PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLEMENTE DAYNA, ACCUSED-APPELLANT.

G.R. No. 134486. November 16, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us on automatic review is the decision[1] of the Regional Trial Court of Dipolog City, Branch 8, finding accused-appellant Clemente Dayna guilty of rape and imposing on him the penalty of death.

Appellant was charged under an Information which reads:

> The undersigned, Provincial Prosecutor, upon a sworn complaint, originally filed by the private offended party, accuses CLEMENTE DAYNA y Agayan of the crime of RAPE, committed as follows:
>
> That, in the morning, on or about the 21[st] day of December, 1994, in the municipality of Piñan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a hunting knife, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one EVELYN ELEMIA, a 15 year old orphan, against her will and without her consent.
>
> CONTRARY TO LAW (Viol. Of Art. 335, Revised Penal Code), with the aggravating circumstances (sic) of the use of deadly weapon.
>
> Dipolog City, Philippines.
>
> February 14, 1995
>
> RODOLFO T. MATA
> Provincial Prosecutor[2]

During his arraignment, appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The first witness for the prosecution was the offended party, EVELYN ELEMIA, 15 years old and a resident of Adante, Piñan, Zamboanga del Norte. On direct examination, she testified that in the morning of December 21, 1994, at around 8:00 o'clock, she and her uncle Clemente Dayna were left alone in their house as her aunt Esperanza went out to buy fish. Clemente Dayna forced her to go upstairs, while he pointed a knife at her back. Upon reaching the second floor, he made her lie down on the floor. Then he removed his shorts and her panty. He then proceeded to have sexual intercourse with her, by inserting his penis inside her vagina for about half an hour. On cross-examination, however, Evelyn stated that her private part was hit by his uncle with an umbrella and that she was told by her aunt and the DSWD personnel to testify that she had been raped.[3]

DR. MEIMEI R. YU, the next witness, testified that she was employed as rural health physician of the Piñan Community Hospital and that she examined the complainant on December 27, 1994. Her findings revealed that the hymen of Evelyn was still intact and that she suffered no lacerations in that area. Neither did she suffer any

bruise or injury on any part of her body. However, Dr. Yu stated that the labia majora was coapted with reddish discoloration which could had been caused by sexual intercourse. On cross, the doctor stated that this discoloration or irritation could have been caused by other hard objects such as the handle of an umbrella being pushed through this particular portion of the organ.[4]

SPO3 RONALD SALATANDRE testified that he was the one who investigated the complaint for rape filed by the wife of Clemente allegedly committed against their niece Evelyn.[5]

The defense, in turn, presented appellant CLEMENTE DAYNA, who denied the accusations against him. He alleged that he only hit Evelyn with the handle of an umbrella because of anger. He said he lost P50 from his pocket, and he suspected that Evelyn took the money. The handle hit Evelyn on her private part twice. He also alleged that his wife and her family were mad at him for having a paramour.[6]

On May 13, 1998, the trial court promulgated its assailed decision disposing as follows:

> WHEREFORE and for all the foregoing observations, with the guilt of the accused established beyond reasonable doubt, herein accused Clemente Dayna y Agayan is convicted as principal by direct participation of the crime of RAPE charged against him, and in the light of Article 335 of the Revised Penal Code, as amended by Republic Act 7659, which took effect on December 31, 1993, hereby sentenced to suffer the penalty of DEATH, by appreciating the aggravating circumstance of relationship, with all the accessory penalties as may be provided by law.
>
> The accused is further sentenced to pay the offended party the sum of P20,000.00 as actual damages and the additional sum of P50,000.00 by way of moral damages.
>
> SO ORDERED.[7]

Appellant raises the following errors in his brief:

> I
>
> THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.
>
> II
>
> EVEN ASSUMING THAT ACCUSED IS TRULY GUILTY OF THE CRIME OF RAPE, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.

Appellant asserts that his guilt had not been established beyond reasonable doubt. He places much emphasis on the fact that the medical examination on the complainant revealed that her hymen was still intact, thus refuting the possibility that her organ was invaded by his penis. Appellant also notes that complainant admitted in her cross-examination that she was hit by an umbrella and that her aunt and the DSWD worker told her to tell the court that she was raped. He adds that his wife and her family had ill feelings against him since he has a lover. These things, according to appellant, place a serious doubt on the prosecution's case. In the alternative, appellant alleges that he cannot be sentenced to death because his relationship with the offended party was not alleged in the information.[8]

The Office of the Solicitor General (OSG), for the State, argues that an intact hymen is not necessarily inconsistent with a finding of rape and that hymenal laceration is not an essential prerequisite to prove rape. The OSG also notes that Evelyn clarified that two incidents happened on December 21, 1994, one was the umbrella bashing and the other was the rape. There is likewise no reason to believe that complainant and her aunt were moved by ill motive in filing the complaint. Had the rape been a mere fabrication, this would have been evident in

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the testimony of complainant. On the contrary, complainant, despite her young age and the gruelling nature of the cross-examination, remained steadfast and consistent, tell tale signs that she was telling the truth in court. The OSG concedes that the trial court erred in appreciating the relationship of appellant and complainant as a ground in imposing the death penalty. However, the OSG insists that the penalty of death is still justified since the rape was attended by the aggravating circumstance of use of a deadly weapon. Finally, the OSG adds that the award of P20,000.00 as actual damages should be increased to P75,000.00.[9]

In sum, the issues in this case are whether the guilt of appellant had been established beyond reasonable doubt and whether the penalty imposed is proper.

In resolving cases of rape, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[10] In general, the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[11]

Guided by these principles and after a careful review of the records of this case, we find no reason to overturn the finding of guilt reached by the trial court.

The testimony of Evelyn was given in a candid and straightforward manner leaving no room for doubt that she is telling the truth. Aside from this, her tender age further lends to her credibility. We noted in People vs. Del Mundo, Sr., G.R. No. 132065, April 3, 2001, it is apparent that in rape cases where the offended parties are young and immature girls from the ages of twelve to sixteen, the rule is that:

> [C]onsiderable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control.[12]

Appellant tries to discredit Evelyn by pointing out that her testimony was not corroborated by the physical evidence. Appellant insists that the fact that her hymen was still intact signifies that she had not been raped. This argument is not convincing. The fact that complainant's private parts did not suffer any laceration or that her hymen is still intact is not relevant in a prosecution for rape. In rape cases, what is material is that there is penetration of the female organ no matter how slight. In a long line of decisions, we have ruled that the only essential point is to prove the entrance or at least the introduction of the male organ into the light of the pudendum. Hence, the moment appellant's penis knocks at the door of the pudenda it suffices to constitute the crime of rape.[13]

On the alleged statements made by complainant during her cross-examination, exonerating appellant, a close look at complainant's testimony would in fact reveal that said testimony bolsters her claim that she had been raped. The fact that she admitted that she was hit by an umbrella does not preclude that she was also sexually abused, thus:

> COURT:
>
> From the Court. There are two incidents which you seem to tell the Court. One is that you were raped by your uncle Clemente and the other one that your uncle got angry and struck your private part with the handle of the umbrella, which happened first?

A:

The first incident was when I was raped.

COURT:

Did it happen on the same day or another day?

A:

It happened on December 21, Your Honor.

COURT:

You mean both incidents happened in the same day.

A :

Yes, Your Honor.[14]

Even the admission of complainant that she was told by her aunt and the DSWD personnel to tell the court that she was raped would not serve appellant's cause. By prodding her to tell the court that she was raped, they were merely encouraging her to tell what truly happened. There is no reason for them to make Evelyn lie.

Neither are we convinced by appellant's assertion that the rape charge could have been motivated by the ill feeling which his wife and her relatives have against him. No person in her right mind would stoop so low as to subject her own niece to the hardships and shame concomitant to a rape prosecution, especially if the one accused is the girl's own uncle, just to assuage her own hurt feelings. It is unnatural for a relative to use her own kin as an engine of malice and sacrifice her to public ridicule if she, in fact, has not been motivated by an honest desire to have the culprit punished. The insistence of appellant that his wife fabricated the rape charges because he had a lover is not supported by the evidence.

All told, we are morally convinced that appellant is guilty of raping Evelyn. However, we are unable to agree with the imposition of the death penalty. As stated in appellant's brief, the trial court erred in appreciating the relationship between appellant and complainant as a basis for the imposition of the death penalty. Said relationship was not alleged in the information. In order to warrant the death penalty, the information must allege the qualifying and modifying circumstance that would justify its imposition. Not only must the information allege the minority of the victim but it must also state the relationship of the offender to the offended party.[15] Otherwise, there would be a gross violation of the appellant's constitutional right to due process, because he was not properly informed of the accusation against him.

Neither is the imposition of the death penalty justified on the sole ground that a deadly weapon was used in the commission of the crime. Note that the penalty for rape when attended by the aggravating circumstance of "with the use of a deadly weapon" is reclusion perpetua to death.[16] Hence, the mere presence of this aggravating circumstance does not automatically entail the imposition of the death penalty. The imposition of the death penalty in those cases where the law provides for a penalty ranging from reclusion perpetua to death does not give the trial court an unfettered but a guided discretion in the imposition of capital punishment.[17] The Court must apply the second paragraph of Article 63 of the Revised Penal Code which reads:

x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x

In the case at bar, no other aggravating nor any mitigating circumstance had been proved. Accordingly, the imposable penalty is reclusion perpetua, the lesser penalty.

Anent the damages awarded, we find that slight modifications are called for. While the award of P50,000 as moral damages is warranted, there is a need to increase the civil indemnity to P50,000 conformably with prevailing jurisprudence.[18] Exemplary damages, pursuant to current jurisprudence, must also be awarded to the victim in the amount of P25,000.

WHEREFORE, the decision of the trial court finding accused-appellant Clemente Dayna guilty of rape with the use of a deadly weapon is AFFIRMED with the MODIFICATION that he is sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the offended party P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Records, pp. 84-99.

[2] Rollo, p. 7.

[3] TSN, August 14, 1995, pp. 2-35.

[4] TSN, November 29, 1995, pp. 2-8.

[5] Id. at 9-14.

[6] TSN, April 24, 1998, pp. 2-9.

[7] Records, pp. 98-99.

[8] Rollo, pp. 50-61.

[9] Id. at 99-115.

[10] People vs. Quijada, G.R. No. 114262, 321 SCRA 426, 431 (1999).

[11] People vs. Maglente, G.R. Nos. 124559-66, 306 SCRA 546, 558 (1999).

[12] Citing People vs. Alipayo, G.R. No. 122979, 324 SCRA 447, 463-464 (2000); People vs. Molina, No. L-30191, 53 SCRA 495, 500-501 (1973); People vs. Egot, No. L-35775, 130 SCRA 134, 141 (1984); People vs. Quidilla, Nos. L-79369-70, 166 SCRA 778, 788-789 (1988).

[13] People vs. Naag, G.R. No. 136394, February 15, 2001, p. 8, citing People vs. Faigano, G.R. No. 113483, 254 SCRA 10, 15 (1996); People vs. Lazaro, G.R. No. 99263, 249 SCRA 234, 242 (1995); People vs. Echegaray, G.R. No. 117472, 257 SCRA 561, 573 (1996).

[14] TSN, August 14, 1995, pp. 33-34.

[15] People vs. Del Mundo, Sr., G.R. No. 132065, April 3, 2001, p. 8.

[16] Article 335, Revised Penal Code, as amended by R.A. 7659, the law applicable at the time the crime was

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committed.

[17] People vs. Baway, G.R. No. 130406, January 22, 2001, p. 19.

[18] People vs. Santos, G.R. Nos. 131103 & 143472, 334 SCRA 655, 672 (2000).

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