

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MULLER BALDINO, ACCUSED-APPELLANT.

G.R. No. 137269. October 13, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The Decision[1] of the Regional Trial Court, Branch 6, Baguio City in Criminal Case No. 15635-R convicting Muller Baldino of rape and imposing the death penalty is before this Court on automatic review.

Muller Baldino was charged on May 4, 1998 under the following Information[2]:

"The undersigned accuses MULLER BALDINO of the crime of RAPE, at the instance, relation and written complaint of ABRELINDA SILAM. Copies of her written complaint are hereto attached and made an integral part of this information, committed as follows:

That on or about the 4th day of March, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force or intimidation have carnal knowledge of the complainant ABRELINDA SILAM, a minor-13 years old, against her will and consent.

CONTRARY TO LAW."

The complainant Abrelinda Silam was thirteen years old when the incident happened. The accused is her brother-in-law, being the husband of her elder sister Judith. Abrelinda was staying with another sister Marcelet Silam-Danglosen at the latter's house in Irisan, Baguio City. The house of the accused also in Irisan was 50 to 60 meters away.

The following narration of the rape incident by the trial court is not disputed:

"On March 4, 1998 at about 6:00 p.m., Abrelinda left the house of Marcelet and went to the house of accused and Judith nearby. She was requested by her sister Judith to spend the night thereat to take care of the children of Judith while the latter is in Buguias, Benguet.

At that time Judith and accused had 3 children; Jomar, 5 years old; Janice, 3 years old; and Muller Jr., 1 year old. Judith testified that she brought along with her to Buguias Janice but left Jomar and Muller in Irisan with their father, the accused.

At around 9:00 p.m., while Abrelinda was sleeping, the accused suddenly grabbed her hands by the wrists. He sat on her legs. He removed her pants and panty. She struggled and pushed him and shouted for help to no avail. He told her to keep still because there is nothing she could do. He spread her legs and mashed her breasts. She continued struggling and resisting. But the accused, who was naked, was able to insert his penis in her vagina and made pumping motions, consummating sexual intercourse with her. She felt pain.

After he satisfied his lust, he threatened her not to tell her sister what he did otherwise he will get angry. She cried and pounded her right hand on accused but he just kept quiet. Then he moved away and slept.

Immediately Abrelinda left and returned to the house of Marcelet. Crying, she reported to Marcelet and the latter's husband that the accused raped her or had sexual intercourse with her against her will. She told them she will sue the accused.

It appears that this was the second time accused raped Abrelinda. The first happened sometime 1997 in their hometown in Buguias, Benguet. Apparently, she can no longer endure or take the repeated sexual assault on her by accused, who is considered a member of the family being her brother-in-law. She thus went home to Buguias, Benguet to report to her father where she filed her complaint of rape against the accused on March 11, 1998 assisted by her father Teligo Silam on the first incident. (See statement of Abrelinda dated March 11, 1998 attached to the Information for Rape filed in Benguet, Exh. C).

Then she came back to Baguio to file her complaint on the incident that happened in Baguio.

On March 13, 1998, Abrelinda went to the NBI, Baguio where she was examined by Dr. Ronald Bandonill who submitted a report (Exh. B), the pertinent portion of which reads:

'GENITAL EXAMINATION:

*PUBIC HAIR: Absent, LABIA MAJORA and

MINORA: both slightly gaping.

*FOURCHETTE: moderately lax. VESTIBULAR
MUCOSA: pinkish.

*HYMEN: originally annular, tall, thin with old-healed, complete lacerations at 6:00 o'clock and 8:00 o'clock positions corresponding to the face of a watch, edges of which are rounded, retracted and non coaptible.

HYMENAL ORIFICE: admits a tube 2.5 cms. in diameter with slight difficulty

*VAGINAL WALLS: tight. RUGOSITIES: prominent.

CONCLUSIONS:

1) No extragenital physical injuries noted on the body of the subject at the time of examination.

2) Old-healed, complete hymenal lacerations noted.' (Exh. B)

Dr. Bandonill explained that the old-healed hymenal lacerations could have been inflicted more than three (3) months previous to the examination on the person of Abrelinda on March 13, 1998. He added that once the hymen is lacerated, it will not be lacerated again or there will be no new lacerations even if there is another sexual contact. This is consistent with the declaration of Abrelinda that there were two incidents of rape; one in Buguias, Benguet sometime 1997 and the second on March 4, 1998 in Irisan, Baguio as the first incident happened more than 3 months before examination.

On the same day of March 13, 1998, Abrelinda gave her Sworn Statement (Exh. A) to the Baguio Police charging the accused of Rape committed against her on March 4, 1998 in Baguio City. On the basis of her said complaint, an Information for Rape was filed by the Prosecutor's Office of Baguio against the accused which is now the case at bar.

In respect to the first incident of rape that happened sometime in 1997 in Buguias, Benguet, an Information for Rape (Exh. C) was also filed by the Prosecutor's Office of Benguet against the accused with the Regional Trial Court, Branch 64, Buguias, Benguet.

Further, an Information (Exh. D) for Violation of Sec. 10 (b) of RA 7610, as Amended (Child Abuse Law), was likewise filed against the accused by the Prosecutor's Office of Baguio with Regional Trial Court, Branch 7, Baguio City with Edwina Silam as the complainant."[3]

The accused denied the charge and claims that the accusation was fabricated. He testified that on the day in question, he slept together with his wife, who had returned from a visit to her parents in Buguias, Benguet, the

day before. During the period from February 20 to March 3, 1998, when his wife was in Buguias, he personally took care of the needs of the two children left with him, and brought the children to his place of work at Irian, where he was assigned as security guard. He insisted that neither he nor his wife requested Abrelinda to take care of the children while his wife was in Buguias and that while Abrelinda went to their house about four times during his wife's absence, it was only for the purpose of getting rice and other things after which she immediately left. He claimed that he did not sign the deed of "Amicable Settlement" dated July 6, 1998 because there was no truth to the rape charged against him. Judith Baldino, wife of the accused and sister of the complainant corroborated the statement of the accused, that on the alleged date of the crime, the accused was with her.[4]

The trial court found the accused liable as charged for the following reasons:

"First, the accused had carnal knowledge of Abrelinda.

The evidence shows that on the night of March 4, 1998 after the accused spread the legs of Abrelinda, he inserted his penis in her vagina and made pumping motions consummating sexual intercourse with her. She felt his penis inside her vagina. And she felt pain. There is therefore no doubt that there was carnal knowledge.

Second, the carnal knowledge was consummated by means of force and against her will.

While Abrelinda was sleeping, the accused pinned her on the bed by holding her hands by the wrists and sitting down on her legs. He undressed her by removing her pants and panty. She resisted by pushing him. She struggled and shouted for help and kept moving. But he told her to keep still because there is nothing that she could do. She continued struggling but the accused succeeded in penetrating her.

Abrelinda did not therefore freely and willingly submit to the carnal act. There was force used on her.

True, the accused was not armed at the time. He did not have to. For his size, weight and strength were enough for him to attain his evil design. At a tender age of 13, innocent to the ways of the world, Abrelinda was no match to the size and strength of accused who is 20 years her senior and married. In addition to all these, the accused enjoyed an ascendancy over Abrelinda being the husband of her oldest sister.

'It bears repeating that the force and violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the result. The force and violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other. All consideration of whether it was more or less irresistible is beside the point.' (People vs. Errojo, 229 SCRA 49)

Third, the fact that the Medico-Legal Report (Exh. B) shows that there were no extragenital physical injuries noted on the body of Abrelinda at the time she was examined does not negate her claim of rape. Neither does it mean lack of resistance on her part.

The mere size, weight and strength of the 33 year old accused rendered the 13 year old Abrelinda virtually immobilized.

Besides, it is unreasonable to expect the young Abrelinda to put up resistance with all her might considering her age and her relationship to the much older accused who was her brother-in-law.

Fourth, after the sexual act, Abrelinda returned that same night to the house of her sister Marcelet crying and disclosed to Marcelet and the latter's husband that the accused raped her and had sexual intercourse with her and that she would sue him. If the sexual intercourse was with her consent, Abrelinda would have kept it to herself especially so that the accused is married to her older sister Judith.

Fifth, it is unnatural and highly improbable that an artless and guileless 13 year old barrio lass like Abrelinda

would fabricate matters about the bestial acts committed on her person by the accused knowing fully well the seriousness and consequences of her charges. More so, that the accused is her brother-in-law. She would be the last person to bring sorrow and pain on her elder sister Judith and the latter's children who would be deprived of the love, company and support of the accused by his incarceration or death. This can only mean Abrelinda had no choice but to bare it all as the beastly acts were true and she can no longer endure them as accused repeated the despicable deed, one in Buguias and the other in Baguio.

Sixth, the Court was impressed with the total naivette and lack of sophistication of Abrelinda. She was candid, natural and straightforward in her answers without any intention to evade or concoct. Her answers were utterly simple and sincere and ring with truth as the record will show. They were not embellished. She could not have possibly imputed and fabricated such a serious offense of rape if it were not true. She is yet a young girl and does not have the designing mind of a scheming woman.

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Seventh, the claim of the accused that the charges against him were fabricated which is the reason why Abrelinda was willing to have the instant case settled and even sought his forgiveness is incredible.

The accused cannot point to any dark or sinister motive that Abrelinda may have in filing the instant case. As already discussed above, she was impelled by no other reason than to vindicate an offense committed against her.

There is nothing on record to prove that Abrelinda sought the forgiveness of accused and wanted to have the instant case settled except his self-serving, gratuitous and preposterous assertion. More, it is the malefactor who asks normally for forgiveness and a settlement, not the victim.

The signature of Abrelinda in the Amicable Settlement (Exh. 1; E) was sufficiently explained by no other than Judith, the wife of the accused himself, who admitted that Abrelinda signed the said document, although she did not understand its contents, after she was erroneously made to believe by Maria Delias, an auntie of Judith and accused, that if she does not sign, the instant case will not push through.

Abrelinda's having signed the said document on the false belief that if she does not, the instant case will not push through only shows that she is very interested in pursuing this case. In fact, after the signing, she testified in Court about her harrowing experience in the hands of the accused. If she really knew or understood what she signed, she would have desisted from testifying in Court against the accused.

And granting arguendo that Abrelinda signed the Amicable Settlement despite knowing its contents, this does not detract from the fact that the accused raped her. Nowhere in the document does it state that the charge of rape against the accused is not true. In fact the amicable settlement proceeds on a premise that the rape was true.

It is worth noting that the Amicable Settlement (Exh. 1; E) was prepared with the intercession of the uncle of Judith as admitted by her and the Office of the Barangay Captain of Poblacion, Buguias, Benguet. The amicable settlement prepared shows that Judith, the wife of accused, their relatives, common friends and Barangay Officials, about 61 in all, tried to patch things up but failed. This is normal in the countryside or rural areas where common relatives, friends and elders in the community try to intercede between the accused and victim.

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Eighth, the Court believes the version of Abrelinda that on March 4, 1998, she was called by her sister Judith to take care of the latter's children as Judith is going to Buguias, Benguet. This was the reason why Abrelinda had to go to the house of Judith and the accused which was just 60 meters away from the house of Marcellet in Irisan where she stays. And that was when the rape incident happened. These declarations of Abrelinda were

corroborated by Marcelet who testified that Abrelinda slept in the house of the accused on the night of March 4, 1998 because she was called by Judith to take care of her children while Judith is in Buguias, but in the early dawn of March 5, 1998, Abrelinda returned to Marcelet's house crying complaining that she was raped by the accused. The testimony of Marcelet on what Abrelinda reported could even be considered as part of the *res gestae* as when Abrelinda made said spontaneous utterances while crying to her sister she was still under the influence of the startling occurrence that happened to her just a few hours before.

Like Abrelinda, Marcelet would not testify on these facts if they were not true. Both sisters, Abrelinda and Marcelet, knew that they will be causing great pain and sorrow to their elder sister Judith and the latter's children in doing so but they had no other choice but to tell the truth.

Ninth, it is hard to believe that accused can baby sit his children Jomar and Janice, ages 5 and 3 respectively while doing his work at the same time. Accused could not possibly change their clothes, wash them, feed them, have them defecate and urinate and take care of them while he was on duty for 24 hours as security guard. His claim (that) he brought them to his work where electric transformers and installations are being guarded by him, a dangerous place ordinarily is not plausible and credible. Hence the need for someone in his house to take care of his very young children while his wife is away is more believable."[5]

The dispositive portion of the judgment reads:

"WHEREFORE, Judgment is hereby rendered finding the accused Muller Baldino Guilty beyond reasonable doubt of the crime of rape, defined and penalized under Section 2 of Rep. Act 8353, as charged in the Information, with the aggravating qualifying circumstance of the victim, Abrelinda Silam, being a 13 year old minor and the offender Muller Baldino, being her brother-in-law and relative by affinity within the third civil degree (husband of her elder sister Judith Silam-Baldino) and sentences him to suffer the supreme penalty of Death to be implemented in accordance with law; to indemnify the offended party, Abrelinda Silam, the sum of P50,000.00 as civil indemnity and the sum of P50,000.00 as Moral damages, both without subsidiary imprisonment in case of insolvency and to pay the costs.

SO ORDERED."[6]

The Public Attorney's Office filed a brief for the accused-appellant raising a lone assignment of error, namely:

"THE COURT OF ORIGIN HAS COMMITTED A SERIOUS ERROR IN METING OUT ON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH DESPITE THE PRESENCE OF THE APPLICABLE RULINGS IN THE CASES OF PEOPLE VERSUS GARCIA (281 SCRA 463, 489) (1997) AND PEOPLE VERSUS RAMOS (G. R. No. 129439, SEPTEMBER 25, 1998).[7]

Accused-appellant prays that the judgment of conviction be modified so as to reduce the penalty to reclusion perpetua.

The Solicitor-General filed a Manifestation and Motion in lieu of Appellee's Brief. He agrees that it was "palpable error" on the part of the trial court to have imposed the death penalty, and takes exception to the award of "the measly amount of P50,000.00 as indemnification."

The Public Attorney's Office filed a Manifestation in lieu of Reply Brief, reiterating that the proper imposable penalty is reclusion perpetua.

The appeal has merit.

We find from our own examination of the evidence no reason to disturb the factual findings of the trial court and being in full agreement in its ratiocination, we affirm the findings of the trial court that the accused-appellant

raped the private complainant Abrelinda.

The absence however, of an allegation in the Information of the qualifying circumstance of relationship, precludes a conviction for qualified rape.

Republic Act No. 8353, insofar as pertinent, reads:

"ART. 266-B. Penalties.- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, homicide is committed. The penalty shall be death.

The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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;
- 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
- 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.
- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
- 5) When the victim is a child below seven (7) years old;
- 6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
- 8) When by reason or on the occasion of the rape, the victim suffered permanent physical mutilation or disability;
- 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime and;
- 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. "

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The above-quoted provision is a reenactment of Article 335 of the Revised Penal Code, as then amended by Republic Act No. 7659, which introduced seven attendant qualifying circumstances that would justify imposition of the death penalty.

The seven attendant circumstances above-quoted, first introduced in Section 11 of Republic Act No. 7659 partake of the nature of "qualifying circumstances" which would increase the penalty by degree and make the crime punishable by the single indivisible penalty of death. It has long been the rule that qualifying circumstances must be properly pleaded in the indictment; if the same are not pleaded but proved, they shall be considered only as aggravating circumstance.[8] Indeed it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable by death, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.[9]

It was established that the accused-appellant is the brother-in-law of the private complainant Abrelinda, being the husband of the latter's older sister Judith, and consequently, a relative by affinity within the third civil degree. This circumstance was never mentioned in the Information, which charges merely simple rape. The trial court therefore erred in convicting the accused-appellant of qualified rape. The crime committed under the circumstances is simple rape attended by generic aggravating circumstance of relationship. The proper penalty imposable, as it is hereby imposed is reclusion perpetua. The civil indemnity of P50,000.00 awarded by the trial court is in order, as the conviction is not for qualified rape and since the proven relationship of the accused-appellant as the brother-in-law of the victim, makes him a brother by affinity, the circumstance of relationship may be considered as an aggravating circumstance which justifies the award of exemplary damages.[10]

WHEREFORE, the judgment of conviction rendered by the Regional Trial Court of Baguio City in Criminal Case No. 15635-R against accused-appellant Muller Baldino is affirmed with the modification that the accused-appellant is convicted of simple rape and is accordingly meted the penalty of Reclusion Perpetua. The civil indemnity in the amount of P50,000.00 and the award for moral damages also for P50,000.00 are hereby affirmed and in addition thereto, an award of P25,000.00 as exemplary damages is granted.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Penned by Judge Ruben C. Ayson.

[2] Records, p. 1.

[3] Rollo, pp. 18-21.

[4] TSN, September 23, 1998, p. 7.

[5] Decision, p. 7-14.

[6] Ibid., p. 16.

[7] Appellant's Brief, p. 1

[8] *People vs. Garcia*, 281 SCRA 463; *People vs. Ramos*, 296 SCRA 559.

[9] People vs. Garcia, supra, at p. 489.

[10] Article 2230, Civil Code.

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