

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE DELAMAR Y GUSTILO, ACCUSED-APPELLANT.

G.R. No. 136102. January 31, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RENE DELAMAR y Gustilo stands accused of raping his stepdaughter Jennylyn Delamar on 30 September 1997. This was only the last in a series of rapes committed by her stepfather which began in 1994, according to Jennylyn, when she was only ten (10) years old. Because of her fear of him, she kept silent about her misfortune until 20 October 1997 when her mother finally wrung the truth from her and gave her the strength to report the matter to the police.

Jennylyn is the daughter of Liwanag Jamandre Delamar with Jose Conte. But since Jennylyn never saw her natural father, she was made to use her stepfather's family name "Delamar." She was only nine (9) months old when her mother left Conte and married the accused Rene Delamar on 25 July 1984. She bore him three (3) children, Renante, Princess and Reman.

At the time Jennylyn was raped by Rene Delamar on 30 September 1997, the oldest child of the Delamars was only around seven (7) years old while the youngest was barely a year old. The Delamars together with Jennylyn lived together in a small one-storey house measuring only two (2) meters by seven (7) meters located along Agham Road, Quezon City.

Jennylyn narrated in detail how in the morning of 30 September 1997 she was sexually assaulted by her stepfather Rene Delamar y Gustilo. According to her, at around 10:00 o'clock that morning, she was washing dishes at home. She heard her stepfather ask her mother to go to the house of the owner of the jeepney that Delamar was driving on a boundary basis, the distance of which was only about twenty-five (25) meters from their house. After her mother left, her stepfather called for her. As she approached him, he reached for her, touched her breasts and embraced her. He told her not to tell anyone or he would kill her. He then inserted his left forefinger into her vagina.

She tried to remove his finger, but he repeated his threat. He then led her to the sofa and made her lie down. He pulled her skirt up and removed her panties. She protested saying "Huwag," but Delamar became angry and told her not to remove his hand from her private parts. After he undressed her, he also took off his shorts, pulled down his briefs, and lay on top of her. She felt pain as his penis penetrated her vagina. As he raped her, Delamar threatened to kill her unless she kept quiet.

After sometime, Delamar withdrew his penis and told Jennylyn to play with it as he played with her nipples. She was so mad at her stepfather for forcing her to do such a thing. He inserted his left forefinger into her vagina and she felt pain. He again asked her to play with his penis; it was only then that he ejaculated.[1] After he satiated his lust he put on his shorts and stood up without a word. Jennylyn went back to her chores and did not utter a word, not even when her mother returned at around 11:00 o'clock that morning. By then, Delamar had already left for a

neighbor's house to play tong-its.

Jennylyn was in tears when she took the witness stand. She sat facing the court with her back to the accused. She told the court that she was only ten (10) years old and a Grade IV student when her stepfather first took advantage of her. So that he could be alone with her, Delamar would send her mother Liwanag out to buy beer or pulutan for him. According to Jennylyn, she was first raped in 1994, then raped eight (8) times in 1995, and again during her birthday in 1996. Her last sexual experience with him was on 30 September 1997 when she was fourteen (14) years old.

Jennylyn also testified that her fear of her stepfather practically paralyzed her and prevented her from telling anyone about her ordeal. Delamar would always time it when her mother would be out of the house, usually on an errand for him. Her three (3) younger siblings would also be out playing in the streets. She also narrated how she would go out of the house whenever her mother would be out on an errand, but her stepfather would always ask one of her siblings to call her in.

On cross-examination, the defense asked her why she kept coming back to her house even though she knew that she would find her stepfather inside waiting for her. But she could only reply helplessly that even their neighbors would tell her to go in and obey his orders.

On 20 October 1997, in response to her mother's insistent questioning, Jennylyn finally confided how her stepfather had abused her over the past three (3) years. Liwanag was shocked when she heard her daughter's story. She immediately brought Jennylyn to the Police Station where the medico-legal officer examined her and gave her statement to the police.

Aside from Jennylyn's testimony, the prosecution also presented Dr. Ma. Cristina Freyra, medico-legal officer of the PNP crime laboratory. Dr. Freyra testified that she examined Jennylyn and found her no longer a virgin but had deep healed lacerations at 3 o'clock, 4 o'clock and 9 o'clock positions in her genitalia. According to Dr. Freyra, the lacerations could have been caused by the insertion of a hard blunt object inside the vaginal canal, e.g., a finger or an erect penis. She surmised that the lacerations were inflicted not less than seven (7) days prior to the examination, or even years before.[2]

Accused-appellant Rene Delamar was his own sole witness. He denied the allegations against him and asserted that on the morning of 30 September 1997 he was at the Land Transportation Office (LTO) to file an affidavit of loss as he had lost the official receipt for his driver's license. He obtained an affidavit of loss from one of the notaries public behind the LTO but was not able to file it because he came upon some friends from PISTON who prevailed upon him to defer filing the affidavit and have lunch with them instead.[3] He was not able to file the affidavit of loss after 30 September because he had no time. In short, he failed to present the document in evidence although, according to him, the affidavit of loss was still with his wife.

He also testified that on 19 October 1997 his wife told him that she had given Jennylyn permission to go out and celebrate her birthday with a male friend. The next day, at around 2:00 a.m., he was awakened by his wife's voice berating Jennylyn who arrived home late. A certain Neil, Jennylyn's male companion, explained that he and Jennylyn only ate at Jollibee then went to a disco. Without asking Jennylyn what took her so long to get home, he (Delamar) slapped her on the face and the back of her neck, pulled her hair, and even punched her repeatedly in the stomach. He cursed her, told her that 2:00 a.m. was not a proper time for a young girl to still be out, and threatened to bring her to a medico-legal officer if she refused to tell the truth about where she and Neil had gone. Jennylyn could only cry and cry.[4]

Rene Delamar stressed that there could be no truth to Jennylyn's accusations because he took care of her as if she

was his own daughter from the time she was still a baby in diapers. He characterized Jennylyn as a secretive child and if she committed something wrong, he had "to force her and hurt her before she admits her wrongdoing." [5]

Delamar admitted on cross-examination that the LTO at East Avenue was near his residence at Agham Road being a mere 10-minute drive away. On that day however, it took him forty-five (45) minutes to get there allegedly because he had to take a public transport. [6]

He also said that he saw nothing wrong with slapping Jennylyn as it was just his way of disciplining her. He also testified that he did not want her to go out with Neil because he knew that Neil was married with children.

When asked if he knew of any reason why his stepdaughter, whom he said he loved and considered as his own, would file this serious charge of rape against him, he said -

Firstly, she was probably afraid that I will have her checked by a doctor. She was also afraid that I will hurt her again and that I will have her live with her aunt or maybe she was afraid that I might kill that man and file rape charges against him and thirdly, her story, she might have gotten the idea from her friend who also charged her father for rape and was sentenced to death x x x x [7]

Delamar also stated that Jennylyn could have been impelled by her love for Neil to testify against him, as he implied that the two (2) were having sexual relations.

On 21 October 1998 the trial court found Delamar's excuses lame and hallow, and sentenced him to death after finding him guilty beyond reasonable doubt. [8]

The case is now before us on automatic review in view of the penalty imposed by the trial court.

After careful examination of the records, we find accused-appellant Rene Delamar y Gustilo guilty as charged. As held in *People v. Dado*, [9] assessing the credibility of witnesses is an area within the almost exclusive province of a trial judge whose findings and conclusions are normally accorded great weight and respect. In determining the credulity of a testimony, significant focus is held to lie on the deportment of, as well as the peculiar manner in which the declaration is made by, the witness in open court. Hardly can an appellate court come close to a trial court in making, from a mere reading of the transcript of stenographic notes, that kind of evaluation. [10] Thus, the trial court stated in unequivocal language -

The court watched and listened attentively and with great circumspection as the victim went through the grim details of the sexual assaults perpetrated against her will. It was a candid moment of a young girl's demeanors, each time she recalled in court the brutal acts - the twinge on her otherwise innocent face as in actual suffering and helplessness, the anguish, the pain, the fear - they were the streams of emotions of a girl deeply seared by her experience.

This was demonstrated eloquently when she asked the court's permission to testify not from the witness stand where she would be facing the accused but instead facing the court with her back turned towards him. She abhors him, no doubt about that but she feared him most and continues to feel so x x x x

We find her testimony sincere and truthful. It stands the test of judgment and credibility. She had no reason to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial if her motive were other than to protect her honor and bring to justice the person who unleashed his lust on her. [11]

It is also a well established doctrine that in cases of rape, the prosecution need not present the testimonies of persons other than the offended party herself if the same is accurate and credible. The Court has frequently held that a conviction for rape may issue upon the sole basis of the complainant's testimony. This is so because no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the

dire consequence of a rape charge - unless she is, in fact, a rape victim.[12]

However, the trial court erred in imposing the death penalty on accused-appellant. As held in the case of *People v. Ramos*,[13] and reiterated in a long line of cases,[14] "the attendant circumstances provided by RA 7659 must be specifically alleged in an information for rape in order that they may properly qualify the crime to the penalty specially prescribed by law." [15] This is based on the fundamental principle that "every element of which the offense is composed must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense." [16] Thus we held in the later case of *People v. Ilao*[17] -

We have already pointed out that the special circumstances instituted by Republic Act No. 7659 on December 31, 1993 increasing the penalty for rape to death are in the nature of qualifying, and not aggravating circumstances.[18] However, to be properly appreciated as a qualifying circumstance, the relationship between appellant and his victim should have been specifically pleaded in the information against appellant as declared in our recently promulgated decision of *People v. Ramos*.

In that case, which is similar to the present one under review, accused therein was charged with raping a 14-year old woman through force and intimidation employed against the said minor. We held therein that the trial court could not convict accused of qualified rape under the first circumstance introduced by Republic Act No. 7659 because the information made no reference, in any manner, to the qualifying fact of relationship between the accused and his victim, although it was proved during the trial that said accused is the father of the offended party.

In the case at bar, the Complaint filed against Rene Delamar, under which he was arraigned, accused him of raping by means of force and intimidation "a minor, 14 years of age" without, however, any allegation of the relationship between accused-appellant and Jennylyn, either by specifying that accused-appellant is the stepfather of Jennylyn, or that Jennylyn is the daughter of his wife by another man.

Adopting our pronouncements in *People v. Ramos*, we perforce have to rule that accused-appellant can only be convicted of simple rape and cannot be held liable for qualified rape in the absence of any allegation of the requisite relationship in the complaint or information. Even if such relationship was duly proved during the trial, still such proof cannot be considered to convict accused-appellant of qualified rape and to consequently impose on him the death penalty since he would thereby be denied his constitutional and statutory right to be informed of the nature and cause of the accusation against him.[19] Considering that, in effect, the crime was committed without any qualifying circumstances having been alleged and proved, the award of civil indemnity is limited to P50,000.00; and, in keeping with prevailing jurisprudence which allows moral damages without need for pleading or proof as to the basis thereof, the Court also awards moral damages to the complaining witness in the amount of P50,000.00.

WHEREFORE, the Decision of the Regional Trial Court, Branch 76, Quezon City, in Crim. Case No. Q-97-73594 is MODIFIED. Accused-appellant RENE DELAMAR Y GUSTILO is instead found GUILTY of Simple Rape and sentenced accordingly to reclusion perpetua. He is also ordered to pay the offended party, Jennylyn Conte Delamar y Jamandre P50,000.00 for civil indemnity, P50,000.00 for moral damages, and to pay the costs.

SO ORDERED.

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

Puno, J., On official leave.

[1] TSN, 7 January 1998, pp. 7-11.

[2] TSN, 1 April 1998, pp. 3-4.

[3] TSN, 13 May 1998, pp. 7-10.

[4] Id, p. 11-15.

[5] Id., p. 21.

[6] TSN, 8 July 1998, pp. 3-4.

[7] Id., p. 6.

[8] Decision penned by Judge Monina A. Zenarosa, RTC-Br. 76, Quezon City.

[9] *People v. Dado*, G.R. No. 87775, 1 June 1995, 244 SCRA 655.

[10] Id., p. 660.

[11] Rollo, pp. 16-17.

[12] *People v. Ching*, G.R. No. 103800, 19 January 1995, 240 SCRA 267, 280. Also, *People v. Ulili*, G.R. No. 103403, 24 August 1993, 225 SCRA 594.

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

[14] See *People v. Ilao*, G.R. No. 129529, 29 September 1998, 296 SCRA 658; *People v. Cantos*, G.R. No. 129298, 14 April 1999, 305 SCRA 786.

[15] See Note 13, p. 578.

[16] *Balitaan v. CFI of Batangas, Branch II*, No. L-38544, 30 July 1982, 115 SCRA 729.

[17] G.R. No. 129529, 29 September 1998, 296 SCRA 658, 670-72.

[18] Citing *People v. Garcia*, G.R. No. 120093, 6 November 1997.

[19] See Note 17, p. 671, citing *People v. Ramos*, G.R. No. 129439, 25 September 1998, 296 SCRA 559.

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