

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORENCIO FRANCISCO Y ALEJO, ACCUSED-APPELLANT.

G.R. No. 135200. February 07, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

A Complaint was filed on 2 February 1996 against accused FLORENCIO FRANCISCO y Alejo alleging that on or about 3 October 1995 he, by means of force and intimidation, willfully, unlawfully and feloniously undressed and mashed the private parts of complainant Editha Francisco, then a minor of fourteen (14) years, and had carnal knowledge of her. In her Complaint, Editha was assisted by her aunt Mercedes Jucutan Edquibal.

On 6 August 1998 the trial court found the accused Florencio Francisco y Alejo guilty of qualified rape, sentenced him to death, and ordered him to pay his victim, his own daughter, Editha Francisco, P75,000.00 as civil indemnity, P5,000.00 as moral damages and P100,000.00 as exemplary damages.[1]

The evidence mainly adduced through the testimony of Editha Francisco shows that on 3 October 1995, between 4:00 o'clock and 6:00 o'clock in the morning, while she was asleep together with her mother, five (5) sisters and three (3) brothers in their tenement at No. 9 J. P. Rizal St., Barangay Sta. Lucia, Novaliches, Quezon City,[2] her father, the accused Florencio Francisco, woke her up and told her to look for his slippers as he was going out to buy cigarettes. When she told him that she could not find his slippers he suddenly covered her mouth tightly with his hands[3] and forcibly dragged her towards the toilet[4] located some five (5) steps[5] away from their house. Once inside the toilet, the accused undressed her and removed her shorts and panty despite her cries and pleas for him to stop. He undressed himself, "feasted on her young breast and inserted his penis into her vagina while the two (2) of them were standing"[6] with the accused propping her up on the seat of the toilet bowl. When he was about to ejaculate, he withdrew his penis from her vagina and wiped the semen from her organ. Afterwards, he warned her not to tell anyone about what happened. Since the accused had been beating her and her siblings in the past, she was afraid of what the accused would do if she would tell anyone about what he did to her this time.

Editha further disclosed that her father had been sexually abusing her repeatedly since she was only nine (9) years old. According to her, the rape incident that is the subject matter of this case was already her last sexual experience with him. However, she never disclosed any of his past sexual abuses until she learned that her father was also sexually molesting her two (2) younger sisters, Baby Flor and Maria Coralyn.[7] This led her to reveal her ghastly experiences to her aunt Mercedes Edquibal who accompanied her to the authorities to report the matter.

Dr. Ma. Cristina B. Freyra, a physician from the Philippine National Police, conducted a medical examination of Editha and found her hymen with deep, healed lacerations at 3:00 and 9:00 o'clock positions.[8]

The accused alleged that his wife Isabelita Jucutan fabricated the charge as he denied the accusation against him. According to him, he used to beat and spank his wife and their daughters. He countered that it was actually the brother of his wife, Amuncio Jucutan, who sexually abused Editha but he did not file any charges against him

upon the request of his wife Isabelita.

The accused, in his Appellant's Brief, questions the Decision of the trial court on two (2) points: First, he contends that rape was not committed, and that the trial court erred in giving credence to the testimony of Editha despite her silence or failure to shout and cry for help. He finds it inconceivable that Editha did not make any outcry when their house and those of her relatives were adjacent to the toilet where the rape was supposedly perpetrated. Second, assuming that he is guilty, he should be held liable only for simple rape as the Complaint failed to allege the special qualifying circumstance of his relationship to Editha. Accordingly, he argues, the absence of this allegation made it legally impossible to sentence him to death. Consequently, he must be imposed the penalty next lower in degree, i.e., reclusion perpetua.

We disagree with accused-appellant that simply because complaining witness failed to shout for help he could not be guilty of rape. The records of the case provide the explanation[9] -

Q: When you were pulled by your father to the said toilet, did you shout?

A: No, your Honor.

Q: Why Madam Witness?

A: He was covering my mouth at that time. He was hurting me.

Moreover, even if accused-appellant did not cover the mouth of Editha, her silence would not by itself be sufficient to negate the conclusion that rape was committed. Being complainant's father, accused-appellant had moral ascendancy and influence over his daughter who was then of tender years. Her fear of her father was more than enough to intimidate her to submit to his lewd advances without shouting for help.

Furthermore, we cannot uphold the contention of accused-appellant that the rape could not have possibly occurred in a toilet which was adjacent to their one-room house where the rest of the immediate members of the family were then sleeping, and to the houses of their relatives who could have easily heard complainant's pleas. Such physical proximity and the possibility that these relatives might hear any sound or notice any commotion coming from the toilet do not warrant the conclusion that accused-appellant did not abuse his daughter. As observed in *People v. Cura*[10] -

x x x x the Court has held in a number of times that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible nor incredible for the members of the victim's family to be in deep slumber and not to be awakened while the sexual assault on her was being committed. Lust is no respecter of time and place.

In addition, the answers of accused-appellant to the charges consisted only of bare denials and allegations that would not suffice to disprove rape. The testimony of Editha at the trial was consistent. There were no material contradictions in her narration, especially on how accused-appellant raped her, which could have easily destroyed her credibility and the veracity of her claim. In fact, if ever there was any point when she gave contradictory statements, it was as to the time when she finally told her mother about her father's lechery.

We, however, agree with accused-appellant that the failure of the prosecution to allege in the Complaint the special qualifying circumstance of relationship between him and the victim will not allow the imposition of the death penalty. Under Sec. 11 of RA 7659, the death penalty shall be imposed for the crime of rape if 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.

These circumstances are in the nature of qualifying circumstances that must be jointly alleged in the complaint or information. *People v. Ramos*[11] provides the rationale for the rule -

While Republic Act 7659 did not give a legal designation to the crime of rape attended by any of the seven new circumstances introduced in Article 335 on December 31, 1993, this Court has referred to such crime as qualified rape in a number of its decisions. However, with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender give a different character to the rape defined in the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special aggravating circumstance.

In the case at bar, the Complaint only averred the minority of the victim, i.e., she was fourteen (14) years old at the time of the commission of the crime. Such failure of the Complaint to implead the relationship of accused-appellant to the victim makes it legally impossible to convict him of qualified rape. Hence, he can only be convicted of simple rape.

It must also be noted that despite proof of relationship in the trial, the aggravating circumstance of relationship may only be appreciated as a generic aggravating circumstance, hence, its presence is futile. Simple rape is punishable by reclusion perpetua, a single indivisible penalty. In our criminal justice system, under Art. 63 of The Revised Penal Code, a single indivisible penalty shall be applied by the courts regardless of any attendant mitigating or aggravating circumstances. Therefore, only the penalty of reclusion perpetua may be imposed. It was error for the trial court to impose the penalty of death since, legally, no qualified rape took place.

The requirement to specifically and jointly allege such circumstances in the complaint or information is not a mere technicality. It is in consonance with the due process clause under Sec. 14, par. (2), Art. III, of the Constitution. The purpose of the provision is explained in *People v. Sardonido*[12] -

While the failure to allege the relationship between accused-appellant and the complainant appears to be a mere technicality, it nevertheless saves accused-appellant from the supreme penalty of death imposable for qualified rape because he was not properly informed that he is being accused of qualified rape. Due process demands that an accused in a criminal case should be informed of the nature of the offense with which he is charged before he is brought to trial in order to enable him to prepare for his defense. In meting out the death penalty upon accused-appellant for qualified rape, the trial court violated accused-appellant's constitutional right to be properly informed of the nature and cause of the accusation against him.

Since accused-appellant is only guilty of simple rape, the amounts awarded as damages must be modified. In line with current jurisprudence,[13] the civil indemnity in simple rape is P50,000.00. The moral damages of P5,000.00, a pittance, should be increased to P100,000.00 considering the tremendous physical and mental suffering of the victim, who is accused-appellant's biological daughter and who was only nine (9) years old when she became his virtual sex slave for five (5) years. Moral damages may be awarded to the victim in a criminal proceeding in such amount as the Court may deem just without need for pleading or proof of the basis therefor.[14]

The amount of P100,000.00 for exemplary damages is, however, excessive and unconscionable. While Art. 2216 of the Civil Code provides that no proof of pecuniary loss is necessary for the adjudication of exemplary damages, their assessment is left to the discretion of the court in accordance with the circumstances of each case. Article 2230 thereof further states that this is warranted in criminal cases when one (1) or more aggravating circumstances attended the commission of the crime. While the imposition of exemplary damages is justified in this case, we equitably reduce it to P25,000.00. In *Inhelder Corporation v. Court of Appeals*,[15] we laid down the rule that judicial discretion granted to the courts in the assessment of damages must always be exercised with

balanced restraint and measured objectivity. Thus, we hold that the amount of P25,000.00 for exemplary damages is considered reasonable and sufficient to deter other parents from sexually abusing their own offsprings and/or indulging further in similar perversities. Moreover, this reduction is warranted upon the finding of this Court that accused-appellant can only be liable for simple rape and not qualified rape.

WHEREFORE, the Decision of the trial court convicting accused-appellant Florencio Francisco y Alejo of qualified rape is MODIFIED. Accused-appellant is instead convicted of Simple Rape and sentenced to suffer the penalty of reclusion perpetua. He is ordered to pay complaining witness Editha Jucutan Francisco P50,000.00 as civil indemnity, P100,000.00 as moral damages and P25,000.000 as exemplary damages.

SO ORDERED.

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

[1] Decision penned by Judge Jaime N. Salazar Jr., RTC-Br. 103, Quezon City.

[2] TSN, 5 September 1997, p. 41.

[3] Id., p. 58.

[4] Id., p. 48.

[5] Id., p. 43.

[6] See Decision of the RTC, p. 2; Rollo, p. 122.

[7] Id., pp. 60-63.

[8] Records, p. 9.

[9] TSN, 5 September 1997, pp. 57-58.

[10] G.R. No. 112529, 18 January 1995, 240 SCRA 234.

[11] G.R. No. 129439, 25 September 1998, 296 SCRA 559, 575.

[12] G.R. Nos. 121205-09, 29 June 1999.

[13] People v. Ambray, G.R. No. 127177, 25 February 1999.

[14] People v Prades. G.R. No. 127569, July 30, 1998, 293 SCRA 411.

[15] G.R. No. 52358, May 30, 1983, 122 SCRA 576.

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