

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELENCIO BALI-BALITA, ACCUSED-APPELLANT.

G.R. No. 134266. September 15, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On September 1, 1997, Ella Magdasoc y Carbona, 11 years of age, assisted by her sister, filed a complaint for rape against Melencio Bali-balita, the common-law husband of her mother, as follows:

“The undersigned accuses MELENCIO BALI-BALITA, common law husband of the complainant’s mother, of the crime of Rape, committed as follows:

That on or about the 26th day of August, 1997 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressing the undersigned, a minor, 11 years of age, and at knife point inserted his fingers at her private part, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY LAW.”[1]

The accused assisted by counsel de oficio entered a plea of not guilty upon arraignment on September 22, 1997.

The evidence for the prosecution consists of the testimony of the private complainant Ella, the medico legal officer, Dr. Ma. Cristina Freyra, and the sister of the complainant, Miriam Gozun y Carbona.

The trial court summarized the prosecution’s evidence as follows:

“Ella Magdasoc, the private complainant, was an eleven year old out-of-school youth who resided at Phase 2, Payatas B, Quezon City at the time of the incident. The accused, Melencio Bali-Balita, on the other hand, also resided at the same address being the live-in partner of Retilla Bali-Balita, the private complainant’s mother.

On August 26, 1997, Ella and her younger siblings were inside their house in Payatas, Quezon City together with the accused. After eating, they were about to go to sleep when the accused told Ella to go inside the room of her mother who was not at home at that time. The accused was already inside the same room when Ella entered. The accused then ordered her to remove her clothes, a pair of shorts and a blouse, and then to get on the bed. When Ella defied the order of the accused, the latter removed her shorts and underwear, after which he himself undressed. The accused told Ella to lie down on the bed and thereafter he went on top of her. Ella then started crying so the accused told her to get up and poked a knife at her. The accused inserted his finger into Ella’s private organ and after that he inserted his private organ into hers. Ella cried as she felt pain but the accused told her not to make noise. The accused then ordered her to bend her back facing him and then placed himself on top of her. Ella told the accused that she had to urinate and the accused allowed her to do so but ordered her to return afterwards. After urinating, Ella did not return to her mother’s room anymore and instead went to her room to sleep. The accused called her back but she did not heed his call.

After the incident, Ella went to the house of her sister, Miriam Gozun y Carbona, and told the latter what happened to her. Together, they reported the matter to their mother, Retila Bali-Balita, who, however, found

Ella's story impossible. As their mother was not interested in pursuing the case against her live-in partner, Ella and Miriam went to the Police Station where they gave statements to the police (Exhs. "D" to "D-2" and Exhs. "F" to "F-1") pointing to the accused as the one who abused Ella. The accused was later apprehended by the police and a complaint, docketed as Criminal Case No. 97-72798 (Exhs. "E" to "E-2"), was filed against him.

At the police station, Ella Magdasoc, the private complainant was referred to the PNP Crime Laboratory Services for laboratory/medico-legal examination. Upon receipt of the request for medico-legal examination (Exh. "A" to "A-1" and the consent of Ella thereto, Dr. Ma. Cristina Freyra, medico-legal officer of the PNP Crime Laboratory Services, initially conducted an interview on the victim (Exh. "B"). Thereafter, Dr. Freyra conducted a physical/genital examination on the person of Ella, the findings of which are embodied in Medico-Legal Report No. M-1237-97 (Exhs. "C" to "C-3"). The pertinent findings thereof are quoted as follows:

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"FINDINGS:

GENERAL AND EXTRAGENITAL:

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

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with congested and abraded labia minora presenting in between. On separating the same disclosed an abraded posterior fourchette and an elastic, fleshy type hymen with deep healed lacerations at 3 and 9 o'clock position. External vaginal orifice admits the smallest finger of the examiner.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."

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Dr. Freyra further testified that in relation to the genital findings upon the person of the private complainant, the lacerations inflicted on her private parts were healed lacerations, which means that they were inflicted more than seven days prior to the examination."^[2]

Melencio Bali-balita denied the accusation. He testified that:

"He knew the private complainant in this case, the latter being the daughter of his live-in partner, Retilla Bali-Balita. The accused denied the accusation that he raped Ella at around 3 o'clock in the morning on August 26, 1997 as he alleged that he was at Phase I, Payatas V, Upper Payatas, Quezon City attending the wake of a friend at around 9 o'clock in the evening on August 25, 1997 and stayed there together with Retilla Bali-balita until around 5 o'clock in the morning on August 26, 1997. When the accused and Retilla Bali-balita arrived home, Retilla's children, including the private complainant, were still asleep. On this account, Retilla Bali-balita and Virginia Agatep corroborated the testimony of the accused that he was not at home at the time of the incident. Further, Retilla Bali-Balita testified that she was not consulted when the case was filed against the accused and that in fact, she learned of it only at around 9 o'clock in the evening of August 26, 1997. She also testified that the

accused and her children, including private complainant, had a fine relationship.”[3]

The trial court held that the crime of statutory rape was established, as Ella was below twelve years of age at the time she was raped. The testimony of the victim that the private organ of the accused penetrated her private part was corroborated by the findings of the doctor that Ella was no longer a virgin, and that there was reddening, discoloration, and abrasion on the labia majora and minora of the private organ of the victim. The court ruled that the defense of “denial and alibi” raised by the accused cannot prevail over the positive assertion and identification of the accused by the victim. Considering that the accused is the common law spouse of the mother of the victim and that the victim was less than twelve (12) years of age at the time of the incident, the court imposed the maximum penalty of death:

“WHEREFORE, judgment is hereby rendered finding the accused, Melencio Bali-balita, GUILTY beyond reasonable doubt of the crime of consummated rape defined in and penalized by Article 335 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of DEATH. The accused is ordered to pay the victim Ella Magdasoc, the amount of P50,000.00 by way of moral damages, and to pay the costs.

IT IS SO ORDERED.”[4]

Accused-appellant raises a lone assignment of error in his brief namely:

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[5]

Accused-appellant alleges that the testimony of the medico legal officer repudiates and contradicts the testimony of private complainant that accused-appellant had sexual congress with her and that it was so painful that she felt like her private organ was being torn. The medico legal officer categorically stated that there were no fresh lacerations and that the private part of the complainant could not accommodate an erect penis, and it is highly improbable that the crime of rape was committed on August 26, 1997. Moreover, the demeanor of Ella after the alleged incident, i.e. that she simply excused herself to urinate and thereafter slept, is contrary to human nature. Lastly, the accused-appellant claims it is perplexing that Ella’s own mother testified in his favor by corroborating his testimony that he was attending the wake of a friend at the time of the alleged incident.

The Solicitor General pleads that the guilt of the accused has been proved beyond reasonable doubt and prays for affirmance of the decision with modification of the award of damages from P50,000.00 to P75,000.00.

The Reply Brief filed by accused-appellant reiterates the same arguments pleaded to seek an acquittal. It is further contended that even assuming that the guilt of the accused-appellant had been proven beyond reasonable doubt, the accused-appellant cannot be meted the extreme penalty of death in view of the fact that the information failed to allege the relationship of the accused-appellant to the victim as a qualifying circumstance. Thus the accused-appellant was not properly informed that he is being accused of qualified rape.

We affirm the judgment finding that the guilt of the accused-appellant has been proven beyond reasonable doubt, but hereby reduce the penalty from death to reclusion perpetua in line with established precedents.

The testimony of Ella relating the sexual assault was categorical and clear:

“PROS (to the witness)

Now Ella, do you recall on August 26, 1997 early morning, where were you at that time?

A:

I was in our house, sir.

Q:

Where is your house located?

A:

In Payatas, Quezon City.

Q:

Now will you please tell the Court if there was an unusual incident that happened to you on that day?

A:

Yes, sir.

Q:

Tell the Court what was that unusual incident?

A:

After eating dinner where (sic) about to go to sleep and he told me not to sleep yet, sir.

Q:

Now after that Ella, what happened next, if any?

A:

He told me to get inside the room of my mother, sir.

Q:

By the way Mr. (sic) witness, who were with you inside that house at that time?

A:

My younger siblings, sir.

Q:

How many siblings do you have?

A:

Two (2), sir.

Q:

Could you tell us the names of your siblings?

A:

I am referring to my brothers Julius and Jordan, sir.

Q:

After you were told to go to the room of your mother, where was the accused then?

A:

He was also about to get inside the room, sir.

Q:

Were you able to enter the room?

A:

Yes, sir.

Q:

By the way Madam witness, where was your mother then when you were told by the accused to enter your room's mother (sic)?

A:

She was not at home during that time, sir.

Q:

Now, while you were inside the room, can you tell us Madam witness what happened next, if any?

A:

He ordered me to remove my clothes, sir.

Q:

Tell us Ella, what were you wearing at that time?

A:

I was wearing a short and a blouse, sir.

Q:

When you were told by Melencio Bali-Balita to undress, did you heed his order?

A:

No, sir.

Q:

When you defy (sic) the order of the accused, what happened next if any?

A:

He was the one who remove (sic) my short and my panty, sir.

Q:

After that Madam witness, what happened if any?

A:

He also undress, (sic) sir.

Q:

After the accused undress (sic) himself, what happened next, if any?

A:

He told me to lie down, sir.

Q:

Where?

A:

At the bed of my mother, sir.

Q:

Were you able to lie down on top of the bed?

A:

Yes, sir.

Q:

Now after that, when you were lying down on top of the bed, what happened next, if any?

A:

He went on top of me, sir.

Q:

When Melencio Bali-balita the accused went on top of you, what did you do?

A:

I cried, sir.

Q:

And what was the reaction of the accused when you were crying then?

A:

He told me to get up and after that he poke a knife at me.

Q:

And then after that Ella, what happened if any?

COURT:

Put on record that the witness is crying.

A:

He inserted his private organ.

ATTY. STA. ANA: (to the Court)

Your Honor, we will move to strike out the answer considering that the information says it was not the private organ it was the finger.

COURT:

Put on record the observation of counsel of the accused.

PROS: (to the Witness)

Now before the accused inserted his private organ, what did the accused do to you, if any?

A:

He inserted his finger into my private organ, sir.

Q:

And what did you tell Ella at that time when the accused was inserting his finger inside your private part, if there was any?

A:

I felt pain, sir.

Q:

Now when Melencio went on top of you and inserted his private part on you claimed, what did you feel then?

A:

It was painful, as if it was being torn.

Q:

Now when you were feeling pain, what did you do if any?

A:

I was crying because it was really painful, sir.

Q:

And how about the accused Melencio Bali-Balita, what was his reaction when you were crying then?

A:

He told me not to make a noise, sir.

Q:

Now Ella, after that what happened next if any?

A:

He ordered me to bend my back facing him. (pinatuwad niya ako)

Q:

After you were told to bend and turn your back in front of him, what did Melencio Bali-Balita do to you if there was any?

A:

He place himself on top of me, sir.

Q:

After that Ella, what happened next if any?

A:

After that something came out from his private organ something that was sticky.

Q:

Now after that Ella, what happened next, if any?

A:

I told him that I am going to urinate, sir.

Q:

Did Melencio Bali-Balita allow you to urinate?

A:

Yes, sir, he even ordered me to immediately come back, sir.

Q:

And were you able to urinate?

A:

Yes, sir.

Q:

Now did you come back to Melencio Bali-Balita after you were told by him to urinate?

A:

No, sir, I went back to my room, sir.

Q:

And who were there sleeping at that time when you went back to your room?

A:

My two (2) brothers , sir.

Q:

How about Melencio Bali-Balita, where was he at that time, if you know?

A:

He was there inside the room of my mother, sir.

Q:

After that Ms. Witness, what happened next, if any?

A:

He called me, sir.

Q:

And did you heed to the call of Melencio Bali-Balita?

A:

No, sir, because I told him that I was going to sleep, sir.

Q:

Then after that what happened next if any?

A:

He told me to sleep inside the room of my mother and he will transfer me from our room to my mother's room, sir.

Q:

Was Melencio Bali-Balita able to transfer you from your room to your mother's room?

A:

No, sir.

Q:

Now after that Madam witness, what did you do, if any?

A:

I did not return, sir.”[6]

We do not find the above testimony as inconsistent with or contradictory to the medico-legal findings. Dr. Cristina Freyra testified on re-direct examination in reply to the questions propounded by the court as follows:

“COURT:

So, the lacerations that you found could have been inflicted on some other time, date?

A:

Yes, your honor.

Q:

When you examined the victim, the victim was no longer a virgin as she had lacerations on the hymen?

A:

Yes, your honor.

Q:

Was there a sign of reddening or discoloration of the labia minora of the private organ?

A:

Labia Minora is congested and so is the fourchette portion.

Q:

In layman’s language what do you mean?

A:

There is reddening of the labia minora and the abrasion which means that the superficial epithelial layer of the skin is removed.

Q:

There was then discoloration?

A:

Yes, your honor.

Q:

What might have caused the discoloration or abrasion?

A:

The friction brought about by rubbing of a hard blunt object.”[7]

Although Dr. Freyra testified that the lacerations found on Ella’s private part were healed lacerations, which means that they were inflicted more than seven days prior to the examination conducted, this finding does not negate the commission of rape on August 26, 1997. As correctly pointed out by the trial court hymenal lacerations which are usually inflicted when there is complete penetration are not essential in establishing the crime of rape as it is enough that a slight penetration or entry of the penis into the lips of the vagina takes place. The conclusion is in line with jurisprudence to the effect that complete penetration of the penis is not essential to consummate rape; what is material is that there is the introduction of the male organ into the labia of the pudendum, no matter how slight.[8]

Thus, in the case of *People vs. Campuhan*,[9] this Court stated:

“We have said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. But the act of touching should be understood here as inherently part of the entry of the penis into the labias of the female organ and not mere touching alone of the mons pubis or the pudendum.”

In *People vs. Dela Peña* we clarified that the decisions finding a case for rape even if the attacker’s penis merely touched the external portions of the female genitalia were made in the context of the presence or existence of an erect penis capable of full penetration. Where the accused failed to achieve an erection, had a limp or flaccid penis, or an oversized penis which could not fit into the victim’s vagina, the Court nonetheless held that rape was consummated on the basis of the victim’s testimony that the accused repeatedly tried, but in vain, to insert his penis into her vagina and in all likelihood reached the labia of the pudendum as the victim felt his organ on the lips of her vulva, or that the penis of the accused touched the middle part of her vagina. Thus, touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim’s vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be “touched” by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.”

The fact that Ella admitted that after she was asked by accused-appellant to return after she went out to urinate, but she did not, and thereafter went to her room to sleep, does not prove that nothing happened. Ella was barely at the threshold of puberty when the incident happened and the accused was the live-in partner of her mother, and therefore exercised some degree of moral ascendancy over her. There is no typical reaction or norm of behavior that ensue forthwith or later from victims of rape.[10] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected under the circumstances from mature

persons.[11] The workings of the human mind when placed under emotional stress are unpredictable and that people react differently.[12]

Time and again, this Court has ruled that it is unlikely for a young girl like the complainant and her family to impute the crime of rape to their own blood relative and face social humiliation if not to vindicate the honor of the complainant.[13] In rape cases, when a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. It is rather inconceivable that a daughter should concoct a story that she was repeatedly raped by her father when family honor is at stake, not to mention that this would mean sending her father to jail.[14] The testimony of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.[15] The fact that the mother of Ella did not believe her daughter's accusation and instead corroborated the testimony of the accused-appellant that he attended a wake at the date and time of the incident in question, does not establish that Ella concocted the story about the sexual assault. It is unthinkable that a young girl like Ella would fabricate a story that would destroy her reputation and her family life and endure the ordeal of a trial were it not for the purpose of seeking redress. No evidence was presented to show any motive on the part of Ella to falsely testify against the accused-appellant.

We therefore find no reason to disturb or set aside the trial court's findings supporting the judgment of conviction. Conclusions as to the credibility of witness, particularly in rape cases, lie with the sound judgment of the court, and will be respected on appeal, unless there appears in the record some fact or circumstance which the trial court overlooked or misappreciated and which if properly considered, would have altered the results of the case.[16]

The penalty imposed however, must be reduced to reclusion perpetua.

Under Article 335 of the Revised Penal Code as amended by Section 11 of R. A. 7659, the concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance. As such their attendance in the commission of the crime must be properly pleaded in the information because it changes the nature of the offense and, if proven beyond reasonable doubt, increases the penalty by one degree.[17]

In the case before us, the victim herself testified that she was born on April 12, 1987 and that she was raped by the accused on August 26, 1997. [18] She was only ten years and four months old at the time of the rape. We note that the victim testified in court in December 1997 or about four months after the rape, and it would not have been difficult for the trial court to take judicial notice that the victim is under 18 years of age.[19]

We find, however, that the filiation of the appellant to the victim was not properly alleged in the information. Sections 7 and 9 Rule 110 of the Revised Rules on Criminal Procedure states:

Sec. 7 Name of the accused.- A complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known, or if his name cannot be discovered he must be described under a fictitious name with a statement that his true name is unknown.

If in the course of the proceeding the true name of the accused is disclosed by him, or appears in some other manner to the court, the true name shall be inserted in the complaint or information and record.

Sec. 9. Cause of accusation.-The acts or omission complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to pronounce judgment.

The Information upon which the appellant was charged states as follows:

“The undersigned accuses MELENCIO BALI-BALITA, common law husband of the complainant’s mother, of the crime of Rape, committed as follows:

That on or about the 26[th] day of August, 1997 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressing the undersigned, a minor, 11 years of age, and at knife point inserted his fingers at her private part, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY LAW.”[20]

It appears to us that the relationship of the accused to the victim is stated as a more detailed description of the identity of the party who committed the crime charged. Such relationship is not stated in the “cause of the accusation” or in the narration of the act or omissions constituting the offense. Every element of the offense must be alleged and if the accused is being charged of a crime in its qualified form the qualifying circumstance must likewise be stated with certainty to enable a person of common understanding to be apprised of the acts or omissions of which he is charged, although the legal designation of the crime committed need not be specifically stated. Due process requires that the accused is duly informed of the nature and the cause of the accusation against him. Such a requirement is primarily intended to enable the accused to suitably prepare his defense as he is presumed innocent and of no independent knowledge of the acts constitutive of the crime charged against him.[21] What is controlling is the description of the criminal act and not, as in this case, the description of the identity of the accused. It has been held that “the real nature of the criminal charge is determined not from the caption or the preamble of the information nor from the specification of the provision of law alleged to have been violated But from the actual recital of the facts as alleged in the body of the information.”[22] In this case the information upon which the appellant was arraigned does not state in the specification of the acts constitutive of the offense that he is charged as the live-in partner of the mother of the alleged victim. This insufficiency prevents a judgment of conviction for qualified rape and thus, the death penalty cannot be imposed. The victim being under 12 years old at the time of the commission of the crime, the crime committed is statutory rape and the proper penalty under Art 335 of the Revised Penal Code, as amended by R. A. 7659, is reclusion perpetua.[23]

The victim is entitled to indemnity of P50,000.00 in line with prevailing jurisprudence,[24] in addition to moral damages in the amount of P50,000.00. This is separate and distinct from the award of moral damages which is automatically granted in rape cases.[25]

WHEREFORE, the decision appealed from is affirmed insofar as it finds the accused-appellant Melencio Bali-balita guilty of the crime of rape with the modification that the penalty imposed is reduced to reclusion perpetua, and the accused-appellant is directed to pay the victim P50,000.00 by way of indemnity, in addition to P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Buena, and De Leon, JJ., concur. Bellosillo, J., see separate opinion.

Quisumbing, and Pardo, JJ., concurs in the separate opinion of J. Bellosillo.

Ynares-Santiago, J., on leave.

[1] 1 Record, p. 1.1

- [2] 2 Decision, pp. 2-4; Rollo pp. 15-17.2
- [3] 3 Rollo, p. 17.3
- [4] 4 Decision, p. 9; Rollo p. 22.4
- [5] 5 Rollo, p. 36.5
- [6] 6 Tsn, December 1, 1997, pp. 5-11.6
- [7] 7 Tsn, November 12, 1997, p. 12.7
- [8] 8 People vs. Faigano, 254 SCRA 10; People vs. Calimba, 253 SCRA 722; People vs. Zaballero, 274 SCRA 627.8
- [9] 9 G. R. No. 129433, March 30, 2000.9
- [10] 10 People vs. Deleverio, 289 SCRA 547.10
- [11] 11 People vs. Sta. Ana, 291 SCRA 188.11
- [12] 12 People vs. Alfeche, 294 SCRA 352.12
- [13] 13 People vs. Perez, 307 SCRA 276; People vs. Namayan, 246 SCRA 646.13
- [14] 14 People vs. Sugano, G. R. No. 127574, July 20, 1999; People vs. Emocling, 297 SCRA 214.14
- [15] 15 People vs. Mengote, 305 SCRA 380; People vs. Victor, 292 SCRA 186.15
- [16] 16 People vs. Apilo, 263 SCRA 582.16
- [17] 17 People vs. Perez, 296 SCRA 17; People vs. Sugano, G.R. No. 127574, July 20, 1999.17
- [18] 18 Tsn., pp. 3-5, December 1, 1997.18
- [19] 19 People vs. Javier, G.R No. 126096, July 26, 1999; People vs. Cula, G.R No. 133146, March 28, 2000.19
- [20] 20 Record, p. 1.20
- [21] 21 People vs. Garcia, 281 SCRA 463; Dans vs. People, 285 SCRA 504; People vs. Bolatete, 303 SCRA 709; Regalado, Remedial Law Compendium, vol. II, 1995 ed., p.250; Pamaran, Criminal Procedure Annotated, 1997 ed., pp.72-80.21
- [22] 22 Buhat vs. Court of Appeals, 265 SCRA 701 at 716-717.22
- [23] 23 The Anti-Rape Law of 1997 was not yet in effect at the time the crime was committed.23
- [24] 24 People vs. Perez, 307 SCRA 276; People vs. Prades, 293 SCRA 411.24
- [25] 25 People vs. Victor, 292 SCRA 186; People vs. Pili, 289 SCRA 118; People vs. Gementiza, 285 SCRA 478.25

SEPARATE OPINION

BELLOSILLO, J.:

I am extremely elated that a human life is saved in this case, as the supreme penalty of death is not imposed. Thus, I concur with the majority that the accused must only be sentenced to reclusion perpetua. While I am convinced that the qualifying circumstances of minority and filiation are duly alleged in the Information, the death penalty, nonetheless, may not be imposed in view of the failure of the prosecution to prove the minority of the complaining witness beyond reasonable doubt.

Apparently, the ponencia relies merely on the testimonies of the complaining witness and her half-sister in concluding that the age of the victim was proved beyond reasonable doubt. Corollarily, it ruled that there being no serious doubt as to the age of the victim, the presentation of the victim's birth certificate or other official document to prove her real age[1] becomes unnecessary. For one thing, "there being no serious doubt" cannot be equated with nor be a substitute for the requisite "proof beyond reasonable doubt."

The Testimonies of the complaining witness and her half-sister were far from being consistent with each other. The former asserted that she was 11 years old when raped while her half-sister testified that the victim was only 10 years old. In her direct examination victim Ella Magdasoc testified -

Prosecutor: Now Ella, how old are you?

Ella: Eleven (11) years old, sir.

Q: And do you recall your birthday?

A: I was born on April 12, 1987, sir.[2]

On cross-examination she stated that-

Atty. Sta. Ana: Now, how old are you on August 26, 1997?

A: 10 years old, sir.[3]

On the other hand, Miriam C. Gozun, the half-sister of the victim, testified in her direct examination-

Pros. Catubay: Madam witness, do you know Ella Magdasoc?

A: Yes, sir.

Q: Why do you know her?

A: She is my half-sister.

Q: Do you know how old is Ella Magdasoc on August 26, 1997?

A: 11 years old.[4]

Granting that there was only a 1-year difference in the supposed age of the victim, this discrepancy should not be taken lightly because the life of the accused-appellant is at stake. No single independent proof was presented by the prosecution to establish the fact that the complaining witness was below 18 years at the time of the incident. Although accused-appellant did not have any occasion to deny or offer any objection to the age of the victim, this did not excuse the prosecution from discharging its burden of proving the age of the victim beyond reasonable doubt.

The minority of the victim, as well as the filiation of the contending parties, when properly alleged in the Information and proved beyond reasonable doubt during the trial, elevates the crime of simple rape to qualified rape, which merits the imposition of the penalty of death. As such, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be alleged in the Information and duly established by the prosecution in order for the extreme penalty to be upheld. Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself; otherwise, as held in *People v.*

Sandrias[5] failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.

In *People v. Veloso*[6] the victim was alleged to have been only 9 years of age at the time she was raped. Although by appearance the victim may have definitely appeared below 18 years, the trial court did not take judicial notice of the fact that the victim was of tender age. This Court affirmed the trial court ruling that minority was not proved beyond reasonable doubt. Thus -

The trial court correctly ruled that the prosecution failed to prove the age of the victim other than through her testimony and that of her father. Thus, in *People v. Vargas* (257 SCRA 603, 1996), it was held that:

In the case at bar, however, no birth or baptismal certificate was presented to prove the age of the victim. Neither was there a showing that said documents were lost or destroyed to justify their non-presentation. The trial court should not have relied on the testimony of Cornelia as to her age nor the testimony of her Aunt Margarita Quilang. Both testimonies are hearsay. Nor was it correct for the trial court to judge the victim's age by considering her appearance.

The minority of the victim must be established beyond reasonable doubt even if uncontested by the defense. On this issue, this Court ruled in *People v. Cula*[7] --

In the case at bar, the trial court pursuant to Section 11 of Republic Act 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 v. 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.

In the instant case, the prosecution utterly failed to discharge its burden of proving beyond reasonable doubt the minority of the victim. Also, the trial court did not make any categorical finding that, indeed, the victim was 11 years old at the time of the rape. It merely relied on the self-serving testimonies of the complaining witness and her half-sister.

Death is a penalty so extreme that it becomes imperative for this Court to calibrate and weigh every piece of evidence presented with utmost caution. In cases like this, the Court cannot presume that the victim is as old as

she claims to be. For sure, a person's age can be proved by other extrinsic evidence such as his birth certificate. If the birth certificate cannot be produced, the reason for its unavailability should be stated and other piece of evidence ought to be presented to establish the age of the victim. In the instant case, the prosecution did not even bother to submit complaining witness' birth certificate; neither did it explain its unavailability and thereafter submit other proof to establish the victim's age.

In recent death penalty cases, this Court has been cautious with its interpretation of the attendant qualifying circumstances. Thus, if the offender is not a parent, ascendant, step-parent, guardian or common-law spouse of the mother of the victim, it would not suffice that it is merely alleged that the offender is a relation. It must be alleged in the Information that he is a relative by consanguinity or affinity within the third civil degree.[8] In *People v. Licanda*[9] the prosecution merely alleged that accused-appellant was the "natural father of the victim" but did not present any evidence to show that the victim was indeed accused-appellant's daughter. The relationship became more suspect as the victim bore a surname different from that of accused-appellant. In resolving the issue of filiation, this Court ruled that "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 especially in a death penalty case where the life of a human being hangs in the balance." [10]

The ponencia also posits that the prosecution failed to plead the concurrence of minority and relationship in the Information. I disagree. The Complaint[11] dated 1 September 1997 filed by the complaining witness, which was treated as the Information by Asst. City Pros. Rolando G. Mislang, reads -

COMPLAINT

The undersigned accuses MELENCIO BALI-BALITA, common law husband of the complainant's mother of the crime of Rape committed as follows:

That on or about the 26th day of August, 1997 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously undressing the undersigned, a minor, 11 years of age, and at knife point inserted his fingers at her private part, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent (underscoring supplied)

x x x x

(Sgd.) Ella Magdasoc y Carbona

Clearly, the relationship (common-law husband of complainant's mother) and the age of the victim (minor, 11 years of age) were concurrently pleaded in the Complaint/ Information. The ponencia claims that although Melencio Bali-Balita was mentioned as the common-law husband of complainant's mother in the opening statement of the Information, the same merely describes his identity and could not be deemed as an allegation of his relationship with the complainant as the same was not reiterated in the second paragraph thereof.

The reasoning seems flawed. Basically, it is immaterial whether the phrase common-law husband of complainant's mother is mentioned in the opening paragraph of the Information or in the second paragraph alleging the acts constituting the crime charged, as either is an integral part thereof. Plainly, the opening paragraph is an indispensable part of the Complaint/ Information, which normally states the name of the accused. It is not necessary, much less mandatory, that the name of the accused or his description be stated specifically in the second paragraph of the Information. Section 6, Rule 110, of the Rules on Criminal Procedure states -

Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting

the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

When the second paragraph hereinquoted requires that "[w]hen an offense is committed by more than one person, all of them shall be included in the complaint or information," all these names, which indeed are essential and indispensable, are stated only in the opening statement and not in the "accusatory" paragraph of the Information, which simply means that the "opening statement" is an integral part of the Information and may not be taken for granted as mere descriptive words or phrases.

The Information in the instant case is complete. The name of accused-appellant is stated, among others, so with his filiation with the complaining witness. In other words, under the herein-quoted provision, it is not required that the name of the accused be stated in the opening paragraph or in the accusatory portion of the Information. It is enough that it is so stated under the heading Information. In fact, when Sec. 6 requires that a Complaint or Information to be sufficient must state the name of the accused and the designation of the offense by the statute, among others, such name and designation of the offense are only stated in the opening statement immediately following the heading Complaint or Information, as quoted and aptly shown in this Separate Opinion. In other words, the filiation of the victim and the accused in the instant case is sufficiently alleged in the Complaint/Information.

A word more. The ponencia also ruled that "as correctly pointed out by the trial court, hymenal lacerations which are usually inflicted when there is complete penetration are not essential in establishing the crime of rape as it is enough that a slight penetration or entry of the penis into the lips of the vagina takes place. To dispel any possible misunderstanding or confusion, this statement must be properly viewed in light of *People v. Campuhan*, G.R. No. 129433, 30 March 2000, where this Court discussed quite extensively and differentiated attempted rape from consummated rape. Therein, the Court explicitly ruled that for rape to be considered consummated it must be established that the penis penetrated at the very least the labia of the external genitalia, which is actually beneath the pudendum, hence, the entry or penetration; otherwise, mere touching of the labia will not suffice to constitute consummated rape.

[1] Draft ponencia, p. 14, 1st par.

[2] TSN, 1 December 1997, p. 3.

[3] TSN, 3 December 1997, p. 5.

[4] TSN, 15 December 1997, p. 2.

[5] G.R. No. 126096, 26 July 1999.

[6] G.R. No. 130333, 12 April 2000.

[7] G.R. No. 133146, 28 March 2000.

[8] *People v. Antonio Ferolino aka Francisco Ferolino*, G.R. Nos. 131730-31, 5 April 2000.

[9] G.R. No. 134084, 4 May 2000.

[10] *Ibid.*

[11] Rollo, pp. 4-5.

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