

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO OLICIA, ACCUSED-APPELLANT.

G.R. No. 134775. July 09, 2002

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PER CURIAM:

Before this Court for automatic review is the decision[1] dated July 28, 1998 of the Regional Trial Court (RTC), Branch 13, Ligao, Albay, in Criminal Case No. 3618, convicting Alfredo Olicia of rape and sentencing him to suffer the supreme penalty of death. He was likewise ordered to indemnify the offended party, his 13-year old daughter Carmi P. Olicia, the amount of P50,000.00; to support the resulting offspring, Kenneth Olicia; and to pay the costs.

On October 22, 1997, an information was filed with the said RTC charging Alfredo Olicia with rape committed in the following manner:

"That sometime in the month of September, 1996 at around 12:00 o'clock midnight in Barangay Gaboc, Municipality of Guinobatan, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means offeree and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own 12 year-old daughter CARMÍ OLICIA, as a result of which, the latter was impregnated against her own will and consent, to her damage and prejudice.

"ACTS CONTRARY TO LAW,"[2]

Upon arraignment, the accused pleaded not guilty to the charge.[3] Trial ensued thereafter.

The evidence for the prosecution shows that Carmi Porras Olicia was born on December 21, 1983 to spouses Alfredo and Rosa Porras Olicia.[4] They are residents of Gaboc, Binogsacan, Guinobatan, Albay. Rosa died when Carmi was only two (2) years old.

Sometime in September of 1996, at around 12:00 o'clock midnight, Carmi, then only 12 years old, was sleeping alone in the bedroom of her family's house in Gaboc when Alfredo, reeking of alcohol, arrived. He woke her up and told her not to move. Then he forcibly removed her shorts and panty. She struggled to free herself from his sexual assault, but to no avail. Thereupon, he placed himself on top of her and inserted his penis into her vagina. She felt pain and cried. Shortly, she noticed blood from her vagina. Thereafter, Alfredo wore his shorts and slept beside her. But she continued crying, feeling the pain of her first sexual ordeal, and then put on her shorts and panty.[5]

After that said incident, Alfredo sexually abused Carmi a number of times, but she did not report these incidents to anyone.[6]

Months later, Carmi became pregnant, prompting Alfredo to take her to Metro Manila to live with her aunt, Vicky Lozano, her mother's sister.

On March 10, 1997, Vicky learned that Carmi was pregnant. Shocked, Vicky wasted no time in confronting Alfredo. He admitted to her that he impregnated Carmi. Vicky then went to the ABS-CBN Bantay Bata, Quezon City, a public service program for abused children, to seek assistance. Forthwith, a Bantay Bata representative and a policeman went to Vicky's house in Caloocan City and brought Alfredo, Vicky and Carmi to the Philippine National Police Headquarters, Camp Crame, Quezon City for investigation.[7]

Dr. Tomas Suguitan, Medico-Legal Officer of the PNP Crime Laboratory, conducted a physical examination on Carmi. In his Medico-Legal Report[8] dated March 11, 1997, he stated that the victim was six months pregnant. He also found healed lacerations in her genitals.[9]

Carmi was subsequently placed under the care of the Department of Social Welfare and Development. On July 14, 1997, she gave birth to a boy, naming him Kenneth Olicia.[10]

The defense presented Alfredo as its lone witness. He testified that from 3:30 until 7:30 in the evening of that day, he had a drinking spree with his friends in front of his mother's house in Gaboc, Guinobatan, Albay. They consumed six bottles of gin. In going home, a one-kilometer stretch from his mother's house, he was assisted by Carmi. Upon reaching his house, he rested while Carmi cooked dinner. After supper, he slept at around 9:00 p.m., with Carmi beside him. A few hours later, he woke up, still drunk. Then he had sexual intercourse with her, during which she neither shouted nor cried. The following morning, she attended school, while he proceeded to a coconut plantation. He had sexual intercourse with her only once. According to him, Carmi was no longer a virgin at that time as she had a suitor, a sound system operator.[11] It was Carmi's wish to give birth at her aunt's house in Manila.

On July 28, 1998, the trial court rendered a decision,[12] the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing consideration and finding the accused Alfredo Olicia guilty beyond any reasonable doubt of the crime of rape against his 13-year-old daughter, Carmi P. Olicia, the Court hereby:

- (a) sentences said accused Alfredo Olicia to suffer the penalty of DEATH;
- (b) to indemnify the offended party the amount of P-50,000.00; and
- (c) to support the child Kenneth Olicia; and to pay the costs.

"Pursuant to the Constitution, the records of this case together with all the exhibits and stenographic notes are hereby ordered immediately elevated to the Honorable Supreme Court for automatic review.

"SO ORDERED." [13]

In this appeal, appellant does not question the trial court's finding that he committed the crime charged. In fact, on the basis of Carmi's testimony,¹⁴ the prosecution established clearly and convincingly all the elements of rape. Moreover, the doctor's findings supported her testimony that it was her father who raped her, resulting in her pregnancy.

What appellant bewails is the trial court's failure to appreciate the alternative circumstance of intoxication as a mitigating circumstance.[15] He claims that, immediately before the rape, he had a drinking spree with his three friends and consumed six bottles of gin. He argues that the quantity of alcohol he imbibed immediately before the rape blurred his reason and deprived him of a certain degree of control. He further asserts that the prosecution failed to prove that his intoxication was habitual or subsequent to the plan to commit the felony. Thus, the fact that he was drunk at the time of the commission of the offense should be considered in imposing the penalty.

Appellant's contention utterly lacks merit.

Intoxication is an alternative circumstance which may be considered either as mitigating or aggravating, depending on the nature and effects of the crime and the circumstances attending its commission.[16] It is a mitigating circumstance when the offender has committed a felony in a state of intoxication, and such is not habitual or is not subsequent to the plan to commit the felony.[17] But when intoxication is habitual or intentional (subsequent to the plan to commit the crime), it becomes an aggravating circumstance.[18] The accused pleading intoxication must present proof that (1) at the time he committed the crime, he has taken such quantity of alcoholic beverage sufficient to blur his reason and deprive him of a certain degree of control, and that (2) such intoxication was not habitual, or was not intended to fortify his resolve to commit the crime.[19]

We are not convinced that appellant was in such a state of intoxication as to mitigate the penalty for his crime. Except for his self-serving claim of extreme intoxication, he did not present any convincing evidence to prove it. Not one of his three companions testified that they indeed consumed six bottles of gin prior to the incident. Also, Carmi contradicted his testimony that she assisted him in returning home after the drinking spree. Carmi testified that she was already fast asleep when she was awakened by appellant who then sexually abused her against her will. While he smelled alcohol, as testified by Carmi, such fact alone is not sufficient to prove that he was in a state of intoxication to such a degree as would blur his reason and deprive him of normal control. Appellant failed to establish that he was not a habitual drinker, incapable of tolerating alcoholic binges. He also did not show that he drank such quantity of liquor without the intention of fortifying his resolve to commit the offense.

Moreover, appreciating intoxication as a mitigating circumstance would not reduce the imposable penalty in this case, which is death. Article 63 of the Revised Penal Code provides that where, as here, the law prescribes a single indivisible penalty, such penalty shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.[20]

Article 335 of the Revised Penal Code, as amended, reads:

"Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:

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, xxx" (*Italics supplied*)

In rape cases, the concurrence of minority of the victim and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death.[21] In the present case, both the minority of the victim (who was twelve years old at the time of the commission of the crime) and her relationship with the appellant as her father, were sufficiently alleged in the information and duly established by evidence during the trial.

The prevailing jurisprudence is that if rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, civil indemnity for the victim shall be in the amount of not less than P75,000.00.[22] Civil indemnity is mandatory upon the finding of the fact of rape.[23] Thus, the amount of P50,000.00 awarded by the trial court as civil indemnity should be increased to P75,000.00.

Moral damages of P50,000.00 should also be awarded to the victim without the need for pleading or proof of the basis thereof.[24] The amount of P25,000.00 as exemplary damages is likewise imposed to deter other fathers with similar perverse sexual behaviors from sexually abusing their own daughters.[25]

Moreover, we sustain the trial court's order directing the appellant to support the child Kenneth Olicia. This is pursuant to Article 345(3) of the Revised Penal Code mandating that the offender in rape cases should support the resulting offspring of the offended woman.[26]

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION in the sense that appellant Alfredo Olicia is ordered to PAY the offended party, Carmi P. Olicia, P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages; and to SUPPORT the child Kenneth Olicia.

Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray* that Republic Act No. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

In accordance with Section 25 of R.A. No. 7659, amending Article 83 of the Revised Penal Code, upon the finality of the decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of her pardoning power.

Cost de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo. Puno, Vitug. Kapunan, Mendoza Panganiban, Quisumbing Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

[1] Penned by Judge Jose S. Sañez.

[2] Records of the RTC, p. 16.

[3] Certificate of Arraignment, Records of the RTC, p. 48.

[4] Certificate of Live Birth; Records of the RTC, p. 110.

[5] Transcript of Stenographic Notes (TSN), March 10, 1998, pp. 2-19.

[6] *Ibid.*, March 23, 1998, p. 7; *Ibid.*, March 10, 1998, p. 15.

- [7] TSN. February 17, 1998. pp. 4-9.
- [8] Records of the RTC. p. 3.
- [9] TSN, March 4. 1998, pp. 12-13.
- [10] Certificate of Live Birth of Kenneth Olicia, Records of the RTC. p. 111.
- [11] TSN, April 30, 1998, pp. 2-10.
- [12] Records of the RTC, pp. 168-175,
- [13] Records of the RTC, p. 175.
- [14] TSN, March 10, 1998, pp. 2-19.
- [15] Appellant's Brief, Rollo, p. 27.
- [16] Article 15 (1st par.), Revised Penal Code; *People vs. Belaro*, 301 SCRA 591, 610 (1999); *People vs. Buenaflor*, 211 SCRA 492, 500 (1992).
- [17] Article 15 (3rd par.), Revised Penal Code; *People vs. Belaro*, *Ibid.*; *People vs. Buenaflor*, *Ibid.*
- [18] *Ibid.*
- [19] *People vs. Aquino*, 322 SCRA 769, 776-777 (2000); *People vs. Buenaflor*, *supra*.
- [20] *People vs. Buenaflor*, *supra*; *People vs. Dumaguing*, 340 SCRA 701. 7²(2000).
- [21] Article 335. Revised Penal Code, as amended by Republic Act No. 7659; *People vs. Empante*, 306 SCRA 250, 263 (1999).
- [22] *People vs. Victor*, 292 SCRA 186, 200-201 (1998).
- [23] *People vs. Larena*, 309 SCRA 305, 324 (1999).
- [24] *People vs. Prades*, 293 SCRA 411, 430 (1998).
- [25] *People vs. Guiwon*, 331 SCRA 70, 81 (2000), citing *People vs. Matrimonio*, 215 SCRA 613 (1992).
- [26] *People vs. Bation*, G. R. Nos. 134769-71, October 12, 2001; *People vs. Melendres*, 339 SCRA 465, 481(2000); *People vs. Alfeche*, 294 SCRA 352, 381(1998).

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