

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR Y BAÑEZ, ACCUSED-APPELLANT.

G.R. No. 136257. February 14, 2001

Ponente: MELO, J.

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MELO, J.:

In order to warrant the imposition of the death penalty, the special qualifying circumstance of the victim's minority and her relationship to the offender should be both alleged in the Information and proved during the trial. This is the principle which finds application in the case at bar.

Before us on automatic review is the decision dated September 25, 1997 of Branch 71 of the Regional Trial Court of the Fourth Judicial Region stationed in Antipolo, Rizal, in its Criminal Case No. 94-11878, finding accused-appellant Oscar Ybañez guilty of rape and sentencing him to suffer the supreme penalty of death.

The instant case was initiated by a complaint against accused-appellant Oscar Ybañez y Dagulpo filed by the victim Erika Dialogo, which charged:

That on or about the 1[st] day of January, 1995, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Erika Dialogo y Dialogo, a minor, ten (10) years of age, without her consent and against her will.

CONTRARY TO LAW.

(p. 5, Rollo.)

Accused-appellant pleaded not guilty to the charge and stood trial, resulting in a judgment of conviction, accordingly disposing:

WHEREFORE, the Court finds the accused Oscar Ybañez y Daguplo GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal code, as amended by R.A. No. 7659, and he is hereby sentenced to suffer the supreme penalty of DEATH, to indemnify the private complainant in the amount of P50,000.00, and to pay the costs.

(p. 16, Rollo.)

The prosecution's version of the events is based principally on the testimony of victim Erika Dialogo, Celestino Dialogo, uncle of the victim, and Dr. Jesusa Vergara of the PNP Crime Laboratory Services.

Erika testified that on January 1, 1995, at around 3 o'clock in the afternoon, she was requested by accused-appellant, her mother's common-law husband, to gather firewood. As she was about to do so, accused-appellant told her not to go and instead she was brought by him to the forest near their house. At that point, he forced her to lay down on a wooden bed, and despite her strong resistance and lack of acquiescence,

accused-appellant took her panties off. Nevertheless, Erika seized a chance to get up and attempted to ran, but accused-appellant was quick in grabbing her back. As a preliminary to his intended beastful act, Erika tearfully narrated, accused-appellant inserted his finger into her vagina, and naked as he was, he laid on top of her and indoctrinated her into eroticism and libidinal gratifications. Thereafter, accused-appellant left her. Erika, on the other hand, left home and went to a certain Ate Rosal where she dozed off. When she woke up, she went home and found therein accused-appellant and her crying baby sister.

Erika continued her silence about her ordeal even as she brought her sister that same day to a certain Ate Tilde. Therefrom, she proceeded to her Ate Dolly, residing nearby. No longer able to keep to herself what she had just gone through, Erika told her Ate Dolly that she was raped by Oscar Ybañez. Consequently, she was brought by her other relatives, including prosecution witness Celestino, to Camp Crame.

Prosecution witness Dr. Jesusa Vergara, the medico-legal officer who conducted a physical examination of Erika confirmed the claim of the victim that she was raped. Dr. Vergara testified that Erika's external vagina orifice admits the tip of the examiner's smallest finger with shallow healed lacerations at 3 and 6 o'clock; and that Erika physically was in a non-virgin state.

The defense is based on the testimony of its sole witness, accused-appellant. He denied the charge and testified that on January 1, 1995, he was on his way home when he met Erika along the road. He gave her a fatherly kiss on the cheek, considering that he treated her as his own child from the time he started cohabiting with the victim's mother in 1987. Nothing more happened after that, so he claimed. He alleged that the crime imputed to him was a way of getting back at him, as initiated by prosecution witness Celestino. According to accused-appellant, Celestino used to live with them but was ordered to move out, hence, Celestino's motive to implicate accused-appellant in this case.

The trial court did not accord credence to the testimony of accused-appellant, pointing out that the defense of denial cannot prevail against the affirmative testimony of Erika who was only 10 years old when subjected to accused-appellant's sexual perversity. Further, Erika showed no ill motive to falsely testify against accused-appellant, and that her testimony was straightforward and impeccable.

Accused-appellant is now before us insisting on his innocence and pleading for acquittal on the ground of reasonable doubt. He imputes to the trial court the error of finding him guilty beyond reasonable doubt of the crime charged notwithstanding the victim's admission that she was not threatened by accused-appellant. He would also make much capital of the circumstance that the victim failed to divulge the rape committed against her to the first person she met after the incident.

Accused-appellant's assertions must certainly come to naught.

The workings of a human mind are unpredictable; people react differently and there is no standard form of behavior when one is confronted by a shocking incident (*People vs. Ranido*, 288 SCRA 369 [1998]). More so, if one is a victim of a misfortune which in the victim's young mind is beyond comprehension.

In the instant case, threatened or otherwise, Erika opted to keep to herself and to endure the misery and pain she suffered from the hands of accused-appellant, at least for a while, so that she just dozed off upon reaching the house of her Ate Rosal. Only later did she realize that she had been violated. So, even before the day ended, she intimated her horrible experience to her Ate Dolly.

Erika's failure to immediately report the rape is not an indication of a fabricated charge (*People vs. Batoon*, 317 SCRA 545 [1999]), and does not by itself undermine the charge. Procrastination seldom works to acquit from liability a person accused of rape (*People vs. Pacistol*, 284 SCRA 520 [1998]). In rape cases, the gravamen of the

offense is sexual intercourse with a woman against her will or without her consent (*People vs. Igat*, 291 SCRA 100 [1998]). Erika, in tears, narrated that she resisted and protested accused-appellant's sexual advances. In fact, she was even able to stand up and attempted to escape, but accused-appellant grabbed and snatched her back, following which, accused-appellant's bestiality unfolded. Erika was 10 years old then. In light of this fact, statutory rape has been committed; force, intimidation or threat need not then be proved (*People vs. Pacistol*, 284 SCRA 520 [1998]). When the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established (*People vs. Tabion*, 317 SCRA 126 [1999]). The mass of physical and testimonial evidence in this case clearly establishes accused-appellant's guilt of the crime of rape. Verily, the trial court was correct in its findings.

While we agree with the trial court that accused-appellant is guilty of rape, we cannot, however, subscribe to the penalty of death imposed. Both the defense and the Office of the Solicitor General are in concurrence. Article 335, as amended by Republic Act No. 7659, provides that the death penalty shall be imposed if the rape victim is under eighteen years of age and the offender is the common-law spouse or the parent of the victim. Clearly believing that the instant case fell within the above-mentioned circumstance, the trial court sentenced accused-appellant to death. A reading of the complaint filed against accused-appellant would, however, reveal that he was charged only with simple rape under Article 335 of the Revised Penal Code, with the additional allegation that the victim was only 10 years of age at the time of the incident.

Although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on accused-appellant because this relationship was not alleged in the complaint. The elements of minority of the victim and her relationship to the offender must concur. The penalty of death cannot be automatically imposed on accused-appellant merely because of the trial court's appreciation of both minority and relationship, no matter how clearly established. Jurisprudence is to the effect that these twin facts be alleged in the information or complaint before the death penalty can properly be imposed (*People vs. Ramos*, 296 SCRA 559 [1998]; *People vs. Leopoldo Ilao*, 296 SCRA 658 [1998]).

Indeed, it would be a denial of the right of accused-appellant to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape but thereafter convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and calling for the capital punishment was not alleged in the indictment on which he was arraigned (*People vs. Garcia*, 281 SCRA 463 [1997]). Section 8, Rule 110 of the Revised Rules of Criminal Procedure, as amended, provides that 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 circumstance.

To be sure, accused-appellant can only be meted out the penalty of reclusion perpetua on account of the complaint's failure to specifically allege the relationship between accused-appellant and the victim, the daughter of accused-appellant's common-law spouse, who was erroneously referred as being instead, the step-daughter of accused-appellant.

Finally, modification of the damages awarded by the trial court is in order. In addition to the civil indemnity of P50,000.00, Erika is entitled to the award of moral damages in the amount of P50,000.00 without need for proof of the basis thereof. Lastly, accused-appellant is liable to pay the victim the sum of P20,000.00 as exemplary damages as a deterrent against or as a negative incentive to curb socially deleterious actions (*Del Rosario vs. CA*, 267 SCRA 158 [1997]).

WHEREFORE, the judgment under review is hereby **AFFIRMED** with modifications. Accused-appellant Oscar Ybañez is hereby found guilty of simple rape and sentenced to suffer the penalty of reclusion perpetua. In addition

to the award of P50,000.00 as civil indemnity, accused-appellant is further ordered to pay the victim P50,000.00 as moral damages, and P20,000.00 as exemplary damages to deter other sex perverts from sexually molesting hapless women. No special pronouncement is made as to costs.

SO ORDERED.

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

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