

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALENTIN BARING, JR., ACCUSED-APPELLANT.

G.R. No. 137933. January 28, 2002

Ponente: BUENA, J.

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BUENA, J.:

Valentin Baring, Jr., herein accused-appellant, was indicted for statutory rape committed against a seven-year-old girl in an information that reads-

“That prior to August 2, 1997 and on several occasions thereto, in the Municipality of Dasmariñas, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation taking advantage of his superior strength over the person of the victim who is only seven (7) years old, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Jennifer Donayre, against her will and consent, to her damage and prejudice.

“CONTRARY TO LAW.”[1]

On his arraignment accused-appellant pleaded not guilty to the crime charged.

After trial, the Regional Trial Court of Imus, Cavite rendered a decision dated January 20, 1999, convicting accused-appellant of rape, to wit –

“WHEREFORE, finding the accused guilty beyond reasonable doubt of the felony of rape, the accused-Valentin Baring Jr. is sentenced to die by lethal injection and to pay the victim an indemnity of P50,000.00 plus moral damages of another P50,000.00 plus the cost of this suit.

“SO ORDERED.”[2]

In a sworn complaint,[3] Jennifer Donayre accused Valentin Baring, Jr., her grandmother’s common-law husband, of raping her on several occasions. It appears that Jennifer was living with her grandmother in Dasmariñas, Cavite. She does not know her real father since her mother and father were separated.[4] Since 1990, when she was about 8 months old[5] until 1997, she was left under her grandmother’s care and custody. She calls Valentin Baring, Jr. as “Papa.”[6]

According to Jennifer, the repeated sexual abuse happened when she was about 6 years old whenever she was left alone in the house. Accused-appellant would touch her private parts, and on such occasions, accused-appellant would remove her panty, mount on her and violate her. She informed her grandmother that accused-appellant sexually abused her.[7]

On July 29, 1997, Jenelyn Donayre-Mendoza visited her daughter Jennifer, herein victim, in Dasmariñas, Cavite. She learned from her daughter that the latter was sexually abused by accused-appellant. Acting on her daughter’s accounts of sexual abuse, she took Jennifer to the National Bureau of Investigation and filed a complaint. Thereafter, Jennifer underwent a medical examination at the Philippine National Police (PNP) Crime Laboratory

Service in Camp Crame, Quezon City. Dr. Dennis G. Bellen, the medico-legal officer at Camp Crame found that Jennifer was in “non-virgin state physically.” The examination disclosed a “congested, fleshy-type hymen with shallow healing laceration at 9 o’clock position and the external vaginal orifice admits tip of the examiner’s smallest finger.”[8]

For his defense, accused-appellant denied the allegations against him.[9] According to accused-appellant, he has been living with Jennifer’s grandmother for ten (10)[10] or eighteen (18) years.[11] Accused-appellant claimed that Jennifer was not living with them during the time the alleged rape occurred.[12] Later on, he testified that prior to July, 1997, Jennifer was living with them since 1990.[13] However, Jennifer was taken from them sometime in July 1997, but he does not know why.[14]

The trial court meted out its judgment of conviction on the basis of the victim’s clear, trustworthy and positive testimony that she was raped several times by accused-appellant. Because of the penalty imposed, this case is now before us on automatic review.

On April 20, 1999, accused-appellant, through his counsel, filed a petition before this Court to dismiss the case that is subject of our automatic review because (i) the three-page double-spaced decision of the trial court is bereft of material facts supporting the conviction; (ii) the medico-legal certificate is merely a scrap of paper since the physician who conducted the examination was not presented as a witness that deprived accused-appellant of his right to cross-examination; (iii) the case of attempted homicide filed by the victim’s grandmother against accused-appellant was provisionally dismissed; and (iv) accused-appellant was merely a “fall guy” and that another person is responsible for the commission of the crime charged against him.[15]

In the appellant’s brief filed on November 4, 1999, accused-appellant assigns the following errors-

“The lower court erred:

“I.

In promulgating a brief and short decision with material facts that have been omitted with no allusions to the transcripts of records erroneous of tenses and grammar jotted by the Court Stenographer.

“II.

In denying the accused his right to plead for a DNA Test to determine that the blood found in the panty of the victim is not his but of another man, Venancio Mendoza, live-in husband of Jennelyn, mother of Jennifer Donayre, the victim.

“III.

In not finding the accused as a ‘fall guy’ framed up to take the place of Venancio Mendoza, live-in husband of Jennelyn, mother of Jennifer, whose behavior in the courtroom as a witness has been beyond normal.”[16]

The Philippine Constitution no less, mandates that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.[17] This vital requirement is not only demanded from the courts. Quasi-judicial bodies are similarly required to give basis for all their decisions, rulings or judgments pursuant to the Administrative Code[18] whose roots may also be traced to the Constitutional mandate.

A decision need not be a complete recital of the evidence presented. So long as the factual and legal basis are

clearly and distinctly set forth supporting the conclusions drawn therefrom, the decision arrived at is valid. Nonetheless, in order to effectively buttress the judgment arrived at, it is imperative that a decision should not be simply limited to the dispositive portion but must state the nature of the case, summarize the facts with references to the record, and contain a statement of the applicable laws and jurisprudence and the tribunal's assessments and conclusions on the case. This practice would better enable a court to make an appropriate consideration of whether the dispositive portion of the judgment sought to be enforced is consistent with the findings of facts and conclusions of law made by the tribunal that rendered the decision.[19] Compliance with this requirement will sufficiently apprise the parties of the various issues involved but more importantly will guide the court in assessing whether the conclusion arrived at is consistent with the facts and the law.

In the case at bar, the trial court's decision may cast doubt as to the guilt of accused-appellant. Such doubt may be engendered not by the lack of direct evidence against accused-appellant but by the trial court's failure to fully explain the correlation of the facts, the weight or admissibility of the evidence presented for or against the accused, the assessments made from the evidence presented, and the conclusions drawn therefrom after applying the pertinent law as basis of the decision.

Accused-appellant claims that the trial court erred in convicting him of the crime of rape despite prosecution's failure to present the examining physician to appear in court depriving him of his constitutional right to confront a witness against him.[20] However, a review of the transcript of stenographic notes reveal that accused-appellant's counsel waived presentation of the medico-legal officer and thus, was not deprived of his constitutional right to confront said witness, to wit-

“PROS. ORQUIEZA:

Your Honor, I was informed by the mother of the private complainant that the doctor is no longer connected with the Crime Laboratory Service at Camp Crame, Quezon City but was reassigned to the Eastern Police District at Mandaluyong City.

“PROS. ORQUIEZA:

I just prefer that a subpoena be sent. We have to ask for the postponement.

“ATTY. ABUBAKAR:

We can dispense with the testimony.

“COURT:

Provided this is admitted.

“COURT:

Do you admit the due execution and authenticity of the report of the doctor?

“ATTY. ABUBAKAR:

We admit everything written here because (sic) doctor says.

“COURT:

Yes, whatever is written there, do you admit that?

ATTY. ABUBAKAR

Yes, your Honor.

“COURT:

No need to present the doctor

“PROS. ORQUIEZA:

We will no longer present Dr. Dennis G. Bellen of the Philippine National Police Crime Laboratory Service at Camp Crame, Quezon City. We have here the xerox copy of the medico legal report no. M-2831-97.

“COURT:

Will you show that to Atty. Abubakar.

“ATTY. ABUBAKAR:

Yes, your Honor.

“COURT:

Admitted.

You dispense the testimony of the doctor.[21]

A medical certificate after all is not indispensable to prove the commission of rape.[22] It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim’s testimony alone, if credible, is sufficient to convict the accused of the crime.[23] Besides, testimonies of rape victims who are of tender age are credible,[24] and the testimonies of child-victims are given full weight and credit.[25]

Accused-appellant likewise impugns the credibility of the victim by pointing out that the rape was filed one year after its commission, which allegedly leaves doubt as to the real identity of the culprit.

Delay in reporting an incident of rape does not create any doubt over the credibility of the complainant nor can it be taken against her.[26] The following realities justified the delay in the filing of the case against accused-appellant: (1) the victim was merely six years old when she was sexually abused; (2) the victim lived separately from her mother and was left under her grandmother’s care; and, (3) the victim’s sexual abuser happens to be her step-grandfather.

According to accused-appellant, he was simply ‘framed-up’ and that another person also raped the victim.[27] He avers that his allegation is supported by the testimony of the victim’s mother Jenelyn that the victim was likewise abused by the latter’s husband.

The categorical testimony of the victim that she was raped by accused-appellant cannot be overturned by the bare denial and defense of being ‘framed-up’ interposed by accused-appellant. The victim made a positive, clear and categorical declaration pointing to accused-appellant as the person who sexually ravaged her-

“Q:

Are you the same Jennifer Donayre the private complainant against the accused Valentin Baring, Jr.?

“A:

Yes, sir.

“X X X X X X X X

“Q:

Who is your father?

“A:

I do not know the name of my father because my father and mother are separated.

“Q:

If your father is in the courtroom can you point to him?

“A:

Yes, sir. (Witness pointing to a man inside this courtroom when asked given [sic] his name as Valentin Baring.)

“Q:

Is he your true father?

“A:

No sir. He is my stepfather.

“Q:

You were pointing to your stepfather, do you know what things or particular things, if any, he did to you?

“A:

Yes, sir.

“Q:

What were those particular things your stepfather had done to you?

“A:

He raped me.

“Q:

When your stepfather raped you, what actually did your stepfather do to you?

“A:

He removed my panty.

“Q:

What did your stepfather do after removing your panty?

“A:

He placed himself on top of me.

“Q:

Was he naked when he placed himself on top of you?

“A:

Yes, sir.

“Q:

When he was on top of you, did he place his penis inside your private parts?

“A:

Yes, sir.

“Q:

What did you feel when his penis was inside your private parts, if any?

“A:

I felt pain.

“Q:

Was your private part bleeding as a result of the insertion of the penis of your stepfather into your private parts?

“A:

Yes, sir.

“Q:

Did he kiss you while he was on top of you?

“A:

Yes, sir.

“Q:

What parts of your body or face was kissed?

“A:

My cheek.

“Q:

Where did this happen?

“A:

Dasmariñas, Cavite.

“Q:

In whose house or place?

“A:

In the house of my grandmother.

“Q:

Who are the residents of that house at that time?

“A:

At that time nobody was in the house because they were working.

“x x x x x x x x

“Q:

Can you recall if the rape you mentioned to us happened while you were 7 years old, 6 years old? What was your age then if you can recall?

“A:

6 years old.

“Q:

How many times did your stepfather do to you these things you mentioned to us that is by placing (sic) on top of you and inserting his penis into your private parts and kissing you?

“A:

10 times.

“Q:

Do you know how to count?

“A:

Yes, sir.

“Q:

How many is this? (prosecutor is depicting two fingers)

“A:

Two, sir.

“Q:

How about this, how many? (Prosecutor is depicting five fingers).

“A:

Five, sir.

“Q:

How about this?(Prosecutor is depicting 10 fingers)

“A:

Ten, sir.[28]

Accused-appellant even contends that the failure of the prosecution to establish the dates when the other alleged rapes were committed justifies the outright dismissal of the case.[29]

Failure to specify the exact date or time when the rapes occurred does not ipso facto make the information defective on its face.[30] When all the essential elements of the crime of rape are stated in the information, an accused is sufficiently apprised of the charged against him. Moreover, the precise time of the commission of the crime of rape is not an essential element of rape.[31] Neither is the exact date of commission of rape an element of the crime[32] for the gravamen of the offense of rape is sexual intercourse without consent.[33]

Accused-appellant contends that the trial court denied him his right to subject the blood found on the victim’s panty for DNA testing.

The records reveal that accused-appellant’s counsel initially asked the court to subject the alleged blood found in the victim’s panty to a DNA test for comparison with accused-appellant’s blood.[34] However, he voluntarily withdrew his proposition.[35] Obviously, accused-appellant’s counsel is misleading the Court. It was even accused-appellant’s counsel who recalled the submission for DNA testing. The alleged denial of accused’s right to avail of the DNA tests is a futile attempt to confuse the issues. He lost sight of the categorical testimony of the victim pinning him down as the perpetrator. It would have been more prudent for him to attack this damaging evidence directly. It must be noted that in the prosecution of rape cases, the presentation of the bloodstained panty is not even essential.[36] The victim’s credible testimony, standing alone, is sufficient basis for the conviction of accused-appellant.

Cases subject of our review, especially those in the nature of child sexual abuse, often involve victims of tender years. On account of the increased number of children coming into the realm of the judicial system, we adopted the “Rule on Examination of a Child Witness” to govern the examination of child witnesses who may either be victims, accused or witnesses to a crime.[37] This rule ensures an environment that allows children to give reliable and complete evidence, minimize trauma, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.[38]

In line with our foregoing thrust to protect children, we observed the peculiar physical examination performed by the doctor on the seven-year-old victim in this wise-

“GENITAL

There is absence of pubic hair. Labia majora full, convex and slightly gaping with the pinkish brown labia minora presenting in between. On separating, the same disclosed a congested, fleshy-type hymen with shallow healing laceration at 9 o'clock position. External vaginal orifice admits tip of the examiner's smallest finger.”[39] (emphasis ours)

This Court is disturbed by the method of physical examination done on the seven-year-old victim. We noticed that in the examiner's effort to show the existence of abuse, the examining physician inserted his smallest finger, as shown in the medico-legal report that the ‘external vaginal orifice admits tip of the examiner's finger.’

It bears to stress that this particular manner of establishing evidence – by determining the diameter/hymenal opening in rape cases – was a common practice in the past. With the passage of R.A. 7610, this Court has nonetheless allowed the utilization of the same kind of evidence in the prosecution of Child Abuse cases. In light however of radical medical developments and findings, specifically as to the determination of the existence of child sexual abuse, this Court deems it necessary to firmly adopt a more “child sensitive” approach in dealing with this specie or genre of crime.

In the international scientific community, recent medical studies have shown that measurement of hymenal opening is unreliable in determining and/or proving child sexual abuse –

“The diameter of the hymenal opening previously has been used as a diagnostic criterion for abuse. More recent studies have shown this to be undependable (Paradise, 1989). Factors affecting hymenal and anal diameter include the examination position (McCann, Voris, Simon, & Wells, 1990) and the degree of relaxation of the child. The anal diameter is also affected by the presence of stool in the ampulla. Hymenal diameter may increase with age and with the onset of pubertal development.”[40]

In fact, there is no evidence, nor published research studies which show that enlarged hymenal opening diameter is any more common in abused than in non-abused children.”[41] Thus -

“In the latest revision of the classification system, ‘enlarged hymenal opening’ is also removed as a criterion that should be considered suspicious for abuse. With labial traction, the hymenal opening may appear quite large, especially to the less experienced clinician, and internal structures such as vaginal ridges, rugae, and vaginal columns may be visualized. This is purely a matter of how much traction is applied, and the degree of patient relaxation, and has no proven correlation with past sexual abuse. Likewise, it is not possible to obtain accurate measurements of the dilated hymenal opening, unless photographs are taken at the point of maximal dilation and measurements are taken from the photographs using a calibrated measuring device. Rings of different sizes that are etched into eyepieces of certain types of colposcopes can be used to estimate diameter size but not to obtain exact measurements.” [42]

Hence, insertion of a finger or any foreign matter inside the hymenal opening under the pretext of determining abuse is unnecessary and inappropriate. The Philippine Judicial Academy [PHILJA] training program for family court judges,[43] through the auspices of the U.P.-P.G.H. Child Protection Unit, sanctioned that in prepubertal girls[44] without active bleeding, all that is needed is an external examination with a good light source and magnification. Be that as it may, the physical findings alone will not be conclusive of child sexual abuse, for a child who gives a clear, consistent, detailed, spontaneous description of being sexually molested may still have normal genital examination. Despite the physical or laboratory findings, however, a child's clear and convincing description of the abuse has a high rate of probability.

We are not at all uninformed in this regard for we, in a plethora of cases, have consistently upheld the full weight of a young victim's unwavering testimony.[45] Also, there is Section 22 of the Rule on Examination of a Child

Witness, which categorically states:

Section 22. Corroboration.- Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard proof required in criminal and non-criminal cases.

What is important at this point, and we do not hesitate to reiterate, is that forensic examination – inclusive of physical examination and forensic interview – of sexually assaulted children [adolescents included] must be conducted with maximum sensitivity to the young victim’s feelings of vulnerability and embarrassment. Great care must be observed in order to make the examination less stressful lest they be more traumatic to the victim than the very assault itself. The value of collecting evidence should always be weighed against the emotional cost of the procedure and examination of the child.

We now come to the matter of the death penalty imposed by the trial court. The single information filed against accused-appellant, docketed as Criminal Case No. 6334-98, charged him with the crime of “Multiple Statutory Rape.”[46] Even then, accused-appellant cannot be held answerable for the other incidents of rape committed. Each and every charge of rape is a separate and distinct crime so that each of the other rapes charged should be proven beyond reasonable doubt.[47]

Article 266-B, paragraph No.5 of the Revised Penal Code, imposes death penalty when the victim is a child below seven (7) years old. The allegation in the information specifically stated that “xxx the victim xxx is only seven years old” which clearly rules out the application of this specific provision that can justify the imposition of the capital punishment. Paragraph No. 1 of the same article which warrants the imposition of the death penalty if the crime of rape is committed where 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,[48] will not apply for while the victim is under eighteen (18) years old, the accused-appellant is not the common-law husband of the victim’s mother. The trial court therefore erred in meting out the death penalty upon accused-appellant for qualified rape. Thus, accused-appellant may only be sentenced to suffer the penalty of reclusion perpetua.

In line with our prevailing jurisprudence,[49] we sustain the trial court’s award of P50,000.00 civil indemnity and P50,000.00 moral damages.

WHEREFORE, the decision of the Regional Trial Court, Branch 21, Imus, Cavite, in Criminal Case No. 6334-98, finding accused-appellant Valentin Baring, Jr., guilty beyond reasonable doubt of rape is hereby AFFIRMED with the MODIFICATION that the sentence is reduced to reclusion perpetua.

SO ORDERED.

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

[1] Rollo, p. 4, 12 and 37; records, p. 1.

[2] Rollo, pp.14; 39; records, p. 90.

[3] Records, pp. 7-8.

[4] TSN, June 17, 1998, p. 3.

[5] TSN, July 13, 1998, p. 11.

[6] TSN, July 13, 1998, p. 12.

[7] TSN, June 17, 1998, p. 6.

[8] Rollo, p. 20.

[9] TSN, August 26, 1998, p. 4.

[10] Ibid., p. 10.

[11] Ibid., p.11.

[12] Ibid., pp. 14-15.

[13] Ibid., p. 15.

[14] Ibid., pp. 15-16.

[15] Rollo, pp. 17-18.

[16] Rollo, pp. 29-30.

[17] Article VIII, Section 14, Philippine Constitution.

[18] Section 14, Chapter III, Book VII of the Administrative Code of 1987 explicitly states that “Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based.”

[19] Oil and Natural Gas Commission vs. Court of Appeals and Pacific Cement Company Inc., 315 SCRA 296, [1999].

[20] Rollo, pp.32-34.

[21] TSN, July 20, 1998, pp. 2-3.

[22] People vs. Dawisan, G.R. No. 122095, September 13, 2001.

[23] People vs. Agunos, 316 SCRA 836 [1999].

[24] People vs. Mengote, 305 SCRA 380 [1999].

[25] People vs. Perez, 319 SCRA 622 [1999].

[26] People vs. Montefalcon, 305 SCRA 169 [1999].

[27] Rollo, pp. 30-32.

[28] TSN, June 17, 1998, pp. 2-8.

[29] Rollo, p. 36.

[30] People vs. Magbanua, 319 SCRA 719 [1999].

[31] People vs. Eddie Sernadilla, G.R. No. 137696, January 24, 2001.

[32] People vs. Alba, 305 SCRA 811[1999].

[33] Supra at footnote # 21.

[34] TSN, August 26, 1998, p. 6.

[35] TSN, August 26, 1998, p. 7.

[36] *People vs. Gastador*, 305 SCRA 659 [1999].

[37] Section 1, Rule on Examination of a Child Witness, effective December 15, 2000.

[38] Section 2, *ibid*.

[39] Rollo, p. 20; records, p. 43, p. 72.

[40] The APSAC[American Professional Society on the Abuse of Children] Handbook on Child Maltreatment, 1996 edition, pp.199-200; citing the ff. Articles: (1) "Predictive accuracy and the diagnosis of sexual abuse: A big issue about a little tissue;" by J.E. Paradise, *Child Abuse and Neglect Journal*, No. 13, pp. 169-176; and (2) "Comparison of genital examination techniques in prepubertal girls," and "Genital findings in prepubertal girls selected for non abuse: A descriptive study." By J. McCann, R. Wells, M. Simon & J. Vorris, *Pediatrics Journal*, Nos. 85-86, pp. 182-187, and pp. 428-439, respectively.

[41] Philippine Judicial Academy [PHILJA: Judicial Career Development Seminar Workshop for Regional Trial Court Judges (NCJR and Regions 1 to 12), "Child Abuse and the Medico-legal Examination," held at Ridge Convention Center, Tagaytay City held on December 8 to 11, 1998.

[42] See Evolution of a Classification Scale: Medical Evaluation of Suspected Child Sexual Abuse," by J. A. Adams, *Child Maltreatment Journal*, #6, February 2001, p. 32.

[43] Philippine Judicial Academy[PHILJA]: Training Program for Family Court Judges, "Application of Child Psychology in Family Courts: During Trial, Rehabilitation and Integration," held at Development Academy of the Philippines Tagaytay City, held on March 21-24, 2000.

[44] Pre-adolescent or young girls who have yet to have their menstruation.

[45] see *People vs. Perez*, 319 SCRA 622 [1999].

[46] Records, p. 1.

[47] *People vs. de Leon*, 319 SCRA 743 [1999].

[48] *People vs. Carullo*, 311 SCRA 680 [1999].

[49] *Supra* at footnote # 21 and 31.

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