

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO FERNANDEZ Y MALINAO, ACCUSED-APPELLANT.

G.R. No. 137647. February 01, 2001

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Under automatic review is the decision[1] of the Regional Trial Court of Pasig, Branch 265, in Criminal Case No. 111534-H, finding accused-appellant Wilfredo Fernandez y Malinao, alias Alfredo Fernandez y Malinao (hereafter WILFREDO), guilty of rape and sentencing him to suffer the extreme penalty of death.

The information[2] which charged WILFREDO with rape was filed with the Regional Trial Court of Pasig, Branch 265. It reads:

On or about December 20, 1996 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Melissande Pasasala y Bohol, a minor, fifteen years of age, against her will and consent.

Upon arraignment, WILFREDO entered a plea of not guilty.

At the trial, the prosecution first presented the victim, Melissande Pasasala who was already seventeen years old at that time. She testified that her mother Dionisia had been living together with WILFREDO since she was nine (9) years old. She, her mother, WILFREDO (whom she reverently addressed as "Papa") and her three siblings all lived together in her mother's house in Bahayang Pag-asa, Ibayong Tipas, Taguig. Her youngest sister was born out of the union of her mother and WILFREDO.[3]

Melissande described their house as made of plywood with a mezzanine. The mezzanine was partitioned into two rooms. She shared a room with her younger sister while the opposite room was occupied by her older brother. Her mother and WILFREDO occupied the room at the ground floor.[4]

In the afternoon of 28 December 1996, she and her younger sister were the only ones left home. WILFREDO then arrived from work with some companions and began a drinking spree which ended at around 7:00 p.m. When his guests left, WILFREDO inquired from Melissande where her mother was. She replied that her mother was at a meeting in the multi-purpose hall. She proceeded to clear the used utensils. WILFREDO thereafter called her and told her to watch the television show. She declined and continued her chore in the kitchen. WILFREDO called her anew. He asked about her studies. She replied that she was doing fine. He further inquired as to what course she was planning to take. At this point, Melissande no longer answered him. She tearfully narrated that WILFREDO was already holding her waist and she was trying to avoid him. He then left her and proceeded to the master's bedroom. Her sister, who was in the same room, went out and called her to say that WILFREDO was asking for her.[5]

Melissande entered the bedroom and was told by WILFREDO to lie down over his chest. He laid her on the bed

and asked if she wanted to go away with him at a faraway place where they could both be happy. Suddenly, he heard a noise. He immediately pushed the girl away. He thought Melissande's mother had arrived. Melissande went back to the kitchen to finish her chore. When WILFREDO realized that her mother was not yet home, he followed her to the kitchen and held her shoulders. He then told her to leave the dishes and follow him. WILFREDO brought her to a long bench where he sat down. WILFREDO requested her to accommodate him (pagbigyan ko raw po siya). She understood the statement as an expression of his attraction to her. But she felt afraid.[6]

WILFREDO asked her to go to his room, but she refused. Instead, he told her to go to the bathroom and actually pushed her there. Inside, he sat on her thighs. She begged, "Papa, I don't like," but he threatened her with a foot-long knife and asked her if she wanted him to kill her. He even declared that he was in the urge to kill. She moved to the corner and begged him once more not to proceed. Instead, he told her to obey what he wished and she reluctantly obliged. WILFREDO dragged her back to and roughly pushed her down (Ibinalibag niya ako) the bench. He thereafter attempted to open her shorts. When he failed, he went out of the house but immediately returned inside the house. He then turned off the lights and dragged the girl. But, he merely switched on the light and went out again, after which, he proceeded to the bathroom. She told him that she was going to sleep. WILFREDO, instead, told her to go up and he followed her.[7]

In her mezzanine bedroom, Melissande pleaded, "I don't want." Unheeding, WILFREDO removed her dress and underwear and laid her down. He removed his pants and brief and positioned himself on top of her. She shouted at him to stop but he punched her and ordered her to be quiet. She could not ask succor from her sister because of his threats to kill them both. He kissed her and as he remained on top of her, he heard her mother knocking. By that time he had penetrated her. He wanted to continue but instead, immediately got up, went down and exited at the back door. Her mother was able to push the bedroom door open as she hurriedly dressed up. Her mother entered the bedroom but Melissande ran out of the house and sought refuge in the home of her older brother Efren Casamayor, who lived in San Joaquin, another town.[8]

Melissande revealed to Efren that WILFREDO raped her. This angered Efren but she dissuaded him from going to her mother's place. She spent the night at Efren's home. The following afternoon, on an errand, she chanced upon her neighbor who informed her that her mother and brother Nobee Jun had been looking for her. She told her neighbor that she was staying with her brother Efren. That evening Nobee Jun visited her at San Joaquin. She admitted to Nobee Jun that she was raped by WILFREDO. Nobee Jun raged and threatened to kill WILFREDO. He further inquired if she had reported the matter to the police. She in fact did go to the police station accompanied by Efren and her sister-in-law on 31 December 1996.[9] October 1998, 2-5.9 There, Melissande executed a sworn statement relating to her harrowing experience.[10] On 3 January 1997, she was physically examined at Camp Crame and the doctor confirmed that she was raped (nagalaw nga raw po ako). The knife used by WILFREDO to threaten her was turned over to the police by her mother.[11]

Melissande claimed that the incident brought her shame. It was not the first time that WILFREDO raped her. The first incident happened in 1994, but she chose to suffer in silence since he threatened to kill her and her mother. This time, however, she mustered the courage to file the rape charge against him. She could no longer consider him as her father. Her mother severed her relationship with him and her relatives disowned him as a member of the family. She wished for him death as penalty for the crime committed against her.[12]

Dionisia Pasasala, Melissande's mother, testified that WILFREDO was her common-law spouse. Since 1989, they had been living together in her house at Ibayong Tipas, Taguig. In the evening of 28 December 1996, she attended a meeting at the multi-purpose hall and arrived at their home at 9:00 p.m. As she knocked on the door, she heard a thud from the mezzanine. She peered through a small hole, about the size of a One Peso coin, near the door. She

saw WILFREDO going down the stairs from the mezzanine, naked waist down. She immediately ran towards the back door which could be easily opened. She went to their room where she saw WILFREDO pretending to be asleep. She dragged him out of the room and demanded to know what he did to Melissande. He did not answer and she proceeded to the mezzanine but Melissande was no longer there; she had left. She looked for her son Nobee Jun, whom she found in a neighbor's house. She instructed him to look for Melissande but she was nowhere to be found.[13]

The following afternoon, Dionisia learned that a neighbor informed Nobee Jun that Melissande was seen in San Joaquin and sent word that she was staying with her older brother, Efren. On 31 December 1996, the police arrested WILFREDO at their home. That same night Dionisia went to the Pasig police station where she found Melissande. Only then did she learn that WILFREDO raped Melissande and threatened her with a knife. They were referred to the Taguig Police where she executed her sworn statement.[14]

The rape incident and several other despicable circumstances angered Dionisia, betrayed her trust for WILFREDO and destroyed her love for him. She then recalled that he drove her blind mother away from their home. He also had previously hit Melissande that caused her head to bleed. She admitted that she was not able to do anything then against WILFREDO because she, too, was afraid of him. He had killed a person and was just out on parole. She also confirmed that he had the habit of carrying a knife even when he sleeps. She also presented as documentary evidence WILFREDO's Certificate of Discharge from Prison,[15] his Certificate of Discharge on Parole[16] and Melissande's Birth Certificate.[17]

On the part of the defense, WILFREDO was the sole witness. His testimony was brief. He did not rape Melissande. He worked as a carpenter and would do repairs in the house he shared with Dionisia. He also denied that there was a hole anywhere near the main door.[18]

On rebuttal, the prosecution presented Nobee Jun Casamayor, Dionisia's son and Melissande's brother. He considered WILFREDO as his stepfather. He was able to confirm for himself what happened to Melissande after accompanying her to Camp Crame for her medical examination. He identified the medico legal report[19] on the examination conducted on her. He further expressed wonder why WILFREDO could not reciprocate the love they gave him. He was treated like a real father; yet, he did not treat them as his own children.[20]

In its decision of 7 December 1998, the trial court convicted WILFREDO and decreed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding Accused, WILFREDO FERNANDEZ y MANILAO alias ALFREDO FERNANDEZ y MALINAO, GUILTY beyond reasonable doubt of the crime of RAPE, aggravated by the fact that the same was committed by the Accused, who is the common-law spouse of the parent of the victim, and hereby sentences him to suffer the penalty of DEATH, as provided for under R.A. No. 7659; to pay the Private Complainant, Melissande Pasasala y Bohol, the sum of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity; THIRTY THOUSAND PESOS (P30,000.00) as moral damages, plus all the accessory penalties provided by law, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The trial court gave credence to the spontaneous and detailed testimony of Melissande on the facts that she was raped. It declared that Melissande's failure to run-away during WILFREDO's attempt to impose his lechery on her could not be interpreted as assent to the sexual act as insinuated by the defense during cross-examination. WILFREDO's moral ascendancy, physical dominance and influence over Melissande were too evident and apparent to be ignored. His tendency for violence, habit, temperament and position as "father" in the family were too much for the girl. Besides, he was threatening her with a knife. Thus, despite her feeble protests, this second rape was likewise consummated.

Hence, this automatic review, as earlier intimated, pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659.

In his lone assignment of error, WILFREDO no longer questions his conviction. Instead, he argues that the trial court erred in imposing the death penalty considering that while the information alleged that the victim was 15 years old at the time the rape was allegedly committed, it failed to allege that the offender was the common-law spouse of the victim's natural mother. The failure to allege these special qualifying circumstances mandated the imposition of the lesser penalty of reclusion perpetua, not death. Thus, the information merely charged him with simple rape. He could not, therefore, be convicted of qualified rape which is punishable by death.

WILFREDO further asserts that he was never married to Dionisia. Thus, he could not even be considered a stepfather of Melissande.

For its part, the Office of the Solicitor General refutes WILFREDO's latter argument by maintaining that the relationship between him and Dionisia was clearly established in the testimonies of Melissande and Dionisia. He even failed to deny it when he testified in open court.

Anent the failure of the information to allege that he is the common-law spouse of the victim's natural mother or the stepfather of the victim, the Office of the Solicitor General counters that such omission does not warrant a modification of the penalty imposed upon him. Accordingly, WILFREDO exercised moral ascendancy as stepfather of Melissande; and the rape was committed with the aggravating circumstances of obvious ungratefulness and the use of a deadly weapon. While these circumstances were not alleged in the information, nonetheless, they were proven during trial. Thus, the trial court properly imposed the death penalty.

Finally, the Office of the Solicitor General seeks an increase in the award of civil indemnity to P75,000 and moral damages to P50,000, in conformity with current jurisprudence.

In his Reply Brief, WILFREDO additionally contends that there was no finding by the trial court of the aggravating circumstance of obvious ungratefulness. Neither was the use of a deadly weapon proven. Further, the Appellee's Brief made no mention of a knife in the counter-statement of facts; instead, it alleged that Melissande no longer resisted the rape supposedly due to WILFREDO's punch.

It is fundamental that in the review of rape cases we are guided by the following principles: (1) an accusation for rape can be made with facility for it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime where two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and it cannot be allowed to draw strength from the weakness of the evidence for the defense.[21]

The paramount issue in rape cases is the credibility of the witnesses and the determination thereof lies with the trial courts which have the opportunity to observe the deportment of the witnesses. As a general rule, we do not disturb the judgment of the trial court on the credibility of the witnesses, unless there exists a fact or circumstance of weight and influence which has been ignored or misconstrued. Hence, the trial court's finding on the matter is accorded the highest degree of respect and will not be disturbed on appeal.[22]

In the instant case, we give credence to the trial court's finding that Melissande was sexually ravished by WILFREDO. We approve the trial court's appreciation of Melissande's forthright testimony. She was unwavering in her answers concerning the circumstances of the rape even in the grueling cross-examination. Well-settled is the principle that when a woman declares that she has been raped she says in effect all that is necessary to mean that she has been raped, and where her testimony passes the test of credibility, the accused can be convicted on the

basis thereof.[23] For, in most cases the only evidence that can be offered to establish the guilt of the accused is the complainant's testimony. Such is the nature of the crime of rape.

The use of force and intimidation are also undisputed.[24] WILFREDO's act of threatening the girl, who was 15 years old at the time of the incident, with a foot-long knife absolutely constitute intimidation. The intimidation was heightened by a previous sexual molestation, threats and previous acts of violence on her and her family by WILFREDO. Indeed, such intimidation produced fear in Melissande's mind. Moreover, WILFREDO's subsequent acts of requiring her to undress, lie down and spread her legs to satisfy his lust notwithstanding her refusal and struggles to avert the rape clearly establish force.[25]

Indeed, no woman would openly admit that she was raped and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial and disgrace herself with the narrative details of how she was raped, if she was not in fact raped.[26] This ruling especially holds true where the complainant is a minor whose testimony deserves full credence.[27]

As to WILFREDO's sole defense of denial, the same is unsubstantiated. Moreover, he failed to ascribe any ill-motive why Melissande would falsely accuse him of such a serious crime. Where there is no evidence to show a doubtful reason or improper motive why a prosecution witness should testify against the accused or falsely implicate him in a crime, the said testimony is trustworthy.[28] Besides, we have time and time again ruled that mere denial cannot prevail over the positive testimony of the witness.[29]

While we affirm the trial court's judgment of conviction, we do not agree with the trial court's imposition of the death penalty on the basis of the relationship between WILFREDO and Melissande specifically described in Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, under which he was charged, viz:

The death penalty shall be imposed if the crime 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim. [Italics supplied.]

The information clearly indicates that there is no allegation therein that WILFREDO is the common-law spouse of the victim's mother. In other words, the actual relationship existing between the offender and the offended party was not alleged. We have been steadfast in our pronouncements that the circumstances under the amendatory provisions of Section 11 of R. A. No. 7659, the existence of which would mandate the imposition of the death penalty, are in the nature of special qualifying circumstances which must be alleged in the information and if not so alleged cannot be proven as such.[30] Where any of said special qualifying circumstance is proven alone without the concurrent allegation thereof in the information, the constitutional and statutory right of the accused to be informed of the nature and cause of the accusation against him is violated.[31]

Having been charged in the information with simple rape only, and no other modifying circumstance having been proven, the penalty that should be imposed on WILFREDO pursuant to Article 63 of the Revised Penal Code would be reclusion perpetua, the lesser of the penalties prescribed by Article 335 of the Revised Penal Code, as amended by R.A. No. 7659.

The other issues raised need not be discussed except the award of moral damages which the trial court imposed in the amount of Thirty Thousand Pesos (P30,000). The same is increased to Fifty Thousand Pesos (P50,000) in accordance with current jurisprudence.

WHEREFORE, the decision of 7 December 1998 of the Regional Trial Court of Pasig City, Branch 265, in

Criminal Case No. 111534-H finding WILFREDO FERNANDEZ y MALINAO, alias ALFREDO FERNANDEZ y MALINAO, guilty of rape is hereby AFFIRMED, with the modifications that he is declared guilty of simple rape only and sentenced to suffer the penalty of reclusion perpetua, and that the award of moral damages in the amount of Thirty Thousand Pesos (P30,000) is increased to Fifty Thousand Pesos (P50,000).

No costs.

SO ORDERED.

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

[1] Original Record (OR), 107-131; Rollo, 15-39. Per Judge Edwin A. Villazor.

[2] OR, 1-2; Rollo, 4-5.

[3] TSN, 10 September 1998, 3-4.

[4] Id., 4.

[5] TSN, 10 September 1998, 5-8.

[6] Id., 8-9.

[7] Id., 10-12.

[8] TSN, 10 September 1998, 12-16.

[9] TSN,

[10] Exhibit "A"; OR, 93-94.

[11] TSN, 9 October 1998, 6-7.

[12] TSN, 9 October 1998, 7-8; TSN, 15 October 1998, 3-5.

[13] TSN, 30 October 1998, 3-7.

[14] Exhibit "B," OR, 95; TSN, 30 October 1998, 7-9.

[15] Exhibit "F," OR, 98-A.

[16] Exhibit "E," OR, 98.

[17] Exhibit "D," OR, 97; TSN, 30 October 1998, 9-10; TSN, 5 November 1998, 4-7.

[18] TSN, 6 November 1998, 3-4.

[19] Exhibit "C," OR, 96.

[20] TSN, 9 November 1998, 4-6.

[21] *People v. Abrecinoz*, 281 SCRA 59, 71 [1997]; *People v. Bernaldez*, 294 SCRA 317, 328 [1998]; *People v. Abangin*, 297 SCRA 655, 663-664 [1998].

[22] *People v. Leoterio*, 264 SCRA 608, 617 [1996]; *People v. Grefaldia*, 273 SCRA 591, 601 [1997]; *People v. Abangin*, *supra* note 21 at 664.

[23] *People v. Gagto*, 253 SCRA 455, 467 [1996]; *People v. Antido*, 278 SCRA 425, 440 [1997]; *People v. Abangin*, *supra* note 21 at 440.

[24] Article 335, Revised Penal Code; *People v. Diaz*, 262 SCRA 723, 730 [1996].

[25] *People v. Conte*, 247 SCRA 583, 592 [1995].

[26] *People v. Gagto*, *supra* note 23 at 468; *People v. Abrecinoz*, *supra* note 21 at 72; *People v. Fundano*, 291 SCRA 356, 368 [1998].

[27] *People v. Gagto*, *supra* note 23 at 467; *People v. Leoterio*, *supra* note 22 at 615; *People v. Abangin*, *supra* note 21 at 665.

[28] *People v. Gagto*, *supra* note 23 at 468; *People v. Leoterio*, *supra* note 22 at 618; *People v. Abangin*, *supra* note 21 at 665.

[29] *People v. Delovino*, 247 SCRA 637, 649 [1995]; *People v. Bernaldez*, *supra* note 21 at 328-329; *People v. Baygar*, G.R. No. 132238, 17 November 1999.

[30] *People v. Ilao*, 296 SCRA 658, 670-671 [1998]; *People v. Dimapilis*, 300 SCRA 279, 308-309 [1998]; *People v. Bartolome*, G.R. No. 133987, 28 January 2000; *People v. Ferolino*, G.R. Nos. 131730-31, 5 April 2000.

[31] *People v. Bartolome*, G.R. No. 133987, 28 January 2000, *supra* note 30; *People v. Alarcon*, G.R. Nos. 133191-93, 11 July 2000.

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