PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO DACARA Y NACIONAL, ACCUSED-APPELLANT.

G.R. No. 135822. October 25, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Elevated to this Court for automatic review is the decision[1] of the Regional Trial Court of Valenzuela, Branch 171, in Criminal Case No. 6030-V-97, sentencing accused-appellant to suffer the penalty of death for the crime of rape and ordering him to indemnify the victim in the amount of P50,000.00.

The criminal complaint against accused-appellant states:

> That on or about February 5, 1997 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation employed upon my person, DITAS DACARA y CARPIO, did then and there wilfully, unlawfully and feloniously have sexual intercourse with me, against my will and without my consent.
>
> Contrary to Law.[2]

Upon arraignment on March 4, 1997, accused-appellant pleaded not guilty.[3]

The antecedent facts are as follows:

At around 4:00 a.m. of February 5, 1997, the victim, thirteen-year old Ditas Dacara, was awakened as she felt somebody touching her breasts and sex organ. Although the room was not lighted, she recognized the culprit as his father, herein accused-appellant. He removed all her clothes and placed himself on top of her. Ditas could not shout because accused-appellant's hand was covering her mouth. She tried to push him away but he eventually succeeded in inserting his penis into her vagina. After satisfying his lust, accused-appellant threatened to kill her as well as her mother, brother, and sister if she reveals the incident to anybody. The threat initially deterred Ditas from divulging the rape, but she finally mustered enough courage to disclose to her mother what accused-appellant did to her.[4] This led to the filling of the above-quoted complaint for rape against accused-appellant.

The medico-legal examination conducted on the victim yielded the following results:

> GENITAL:
>
> There is moderate growth of the pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.
>
> CONCLUSION:

> Subject is in non-virgin state physically.
>
> There are no external signs of application of any form of violence.[5]

Accused-appellant interposed the defenses of denial and alibi. He contended that from February 3, 1997 to February 17, 1997, he was in Marilao, Bulacan, where he worked as a stay-in construction worker. He stressed that during said period, there was never an instance when he went back to their house in Valenzuela until February 17, 1997.[6]

To bolster his claim, accused-appellant presented defense witnesses Amanda Rapales and Marilou Navarro.[7] Amanda Rapales, a neighbor of accused-appellant in Valenzuela, substantially testified that at around 10:00 a.m. of February 3, 1997, accused-appellant passed by her house to leave the key of his house, as he was leaving for work.[8] Marilou Navarro, on the other hand, testified that accused-appellant stayed in her house in Bulacan from February 3, 1997 up to February 17, 1997, and that he never left her place until February 17, 1997, when he went home to Valenzuela.[9]

On September 9, 1998, the trial court rendered the decision under automatic review. The dispositive portion thereof reads:

> WHEREFORE, finding accused Pio Dacara y Nacional Guilty beyond reasonable doubt of the offense charged/committed on her daughter Ditas Dacara, a girl of thirteen (13) years, four (4) months and twenty-nine (29) days at the time of the commission, he is hereby sentenced to death.
>
> To indemnify the victim the amount of P50,000.00 and to pay the costs.
>
> Let the complete records of the case be immediately forwarded to the Honorable Supreme Court for automatic review pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of Republic Act No. 7659.
>
> SO ORDERED.[10]

The Appellant's Brief raises the following assignment of errors:

> I
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> THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ON THE GROUND OF REASONABLE DOUBT AND IN CONSIDERING THE INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.
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> II
>
> THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.
>
> III
>
> THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE NON-ALLEGATION OF THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP IN THE COMPLAINT.[11]

In his first assigned error, accused-appellant cites two inconsistencies which allegedly destroyed the credibility of the victim. He specifically pointed out the testimony of the victim that she was raped at around 4:00 a.m. of February 5, 1997, as well as the declaration of the victim's mother that she usually leaves the house to sell merchandise at about 4:30 a.m. Accused-appellant contends that assuming both statements are true, then, the victim's mother would still be in the house at the time the rape complained of occurred. Accused-appellant likewise highlights the supposed inconsistency as to the date when the victim intimated to her mother that she was

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raped by accused-appellant.

The contentions are without merit. The time of the alleged rape and the time when the victim's mother routinely leaves the house, are mere approximations which cannot in any way impair the credibility of the prosecution witnesses. Besides, the presence of the victim's mother in the house will not necessarily preclude the commission of rape. As consistently held by this Court, lust is no respecter of time and place.[12] In the same vein, whether the revelation of the rape by the victim was on February 9, 1997, as claimed by her, or on March 17, 1997, as testified by her mother, is highly inconsequential. It does not detract from the positive, candid and straightforward testimony of the victim that she was raped by accused- appellant.

Verily, the inconsistencies adduced by accused-appellant refer to minor and trivial matters. Rather than weakening it, said inconsistencies serve to strengthen the veracity of the victim's story as they erase doubts that her testimony has been coached or rehearsed.[13]

From all the foregoing, accused-appellant utterly failed to destroy the credibility of the rape victim. Her candid and direct narration of the details of the rape as reviewed by this Court in the transcript of stenographic notes, evidently deserves full faith and credence. It bears stressing that Ditas was only thirteen years old when she was sexually abused by accused-appellant. Settled is the rule that testimonies of child-victims are given full weight, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[14] Indeed, the findings of the trial court, which had the opportunity to observe her deportment on the witness stand, should be affirmed.[15]

The trial court did not err in disregarding the defenses set up by accused-appellant. Denial and alibi are inherently weak and cannot prevail over the rape victim's positive identification of her ravisher. This applies with more vigor in the present case where the culprit is the father of the victim with whom the latter has close and natural familiarity that enabled her to recognize him easily.[16] Moreover, it is highly inconceivable that Ditas would fabricate rape charges against her very own father.

What is more, accused-appellant failed to prove the physical impossibility of his presence at the locus criminis at the time the rape occurred. According to him, the travel time between Marilao, Bulacan, and their house in Valenzuela, by public transport, is only one hour.[17] Such a short span of time does not render impossible the presence of accused-appellant in his house at the time of the perpetration of the rape. Hence, his defense of alibi must fail.

The Court, however, cannot affirm the penalty of death imposed on accused-appellant due to the failure of the prosecution to allege in the complaint the minority of the victim and her relationship with accused-appellant. Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, under which accused-appellant was convicted reads:

> The death penalty shall also 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. x x x

The circumstances of minority and relationship in the foregoing provision are special qualifying circumstances that cannot be considered unless specifically stated in the complaint or information. Notably, Sections 8 and 9,[18] Rule 110, of the December 1, 2000 Revised Rules on Criminal Procedure, now require that aggravating circumstances, whether ordinary or qualifying, must be alleged in the complaint or information. The Constitution

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guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him. It is this requirement that renders it essential for every element of the offense with which an accused is charged to be properly alleged in the complaint or information.[19] Consequently, the crime committed in the present case is only simple rape, punishable by reclusion perpetua.

Nevertheless, in line with our ruling in People v. Catubig,[20] the qualifying circumstances of minority and relationship, though not specified in the complaint, can serve as basis for awarding exemplary damages. Although the rape in this case was committed in 1997, before the Revised Rules on Criminal Procedure took effect, the retroactive application of the rules does not absolve accused-appellant from civil liability. Hence, he is liable to pay exemplary damages.

In addition to the P50,000.00 civil indemnity , the victim is entitled to another P50,000.00, as moral damages, which are awarded without need of proof of moral suffering.[21]

WHEREFORE, the decision of the Regional Trial Court of Valenzuela, Branch 171, in Criminal Case No. 6030-V-97, finding accused-appellant Pio Dacara y Nacional guilty beyond reasonable doubt of the crime of rape, is AFFIRMED with the following MODIFICATIONS: Accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the offended party the additional sums of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

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

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[1] Penned by Judge Adriano R. Osorio.

[2] Rollo, p. 7.

[3] Records, p. 14.

[4] TSN, June 20, 1997, pp. 3-7.

[5] Records, p. 8.

[6] TSN, July 17, 1998, pp. 3-9.

[7] Spelled as Navarra in the Transcript of Stenographic Notes.

[8] TSN, April 20, 1998, p. 7.

[9] Ibid., February 13, 1998, p. 5.

[10] Rollo, p. 29.

[11] Rollo, pp. 43-44.

[12] People v. Tan, Jr., 264 SCRA 425, 439 [1996]; citing People v. Dones, 254 SCRA 696 [1996]; People v. Remoto, 314 Phil. 432 [1995]; People v. Segundo, 288 SCRA 691 [1993]; People v. Codilla, 224 SCRA 104 [1993]; and People v. Guibao, 217 SCRA 64 [1993].

[13] People v. Barera, 262 SCRA 63, 72 [1996]; citing People v. Pamor, 237 SCRA 462 [1994]; and People v.

Salinas, 232 SCRA 274 [1994].

[14] People v. Lusa, 288 SCRA 296, 303 [1998]; citing People v. Gabayron, 278 SCRA 78 [1997].

[15] People v. Corea, 269 SCRA 76, 87 [1997].

[16] People v. Cula, 329 SCRA 101, 115 [2000].

[17] TSN, July 17, 1998, p. 12.

[18] SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[19] People v. Catubig, G.R. No. 137842, August 23, 2001; citing People v. Narido, 316 SCRA 131 [1999] and Section 1 (2), Article III of the Constitution.

[20] Supra.

[21] People v. Baid, 336 SCRA 656, 678 [2000]; citing People v. Capillo, 319 SCRA 223 [1999].

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