is highly suspect since her mother also bears the same surname.[45] In any event, the problem could have been easily remedied by the prosecution by presenting Nelita's birth certificate or any other documentary evidence which shows the name of Nelita's father. The failure of the prosecution to do so should be taken in favor of accused-appellant considering that it has the burden of proving its allegations[46] especially in a death penalty case where the life of a human being hangs in the balance.[47] In view of the foregoing, the penalty imposed by the trial court must be reduced to reclusion perpetua as there is in effect a failure to prove the qualifying circumstance of filiation as alleged in the Information.[48]

Nor can accused-appellant's use of a bladed weapon in committing the rape serve as basis for the imposition of the death penalty. This circumstance, which under Art. 335, increases the penalty of reclusion perpetua to death,[49] must be so alleged in the Information. This, however, was not done in this case.

Neither can accused-appellant be held liable for the other rapes testified to by Nelita, specifically that committed on September 21, 1996, since no Information covering such crime has been filed against him. Because of the right of the accused to be informed of the nature and cause of the accusation against him, he cannot be convicted of a crime with which he has not been charged even if the evidence shows that he committed the same.[50]

Fourth. In addition to the P50,000.00 civil indemnity awarded by the trial court, moral damages in the amount of P50,000.00 should likewise be given to Nelita, which is to be automatically awarded in rape cases without need of proof.[51]

WHEREFORE, the decision of the Regional Trial Court, Branch 129, Caloocan City, is **AFFIRMED** with the **MODIFICATION** that accused-appellant's sentence is reduced to reclusion perpetua, and he is ordered to pay complainant Nelita Mahinay the amount of P50,000.00 as moral damages, in addition to the amount of P50,000.00 civil indemnity awarded by the trial court.

SO ORDERED.

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

Melo, Kapunan, and Purisima, JJ., on leave.

[1] Per Judge Bayani S. Rivera.

[2] Exh. B; Records, p. 40.

[3] TSN, pp. 4, 8-10, Sept. 24, 1997; TSN, p. 4, Jan. 7, 1998.

[4] The Information alleges that the rape was committed "on or about the 11th day of August 1997."

[5] TSN, pp. 3-7, Sept. 24, 1997.

[6] TSN, pp. 10-11, Sept. 24, 1997.

[7] Exh. A; Records, p. 39. (Emphasis added)

[8] TSN, pp. 10-11, 13 & 16, Nov. 7, 1997.

[9] TSN, pp. 5-10 & 15, Oct. 2, 1997.

[10] Id., pp. 7, 13-14.

[11] TSN, p. 3, Jan. 7, 1998.

[12] Id., pp. 4-5.

[13] RTC Decision, p. 16; Records, p. 70. (Emphasis in the original)

[14] Accused-appellant's Brief, p. 1; Rollo, p.36.

[15] Id., p. 4; id., p. 39.

[16] Now Art. 266-A, as amended by Republic Act No. 8353 (Anti-Rape Law of 1997), which took effect on October 22, 1997.

[17] *People v. Sanchez*, 250 SCRA 14 (1995); *People v. Borja*, 267 SCRA 370 (1997); *People v. Evangelista*, 282 SCRA 37 (1997); *People v. Clopino*, 290 SCRA 432 (1998).

[18] (a) Through force, threat or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[19] *People v. Gabas*, 233 SCRA 77 (1994).

[20] RTC Decision, p. 5; Records, p. 68.

[21] *People v. Abad*, 268 SCRA 246 (1997); *People v. Butron*, 272 SCRA 352 (1997); *People v. Mercado*, 275 SCRA 581 (1997).

[22] RTC Decision, pp. 13-14; Rollo, pp. 67-68.

[23] *People v. Sanchez*, 250 SCRA 14 (1995); *People v. Tami*, 244 SCRA 1 (1995); *People v. Abu*, 230 SCRA 612 (1994).

[24] *People v. Antipona*, 274 SCRA 328 (1997); *People v. San Juan*, 270 SCRA 693 (1997); *People v. Abad*, 268 SCRA 246 (1997).

[25] See *People v. Burce*, 269 SCRA 293 (1997).

[26] RTC Decision, 6; Records, p. 69.

[27] *People v. Bugarin*, 273 SCRA 384 (1997).

[28] *People v. Ching*, 240 SCRA 267 (1995).

[29] *People v. Abad*, *supra*.

[30] Appellee's Brief, p. 12; Rollo, p. 72.

[31] *People v. Cura*, 240 SCRA 234 (1995).

[32] *Antonio v. Court of Appeals*, 273 SCRA 328 (1997).

[33] Accused-appellant's Brief, p. 7; Rollo, p. 42.

[34] *People v. Devilleres*, 269 SCRA 710 (1997); *People v. Cura*, *supra*.

[35] *People v. Rabosa*, 273 SCRA 142 (1997).

[36] Appellee's Brief, pp. 15-16; Rollo, pp. 75-76.

[37] 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.

2. When the victim is under the custody of the police or military authorities.

3. 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.

4. When the victim is a religious or a child below seven (7) years old.

5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[38] *People v. Ramos*, 296 SCRA 559 (1998); *People v. Dimapilis*, 300 SCRA 279 (1998); *People v. Cantos, Sr.*, 305 SCRA 786 (1999).

[39] Nelita testified that she was born on July 4, 1984, so that on August 11, 1997, when she was raped, she was only 13 years old (TSN, p. 10, Sept. 24, 1997).

[40] TSN, p. 4, Sept. 24, 1997.

[41] TSN, p. 3, Oct. 2, 1997.

[42] Appellee's Brief, pp. 15-16; Rollo 75-76.

[43] See *People v. Medina*, 300 SCRA 98 (1998); *People v. Dimapilis*, *supra*; *People v. Cantos, Sr.*, *supra*.

[44] TSN, p. 3, Sept. 24, 1997.

[45] Under Art. 176 of the Family Code, illegitimate children shall use the surname of their mother.

[46] *People v. Ching*, 240 SCRA 267 (1995).

[47] *People v. Alvario*, 275 SCRA 529 (1997); *People v. Galera*, 280 SCRA 492 (1997).

[48] See *People v. Manggasin*, G.R. Nos. 130599-600, April 21, 1999, where the Court lowered the penalty to reclusion perpetua because although the Information alleged that the accused is the step-father of the complainant, the evidence showed that the accused and the victim's mother merely lived in a common-law relationship, hence the accused could not be the step-father of the complainant, that is, the man who is legally married to the victim's mother after the death of the victim's biological father.

[49] *People v. Bayron*, G.R. No. 122732, Sept. 7, 1999.

[50] *People v. Antido*, 278 SCRA 425 (1997); *People v. De Guzman*, 265 SCRA 228 (1996).

[51] *People v. Prades*, 293 SCRA 411 (1998).

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