

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO SABALAN Y VILLAMOR, ACCUSED-APPELLANT.

G.R. No. 134529. February 26, 2001

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Fernando Sabalan was charged with rape by his own daughter, Analiza Sabalan. The Information against him reads:

"That on or about the 8th day of November 1996, at Barangay Butaguin, in the Municipality of Gumaca, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the offended party, with lewd design, by means of force, threats, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Analiza Sabalan, his own daughter, a minor, 12 years of age, against her will.

Contrary to law."

When arraigned, accused-appellant, assisted by counsel, entered a plea of not guilty.[1] Trial ensued.

The prosecution presented two witnesses, namely: the victim, Analiza Sabalan, and the examining physician, Sonia Elena Leopando, M.D., of Gumaca District Hospital, Gumaca, Quezon.

Analiza testified that she is the daughter of Carmen and Fernando Sabalan (accused-appellant). She said she was born on July 5, 1984. She claimed that accused-appellant raped her on five different occasions inside their house in the month of November 1996. She could not recall the exact dates of her defilement, except for the one that took place in the evening of November 8, 1996. At that time, she was left in the house with her younger siblings. She was allegedly 12 years old. Her mother and her eldest sibling were then working in the house of her grandmother situated about 300 meters away from their residence.

Analiza recalled that she was sleeping when she felt accused-appellant lay beside her. Without much ado, he took off her shorts and placed himself on top of her after removing her shorts. She felt pain when he inserted his penis into her vagina. During the sexual assault, she tried to shout, but accused-appellant boxed her on the stomach and on her thigh. She cried and begged him to stop. Her efforts were futile. After satisfying his lust, accused-appellant warned her not to tell to anybody or he would hurt her. She kept mum about the incident.

According to Analiza, accused-appellant is a drunkard. He maltreated her, her mother and her siblings. Her parents separated after she was raped. Her mother took her and her siblings to a relative in Libmanan, Camarines Sur.

In February 1997 or three months after the rape incidents, accused-appellant went to Libmanan and tried to get her back. The move made her tell her mother about the rape. Her mother accompanied her to Gumaca and they filed the rape case against the accused-appellant.

Dr. Sonia Elena Leopando of the Gumaca District Hospital conducted the medical examination on the victim. The doctor found healed lacerations in the internal portion of the victim's vagina at 2, 5 and 9 o'clock positions. She opined that the lacerations could have been caused by the introduction of an erect penis into the vagina.

The defense presented accused-appellant Fernando Sabalan as its sole witness. He denied raping her. He claimed that he was a good father to his children, including the victim, and a good husband to his wife, Carmen. He further declared that he did not quarrel with his wife nor scold Analiza before the alleged rape. He had no idea why his daughter charged him with rape. Allegedly, it was not possible for him to rape the victim because he was always with his wife.

After the trial, the court a quo found the accused-appellant guilty as charged of incestuous rape and meted him the supreme penalty of death. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered convicting the accused Fernando Sabalan y Villamor of the crime of incestuous rape and he is hereby sentenced to suffer the penalty of death, with its accessory penalties under Article 40 of the Revised Penal Code, and to pay the private offended party, Analiza Sabalan, the amount of P50,000.00.

SO ORDERED."

The case is with us on automatic review. Accused-appellant raises the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

The judgment of conviction is affirmed, with modification as to the penalty imposed.

Accused-appellant anchors his appeal on the alleged lack of credibility of the victim. He cites the testimony of the victim that she could not forgive him due to the maltreatment she and her family suffered in his hands while they were still living with him. Allegedly, her admission that her relationship with him prior to the rape incidents was not cordial destroyed her credibility.

We are not persuaded.

The settled rule is that when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight, even finality, unless it is shown that it was tainted with arbitrariness or there was an oversight of some fact or circumstance of weight and influence. The reason is obvious, the trial court has the unique opportunity to observe the witness firsthand and note his or her demeanor and manner of testifying.[2] We find no cogent reason to depart from this doctrine.

The trial court observed that the victim was straightforward and candid while testifying. She positively identified accused-appellant as her rapist and that she was raped not only once but several times. She testified as follows:[3]

"(FISCAL FLORIDO):

Q: Miss, how did it happen that your father had raped you?

(ANALIZA):

A: He removed my clothes, Mam.

Q: What part of your clothes was removed by your father?

A: My shorts, Mam.

Q:

And during that evening of November 1996 at Barangay Butaguin, you said in your house, Gumaca, Quezon, who was with you aside from your father in that house?

A: My brothers and sisters, Mam.

Q: During that evening, aside from your father, who was with you in that house?

A: Only my brothers and sisters, Mam.

x x x x x x x x

Q: During that time, where was your mother?

A: In her work, Mam.

x x x x x x x x

Q:

Now, you said your father, Fernando Sabalan had raped you during that time and date, what did he do when you said he raped you?

A: He removed all my clothes, Mam.

Q: Then after he had removed all your clothes... By the way, what clothes were removed by your father?

A: My short(s) and my T-shirt, Mam.

Q: After he had removed your shorts and T-shirt, what else did your father do if he did anything more?

A: He placed himself on top of me, Mam.

Q: Now, during the time that your father had placed himself on top of you, was he wearing anything?

A: None, Mam.

Q:

And you said your father had placed himself on top of you. What did he do when he was already on top of you?

A: He inserted his penis on (sic) my vagina, Mam.

Q:

And when he inserted his penis on (sic) your vagina, did you feel pain?

A: Yes, Mam.

Q:

And when he inserted his penis to your vagina and you said it is painful, what did you do if you did anything? Did you shout or what?

A: I cried, Mam.

Q: You cried but you did not shout?

A: He was hurting me whenever I shout, mam.

Q: When you said he was hurting you, what kind -- how did he hurt you?

A: He was boxing me on my stomach, Mam.

Q: And aside from boxing your stomach, where else was he hurting you?

A: On my thigh, Mam.

Q: Now Miss witness, you said you were not shouting because he was hurting you. Did you try, during that time, to prevent your father from raping you?

A: None (sic), Mam, because I was already afraid.

Q: Now, after your father had raped you, what did you do if you did anything?

A: No more, Mam.

Q

:Immediately after the incident took place and you said your mother was not there because she was in her work, when did your mother arrive?

A: After he was finished and after my father had already slept, Mam.

Q: When your mother arrived, did you report that matter to her?

A:

No, Mam.

Q: Why did you not tell your mother?

A:

Because according to him, if ever I report that matter to anybody, he will hurt me again, Mam."

We agree with the findings of the trial court. Her testimony bears the earmarks of truth. Indeed, a young woman would not ordinarily file a rape complaint against anybody, much less her own father, if it were not true.[4]

The victim's credibility was not destroyed by her admission that she harbored ill feelings against the accused-appellant. Her ill-feelings were understandable. She perceived him as a despicable father-a drunkard, a wife beater, an abusive father and, worse of all, a sexual molester of his own flesh and blood. We cannot expect a young girl whose chastity has been abused, not only once but several times, to maintain a "cordial" relationship with her abuser. Her candid admission of her true feelings for accused-appellant is a credit to her credibility. Even when consumed with anger, it would take a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for most of his remaining life in jail, if not put him to death, and drag herself and the rest of her family to a lifetime of shame.[5] In any event, the victim categorically stated in court that she filed the rape case because accused-appellant really raped her. She testified as follows:[6]

"(ATTY. BONIFACIO):

Q: Do you remember when this incident happened?

COURT:

Which incident are you referring to?

ATTY. BONIFACIO:

Q: The incident of rape against (sic) your father?

(ANALIZA):

A: November 1996, I could not exactly remember the date, sir. I could not remember the exact date sir.

Q:

Prior to the raping incident, was your relationship with your father cordial?

A: No, sir.

Q: Will you explain that?

A: Because he was always drinking, sir.

Q: So what, if he was always drinking?

A: He was always hurting us, sir.

Q: What do you mean by "hurting us"?

A: Whenever he was drunk, he used to hurt us (nananakit), sir.

Q: In what manner did he hurt you (nananakit)?

A: Sometimes, he was kicking us. Sometimes, he was throwing us, my brothers and sisters, sir.

Q:

And because your father was always hitting or hurting you, in order to revenge against him, you filed a case against him, is that correct?

A: Yes, sir.

Q: The truth is that, you perceive that this Fernando Sabalan is a cruel father, is that correct?

A: Yes, sir.

Q: And, because he is a cruel father (malupit na ama), you cannot forget him?

A: No, sir.

Q: So you concocted a story that you were raped by your father, is that correct?

A: He really raped me, sir." (emphasis ours)

Accused-appellant also argues that the prosecution failed to prove the use of force, threat, violence and intimidation. He points to the testimony of the victim where she allegedly declared that she did not resist the bestial act, thus:[7]

"Q: And when he was removing your shorts, what did you do?

A: I was crying, sir.

Q: You did not fight with your father?

A: No, sir, because he is "matapang."

Q: You did not scratch him?

A: No, sir, because he used to hurt me. I was afraid, sir.

Q: And so, because you were afraid, you did not box him?

A: No, sir.

Q: So it is just this way, you just stood (sic) still lying down when your father was removing your clothes?

A: Yes, sir. I was just crying."

The argument of accused-appellant is bereft of merit.

Accused-appellant gained carnal knowledge with the victim through force, threat, violence and intimidation. The records show that he boxed her on the stomach and on the thigh when she tried to shout during the sexual assault. She was unable to prevent the sexual molestation but she never consented to it. In fact, she repeatedly begged him to stop her defloration. She testified:[8]

"Q: And besides crying, what did you do?

A: I was begging him not to do that to me.

Q:

And, more or less, what were the words that you uttered to your father when you were begging him not to do that to you?

A: I told him "tama na po."

Q: And those were the only words that you told your father when you were begging?

A: Yes, sir.

Q: How many times did you tell your father "tama na po"?

A: I already forgot how many times, sir.

Q: When you uttered those words "tama na po," was there already a penetration of his penis?

A: Yes, sir.

Q: But before he was inserting his penis into your vagina, what did you say to your father?

A: "Huwag na po."

Q: How many times did you tell that to your father?

A: Three times, sir."

It must be stressed that the law does not impose upon a rape victim the burden of proving resistance,[9] particularly when intimidation is exercised upon the victim and the latter submits herself to the rapist's will for fear for life or personal safety. It suffices that the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused-appellant, the threat would be carried out.[10]

It was easy for the accused-appellant to impose his evil desire on the victim. As observed by the trial court, she only finished Grade II of elementary education. She is a timid girl, thin and quite small for her age. She has been maltreated and was afraid of accused-appellant.

Accused-appellant's uncorroborated denial of the crime charged is insufficient to refute the prosecution evidence. His denial cannot be given greater weight than the testimony of a credible witness who testified affirmatively. Between the positive declarations of the victim and the negative statements of the accused-appellant, the former deserves more credence.[11]

In sum, we hold that the prosecution has established the guilt of accused-appellant beyond reasonable doubt. However, we cannot impose upon him the penalty of death. Article 335 of the Revised Penal Code, as amended by section 11 of Republic Act No. 7659, provides that the death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

"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."

The concurrence of minority of the victim and her relationship to the offender constitutes one special qualifying circumstance. Both must be alleged and proved.[12]

In the case at bar, the information alleged the special qualifying circumstance of relationship and minority. The prosecution evidence, however, is insufficient to prove the minority of the victim. Besides the bare declaration of the victim as to her age, there was no independent evidence presented by the prosecution that could accurately show her age.[13] For instance, her mother could have testified as to when the victim was born[14] but unfortunately, she was not presented in court. We have held that the minority of the victim must be proved with equal certainty and clearness as the crime itself. Failure to sufficiently establish the victim's age will bar any finding of rape in its qualified form.[15] Consequently, the death penalty imposed on accused-appellant should be reduced to reclusion perpetua.

We hold that accused-appellant should be made to pay P50,000.00 as indemnification for the rape committed. Additionally, he should pay P50,000.00 for moral damages in line with our ruling in *People vs. Prades*[16] that moral damages may be awarded to the victim in such amount as the court deems just, without the necessity for pleading or proof as basis thereof.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Quezon, Branch 61, in Criminal Case No. 5548-G is AFFIRMED, with modification that accused-appellant should suffer the penalty of reclusion perpetua. Accused-appellant is ordered to pay the victim, Analiza Sabalan, the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

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

[1] Original Records, p. 16.

[2] *People vs. Sacapaño*, 313 SCRA 650 (1999).

[3] TSN, September 18, 1997, pp. 4-6.

[4] People vs. Sacapaño, *supra*.

[5] People vs. Alcala, 307 SCRA 330, 346 (1999).

[6] TSN, October 7, 1997, p. 10.

[7] *Id.*, p. 17.

[8] *Id.*, pp. 17-18.

[9] People vs. Silvano, 309 SCRA 122 (1999).

[10] People vs. Lim, 312 SCRA 550 (1999).

[11] People vs. Alcala, *supra*.

[12] People vs. Maglente, 306 SCRA 546 (1999); see Section 8, Rule 110, Revised Rules of Criminal Procedure.

[13] People vs. Tipay, G.R. No. 131472, March 28, 2000.

[14] People vs. De la Cruz, G.R. No. 131167-68, August 23, 2000.

[15] People vs. Javier, *supra*. See also People vs. Rosales, 313 SCRA 757, 765 (1999).

[16] 293 SCRA 411 (1998).

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