

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DELOS SANTOS, ACCUSED-APPELLANT.*G.R. No. 137889. March 26, 2001*

Ponente: MELO, J.

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A father who ravages his own daughter reduces himself to the level of a beast and forfeits his membership in the world of civilized men.

Nenita de los Santos was only 14 years old when her father, accused-appellant Romeo de los Santos, sexually abused her. She narrated that on July 31, 1997 at around 9 o'clock in the evening while she was about to go to sleep, her father suddenly approached her, held her waist and poked a knife at her side, threatening to kill her if she tells anyone what he was about to do to her. Then her father boxed her on the abdomen, inflicting on her so much pain and causing her to fall down on the floor. While in such a position, her father removed her short pants and panties even while she resisted; but her father overpowered her and he succeeded in having sexual intercourse with her. Accused-appellant stopped violating his daughter only after he has satisfied his lust. Nenita cried the whole night through and the days after because of the intense pain in her private part, but more so because of the betrayal of the man who gave her life and whom she trusted would protect and shield her from life's sorrows and pains. To add ignominy to his bestial acts, accused-appellant not only violated his daughter once but several times.

Out of shame and fear for her life, Nenita suffered in silence. She never told anyone, not even her mother, about the horrible ordeal she went through in the hands of her own father. But after several days, she mustered enough courage and went to the police to report the incident. She also submitted to a physical examination to substantiate her allegations. The necessary information for multiple rape was filed against accused-appellant.

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged.

The prosecution accordingly presented as its first witness Dr. Felma Caybot, the physician who examined the victim. Dr. Caybot testified, among other things that: (1) she was able to insert her two fingers in Nenita's private part with minimal resistance and there was not even a change in the facial expression of the patient, and (2) in the examination of the hymen of the patient, she found healed lacerations at 6 o'clock and 3 o'clock positions (tsn, p. 3, July 7, 1998).

The prosecution then called Nenita as its next witness. Nenita had barely started her narration of the incidents when accused-appellant manifested in court that he was changing his plea from "not guilty" to "guilty" provided the Information is amended to a single charge of rape. The trial court put accused-appellant on the witness stand, and after seemingly satisfying itself that accused-appellant understood the full consequences of his plea of guilty, the court a quo allowed the amendment of the Information to one charge of rape and changed accused-appellant's plea of "not guilty" to "guilty".

Nenita continued with her testimony; after which, the prosecution rested its case. When it was accused-appellant's turn to present his evidence, he manifested to the court that he had no evidence to present.

On February 10, 1999, the court a quo convicted accused-appellant of the crime of rape and imposed on him the supreme penalty of death, thusly:

WHEREFORE, the Court finds accused ROMEO DELOS SANTOS, GUILTY beyond reasonable doubt as principal of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. No. 7659, Sec. 11 thereof and hereby imposes upon the accused Romeo delos Santos the penalty of DEATH; to pay the victim Nenita delos Santos civil indemnity in the amount of FIFTY THOUSAND (P50,000.00) PESOS and the costs.

The death penalty having been imposed by this Court, let the records of the case together with the transcript of stenographic notes be transmitted to the Supreme Court by way of an automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

SO ORDERED.

(pp. 72-73, Records.)

In this automatic review, accused-appellant faults the trial court "in not applying the safeguards to a plea of guilty to a capital offense set forth under Section 3, Rule 116, 1985 Revised Rules on Criminal Procedure" (Brief for the Accused-Appellant, Rollo, p. 29).

We find the contention partially meritorious, but not sufficient to warrant the reversal of the finding of guilt by the court a quo.

Section 3, Rule 116 of the 1985 Rules on Criminal Procedure (the Rule then prevailing when the instant crime was committed and tried, and which remains unamended in the present 2000 Rules) states the procedure to be followed where the accused, with the assistance of counsel, voluntarily pleads to a capital offense:

Sec. 3. When an accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. (1985 Rules on Criminal Procedure)

Thus, where the accused enters a plea of guilty to a capital offense, the trial court is called upon to observe the following procedure: the court shall conduct a searching inquiry into the voluntariness and the accused's full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of his culpability. The accused may also present evidence in his behalf (People vs. Dayot, 187 SCRA 637 [1990]).

In the case at bar, the trial court asked accused-appellant the following questions to determine the voluntariness and full comprehension of his change of plea from "not guilty" to "guilty", thus:

COURT:

x x x.

Put the accused in the witness stand for the searching questions and inquiries.

Q - You just change your plea of not guilty to plead guilty to the crime of rape, is that correct?

A - Yes, Ma'am.

Q - Do you know that by pleading guilty to the crime charged you can be meted out of a penalty of death?

A - Yes, Ma'am.

Q - By the way, is your decision to plead guilty voluntary on your part?

A - Yes your Honor, because I pity her.

Q - Nobody is threatening you of bodily harm so that you will plead guilty to the crime charged?

A - None your Honor. It is my own will.

Q -

Inspite the fact that you are already aware that the penalty provided for by law is death, will you still insist on your plea of guilty?

A - Yes, your Honor.

Q -

Aside from that reason that your wife deserted you and your small children are left behind are you still bent on proceeding your plea of guilty despite that you can be meted with the penalty of death?

A - Yes your honor, I will go on with my plea of guilty.

(pp. 4-5, tsn, July 9, 1998.)

It is observed that the procedure followed by the trial court in respect of the affirmative plea of accused-appellant leaves much to be desired. As required under Section 3, Rule 116 of the 1985 Rules of Criminal Procedure (supra), the trial court should have taken the necessary measures to see to it that accused-appellant really and freely comprehended the meaning, full significance and consequences of his plea. In the case at bar, accused-appellant pleaded guilty to raping his daughter because he pitied her (tsn, July 9, 1998, p. 5). This is not a sufficient reason for the trial court to allow a change of plea from "not guilty" to one of "guilty". Aside from ensuring the voluntariness of accused-appellant's plea and his full comprehension of the consequences of the same, the trial court should also have impressed on him that by changing his plea from "not guilty" to "guilty", he was, in effect, admitting authorship of the crime of rape against his own daughter. This the trial court failed to do.

Nevertheless, even without considering said plea of guilty on the part of accused-appellant as above discussed, there is adequate evidence to warrant and justify the conviction of accused-appellant, namely: the medical certificate attesting to the fact that the victim, Nenita, has a lacerated hymen, and, the testimony of Nenita herself

that her father, herein accused-appellant, forced her to have sexual intercourse with him, not just once but several times. This testimony was un rebutted as accused-appellant did not present any evidence to prove his innocence even when asked to do so by the court a quo. His plea of guilty effectively corroborated and substantiated Nenita's allegations that her father indeed raped her. Of no small significance too is the fact that accused-appellant changed his plea of "not guilty" to one of "guilty" after arraignment, and after the prosecution has presented its witnesses - the physician who examined Nenita, and, Nenita herself.

Republic Act No. 7659 or the Death Penalty Law, punishes the rape of a minor with death. The allegation of minority must, however, be proved with equal certainty and clearness as the crime itself. Thus, in *People vs. Javier* (311 SCRA 122 [1999]), we required the presentation of the birth certificate of the victim to prove her minority, failing which the imposition of the death penalty cannot be upheld. It is a common observance that in this age of modernity, a physically developed 14-year old girl may be mistaken for an 18-year old young woman, in the same manner that a frail and youthful-looking 18-year old lady may pass as a 14-year old minor. Thus, it is in this context that proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In the case at hand, the prosecution did not present any independent proof of Nenita's minority. It merely alleged in the Information that Nenita was 14 years old when her father raped her. In the light of our discussion in *Javier* (supra), this failure effectively removes the instant case from the operation of the Death Penalty Law. It is a time-honored principle that in a criminal prosecution, especially where the life of another human being is hanging on the balance, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which the accused is charged must be established in order for the corresponding penalty thereto to be upheld. The prosecution, in the instant case, was remiss in this regard. The applicable penalty is, therefore, reclusion perpetua and this penalty being an indivisible penalty, the benefits under the Indeterminate Sentence Law are not applicable (Section 2, Act No. 4103, as amended).

Pursuant to prevailing jurisprudence the indemnity for rape is now P50,000.00 (*People vs. Itdang*, G.R. No. 136393, October 18, 2000, citing *People vs. Betonio*, 279 SCRA 532 [1997]). Rape victims shall likewise be entitled to moral damages in the amount of P50,000.00 (*People vs. Clado*, G.R. No. 135699-70, 139103, October 19, 2000 citing *People vs. Perez*, 307 SCRA 276 [1999]).

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that the penalty to be imposed shall be RECLUSION PERPETUA, instead of death. Accused-appellant is further ordered to indemnify the victim in the amount of Fifty Thousand Pesos (P50,000.00) and to pay another Fifty Thousand Pesos (P50,000.00) as moral damages. No special pronouncement is made as to costs.

SO ORDERED.

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

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