

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO ABINO Y ADVINCULA, APPELLANT.

G.R. No. 137288. December 11, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Rape, particularly incestuous rape, is reprehensible and abominable. However, to convict the accused and to sentence him to death requires proof beyond reasonable doubt of the elements of the crime and the qualifying circumstances specifically alleged in the information. Conviction always rests on the strength of the evidence of the prosecution, never on the weakness or the absence of that of the defense.

The Case

For automatic review by this Court is the Decision[1] dated January 20, 1999, promulgated by the Regional Trial Court (RTC) of Calamba, Laguna (Branch 34) in Criminal Case No. 5793-98-C, finding Danilo Abino y Advincula guilty of rape beyond reasonable doubt. We quote the decretal portion of the Decision:

"ACCORDINGLY, this Court finds accused Danilo Abino y Advincula GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of death.

"Accused is further directed to indemnify the offended party, Daniela Abino, the sum of FIFTY THOUSAND (P50,000.00) PESOS as and for moral damages.

"With costs against the accused." [2]

The information[3] against appellant reads as follows:

"That on or about April 6, 1996, in the Municipality of Los Banos, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused did then and there have carnal knowledge of his daughter, the minor DANIELA ABINO y MERCADO, who was then asleep and unconscious, against her will and consent, to her damage and prejudice."

With the assistance of his counsel,[4] appellant pleaded not guilty when arraigned on July 10, 1998.[5] In due course, the latter was tried and convicted of qualified rape.

The Facts

Version of the Prosecution

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:[6]

"1. Fourteen-year old Daniela Abino lived with her father, appellant Danilo Abino, at Agua Santa, an old resort located in Bambang, Los Baños, Laguna. Appellant was a member of the Los Baños task force on market security, assigned to night shift duty at the market. Daniela's mother no longer lived with them as she had

another family

"2. On the evening of April 6, 1996, appellant came home drunk. He took a bath and told Daniela to prepare his things for the market. Daniela obeyed him and went to the second floor of their house to fix her father's things. Appellant followed Daniela clad only in his underwear with a towel wrapped around his waist. He embraced Daniela and pressed his penis against her buttocks. Daniela pulled herself away from appellant and went downstairs.

"3. When appellant went down, Daniela told him that she was no longer going with him to his office. Appellant said nothing and left for work. Daniela stayed at the first floor of their house until she decided to go to bed and went upstairs.

"4. Daniela was fast asleep in her bed when she felt somebody on top of her and kissing her. She opened her eyes and saw appellant who was naked. Daniela found herself naked too as she no longer had her panty and shorts on. When Daniela woke up and moved, appellant stood up, dressed himself and then left. Daniela felt intense pain in her vagina and cried.

"5. Daniela put on her panty and tried to sleep, but sleep escaped her and she kept on crying. The following morning, she prepared herself for school and cooked rice. Daniela, however, did not go to school that day and stayed at home.

"6. Daniela did not immediately tell anybody about what appellant did to her. She stayed with him for about seventeen months more or until September 1997. However, Daniela eventually decided to run away from home because she was afraid that appellant might molest and hurt her again.

"7. Daniela stayed in a canteen near 'Star City' in Manila. After her stint at the canteen, Daniela worked for one Mando Parr in Pasay City. She, however, left his employ. In December of 1997, Daniela found herself in Baguio City where she met a social worker who placed her in the custody of the Department of Social Welfare and Development.

"8. On December 17, 1997, Daniela was brought by one Aileen Edades of the Commission on Human Rights to the City Health Office in San Pablo City. There she was examined by Dr. Azucena I. Bando, the Assistant City Health Officer of San Pablo City.

"9. Dr. Bando found that Daniela's sex organ bore a '3rd and 9 o'clock old healed laceration scar' and that the scar was caused by the insertion of a foreign body, specifically, 'the penis or a male organ,' into Daniela's vagina. According to Dr. Bando, the laceration might have been inflicted 'a year ago'."

Version of the Defense

On the other hand, the Public Attorney's Office presents appellant's version of the incident simply as follows:[7]

"Danilo Abiño y Advincula testified that the allegation in the complaint is not true. The only reason why the complainant filed the rape charge against him is that he is a very strict father, that's the reason why the complainant is angry with him."

Ruling of the Trial Court

The court a quo found complainant's testimony "strong, credible and competent." It "could not fathom any justifiable reason why she at so young an age would accuse her own father and portray the latter as a beast who deflowered her if the same be not true." Finding carnal knowledge to have taken place between them, it sentenced appellant to death.

Hence, this automatic review before us.[8]

Assignment of Errors

In his Brief, appellant faults the court a quo with the following alleged errors:[9]

"The lower court erred in convicting the accused based on the incredible and inconsistent testimony of Daniela Abiño.

"The lower court gravely erred in convicting the accused despite failure of the prosecution to prove his guilt beyond reasonable doubt."

Basically, the assigned errors boil down to the sole issue of whether the prosecution evidence proves appellant's guilt beyond reasonable doubt of the crime charged.

The Court's Ruling

The appeal is meritorious.

Main Issue:

Sufficiency of Evidence

At the time of the alleged commission of the acts stated in the Information, the Revised Penal Code, as amended by Section 11 of RA 7659, specifies how rape may be committed, as follows:

"Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of 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 death.

"When the rape is attempted or frustrated 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, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
- when the victim is under the custody of the police or military authorities.
- when the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.
- when the victim is a religious or a child below seven (7) years old.

- when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

Insofar as it is relevant to the present case, the law states that once the crime of rape is proven, the circumstance of father-daughter relationship between the victim and the offender raises the penalty to death. Such relationship, which must be both alleged in the information and proven by the evidence, does not by itself operate to convert carnal knowledge to rape. It bears emphasizing that the law requires that the elements of rape be proven first before the circumstance of relationship can be appreciated to increase the penalty.

In the present case, the Information alleges that the crime of rape was committed under paragraph number two of Article 335 of the Revised Penal Code. Hence, before appellant can be convicted thereof, two elements must concur: (1) he had carnal knowledge of complainant, Daniela; and (2) she was unconscious when it happened.

The prosecution sought to prove the element of unconsciousness through the testimony of Daniela that on the night of April 6, 1996, she was asleep. As to the element of carnal knowledge, it presented only the following circumstantial evidence:

- On the night of April 6, 1996, Daniela woke up to find her father on top of her, but he promptly got off when she "opened her eyes."
- Thereafter she felt pain in her vagina.
- After seventeen months, she left home and wandered from place to place for several more months, until she met a social worker in Baguio.
- She was then examined and found to have old healed hymenal lacerations at the 3 and the 9 o'clock positions and a yellowish white discharge, which indicated infection due to coitus several times with an infected male.[10]

An examination of Daniela's entire testimony compels us to reverse the RTC's hasty conclusion of rape based only on its circumstantial finding of carnal knowledge between appellant and Daniela. Contrary to the court a quo's pronouncement, Daniela was not convincing on very material points.

Q

Tell us on the night of April 6, 1996 where were you then?

A

I was in our house at Agua Santa.

Q

Where is this Agua Santa where you said you were then?

A

In Bambang sir.

FISCAL:

Q:

Los Baños, Laguna?

A

Yes, sir.

Q

Were you alone in your house or did you have companions at that time?

A

None, sir.

Q

What time did you go to sleep that night of April 6, 1996?

A

I do not know the time sir.

Q

When asked if you ha[d] any companions on that night of April 6, 1996 you said you ha[d] no companions, tell us why were you alone on that night in your house?

A

Beclus[e] my father left.

Q

How about your mother, do you have any mother?

A

Yes, sir.

Q

Where was she on that night of April 6, 1996?

A

She already has another family.

Q

What time did you wake up that night of April 6, 1996?

A

I do not know.

Q

Were you able to continuously sleep the whole night of April 6, 1996?

A

No, sir.

Q

Why?

A

Because that night, my father who was dr[u]nk took his bath and after that he told me to fix his things in going to the office. So I went upstairs to fix his things and he followed me.

ATTY. PADERAYON:

Before the next question, we object to the answer, your honor, considering that that is not responsive to the question.

FISCAL:

Q

Where did he follow you?

A

To the second floor of our house.

Q

After your father followed you [o]n the second floor of your house, what did he do? if any?

A

He told me it was cold.

Q

After he embraced you, what happened?

A

"Yong ari niya idinikit sa puwet ko."

Q

After he did that to you, what did he do next?

A

"Umalis ako sa harap niya at bumaba [ako] ng hagdan." (Witness is crying)

Q

After you said you left and went down, what did your father do?

A

He dressed up and when he was already on the first floor, I told him that I will not go with him anymore [to] the office.

Q

Why? Did he ask you to go with him [to] the office?

A

Yes, sir, we are always together in his office and I am sleeping in his office.

Q

By the way, where [is] this office where you said your father is working?

A

Near the market sir.

Q

What is his work in the market?

A

Tax collector sir.

Q

After you told your father that you will not go with him anymore what did he tell you?

A

Nothing, he just left.

Q

On your part, what did you do after your father left?

A

I just stayed in the first floor of our house, up to x x x nigh[t] time and when x x x night time came I went to sleep.

FISCAL:

Q:

Did your father come back that night?

A

Yes, sir.

ATTY. PADERAYON:

Leading, your honor.

FISCAL:

Q:

Why did you know that your father went back that night?

A

I saw him that night.

Q

At what time did you see him and what was he doing at the time you saw him?

A

When I saw him that night I don't know what time was that[.] I returned to sleep and I was awakened and felt that someone was on my top.

Q

Were you able to recognize who was that somebody who was on your top?

A

Yes, sir.

Q

Who?

A

My father sir.

Q

What was your father doing at the time you said he was on top of you?

A

When I opened my eyes he left me.

Q

Can you tell us what your father was wearing when you said he was on top of you?

A

Pants and white t-shirt and [he] was wearing a vest.

Q

And when your father you said left what did you notice on your self?

A

My private part was painful.

FISCAL:

Q:

Aside from the pain that you felt what else did you [notice] from your private part?

A

"Mahapdi" whenever I am urinating.

Q

When you said you felt pain after your father left, what were you wearing?

A

I was wearing my uniform.

Q

At the time your father left at the time you saw him, what were you wearing?

A

I was wearing skirt and shorts.

Q

So when you said you felt pain after you said your father was on top of [you] and then you left, what did you do?

A

I noticed my panty was yellowish and was hot "mainit ng konti".

Q

And when you noticed these things, what did you do?

A

I just cried.

Q

Where was your father at the time you said you were crying?

A

He returned to the market.

Q

Finally, what time did you wake up that morning?

A

I was not able to sleep then.

Q

The following morning, what did you do?

A

I cooked rice and prepared myself [for] school.

Q

Did you go to school the following day?

A

No, sir.

FISCAL:

Q:

Why?

A

I felt lazy.

Q

What did you do that day of April 7 when you said you did not go to school?

A

Nothing sir. I just stayed in the house.[11]

Then, on redirect examination, she testified:

Q:

Now you said that you woke up, your father was on top of you, what was he doing at that time when he was on your top?

A:

He was kissing me, sir.

Q:

And aside from kissing, what else x x x did [he do] to you?

A:

Nothing more, sir."[12]

In attempting to clarify and consolidate its case against appellant, the prosecution succeeded only in destroying the testimony of its star witness. In the process, it further strengthened the premise that, other than lying on top of Daniela and kissing her, appellant did "nothing more" on April 6, 1996.

The circumstantial evidence in the present case admits of the possibility that appellant could have had carnal knowledge of complainant. But we cannot affirm his death sentence on the basis alone of a mere possibility. Settled jurisprudence[13] requires proof beyond reasonable doubt, not mere possibility of the presence of all the elements of the crime charged.

Here, the prosecution's contention that the element of carnal knowledge concurred with the element of unconsciousness is neither believable nor supported by evidence. There is no evidence to show that Daniela was knocked out, drugged, intoxicated, tired and worn out or in any similar condition that would induce such a heavy sleep. There was therefore nothing that would account for her insensitivity to appellant's supposed act of inserting his penis into her vagina, if this really happened on April 6, 1996.

The prosecution claims that the painful vagina and the lacerated hymen are circumstantial evidence of carnal knowledge that occurred while Daniela was asleep on the night of April 6, 1996. If this were so, it follows that the purported penile penetration must have been deep enough to reach and lacerate her hymen at the 3 and the 9 o'clock positions. It is simply incredible that the pain that can reasonably be expected from such insertion of a penis into her young, virginal vaginal canal would fail to wake her up. How could she have slept through the entry of her father's penis into her vagina and its exit therefrom -- from beginning to end - and awakened only after the alleged completion of the crime, as the prosecution would have us believe? It may have been possible if she had been drugged, but a case must rest on evidence, not on mere possibility.

"It is a legal truism that evidence, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself." [14] "We have no test of the truth of human testimony, except in conformity with our knowledge, observation, and experience and whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance." [15] In the present case, the circumstances surrounding the prosecution's allegations are not in accord with human experience. "The proof against the accused must overcome not only "the test of reason and logic, but above all, that of experience." [16] It is more reasonable to believe, that, as Daniela herself testified, appellant kissed her on the night of April 6, 1996 - but did nothing more; or, as can reasonably be inferred from the records, he had carnal knowledge of her, but she was conscious and willing.

Doctrinally, where "the inculpatory facts and circumstances are capable of two or more explanations one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction." [17]

It is claimed that appellant had carnal knowledge of his daughter on a day other than on April 6, 1996, and under some circumstance other than while she was asleep. Aside from speculation and conjecture, this argument finds no factual support. And even if true, such circumstance cannot convict him of the rape charged in the Information.

Neither can we, in these proceedings, convict appellant of rape committed through intimidation as a result of his moral ascendancy, even if it were proven beyond reasonable doubt. He was charged and tried on an Information alleging rape of a woman who was "asleep and unconscious." Convicting him of rape done by intimidation would violate his constitutional right "to be informed of nature and cause of the accusation against him." [18]

Rape, particularly incestuous rape, is reprehensible and abominable. However, to convict the accused and to sentence him to death requires that (1) the prosecution's evidence for the elements of the crime and (2) the qualifying circumstances specifically alleged in the Information must pass the test of moral certainty. Absent the satisfaction of this stringent requirement, we must uphold appellant's constitutional right to be presumed innocent.

WHEREFORE, the appeal is GRANTED and the assailed decision is hereby REVERSED and SET ASIDE. Appellant Danilo Abino y Advincula is ACQUITTED on reasonable doubt. The director of the Bureau of Corrections is ordered to cause the immediate release of appellant, unless the latter is being lawfully held for another cause; and to inform the Court of the date of appellant's release, or the reasons for his continued confinement, within ten days from notice. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, and Buena, JJ., abroad on official business.

[1] Penned by Judge Antonio M. Eugenio Jr.

[2] Assailed Decision, p. 4; rollo, p. 16; records, p. 179.

[3] Records, p. 19, signed by Assistant Provincial Prosecutor Miguel Noel T. Ocampo.

[4] Atty. Eloida Capuno.

[5] Order dated July 10, 1998; records, p. 40.

[6] Appellee's Brief, pp. 3-5; rollo, pp. 80-82 The Brief was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Antonio L. Villamor and Solicitor Vida G. San Vicente.

[7] Appellant's Brief, p. 4; rollo, p. 54. Appellant's Brief was signed by Atty. Arceli A. Rubin, Atty. Teresita S. de Guzman and Atty. Josephine M. Advento-Vitocruz, all of the Public Attorney's Office.

[8] This case was deemed submitted for resolution on January 25, 2000, upon receipt by this Court of Appellant's Reply Brief.

[9] Appellant's Brief, p. 5; rollo, p. 55.

[10] TSN October 16, 1998, pp. 5-6.

[11] TSN, September 28, 1998, p. 6.

[12] TSN, October 7, 1998, p. 9.

[13] *People v. Aranda*, 226 SCRA 562, September 17, 1993; *People v. Macagaling*, 237 SCRA 299, October 3, 1994.

[14] *People v. Magpantay*, 284 SCRA 96, January 14, 1998, per Melo, J.

[15] *People v. Nepomuceno Jr.*, 298 SCRA 450, November 11, 1998, per Melo, J.

[16] *People v. Diaz*, 308 SCRA 744, June 21, 1999, per Panganiban, J.

[17] *People v. Solis*, GR No. 138936, January 20, 2001, p. 27, per Panganiban, J., citing *People v. Ale*, 145, 145 SCRA 50, October 14, 1986, per Gutierrez, J.

[18] §14(2), Article III, Constitution; *People v. Bugtong*, 169 SCRA 797, January 31, 1989, per Fernan, CJ.

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