PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO Z. DIZON, ACCUSED-APPELLANT.

G.R. No. 134802. October 26, 2001

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PER CURIAM:

Before us on automatic review is the Decision[1] of the Regional Trial Court of Quezon City, Branch 219, in Crim. Case No. Q-97-71910, finding Renato Dizon y Zuela guilty of Robbery with Rape, attended by two aggravating circumstances, imposing upon him the penalty of Death and ordering him to pay complainant Arlie Rosalin P9,500.00 for actual damages, P200,000.00 as moral damages and to pay the costs.

Culled principally from the testimony of private complainant, the facts of the case are as follows:

On July 7, 1997, around 9:30 p.m., private complainant Arlie Rosalin, then a 21-year old engineering student from Dinalupihan, Bataan, alighted from a bus as it stopped by a small bridge along EDSA just before Roosevelt Avenue, Quezon City.[2] Seconds later, she heard someone call out "Miss!" and when she turned her head around, she found appellant behind her.[3] Appellant suddenly seized her, pointing a fan knife to the side of her neck, and announced a holdup. He then told her to face the railing of the bridge and asked for her wallet and jewelry. Terrified, private complainant complied. Still not content, though, appellant got her backpack, warning her that should he find another wallet inside, he would kill her and throw her over the bridge as he had done to his other victims.[4]

After appellant stripped her of her valuables, appellant instructed private complainant to walk with him along EDSA and pretend that they were a couple.[5] They crossed Roosevelt Avenue, passed the Munoz market, then headed for Project 7. Private complainant could not ask for anyone's help because, all the while, appellant had his arm around her and a knife pressed to her side.[6] Appellant further frightened her by telling her that he had already killed many people.[7] Scared as she was, however, private complainant would furtively look at appellant's face whenever they passed a lighted place, vowing to herself that should she ever be able to escape, she would remember him and have him arrested.[8]

After walking for some time, they finally reached a dark and empty basketball court.[9] There, appellant ordered private complainant to remove her pants and underwear. Private complainant could not do anything but follow appellant's orders since he was holding her at knifepoint. Besides, even if she screamed, nobody would hear her.[10]

Appellant kissed private complainant on the lips, neck, and breasts, which he also mashed.[11] He likewise bit her nipple at least three times, as well as the right side of her back and vagina.[12] Unable to control his lustful urges any longer, he forced her to bend forward over the hood of a taxi and, in this position, forcefully penetrated her vagina with his organ.[13]

After satisfying himself in this fashion, appellant ordered private complainant to hold and massage his penis which, he boastfully informed the latter, carried bolitas.[14] He then forced her to put his foul-smelling penis into her mouth, which sickened her to the pit of her stomach.[15]

Still not done with her, appellant forced private complainant to lie on the ground.[16] Private complainant could not fight off any of appellant's demands, because whenever she tried to resist, and whenever she failed to answer any of his questions, he would bang her head on the hood of the taxi, slam her head on the wall, or slap her hard in the face.[17]

After appellant pushed private complainant to the ground, he went down on her and proceeded to ravish her all over again.[18]

Though admittedly spent by now, appellant still refused to let go of private complainant. Instead, he made her sit astride over him, and to make sure she would not be able to escape, held her tightly by the hair with both hands.[19] When private complainant balked at inserting his organ inside of hers, appellant removed one hand from her hair and groped in the dark.[20] Sensing that he was reaching for his knife and would finally kill her, private complainant struggled with all her might and broke free from appellant's hold. She scampered to her feet, grabbed her pants, and ran as fast as she could away from appellant.[21]

Soon, private complainant found a store that was about to close. She barged in, informing the people that she had been raped, and pleaded for their help. However, the owner of the store did not want to get involved. Instead, he reminded her to wear her pants, then referred her to the barangay.[22]

When a barangay officer arrived, he accompanied her back to the basketball court, where they were able to recover her shoes, underwear, and appellant's black cap.[23] Since appellant was no longer around, private complainant just gave a description of him: he was dark, 5'3" to 5'4" in height, and with a body covered with tattoos from the waist down.[24] Private complainant was then brought to the police station where her statement was taken.[25]

About three days later, the barangay informed private complainant that they already had a suspect who matched appellant's description. Accompanied by policemen, among others, she went to the vicinity of the Munoz market, where appellant was reportedly working as a tricycle dispatcher.[26] After some anxious moments of searching in the crowd, private complainant finally caught sight of appellant and pointed him out to her companions.[27] One of the police officers accosted appellant and asked him if he knew private complainant.[28] Upon seeing her, appellant pulled out the same fan knife he had earlier used on her.[29] He was not quick enough, however, because the police officers were able to disarm him. Appellant was then handcuffed and brought to the police station.[30]

In an Information[31] dated July 14, 1997, Assistant City Prosecutor Mercedes D. Penamora charged appellant as follows:

> "That on or about the 7[th] day of July, 1997 in Quezon City, Philippines, the above-named accused, with intent to gain, by means of force and violence against and/or intimidation upon person did, then and there wilfully, unlawfully and feloniously rob the person of one ARLIE ROSALIN Y NICDAO In the following manner, to wit: on the date and place aforementioned while said complainant was walking along the sidewalk of EDSA, Munoz, this city after alighting from a passenger bus, said accused suddenly appeared and embraced complainant and at knife point announced a hold-up and then and there rob, took and carted away the following items, to wit:
>
> One necklace w/pendant -
>
> P 300.00
>
> Two (2) gold rings

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5,000.00

One bag pack containing

Assorted clothes

2,000.00

One(1) paper bag (bench)

Containing stuff toys

200.00

Perfume

1,000.00

Cash

1,000.00

all in the total amount of p9,500.00, Philippine Currency, all belonging to said ARLIE ROSALIN y NICDAO, to her damage and prejudice and on the occasion of the robbery, accused with lewd designs and with force and intimidation and with use of a knife undressed said complainant and put himself on top of her and have carnal knowledge with said ARLIE ROSALIN y NICDAO against her will and without her consent, to the damage and prejudice of the said ARLIE ROSALIN Y NICDAO.

"Contrary to law."

Appellant entered a plea of not guilty when arraigned on August 7, 1997, with the assistance of Atty. Donato A. Mallabo.[32] Trial proceeded in due course. The prosecution presented as witnesses the victim herself, Arlie Rosalin; SPOI Cristopher Hael, a police officer assigned at the Baler Police Station who testified on the circumstances leading to the arrest of the accused; PO1 Emelito de La Cruz, the police investigator; and Dr. Emmanuel Reyes, the PNP medico-legal officer who conducted the examination on Arlie Rosalin.

The appellant put up the defense of denial and alibi. Appellant's testimony was not corroborated by any other witness. His testimony consisted mainly of denials of his involvement in the crime being imputed against him. He averred that as a tricycle dispatcher, he used to work from 7:00 o'clock to 11:00 o'clock in the morning and from 2:00 o'clock to 5:00 o'clock in the afternoon; that on the evening of July 7, 1997, he was just at home resting; that

he was at work when he was arrested and when he was brought to the police station, he was beaten up; that he told the police that he had nothing to do with what happened to the complainant and that he saw her for the first time only when he was arrested; that he did not know of any reason why she singled him out and filed a case against him; and that when he was brought to the fiscal, he again denied the charges against him.

On July 13, 1998, the trial court promulgated its decision, the dispositive portion of which reads:

> "WHEREFORE, finding that the prosecution was able to prove the guilt of the accused beyond reasonable doubt for the crime of Robbery with rape under paragraph one, Article 294 of the Revised Penal Code, as amended by R.A. 7659, attended by two aggravating circumstances, the Court hereby sentences him (1) to suffer the penalty of Death; (2) to indemnify complainant Arlie Rosalin in the amount of P9,500.00 as actual damages; (3) to pay her P200,000.00 as moral damages; and (4) to pay the costs.
>
> "Let the records of the case be transmitted to the Supreme Court for automatic review.
>
> "SO ORDERED."

Appellant impugns the decision of the trial court on the following grounds:

> "1. The lower court erred in convicting the accused when in truth and in fact he was not positively identified by the victim.
>
> "2. The lower court erred in appreciating the aggravating circumstances of cruelty and uninhabited place against the accused.
>
> "3. The lower court erred in finding the accused guilty beyond reasonable doubt of the crime of robbery with rape in violation of Art. 294, Par. 1 (should be par. 2) of the Revised Penal Code."

We affirm the trial court's decision.

Being interrelated, appellant's first and third assigned errors, which boil down to a question of credibility of the private complainant, will be discussed jointly.

In assailing the credibility of the private complainant, appellant puts the following in issue:

First, appellant states that he has only two hands; hence, it was impossible for him to remove his pants, restrain private complainant, and hold a fan knife all at the same time.

Second, appellant points out an alleged inconsistency between private complainant's account of rape and her alleged refusal to escape her rapist despite opportunity to do so.

Third, appellant argues that he was not positively identified by private complainant because somebody had to tell her where he was when she and the police went out to look for him at the market place in Munoz.

We find appellant's arguments to be untenable.

On the first point, it is not impossible for appellant to undress while holding his victim and a fan knife at the same time. On direct examination, the private complainant testified thus:

> "Q When he raped you did he remove his pants?
>
> "A Yes, ma'am he removed his pants.
>
> "Q When he removed his pants, did you run?
>
> "A No, Ma'am because he was holding me and the knife was pointed at me,

> "Q When he was holding you and the gun (sic) was pointing (sic) at you how did he remove his pants?
>
> "A Like this, ma'am . . .
>
> "COURT INTERPRETER
>
> Witness holding the right wrist of the Interpreter using the left hand. The witness demonstrating that the accused was using his right hand holding the knife while unbuttoning his pants and every time she would resist the accused would point the knife at her."[33]

Countless cases of rape have been committed in a similar fashion. We quote the pertinent portions of two such cases:

> "xxx When she saw her father naked, she got scared and did not move. Because of her refusal, her father poked a three-cantos knife at her neck and he undressed her by pulling down her skirt and her panty until they were removed from her body. Her father then told her to sit up and when she did, he pulled her t-shirt off her head. She cried and her father threatened to kill her if her cries will be heard by others."[34]
>
> "xxx The accused awakened Mergena upon arriving from a drinking session with his brothers, pointed a knife at her and ordered her to stand up. When she refused to obey, he pulled her up. He removed his short pants, then with a knife still pointed at her, removed her skirt and made her lie down. He removed her panty and his underwear, separated her thighs and inserted his penis into her vagina while fondling her breast. This entire time his left hand was holding the knife."[35]

On the second point, that private complainant could have escaped her captor with facility is something easier said than done. Private complainant was a terrified captive, held fast at the wrist by appellant while the latter, using his other hand, unbuttoned his pants, stopping only to brandish his fan knife at private complainant whenever she showed the least sign of resistance. Overcome with fear, it is understandable why she was not able to escape at that moment.

On the third point, contrary to appellant's assertion, private complainant was able to identify appellant as her assailant. While somebody did point out to private complainant and her companions that they had already passed the person they were looking for, this was understandable because the place where they were searching was crowded. The failure to see is not the same as failure to recognize which is what is crucial in identification. Nobody prodded her to point to appellant. Nobody told her that he was the malefactor. What is important is that it was private complainant herself who had provided appellant's description and who, without assistance, eventually picked him out from the crowd as the person who robbed and raped her.

Appellant finds it unbelievable that private complainant was able to recognize him "when she did not even touch his penis and test it for the presence of bolitas during his identification at the Muñoz market." Private complainant did not have to do that. She was able to recognize appellant because of his mole on the cheek and his body smeared with tattoos, and more importantly, because she repeatedly gazed at appellant's face every time they passed a well-lit place on their way to the basketball court.[36] She was also able to take a good hard look at appellant's face and body while she was forced to sit on top of him during an unwanted sexual act at the basketball court.[37]

On cross-examination, private complainant testified thus:

> "Q So much so that because his hands were placed around your neck and the knife was pressed in your body, practically, you were closing your eyes, you just believed whatever he tells (sic) you?
>
> "A Everytime we would pass by a lighted area, even if I was scared, I would look at him, sir.

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"Q But as much as possible, because you were scared and you were already angry, you would not like to see the face of that stranger, right?

"A No, sir, because I was really trying to memorize the face."[38]

"x x x

"Q Why were you interested in the face of that stranger?

"A So that in case I would be able to escape, I would have him arrested."[39]

And on re-direct examination, private complainant testified:

"Q Are you very sure that it was the accused now in this case who actually sexually abused you?

"A Yes, ma'am I am sure.

"Q Why are you so sure?

"A Because I could see his face everytime I passed by a lighted area, ma'am (witness crying)."[40]

This only shows that private complainant had ample opportunity to behold the appellant so that she was able to positively identify the appellant as the one who robbed her and sexually abused her.

In the light of this positive and direct evidence of appellant's culpability, the trial court correctly discarded his defense of denial and alibi. It is an elementary rule that alibi cannot prevail over the clear and positive identification of the appellant as the very person who committed the crime. Moreover, in order to justify an acquittal based on this defense, the accused must establish by clear and convincing evidence that (a) he was in another place at the time of the commission of the offense; and, (b) it was physically impossible for him to be at the scene of the crime at the time it was committed.[41] This, appellant miserably failed to do. It was not physically impossible for appellant to have been at the crime scene in Project 7, Quezon City, considering that he claimed to have been a mere tricycle ride away in his house in San Jose del Monte, Quezon City around the time of the commission of the crime.

Considering all the foregoing, the trial court did not err in giving full faith and credence to the testimony of private complainant. This, especially since appellant has not even imputed any ill motive on the part of private complainant to testify falsely against him. Where there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[42]

The matter of assigning values to the declarations of witnesses is best and most competently performed by the trial court who had the unmatched opportunity to observe the demeanor of witnesses while testifying, and to assess their credibility using various indicia available but not reflected in the records. Hence, the court a quo's appraisal on the matter is entitled to the highest respect, and will not be disturbed on appeal unless there is a clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case. There is no compelling reason in the present case to depart from this rule.[43]

On the second assigned error, the trial court correctly appreciated the generic aggravating circumstances of cruelty and uninhabited place against appellant.

Indeed, the term "cruelty" often conjures bloody and gory images which are conspicuously absent in this case. However, as correctly pointed out by the trial court, "the appreciation of cruelty, as an aggravating circumstance,

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is relative. It depends upon the crime committed. As long as the wrong done in the commission of the offense is deliberately augmented and that such wrong is not essential for the accomplishment of the ultimate purpose of the offender, the same could be considered as aggravating. The nature of the wrong or the number thereof is immaterial."[44]

The trial court's pronouncement finds support in a long line of jurisprudence. As held in People vs. Basao,[45] People vs. Lacao,[46] People vs. llaoa,[47] People vs. Alban,[48] and other cases, the test of cruelty is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission, or inhumanly increased the victim's suffering, or outraged, or scoffed at his person or corpse. Where the accused, for his pleasure and satisfaction, inflicted on the victim unnecessary physical and moral pain, with the intention of deliberately and inhumanly intensifying or aggravating the sufferings of the victim, cruelty is present.

Tested against the foregoing yardstick, the element of cruelty undoubtedly attended the commission of the crime in this case. As recounted by private complainant, appellant not only raped her, but subjected her to various dehumanizing indignities, such as making her fondle and put his foul-smelling penis in her mouth, forcing her to admire his bolitas, and demanding that she assume embarrassing and indelicate positions. Furthermore, he viciously slammed her head against the hood of the taxi, banged her head against the wall, and slapped her hard in the face whenever she failed to answer any of his questions. All these wrongs were no longer necessary insofar as appellant's purpose of raping private complainant was concerned. By subjecting her to these unwarranted physical and moral abuses on top of raping her, appellant deliberately and inhumanly augmented her pain and sufferings, thus, committing cruelty.

Finally, appellant claims that the generic aggravating circumstance of uninhabited place cannot be appreciated against him since the basketball court where he supposedly brought his victim cannot be considered an uninhabited place. Appellant cites private complainant's testimony that the basketball court was near a highway and surrounded by houses.

We are not convinced.

Whether or not a place may be considered uninhabited, is determined not by the distance of the nearest house to the scene of the crime but whether or not in the place of commission, there was reasonable possibility of the victim receiving some help.[49] In People vs. Desalisa,[50] the crime was considered as having been committed in an uninhabited place because the killing was done during nighttime, and many fruit trees and shrubs obstructed the view of neighbors and passersby. Similarly, in the case of People vs. Damaso, et al.,[51] the court, notwithstanding the close proximity of the sugarcane field where the victims were killed to the national highway and some houses, still considered the aggravating circumstance of uninhabited place because the killing was done during nighttime and the sugarcane in the field was tall enough to obstruct the view of neighbors and passersby. The situation is no different in the case at bar. Appellant precisely sought the solitude of the basketball court to ensure that private complainant would not be able to call for, and receive, any help. Aside from being cloaked by the darkness of the night, the basketball court was a relatively isolated place, shielded from the public view by the high walls of the surrounding houses.[52] Private complainant could have screamed at the top of her lungs and nobody still would have heard her. Without a doubt, therefore, the trial court properly appreciated the aggravating circumstance of uninhabited place against appellant.

Article 294 of the Revised Penal Code, as amended by Republic Act 7659 provides:

> "Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or any person shall suffer:

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> "1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

In the case at bar, two (2) aggravating circumstances attended the commission of the robbery with rape, thus the trial court correctly imposed on the appellant the penalty of death.

The trial court also ordered appellant to pay the victim P200,000.00 as moral damages. Ordinarily, the victims of rape are awarded a minimum of P50,000.00 as moral damages. However, the factual circumstances of the case at bar calls for a stiffer penalty. After robbing and raping the victim, appellant subjected the victim to physical harm like biting her nipples and vagina; banging her head on the hood of the taxi and on the wall; and subjecting her to indignities like holding and massaging his penis and worst of all, forcing her to put his foul-smelling penis into her mouth. The trial court was correct in ordering the appellant to pay his victim the amount P200,000.00 as moral damages for all of these repulsive acts and P9,500.00 as actual damages for the money and valuables taken from her. We also hold that the victim is entitled to P50,000.00 for civil indemnity, as it is mandatory upon a conviction of rape. Such indemnity is distinct from moral damages and based on different jural foundations.[53] Furthermore, under Article 2230 of the New Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances.[54] Hence, We find an award of exemplary damages in the amount of P25,000.00 proper.

Four Justices of the Court maintain their position that R. A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Court AFFIRMS the decision of the Regional Trial Court of Quezon City, Branch 219 in Crim. Case No. Q-71910 finding appellant Renato Dizon y Zuela guilty beyond reasonable doubt of the crime of robbery with rape under paragraph one, Art. 294 of the Revised Penal Code, as amended by RA 7659, attended by two (2) aggravating circumstances, and sentencing him to suffer the penalty of death, to pay victim Arlie Rosalin P200,000.00 as moral damages; and P9,500.00 as actual damages, with the MODIFICATION that he shall further pay the victim P50,000.00 as civil indemnity; and P25,000.00 as exemplary damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified copies thereof, as well as the records of this case, be forwarded without delay to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

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

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[1] Penned by Presiding Judge Jose Catral Mendoza; Original Records, pp. 80-87.

[2] TSN, October 7, 1997, pp. 3-4.

[3] Ibid., p.4.

[4] Ibid., p. 5.

[5] Ibid., pp. 5-6.

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[6] Ibid., p. 5.

[7] Ibid., pp. 6-7.

[8] TSN, October 14, 1997, pp. 36-37.

[9] TSN, October 7, 1997, p.7.

[10] Ibid.

[11] Ibid.

[12] Ibid., p. 8.

[13] Ibid., p. 9.

[14] TSN, October 14, 1997, p. 4.

[15] Ibid., pp. 4-6.

[16] TSN, October 7, 1997, p. 9.

[17] Ibid., pp. 9-10.

[18] Ibid.

[19] Ibid.

[20] Ibid., p. 11.

[21] Ibid.

[22] Ibid.

[23] Ibid., pp. 11-12.

[24] Ibid., p.12.

[25] Ibid., p. 13.

[26] Ibid., pp. 13-14.

[27] Ibid., p. 14.

[28] Ibid., p. 15.

[29] Ibid., pp. 15, 17.

[30] Ibid.

[31] Original Records, p. 1.

[32] Original Records, p. 13.

[33] TSN, October 7, 1997, pp. 8-9.

[34] People vs. Caballes, 199 SCRA 152 [1991].

[35] People vs. Leoterio, 264 SCRA 608 [1996].

[36] TSN, Oct. 14, 1997, pp. 36-37.

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[37] TSN, Nov. 25, 1997, p.9.

[38] TSN, Oct. 14, 1997, pp. 35-36.

[39] TSN, Oct. 14, 1997, p. 37.

[40] TSN, November25, 1997, p.8.

[41] People vs. Diopita, G.R. No. 130601, December 4, 2000.

[42] People vs. Gayomma, 315 SCRA 639 [1999].

[43] People vs. Diopita, G.R. No. 130601, December 4, 2000; People vs. Navales, 337 SCRA 436 [2000].

[44] RTC Decision, p. 6.

[45] 310 SCRA 743 [1999].

[46] 60 SCRA 89 [1974].

[47] 233 SCRA 231 [1994].

[48] 245 SCRA 549 [1997].

[49] People vs. Desalisa, 229 SCRA 35, 48 [1994].

[50] Ibid.

[51] 86 SCRA 370, 382 [1978].

[52] TSN, October 7, 1997, p.7.

[53] People vs. Diopita, G.R. No. 130601, December 4, 2000; People vs. Navales, 337 SCRA 436 [2000].

[54] People vs. Tundag, G.R. Nos. 135695-96, Oct. 12, 2000.

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