

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DELFIN DELA CRUZ, APPELLANT.

G.R. No. 137405. September 27, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Though not specifically assigned as an error, the sufficiency of the prosecution's evidence must be passed upon in all appeals of criminal cases, especially those in which the death penalty was imposed by the trial court.

The Supreme Court must be satisfied that, indeed, the crime charged and the identity of the culprit were proven beyond reasonable doubt by the prosecution.

The Case

Before us for automatic review is the April 14, 1998 Decision^[1] of the Regional Trial Court (RTC) of San Jose, Occidental Mindoro (Branch 46), in Criminal Case No. R-4114. The RTC, which convicted Delfin dela Cruz of rape and sentenced him to death, disposed as follows:

“WHEREFORE, finding the accused Delfin dela Cruz, guilty beyond reasonable doubt of the crime of rape, described and penalized under Article 335 of the Revised Penal Code and Section 11 of Republic Act No. 7659, otherwise referred to as the Death Penalty Law, this Court hereby sentences him to suffer the capital penalty of DEATH.

“The accused is ordered to indemnify the offended party, Marikit dela Cruz, damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

“The accused, who is presently detained at the Provincial Jail at Magbay, San Jose, Occidental Mindoro, is ordered immediately transferred to the new Bilibid Prisons, Muntinlupa City, Metro Manila.”^[2]

During his arraignment on March 5, 1997,^[3] appellant, with the assistance of his counsel,^[4] pleaded not guilty.

In an Information dated January 24, 1997,^[5] he was charged as follows:

“That on or about the 24th day of October, 1996 at around 12:00 o'clock in the evening, in Barangay Lagnas, Municipality of Sablayan, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Marikit dela Cruz, a woman, against her will and consent.

“CONTRARY TO LAW.”^[6]

The Facts

Version of the Prosecution

The prosecution's account of the factual antecedents of the case is narrated by the Office of the Solicitor General

(OSG) as follows:

“Private complainant Marikit dela Cruz is the seventh (7th) child of appellant Delfin dela Cruz. x x x

“x x x x x x x x

“On October 24, 1996, Marikit, then sixteen (16) years of age, had a reunion with her family x x x at their farm in Lagnas, Sablayan, Occidental Mindoro, on the occasion of the birthday of her father, herein appellant Delfin dela Cruz. The celebration ended at past 9:00 o’clock in the evening when appellant’s two drinking buddies left the place.

“Shortly before midnight, when Marikit was already preparing to sleep, she was summoned by her mother telling her that appellant wanted to talk to her. Marikit complained that she was sleepy but her mother told her that her father may have something important to tell her.

“Marikit obeyed and, together with her mother, she went to her father who was waiting at the water pump ‘bomba’ near their house. There, appellant told Marikit to go with him to the hut of their farm. At first, Marikit declined saying ‘it was very cold already. . . and it is bad for my health,’ but agreed later on because of fear of her father and considering also that her mother urged her to do so.

“Upon arriving at the hut which was one kilometer from their house, appellant asked Marikit ‘what is his gift.’ Marikit replied ‘I do not have a gift.’ Appellant told Marikit ‘to just follow what he wants.’ Thereafter, appellant suddenly embraced and kissed Marikit, and started undressing her. She tried to resist but he threatened to harm her. After he removed all [his] daughter’s clothes, he placed himself on top of her and forcing her to face him. On the witness stand, Marikit exclaimed ‘Ginalaw niya ako,’ referring to appellant who ‘was able to penetrate his private part on my private part.’ During their four (4) hours stay inside the hut, appellant sexually abused [his] daughter twice. Marikit ‘cried and cried’ and asked her father why he raped her. Appellant, however, did not answer. Thereafter, they left the hut and went home. Marikit was no longer able to sleep that night.

“Three (3) days thereafter, on October 28, 1996, Marikit decided to file a complaint against her father. On the same date, she submitted herself to medical examination. The examining Health Officer, Dr. Wilfred G. Kenept, issued a Medico-Legal Certificate dated October 28, 1996, which disclosed the following findings:

‘Physical Examination:

HEENT -

CHEST & LUNGS -

ABDOMEN - ESSENTIALLY NORMAL

EXTREMETIES -

Internal Examination shows normal looking external genitalia, with abrasion on the posterior aspect of the left labia minora, hymen not intact.’

“On October 29, 1997, Marikit executed her criminal complaint charging appellant, her own father, with the crime of Rape. In a statement with the police executed on the same date, Marikit also disclosed that appellant had first sexually abused her when she was still thirteen (13) years of age, although she did not formally lodge her complaint then on the belief that appellant would change his ways.

“Sometime in March of 1997, after the Information for Rape against appellant had already been filed in court, appellant wrote to Marikit two (2) separate letters begging for forgiveness. She gave these letters to DSWD Officer Edgar P. Calabio for safekeeping.”[7] (Citations omitted)

Version of the Defense

On the other hand, appellant wrote an abbreviated version of the facts in this manner:

“Accused Delfin dela Cruz testified that complainant is his daughter. That he has a total of twelve (12) children. He admitted the charge of rape filed against him by his daughter. Upon questioning by the Court, he denied having begotten a daughter out of a relationship with his sister-in-law, nor did he [have] a son from his eldest daughter Juliet, as alleged by the complainant. He denied having raped the complainant on the night of October 24, 1996. He admitted that October 24, 1996 was his birthday. He allegedly maltreated (nabugbog ko lang po siya) his daughter (complainant) when the latter was in first year high school but he never sexually abused her. For the sake of his family he will admit that it was his fault.”[8]

The Ruling of the Trial Court

The trial court accorded credence to the testimony of private complainant and explained its ruling in this wise:

“The prosecution has been able to prove by clear and convincing evidence, [accused’s] guilt beyond reasonable doubt, foremost of which are the straightforward testimony of the complaining witness, the Medical Certificate issued by Dr. Wilfred Kenept on October 28, 1996 that indeed the private complainant’s hymen is no longer intact, and the existence of abrasion on the posterior aspect of her left labia minora, thus indicating recent sexual intercourse conformably with the date when she was sexually abused, and the admission of the accused himself in his two (2) letters he wrote to his daughter Marikit.

“In particular, in his first letter he expressly admitted that he did rape his daughter twice as alleged by her in her complaint, and at the same time asked for forgiveness. His second letter did not explicitly admit his guilt but attempted to utilize his moral ascendancy as a father over his daughter. He likewise tried to prick his daughter’s conscience by reminding her that he was the one who gave her life in this world and had at one time, when Marikit was sick, even risked his health if not life, by crossing the flooded river to secure medicine for her such that he wanted her to forget about her complaint against him.

“x x x x x x x x

“The attempt of the accused to save his neck by changing his plea of not guilty to guilty, has been conveniently resorted to by him in the hope that this Court will be less forgiving [sic] of his crime or at least be lenient to him. This Court, however, is not to be convinced, as the prosecution has fully established his guilt beyond reasonable doubt. His voluntary plea of guilt, while confirming this established fact, simply operates to abbreviate the otherwise long and tedious proceedings.

“Under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, otherwise referred to as the Death Penalty Law, and as further amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997, reclassifying rape as a crime against persons, when rape is committed through force, threat or intimidation or 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, as in the case at bar, the imposable penalty is death.

“Pursuant to the foregoing provisions, there is no doubt that the accused can be meted the supreme penalty of death.”[9]

Hence, this automatic review.[10]

The Issue

Appellant does not challenge the finding of guilt arrived upon by the RTC, but questions its imposition of the death penalty, in this lone assignment of error:

“The trial court erred in imposing the penalty of death for the crime charged despite that accused was not properly informed of the nature and cause of accusation against him which is in violation of his constitutional right.”[11]

The sufficiency of the prosecution’s evidence was not raised as an issue. Still, the Court reviewed it under the principle that an appeal in a criminal case, especially one in which the death penalty has been imposed, opens the entire record for scrutiny. We shall take up the appropriate penalty as the second issue.

The Court’s Ruling

The appeal is partly meritorious.

First Issue

Sufficiency of the Prosecution’s Evidence

True, appellant no longer questions his criminal liability, but only seeks to reduce the penalty imposed by the RTC. On its own volition, this Court has nonetheless pored over the records of the case on the theory that an appeal in a criminal case is open to a de novo review.

After a meticulous study of the evidence, we are convinced that the prosecution has clearly and sufficiently established the fact of rape and the culpability of appellant for the crime alleged in the Information. Verily, we find no reason to doubt the trial court’s finding of guilt. The victim testified on the details of the rape incident in a clear, straightforward and credible manner as follows:

“Q: On October 24, 1996, at about midnight, where were you, and what were you doing?

A: I was in our hut, sir.

Q: Where is that hut located?

A: It is far from our house, sir.

Q: Where is your house located in relation to the hut?

A: It is far, sir.

Q: How far in terms of meter?

A: Around one (1) kilometer, sir.

Q: Where is this particular hut located?

A: In the farm, sir.

Q: Will you tell us why on that evening of Oct. 24, 1996 at around 12:00 midnight you were in the nipa hut?

A: I was brought by my father there, sir.

Q: Who is this father of yours?

A: Delfin dela Cruz, sir.

x x x x x x x x

Pros. Salcedo

Q: Why did your father bring you to the hut during that night?

A: 'Niyaya po niya ako.'

Q: How did he invite you?

A: He told me that there was something important that he is going to tell me.

Q: What were you doing in your hou[se] when your father invited you to proceed to the hut?

A: I was about to sleep, sir.

Q: When your father invited you to go to the hut in your farm, what did you do if you did anything?

A: I told him that I will sleep.

Q: But what did your father say when you told him that you are going to sleep?

A: He told me that he has a very important thing to tell me, sir.

Q: Where was your mother at the time your father was inviting you to proceed to the hut in your farm at that time?

A: She was with me, sir.

Q: What did your mother say when your father invited you to proceed to the hut in your farm that night?

A: My mother forced me to go with my father, sir.

Q: Did you in fact go with your father in the farm?

A: Yes, sir.

Q: When you arrived in your hut in the farm, what did your father say if any?

A: None, sir.

Q: What did he do when you arrived in the hut?

A: 'Nag kuwentuhan,' sir.

x x x x x x x x

Q: What else did you talk about with your father?

A: He asked me what is his gift, sir.

Q: Why? What is the occasion if any that your father is asking his gift from you?

A: It was his birthday on that date, sir.

Q: What did you tell him then?

A: I told him that I do not have a gift, sir.

Q: What did your father say when you told him that you cannot offer a gift to him?

A: [He] told me to just follow what he want, sir.

Q: What did your father do after he told you to just follow what he want to do?

Atty. Jaravata

May we make of record that the witness is in deep thinking. She cannot answer the question asked by the

Prosecutor.

COURT

Make the observation of the counsel be on record.

Atty. Jaravata

May we make a record also that the private offended is blushing and she is in deep thinking.

COURT

Let the question be answered.

A: He suddenly embraced and kissed me, sir.

Pros. Salcedo

Q: Thereafter, what else did your father do?

A: He started to undress me.

Q: What did you do when your father started to undress you?

A: I returned my clothes that he is removing, sir.

Q: Why? What dress you are wearing at that time when your father is trying to undress you?

A: I am wearing a T-shirt and short pants, sir.

Q: When your father is removing your clothes, what were you doing?

A: I tried to resist, sir. I fought back.

Q: When you tried to resist and fight back because your father was removing your dress, what did he tell you if any?

A: He threatened me that he will harm me, sir.

Q: After threatening you that he will harm you because you are then fighting back and resisting what did your father do if he did anything?

A: He undressed me, sir.

X X X X X X X X

Pros. Salcedo

Q: You said that he undressed you, what dress was removed from your body?

A: All my clothes, sir.

Q: Including you underwear?

A: Yes, sir.

Q: After your father has totally undressed you, what did he do if he did anything?

A: He raised himself on top of me, sir.

Q: In relation to the hut where you are brought by your father, where did your father undress you and placed

himself on top of you?

A: Inside the hut, sir.

X X X X X X X X

Q: After your father has already placed himself on top of you, what else did he do?

A: He was able to get what he wanted to get, sir.

Q: What did you mean by that?

A: 'Ginalaw niya ako,' sir.

COURT

Q: What you mean by 'ginalaw niya ako'?

A: He was able to penetrate his private part on my private part, sir.

Q: How long did you stay in that hut?

A: Around four (4) hours, sir.

Pros. Salcedo

Q: Within that four hours, what else did your father do after he has got what he wanted from you?

A: He repeated what he had done to me, sir.

Q: You mean, your father had sexual intercourse to you?

A: Yes, sir.

Q: After that what did you do?

A: I cried and cried, and I asked him why he did that to me.

Q: What was the answer of your father?

A: He did not answer anything, sir.”[12]

Moreover, it is worth noting that during the course of the trial, appellant admitted having sexually violated his own daughter as follows:

“Q: You stated that you are Delfin dela Cruz, you are the same Delfin dela Cruz in this case?

A: Yes, sir.

Q: And how are you related to the complainant Miss Marikit dela Cruz?

A: She is my daughter, sir.

Q: How many children do you have in your family?

A: Twelve (12) sir.

Q: And of course, you are aware of the complaint filed against you by your daughter?

A: Yes, sir.

Q: What can you say about this, do you admit to the court the offense charged against you?

A: Yes, sir.”[13]

Indeed, there is no higher evidence of guilt than the voluntary testimony of the accused himself. Such admission is evidence of the highest order, since it is supported by the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience.[14]

Second Issue

Proper Penalty

Appellant argues that the Information under which he was arraigned charged him only with simple rape as defined by Article 355 (paragraph 1) of the Revised Penal Code. Such offense he contends, is not punishable with the death penalty; besides, the qualifying circumstances of minority and relationship were not alleged in the Information.

The OSG, on the other hand, counters that appellant was reasonably apprised of the nature of the accusation against him, inasmuch as the Information made reference to the sworn Complaint with appendices (Sworn Statement, Birth Certificate and Medico-legal Certificate) that unmistakably establish the minority of the victim and her relationship to him.

We agree with appellant. The Court has consistently ruled that the various circumstances enumerated under RA 7659 are in the nature of qualifying elements, which should be alleged in the information and proved beyond reasonable doubt during the trial.[15] Thus, in order that the circumstances of minority and relationship may be appreciated, both must be specifically alleged in the information and duly proven during trial, with equal certainty as the crime itself.[16]

Indeed, in the present case, the Information did not allege the qualifying circumstances that the victim was below eighteen (18) years old when the offense was committed, and that the offender was her father. Hence, in no way can appellant be convicted of qualified rape, because the Information clearly makes out a case for simple rape only.

The qualifying circumstances of minority and relationship must at all times be pleaded in the information, consistent with the constitutional right of the accused to be informed of the charges against him.[17] It is a matter of settled jurisprudence that qualifying circumstances must be properly pleaded in the indictment.[18] That certain documents or appendices evincing the aforementioned qualifying circumstances are attached or referred to in the Information will fall short of the stringent standards established by jurisprudence. To be sure, the minority of the victim and her relationship to the offender must be specifically and clearly set forth in the information itself in order that the accused may be convicted of qualified rape.

It would certainly 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, but is later convicted of qualified rape punishable with death.[19]

Where the prosecution fails to conjointly allege and prove the qualifying circumstances of minority and relationship, the accused should be held liable for simple rape only.[20] To effectively prosecute him for the crime of qualified rape, these two circumstances must concur, and failure to allege them in the Information -- despite proving them during trial -- effectively rules out the imposition of the death penalty.[21]

When the death penalty is not imposed, prevailing jurisprudence fixes the indemnity ex delicto at P50,000. Consistent with *People v. Catubig*,[22] the victim is also entitled to moral damages without need of further

evidence other than the fact of rape; and to exemplary damages because the circumstance of relationship, though not alleged in the Information, was duly proven.

WHEREFORE, the Decision of the Regional Trial Court of San Jose, Occidental Mindoro (Branch 46) in Criminal Case No. R-4114 is AFFIRMED with the MODIFICATION that appellant is found guilty of simple rape only. Accordingly, the death sentence imposed by the trial court is hereby REDUCED to reclusion perpetua. Additionally, appellant shall pay the victim P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

SO ORDERED.

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

[1] Rollo, pp. 16-25; records, pp. 90-99. The Decision was penned by Executive Judge Ernesto P. Pagayatan.

[2] RTC Decision, p. 10; rollo, p. 25; records, p. 99.

[3] Records, p. 26.

[4] Atty. Ernesto F. Jaravata.

[5] Rollo, p. 6; records, p. 18; signed by Assistant Prosecutor Levitico B. Salcedo.

[6] Ibid.

[7] Appellee's Brief, pp. 5-9; rollo, pp. 80-84. This was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Azucena Balanon-Corpuz and Solicitor John Emmanuel F. Madamba.

[8] Appellant's Brief, pp. 5-6; rollo, pp. 50-51. This was signed by Atty. Pedro B. Baguilat Jr. of the Public Attorney's Office.

[9] RTC Decision, pp. 7-10; rollo, pp. 22-25.

[10] This case was deemed submitted for decision on February 26, 2001, upon this Court's receipt of Appellant's Reply Brief.

[11] Appellant's Brief, p. 1; rollo, p. 46. Original in upper case.

[12] TSN, March 20, 1997, pp. 5-12.

[13] TSN, February 24, 1998, p. 3.

[14] *People v. Espiritu*, 302 SCRA 533, February 2, 1999.

[15] *People v. Lalingjaman*, GR No. 132714, September 6, 2001.

[16] *People v. Asuncion*, GR No. 136779, September 7, 2001.

[17] *People v. Bernaldez*, 322 SCRA 462, January 19, 2000.

[18] *People v. Supnad*, GR Nos. 133791-94, August 8, 2001.

[19] *People v. Sandoval*, 348 SCRA 476, December 18, 2000.

[20] *People v. Flores*, 322 SCRA 779, January 20, 2000.

[21] People v. Surilla, 336 SCRA 376, July 24, 2000.

[22] GR No. 137842, August 23, 2001.

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