

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO TUPAZ Y CASTOR, JR., ACCUSED-APPELLANT.

G.R. No. 136141. October 09, 2002

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the Decision[1] of the Regional Trial Court of Cavite City, Branch 16, in Criminal Case No. 237-95 convicting herein accused-appellant Domingo Tupaz y Castor, Jr. of the crime of rape and sentencing him to suffer the supreme penalty of death.

On September 22, 1995, Domingo Tupaz y Castor, Jr. was charged with the rape of his own daughter in an Information that reads:

That on or about the 7[th] day of May, 1995, at Barangay Ligdong I, Municipality of Rosario, Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of his superior strength over the person of his own daughter who is only sixteen years old, and by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of one AAA against her will and consent to her damage and prejudice.

CONTRARY TO LAW.

Upon arraignment on October 25, 1995, Domingo Tupaz y Castor, Jr., assisted by counsel, entered the plea of “not guilty.” Thereafter, trial on the merits ensued.

From the evidence adduced by the prosecution, it appears that, on May 7, 1995, AAA was in the company of her friends in their neighborhood in Barangay Ligdong 1, Rosario, Cavite. As her mother was out selling fish, Domingo told AAA to go home at around 1:00 in the afternoon and look after her two younger siblings. Despite her apprehension, she obliged for fear of her father’s temper.[2]

After an hour, Domingo came home drunk. He ordered AAA to follow him upstairs. When she refused, Domingo hit her with a stick. To avoid further violence, AAA reluctantly obeyed when she was told by the appellant to undress. Thereupon, Domingo raped her, for no less than thirty minutes, until he reached his climax. His lust spent, Domingo casually left.[3]

AAA revealed in court that she had been raped several times in the past by her father since she was 12 years old.[4] Her mother did nothing for fear of losing him despite being informed of his bestiality. She did not dare seek refuge elsewhere out of concern for her mother and younger siblings who were threatened with death by her father.[5] The sexual assault on May 7, 1995 was to be the last, however, as she finally mustered enough courage to reveal her misfortune to a relative. Domingo was eventually arrested on July 24, 1995 for the rape of his own daughter.[6]

AAA underwent physical examination conducted by Dra. Ida Daniel, NBI Medico-Legal Officer, who came up with the following findings:

No evident sign of extra genital physical injury noted on the body of the subject at the time of examination. Hymen intact, distensible and its orifice wide (2.5 cms. in diameter) as to allow complete penetration of an average-sized adult Filipino male organ in full erection without producing any general injury.[7]

Considering the size of the subject's vaginal orifice, Dra. Daniel concluded that it had already been penetrated by a hard object although the hymen remained intact due to elasticity.[8]

Accused-appellant Domingo Tupaz y Castor, Jr. interposed alibi. His testimony showed that he was a fisherman in the employ of a certain Joven Samartino. As such, he usually left the house for the 15-minute trip to Long Beach, Noveleta, Cavite at 8:00 in the morning. Upon arrival, he would help mend the fishing nets until the afternoon before setting out to the sea for an overnight watch of the pukot (fishing nets). Early the following morning, after loading their catch, Domingo and his companions would sail back to the shore and go home. He followed that routine before his arrest on July 24, 1995. Hence, he could not have possibly raped his daughter in the afternoon of May 7, 1995. According to Domingo, his brother-in-law, Benjamin Guinto, and sister-in-law, Anita G. Custodio, enticed AAA to file the instant complaint to seek revenge for his violent temper whenever he got drunk.[9]

Rosita and Christopher Tupaz, wife and son of Domingo Tupaz y Castor, Jr. respectively, also took the witness stand to corroborate the testimony of Domingo on material points.[10]

On August 14, 1998, the trial court rendered its decision, the dispositive portion of which is quoted hereunder:

WHEREFORE, finding the accused DOMINGO CASTOR TUPAZ, JR. guilty beyond reasonable doubt for the offense of rape as charged in Criminal Case No. 237-95, the Court hereby sentences him to suffer the penultimate penalty of DEATH by lethal injection, as so provided under Republic Act No. 7659, and to indemnify AAA P50,000.00.

Aggrieved by the decision, Domingo Tupaz, Jr. interposed the instant appeal[11] raising the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE GROSSLY INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II

GRANTING THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO PROVE THE PRIVATE COMPLAINANT'S MINORITY.

Accused-appellant points out that private complainant stated on direct examination that she was alone in the house when her father raped her while she admitted on cross that her two younger siblings were present then. Likewise, her declaration on direct examination to the effect that she informed her mother about the rape ran counter to her subsequent statement that she kept the matter to herself. Moreover, private complainant could not recall with certainty the date of the first rape and she gave conflicting accounts of the number of times the sexual assault was repeated prior to May 7, 1995.

Regarding the second assigned error, accused-appellant claims that no other evidence was presented by the prosecution to establish the age of the private complainant, aside from her testimony.

Representing the Appellee, the Office of the Solicitor General (OSG) counters that the alleged contradictions in the testimony of the private complainant are minor inconsistencies that do not detract from her credibility.

Regarding the minority of the private complainant, her undisputed testimony shows that she was only 16 years old at the time of the sexual assault, thus, the trial court's decision should be affirmed in toto[12].

In the review of rape cases, this Court is almost invariably guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence of the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[13]

Summing up, the crucial issue in any prosecution for rape is always the credibility of the private complainant. For as long as the complainant's testimony meets the test of credibility, the accused may be convicted on the basis thereof.[14]

After a painstaking review, this Court agrees with the trial court in giving credence to the private complainant's testimony as against the accused-appellant's implausible defense. The testimony of the private complainant was given in an honest and believable manner, devoid of any hint of falsity or attempt at fabrication. In several instances, her testimony was interrupted by fits of crying and outbursts of emotion,[15] leaving no room for doubt that she was truthful in her narration of events and her misfortune in the hands of her own father, the accused-appellant.

Besides, it is inconceivable for a daughter to fabricate a web of lies to implicate her parent in a heinous crime unless she is solely motivated by a genuine desire to seek justice for a grievous wrong done to her. Extant in the records were the sustained efforts exerted by no less than her mother and younger brother, Christopher, for private complainant to withdraw the instant complaint for rape against the accused-appellant.[16] Far from acceding to their pleas, however, private complainant never wavered. She even belied their assertions on rebuttal that she was merely enticed to exact revenge by their relatives who supposedly had an ax to grind against the accused-appellant.[17]

The private complainant did not dwell on the details of her harrowing experience. Those details are not essential anyway to sustain accused-appellant's conviction. Well-entrenched is the doctrine, founded on reason and experience, that when a victim of rape says she was violated, she says, in effect, all that is necessary to show that rape was indeed committed against her.[18] The inability of the private complainant to recall the exact date of the first rape and the number of times she was sexually assaulted by the accused-appellant prior to May 7, 1995, does not militate against her credibility. It should be pointed out that victims of rape hardly retain in their memory the dates, number of times and manner they were violated, and it is for this reason that the exact date of the commission of the rape is not an essential element of the crime.[19] The alleged inconsistencies in her testimony on the whereabouts of her two younger siblings during the rape on May 7, 1995 and whether she informed her mother about it, are minor and inconsequential flaws that should strengthen rather than impair her credibility.

Accused-appellant's alibi does not deserve serious consideration. Aside from alibi being an inherently weak defense, accused-appellant would have this Court believe that he was out at work everyday for practically 23 hours a day starting at 8:00 a.m. until 7:00 a.m. the following day. A careful analysis of and Christopher's testimonies reveals, however, that said schedule was followed only when accused-appellant was required to mend the fishing nets at the house of his employer before setting out to sea. This of course was not always the case. In fact, it could be discerned from the testimony of Rosita that the accused-appellant was at home in the afternoon when the sexual assault was committed.[20] For alibi to prosper, an accused must prove that not only was he absent at the scene of the crime at the time of its commission but also that it was physically impossible for him to

be situated therein during the commission of the crime.[21] Where there is even the slightest chance for the accused to be present at the crime scene, the alibi will not hold.[22]

Consequently, we affirm accused-appellant's conviction.

However, the prosecution failed to establish the minority of the private complainant with the requisite quantum of evidence. Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659,[23] punishes rape with reclusion perpetua but justifies the imposition of the death penalty "(w)hen the victim is under eighteen (18) years of age and the offender is a parent xxx." However, based on prevailing jurisprudence,[24] there is a need for independent proof of age of the victim, aside from her testimony or that of her relatives, even though her age is not contested by the defense.

The records show that AAA merely testified that she was sixteen (16) years old when she was violated by the accused-appellant on May 7, 1995, without independent proof thereof such as her birth certificate. Neither was there any showing that the document was lost or destroyed to justify the failure to present it. In the case of *People vs. Javier*,[25] we explained that:

In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstance enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld. xxx Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim's age is fatal and consequently bars conviction for rape in its qualified form.

Finally, in rape cases, moral damages in the amount of P50,000 can be awarded without need for proof.[26] An award for exemplary damages in the amount of P25,000 is also proper to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters.[27]

WHEREFORE, the decision of the Regional Trial Court of Cavite City, Branch 16, convicting accused-appellant Domingo Tupaz y Castor, Jr. of the crime of rape and sentencing him to suffer the penalty of death and to pay the private complainant P50,000 as civil indemnity is hereby MODIFIED. As MODIFIED, he is hereby found guilty beyond reasonable doubt of the crime of simple rape and is sentenced to suffer the penalty of reclusion perpetua, and to pay, in addition to the award of P50,000 as civil indemnity, the amounts of P50,000 by way of moral damages and P25,000 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Sandoval-Gutierrez, Morales, and Callejo, Sr., JJ., concur.
Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Carpio, and Austria-Martinez, JJ., on leave.

[1] Penned by Judge Manuel A. Mayo, Rollo, pp. 17-33.

[2] TSN, dated February 14, 1996, pp. 8-11; TSN, dated May 7, 1997, pp. 12-19.

[3] TSN, dated February 14, 1996, pp. 10-11; TSN, dated May 7, 1997, pp. 19-25; 40.

- [4] TSN, dated May 7, 1997, pp. 6; 30; 41.
- [5] TSN, dated February 14, 1996; pp. 11-12; TSN, dated May 7, 1997, p. 46.
- [6] Id., pp. 36-37.
- [7] Exhibit “B”.
- [8] TSN, dated March 13, 1996, pp. 12-14.
- [9] TSN, dated June 26, 1997, pp. 3-35.
- [10] TSN, dated February 5, 1998, pp. 4-41; TSN, dated April 16, 1998, pp. 3-33.
- [11] Appellant’s Brief, Rollo, pp. 48-66; Reply Brief, Rollo, pp. 114-118.
- [12] Appellee’s Brief, Rollo, pp. 94-105.
- [13] People vs. Tipay, 329 SCRA 52, 59 [2000]; People vs. Sapinoso, 328 SCRA 649, 656 [2000].
- [14] People v. Tabanggay, 334 SCRA 575, 587 [2000].
- [15] TSN, dated February 14, 1996, p. 10; TSN, dated May 7, 1997, pp. 9, 17.
- [16] TSN, dated April 16, 1998, pp. 14-16; TSN, dated February 5, 1998, p. 31; TSN, dated May 14, 1998, p. 5.
- [17] TSN, dated May 14, 1998, pp. 3-6.
- [18] People vs. Ambray, 303 SCRA 697, 704 [1999]; People vs. Bolatete, 303 SCRA 709, 729 [1999].
- [19] People vs. Sancha, 324 SCRA 646, 654 [2000].
- [20] TSN, dated April 16, 1998, pp. 8-9.
- [21] People vs. Dacibar, 325 SCRA 725, 741 [2000]; People vs. Villanueva, 302 SCRA 380, 394-395 [1999].
- [22] People vs. Quillosa, 325 SCRA 747 [2000].
- [23] Death Penalty Law.
- [24] People vs. Veloso, 330 SCRA 602, 612 [2000]; People vs. Cula, 329 SCRA 101, 117 [2000]; People vs. Javier, 311 SCRA 122, 141 [1999].
- [25] Supra.
- [26] People vs. Perez, 296 SCRA 17, 37 [1998].
- [27] People vs. Dizon, 356 SCRA 69, 88 [2001].

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