PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO CATUBIG Y HORIO, ACCUSED-APPELLANT.

G.R. No. 137842. August 23, 2001

Ponente: VITUG, J.

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VITUG, J.:

In an information, dated 29 January 1998, the accused, Danilo Catubig y Horio, was charged with the crime of rape before the Regional Trial Court, Branch 78, of Malolos, Bulacan; viz:

> "The undersigned Asst. Provincial Prosecutor on complaint of the offended party Dannilyn Catubig y Lazaro accuses Danilo Catubig y Horio of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, committed as follows:
>
> "That on or about the 27th day of November, 1997, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd design have carnal knowledge of the said offended party against her will."[1]

When arraigned on 16 July 1998, accused Catubig, represented by counsel de oficio, pleaded "not guilty" to the offense charged; forthwith, trial ensued.

The case for the prosecution was laid bare in Appellee's Brief submitted by the Office of the Solicitor General.

> "On November 27, 1997, at around 4:00 o'clock in the afternoon, private complainant Dannilyn Catubig, who was born on August 9, 1985, and her four (4) younger siblings were watching television in the sala of their house located at Sunlife Subdivision, San Jose del Monte, Bulacan.
>
> "After an hour, Dannilyn's father, herein appellant Danilo Catubig, arrived and told Dannilyn's siblings to proceed, as in fact they did proceed, to her aunt's house which is just located nearby. Thereafter, appellant told Dannilyn to go inside a room and to lie down on the bed. After Dannilyn had complied, appellant removed Dannilyn's shorts and panty, while appellant, after removing his brief and t-shirt, [laid] on top of Dannilyn. Afraid of appellant who beat and raped her in the past, Dannilyn was not able to resist appellant who succeeded in inserting his penis into Dannilyn's vagina.
>
> "However, Dannilyn's aunt, who got suspicious of what appellant was doing to Dannilyn, informed the latter's mother, Jocelyn Catubig, about the said suspicion. Thus, when confronted by her mother, Dannilyn was forced to reveal that she was indeed raped by appellant. The sexual assault was reported to the San Jose del Monte Police Station where Dannilyn's sworn statement was subsequently taken on December 3, 1997.
>
> "Upon the request of the police authorities, Dannilyn was examined on December 1, 1997 by Dr. Wilfredo E. Tiera, Medico-Legal Officer of the National Bureau of Investigation, who found out that Dannilyn's healed laceration in the hymen was caused by sexual intercourse."[2]

The accused denied the accusation against him. He claimed that the rape charge was brought about only because

of the ill-will between him, on the one hand, and his wife and daughter Dannilyn, on the other hand, following a quarrel. On 27 November 1997, he asseverated, he had fought with his wife, hitting her and his daughter. His wife then threatened him that it was the last time that she would allow him to harm her and that he would regret what he did. True to her foreboding, the next day, he was arrested and a complaint for rape was filed against him.

On 11 December 1998, the Regional Trial Court rendered a decision holding the accused guilty of the crime of rape; it adjudged:

> "WHEREFORE, in view of the foregoing, the Court hereby finds accused DANILO CATUBIG Y HORIO GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the penalty of DEATH, and to pay private complainant Dannilyn Catubig the amount of Fifty Thousand Pesos (P50,000.00) as moral damages."[3]

With the imposition of the death penalty by the trial court, the records were elevated to this Court for automatic review.

In his brief, appellant submitted thusly:

> "1. The lower court erred in finding the accused guilty of the crime of rape in violation of Article 335 of the Revised Penal Code as amended by Republic Act 7659.
>
> "2. The lower court erred in not taking into consideration the fact that the information was defective for failure to state that the accused is the father of the victim and that the victim was under 18 years [of] age at the time of the commission of the alleged rape."[4]

Private complainant Dannilyn Catubig narrated how she was repeatedly abused by her own father; she testified:

> "Q
>
> Now, after your sisters and brother [went] to the house of your aunt, what did your father do?
>
> "A
>
> He instructed me to go inside the room.
>
> "Q
>
> How many rooms were there in your house?
>
> "A
>
> Only one.
>
> "Q
>
> Did you go to the room per instruction?
>
> "A
>
> Yes, sir.
>
> "Q
>
> And what happened inside the room?
>
> "A

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My father entered the room.

"Q

And when your father entered the room, what did he do next?

"A

He removed my short [pants] and my panty.

"Q

What was your position at that time when your father removed your short pants and panty?

"A

I was lying.

"Q

When you entered the room, did you lie immediately?

"A

No, I just sat.

"Q

How come as you claimed a while ago, you were lying when your father removed your short pants and panty?

"A

Once I entered the room, I was sitting then he removed my short [pants] and panty.

"Q

You said upon entering the room, you sat and while sitting, all of a sudden your father removed your short pants and panty while already lying at that time, how come you were lying when according to you, you were sitting inside the room?

"A

I was sitting first and he instructed me to lie down.

"Q

While you were sitting inside the room and you were instructed by your father to lie, what comes to your mind?

"A

That he will rape me.

"Q

How did you come to know that?

"A

He was raping me before, doing that before.

"Q

In other words, that was not the first time your father raped you on that particular date?

"A

No, sir.

"Q

When was the first time, if you remember?

"A

When I was still in grade 1.

"Q

How many times were you raped by your father?

"A

I can no longer remember how many it was - several.

"Q

When was the last time your father raped you?

"A

November 27.

"Q

Now, when your father removed your short pants and panty, what did he do next?

"A

He removed his brief and shirt.

"Q

After removing his brief and shirt, what did he do?

"A

He [laid] on top me.

"Q

When your father [laid] on top of you, what did he do?

"A

He was inserting his penis to my vagina.

"Q

At this juncture, may we make of record that witness starts to cry.

"Q

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How did you know your father inserted his penis to your vagina?

"A

I can feel it and it is painful.

"Q

That was the time when your father was already lying on top of you?

"A

Yes, sir.

"Q

And what was the movement of the body of your father while he was lying on top of you?

"A

Push and pull movement.

"Q

For how long did your father stay on top of you doing that push and pull movement?

"A

That must be about 1 hour, but my aunt arrived.

"Q

Aside from the pain, what else did you feel?

"A

Mahapdi at parang may pumipitik sa loob ng ari ko.

"Q

Did you not try to resist?

"A

No, because I am afraid of him.

"Q

You are afraid of your father?

"A

Yes, sir.

"Q

Afraid of what?

"A

Because he was beating us, hitting us.

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"Q

Why, what was the reason why your father was hitting you?

"A

To threaten us.

"Q

For what purpose?

"A

Whenever my mother sided with us, my father and mother engaged in a fight.

"Q

In this case, you were raped and sexually abused by your father, what made you afraid of him?

"A

Because we were afraid of my father since childhood."[5]

Dannilyn has given her testimony in a plain, categorical, spontaneous and frank manner, remaining consistent throughout, and there is hardly anything on record that can cast doubt on her sincerity. The revelations of an innocent child whose chastity has been abused, coupled with her willingness to face police investigation and to undergo the trouble and humiliation of a public trial, should merit credence unless strong justifications dictate otherwise. Indeed, it would take a most senseless kind of depravity for a young daughter to just make up a story which could put her own father to an undeserved indictment and to even possibly face death in the hands of the law.[6]

When rape is committed against one's own daughter, the moral ascendancy and influence of the father, that necessarily flows from his parental authority, can sufficiently cow the child to submission and can rightly be held to substitute for the requisite "violence or intimidation" that, normally, would be characterized by physical acts and uttered threats made on the victim.

The trite defenses of alibi and denial proferred by appellant cannot prevail over the positive and categorical statements of private complainant. Alibi is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. In order that this defense can prosper, it must be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident. These conditions have not been met in the case at bar.

The contention of appellant that his wife and daughter Dannilyn have accused him merely because of his violent ways is much too flimsy to be believed. The mere resentment of a wife and daughter is not so compelling as to have motivated them to wrongly lodge a complaint for a crime much more serious than might, if at all, be expected.

It is likewise a settled doctrine that the assessment made by the trial court on the credibility of witnesses deserves great regard and weight on appeal. The rule is not without reason; the trial judge has a unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude during the course of the testimony in open court. There is no valid reason to now ignore this long accepted jurisprudence in this instance.

This Court, however, finds the second assignment of error impressed with merit.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, at times also referred to as the Death Penalty Law, states in part:

> "Art. 335. When and how rape is committed. x x x
>
> "x x x x x x x x x
>
> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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."

The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the complaint or information for the penalty of death to be decreed.[7] The Constitution guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him.[8] It is a requirement that renders it essential for every element of the offense with which he is charged to be properly alleged in the complaint or information.

Here, the information failed to state the minority of the victim and her relationship with the offender, both special qualifying circumstances under Republic Act No. 7659, and for want of such allegations, the trial court erred in imposing the death penalty on the accused.[9] Appellant could only thus be convicted under Article 335 of the Revised Penal Code, as amended, of simple rape punishable by reclusion perpetua.

Anent the award of damages, the trial court has correctly awarded P50,000.00 moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation to the offended party.[10] In addition, the offended party deserves to receive the amount of P50,000.00 civil indemnity,[11] the equivalent of compensatory damages, and exemplary damages in the amount of P25,000.00.

An apparent discord in the award of exemplary damages in simple and qualified rape cases perhaps deserves more than just a passing remark.

The Civil Code of the Philippines provides, in respect to exemplary or corrective damages, thusly:

> "ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.
>
> "ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.
>
> "ART. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.
>
> "ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.
>
> "ART. 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.
>
> "ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no

> proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.
>
> "ART. 2235. A stipulation whereby exemplary damages are renounced in advance shall be null and void."

The attendance of aggravating circumstances in the perpetration of the crime serves to increase the penalty (the criminal liability aspect),[12] as well as to justify an award of exemplary or corrective damages (the civil liability aspect),[13] moored on the greater perversity of the offender manifested in the commission of the felony such as may be shown by (1) the motivating power itself, (2) the place of commission, (3) the means and ways employed, (4) the time, or (5) the personal circumstances of the offender or the offended party or both. There are various types of aggravating circumstances, among them, the ordinary and the qualifying. Relationship is an alternative circumstance under Article 15 of the Revised Penal Code.

> "Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are relationship, intoxication, and degree of instruction and education of the offender.
>
> "The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender."

As a rule, relationship is held to be aggravating in crimes against chastity, such as rape and acts of lasciviousness, whether the offender is a higher or a lower degree relative of the offended party.[14]

Under Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, the death penalty is to be imposed in rape cases "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." The Court has since held that the circumstances enumerated by the amendatory law are to be regarded as special qualifying (aggravating) circumstances. Somehow doubts linger on whether relationship may then be considered to warrant an award for exemplary damages where it is used to qualify rape as a heinous crime, thereby becoming an element thereof, as would subject the offender to the penalty of death. Heretofore, the Court has not categorically laid down a specific rule, preferring instead to treat the issue on a case to case basis.

In People vs. Fundano,[15] People vs. Ramos,[16] People vs. Medina,[17] People vs. Dimapilis,[18] People vs. Calayca,[19] People vs. Tabion,[20] People vs. Bayona,[21] People vs. Bayya,[22] and People vs. Nuñez,[23] along with still other cases, the Court has almost invariably appreciated relationship as an ordinary aggravating circumstance in simple rape and thereby imposed exemplary damages upon the offender whether or not the offense has been committed prior to or after the effectivity of Republic Act No. 7659. Exceptionally, as in People vs. Decena,[24] People vs. Perez,[25] People vs. Perez,[26] and People vs. Ambray,[27] the Court has denied the award of exemplary damages following the effectivity of that law. In qualified rape cases, such as in People vs. Magdato,[28] People vs. Arizapa,[29] and People vs. Alicante,[30] the Court decreed the payment of exemplary damages to the offended party but it did not so do as in People vs. Alba,[31] People vs. Mengote,[32] and People vs. Maglente.[33]

It may be time for the Court to abandon its pro hac vice stance and provide, for the guidance of the bar and the bench, a kind of standard on the matter.

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a

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deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted,[34] the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant - associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud[35]- that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[36]

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

Relevantly, the Revised Rules on Criminal Procedure, made effective on 01 December 2000, requires aggravating circumstances, whether ordinary or qualifying, to be stated in the complaint or information. Sections 8 and 9 of Rule 110 of the Rules of Court now provide:

> "Sec. 8. Designation of the offense. - 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 circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> "Sec. 9. Cause of the accusations. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

A court would thus be precluded from considering in its judgment the attendance of "qualifying or aggravating circumstances" if the complaint or information is bereft of any allegation of the presence of such circumstances.

The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.

WHEREFORE, the decision of the court a quo is AFFIRMED with MODIFICATION in that appellant Danilo Catubig y Horio is found guilty only of simple rape and not in its qualified form, and he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay complainant Dannilyn Catubig P50,000.00 civil indemnity, P50,000.00 moral damages and P25,000.00 exemplary damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Puno J., in the result.

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[1] Rollo, p. 5.

[2] Rollo, pp. 61-62.

[3] Rollo, p. 51.

[4] Rollo, p. 35.

[5] TSN, 16 March 1998, pp. 3-5.

[6] People vs. Rivera, 318 SCRA 317.

[7] People vs. Narido, 316 SCRA 131.

[8] Sec. 1(2), Art. III of the Constitution.

[9] People vs. Panique, 316 SCRA 757.

[10] People vs. Nuñez, 310 SCRA 168; People vs. Narido, 316 SCRA 131.

[11] People vs. De la Cuesta, 304 SCRA 83; People vs. Narido, supra.

[12] Idem, p. 312.

[13] Art. 2230, Civil Code.

[14] Reyes, Luis R. The Revised Penal Code, 14[th] Ed., 1998, p. 464; People vs. Porras, 58 Phil. 578; People vs. Lucas, 181 SCRA 316; People vs. Tan Jr., 264 SCRA 425; People vs. Perez, 270 SCRA 526; People vs. Perez, 296 SCRA 17; People vs. Mosqueda, 313 SCRA 694; People vs. Tresballes, 314 SCRA 774; People vs. Docena, 322 SCRA 820; People vs. Sampior, 327 SCRA 31; People vs. Gajo, 327 SCRA 612; People vs. Alvero, 329 SCRA 737.

[15] 291 SCRA 356.

[16] 296 SCRA 559.

[17] 300 SCRA 98.

[18] 300 SCRA 279.

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[19] 301 SCRA 192.

[20] 317 SCRA 126.

[21] 327 SCRA 190.

[22] 327 SCRA 771

[23] 310 SCRA 168.

[24] 332 SCRA 618.

[25] 270 SCRA 526.

[26] 290 SCRA 17.

[27] 303 SCRA 697.

[28] 324 SCRA 785.

[29] 328 SCRA 214.

[30] 332 SCRA 440.

[31] 305 SCRA 811.

[32] 305 SCRA 380.

[33] 306 SCRA 546.

[34] American Cent. Corp. vs. Stevens Van Lines, Inc., 103 Mich App 507, 303 NW2d 234; Morris vs. Duncan, 126 Ga 467, 54 SE 1045; Faircloth vs. Greiner, 174 Ga app 845, 332 SE 2d 905; §731, 22 Am Jur 2d, p. 784 American Surety Co. vs. Gold, 375 F 2d 523, 20 ALR 3d 335; Erwin vs. Michigan, 188 Ark 658, 67 SW 2d 592.

[35] §762 22 Am Jur 2d pp. 817-818.

[36] §733, 22 Am Jur 2d, p. 785; Symposium: Punitive Damages, 56 So Cal LR 1, November 1982.

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