PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO TORALBA, ACCUSED-APPELLANT.

G.R. No. 139411. August 09, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The basest levels of incestuous rape are reached where a mentally deficient woman, the unfortunate product of the depraved union between a man and his own daughter, is raped and assaulted by this same man --- her father and grandfather.

The information filed before Branch 25 of the Regional Trial Court of Naga City[1] provides in part:

> That on or about August 7, 1998, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father/grandfather of herein private complainant, slapped private complainant, grabbed her by the shoulder and forced her to lie down and by means of force, threat and intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of said CORNELIA TORALBA, against her will and without her consent, and to her damage and prejudice.
>
> CONTRARY TO LAW.
>
> With the aggravating circumstance of relationship.[2]

The evidence establishes that the accused sired several offspring with his two daughters, Remedios Toralba-Belista ("Remedios") and Melinda Toralba ("Melinda"). His offspring by his daughter Remedios is herein private complainant, Cornelia Toralba.

Cornelia was diagnosed as having moderate mental retardation; she was aged 23 when she testified in the trial of this case but her mental age was determined to be between 6 to 9 years. Dr. Aimee Marie Nobleza, the psychiatrist who examined Cornelia, testified that she was capable of standing trial and appearing as witness, provided the questions to her are couched in simple and direct language. She could also capably recount the rape incident in question, although she could not recall the exact dates.

Cornelia finished only Grade II and could not read or write. The complaint filed before the prosecutor's office bore her thumbprint, as well as the thumbprint of her grandmother, Melecia Montañez Toralba (the wife of the accused), and the signature of her mother, Remedios. Before affixing her thumbprint to the document, however, the contents of the complaint were read and translated to Cornelia by a lawyer.

As determined by the trial court, on the evening of August 7, 1998, Cornelia was spreading a mat inside their house when she observed the accused standing four to five meters away, naked from the waist down. The accused then approached her and pushed her until she fell on the bed. When she resisted, he started slapping her; then he lay on top of her, kissed her on the lips, and had carnal knowledge of her. The victim's mother, Remedios, entered the house just in time to see her father, the accused, attack Cornelia and succeed in raping her. Driven to a blind

rage, Remedios started shouting and cursing at the accused causing Melecia and Melinda to also be drawn to the scene. Melecia and Melinda took the side of the accused, and Melinda struck Remedios on the head with an iron pipe, causing the latter to lose consciousness.

Almost two weeks later, Cornelia submitted herself to a medical examination which confirmed the presence of "nulligravid external genitalia (+) old hymenal lacerations at 3, 5 and 9 o'clock positions."[3] The physician who prepared the medical certificate, Dr. Ma. Vienna Llorin, explained that the lacerations could have been caused by the insertion of a hard object, possibly a male organ.[4] Dr. Llorin also observed that when the examination was conducted on August 20, 1999, Cornelia looked so fearful and refused to reply to the doctor's questions.[5]

Melecia Toralba, the wife of the accused and grandmother of the victim, was also presented by the prosecution to show that Cornelia was indeed the daughter of the accused and Remedios, although in Cornelia's birth records it was made to appear that she (Melecia) was the mother of Cornelia.[6] This was because, right after giving birth to Cornelia, Remedios had entrusted the baby to her and her husband's custody.[7]

Meanwhile, the accused admits that he and the victim were at their house on that fateful evening of August 7, 1998 but denies having made sexual advances at her. As he recounted it, he was in the yard breaking stones with a hammer when he heard his children Remedios and Ramon arguing loudly; Remedios called Ramon a cheater and a thief, and Ramon threatened to hit her. He broke up the quarrel and advised Ramon to leave, but even as Ramon left Remedios kept talking and supposedly vented her anger at Cornelia. The accused said that Remedios pulled Cornelia by the hair, and tried to drag her towards a bench; the accused then tried to stop Remedios from hurting Cornelia, when he suddenly heard a thud and Remedios fell to the ground. When she stood up, there was blood on her head and Melinda was standing behind her. Then Remedios supposedly got a knife from inside the house but the accused took it away from her.

To corroborate the above story, the defense presented Ramon Toralba, a son of the accused, and Rosie Toralba, a daughter of the accused with Melinda. (It was established that the accused also had two children with his other daughter, Melinda, named Rosie and Jenny.)

The trial court found the combined statements of Cornelia and Remedios, corroborated by the findings of Dr. Llorin, more credible than the accused's bare denial of the charges. It held that a mental retardate is not disqualified to be a witness, and where in the present case the victim was assessed as being capable of recalling and recounting past experiences, her positive identification of the accused as the person who raped her should necessarily prevail over the lame denials of the latter.

Considering the relationship of the accused with the victim and the victim's state of mental retardation, such that, although she was 22 years old at the time of the rape she was assessed as having the intelligence quotient of a child 6 to 9 years old, the trial court declared that the imposition of the death penalty would have been in order if not for the accused being over 70 years old, which under Article 83 of the Revised Penal Code merits the suspension of the death sentence and the commutation of the penalty to reclusion perpetua. Thus, the lower court disposed of the case with this pronouncement:

> WHEREFORE, premises considered, this court finds the accused Agapito Toralba GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 and considering that the accused is already seventy one (71) years old this court hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA, instead of DEATH as provided for in Article 83 of the New Revised Penal Code, and further to indemnify the victim Cornelia Toralba the sum of P50,000.00 and to serve as a deterrent to persons who may assert an animal instinct to satisfy their incestuous lust, the accused is also hereby ordered to pay the amount of P25,000.00 by way of exemplary damages and to pay the costs.

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SO ORDERED.[8]

The appeal at bench prays that the Court make a finding of reasonable doubt, arguing that it is incredulous to suppose that the accused despite his advanced age would design to, more so succeed in, raping a full-grown woman. It pointed out supposed inconsistencies in the testimonies of Cornelia and Remedios; it also drew attention to the conduct of the accused at the time of arrest, when he voluntarily and unresistingly went with the police.

Alternatively, or should the Court sustain the guilt of the accused, the appeal seeks a conviction only for simple, not qualified, rape, as the information does not allege the mental disability of the offended party.

The Solicitor General vigorously disputes the first assignment of error, and fully supports the factual findings of the lower court. He concedes, however, that the charge of rape was not adequately qualified in the information, as the latter failed to allege the mental incapacity of the victim. He makes the additional plea that moral damages, apart from civil indemnity and exemplary damages, be awarded to the victim.

From an evaluation of the evidence, the Court has arrived at the conclusion that the culpability of the accused had been proved beyond reasonable doubt.

The competence and credibility of mentally deficient rape victims as witnesses has been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently.[9] Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony that someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.[10]

Through very simply worded questions, the prosecution was able to elicit the details of the incident from Cornelia Toralba. Thus:

ATTY. BALLEBAR

Q:

Now, before that incident, Madam Witness, where were you?

A:

I was inside the room, Ma'am.

Q:

Inside the room of what house?

A:

At the house of Agapito, Ma'am.

Q:

Now, what were you doing in that room?

A:

I was spreading the mat, Ma'am, on the floor.

Q:

Now, when you were spreading the mat on the floor, where was Agapito Toralba then?

A:

He was at the kitchen, Ma'am.

Q:

And what was he doing at the kitchen?

A:

He undressed himself, Ma'am.

Q:

Now, this kitchen, how far is this to the place where you were spreading the mat, from where you are seated?

A:

(Witness pointed the distance as agreed upon by counsels to be four to five meters.)

Q:

Now, you mentioned that at the kitchen, Agapito Toralba undressed himself, what dress did he remove?

A:

His short pants, Ma'am.

Q:

After he removed his short pants, what did he do next, if any?

A:

He entered the room, Ma'am.

Q:

And the room which Agapito Toralba entered, is it the same room where you were spreading the mat?

A:

Yes, Ma'am.

Q:

And when he entered the room, what did he do, if any?

A:

He pushed me, Ma'am.

Q:

Now, when he pushed you, what part of your body did he push?

A:

My chest, Ma'am.

Q:

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And what happened to you when you were pushed by Agapito Toralba?

A:

I fell down, Ma'am.

COURT

Q:

Where did you fall down?

A:

I fell down on the bed, Your Honor.

ATTY. BALLEBAR

Q:

And when you fell down on the bed, what did Agapito Toralba do, if any?

A:

He lay on top of me, Ma'am.

Q:

And after he lay on top of you, what did he do next, if any?

A:

He kissed me, Ma'am.

Q:

Where were you kissed?

A:

On my lips, Ma'am.

Q:

And after he kissed you, what did he do next, if any?

A:

He inserted his to my front, Ma'am.

Q:

Now, what is this "his" which he inserted in front of you?

A:

He inserted his penis, Ma'am.

(Witness is crying.)

Q:

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You mentioned that he inserted his penis in your front. What is that front where he inserted the penis?

A:

My vagina, Ma'am.

Q:

And after he inserted his penis in your vagina, what did he do next, if any?

A:

After which, Ma'am, he left.

Q:

Now, when Agapito Toralba inserted his penis in your vagina, what were you doing at that time?

A:

I continued crying, Ma'am.

Q:

Did you not fight?

A:

I also fought him, Ma'am, but I was overpowered.

xxx [11]

Moreover, Cornelia's statements were fully corroborated by Remedios Toralba, who caught the accused in the act of raping her daughter, and the findings of Dr. Llorin on the presence of healed lacerations on the victim's organ. Cornelia's grandmother, Melecia, the wife of the accused, initially took the side of the accused but later showed her support for Cornelia, by also affixing her thumbprint on the complaint for rape and testifying as a witness for the prosecution. It is highly unlikely for his own wife and daughter to confront the accused with so serious a charge as incestuous rape, aware that the same could put the head of their family behind bars for the rest of his life and expose the family to public ridicule and shame, if they are not motivated by the singular desire to seek justice and redress for Cornelia.

Coming now to the assigned errors in this petition, we find the inconsistencies imputed by the accused on the testimonies of Cornelia and Remedios to be no more than imagined. Both mother and daughter gave clear and credible testimonies as reflected on the records of this case. The argument on the accused's being so advanced in age as to render it doubtful for him to have committed the rape is belied by his having been caught in flagrante delicto; this Court has also held in several instances that advanced age is not known to render sexual intercourse impossible nor to deter sexual interest and capability.[12] As for accused's non-flight and lack of resistance to his arrest, we have intermittently held that unlike flight of an accused which may be indicative of guilt, non-flight is not a conclusive gauge of innocence --- it is simply inaction, which may be due to several factors.[13]

There is merit, however, to the second assignment of error. The Court holds that as worded in the information, the crime of rape was not sufficiently qualified and the accused may be convicted only for simple rape.

At the time of the rape, Republic Act No. 8353 or the Anti-Rape Law of 1997, which repealed Article 335 of the Revised Penal Code and classified rape as a crime against persons, was already effective. The new provisions on

rape, provided under Articles 266-A and 266-B of the Revised Penal Code, state:

> Article 266-A. Rape; When And How Committed. --- Rape is committed---
>
> 1) By a man who shall have carnal knowledge of a woman under any of the circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machinations or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
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> xxx
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> Article 266-B. Penalties. --- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
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> The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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;
>
> 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
>
> 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
>
> 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
>
> 5) When the victim is a child below seven (7) years old;
>
> 6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
>
> 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof of the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
>
> 8) When by reason or on the occasion of the rape, the victim suffered permanent physical mutilation or disability;
>
> 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
>
> 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.
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> xxx

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The Court has often reiterated that circumstances qualifying the imposition of the death penalty in rape cases must be designated with specificity in the information in order to duly apprise the accused of the nature of the charges leveled against him.[14] The failure to do so in the present case will result in the accused's conviction for no higher than simple rape, as provided under Article 266-A, paragraph 1, punishable by reclusion perpetua.

The information in the instant case undisputably fails to allege any circumstance under Article 266-B that would qualify the rape and involve the imposition of capital punishment. Although the fact of relationship between the accused and the offended party is alleged, there is no mention of Cornelia's mental age for the circumstance in Article 266-B, par. 1 to apply.[15] Neither did the information allege that the accused was aware of the mental disability of Cornelia, as set out in Article 266-B, par. 10.

The fact that such mental retardation, or the accused's knowledge thereof, was subsequently brought into evidence, does not work to amend the charges as laid out in the information, which altogether preclude the conviction of the accused for qualified rape. However, the fact of relationship of the offender with the victim, duly alleged in the information and proven in trial, being an alternative circumstance under Article 15 of the Revised Penal Code, may be treated as a generic aggravating circumstance in the crimes of rape and acts of lasciviousness,[16] and will justify the award of exemplary damages.[17]

Under these circumstances, therefore, we find it necessary to modify the decision of the trial court which convicted the accused for qualified rape, although it commuted the death penalty to reclusion perpetua by reason of the accused being over 70 years of age. The Court holds that, because of the defect in the information filed against the accused, he may be only convicted for rape under Article 266-A of the Revised Penal Code, which carries the lesser penalty of reclusion perpetua. There is no occasion to commute the death sentence because the conviction is for simple rape.[18]

At the same time, we uphold the award by the trial court of P50,000.00 as civil indemnity, and grant another P50,000.00 as moral damages, in accordance with present case law[19] which dictate that the award of moral damages to rape victims should automatically follow conviction and require no additional proof. We also find the award of P25,000.00 by the trial court as exemplary damages to be in order, considering the presence of the generic aggravating circumstance of relationship, and for the purpose of deterring persons with similarly perverse tendencies and aberrant sexual behavior from victimizing their daughters or other near relations. Indeed, the moral corruption of the accused had been indisputably shown, having taken sexual advantage not only of the herein offended party, who is both his child and grandchild, but also of his two daughters, from which incestuous liaisons children have been born.

WHEREFORE, accused-appellant Agapito Toralba is declared GUILTY beyond reasonable doubt of the crime of rape as defined under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, and sentenced to suffer the penalty of reclusion perpetua, and ordered to indemnify the victim Cornelia Toralba the following sums: P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Presided by Judge Jose T. Atienza.

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[2] Rollo, 6.

[3] Exh. "B", cited in RTC Decision; Rollo, 18.

[4] TSN, March 15, 1999, 11.

[5] Ibid., 12.

[6] TSN, March 23, 1999, 3-5.

[7] Ibid., 5.

[8] RTC Decision; Rollo, 25.

[9] People vs. Ducta, G.R. No. 134608, August 16, 2000; People vs. Lubong, 332 SCRA 672 (2000); People vs. Cabingas, 329 SCRA 21 (2000); People vs. Tipay, 329 SCRA 52 (2000); People vs. San Juan, 270 SCRA 693 (1997).

[10] People vs. San Juan, supra.

[11] TSN, March 23, 1999, 13-15.

[12] People vs. del Rosario, G.R. No. 134581, October 26, 2000; People vs. Austria, G.R. No. 123539, June 27, 2000; People vs. Lustre, 330 SCRA 189 (2000); People vs. dela Cuesta, 304 SCRA 83 (1999).

[13] People vs. Omar, 327 SCRA 221 (2000). See also People vs. Temanel, G.R. Nos. 97138-39, September 28, 2000; People vs. Legaspi, 331 SCRA 95 (2000).

[14] People vs. Ilao, 296 SCRA 658 (1998); People vs. Ramos, 296 SCRA 559 (1998).

[15] See People vs. Pecayo, G.R. No. 132047, December 14, 2000; People vs. Surilla, G.R. No. 129164, July 24, 2000, People vs. Traya, 332 SCRA 499 (2000); People vs. Decena, 332 SCRA 618 (2000), which held that the concurrent qualifying circumstances of minority and relationship must be alleged in the indictment and proven during trial to merit the imposition of the death penalty. Since sexual intercourse with a woman with a mental age below 12 years old constitutes statutory rape, the woman's mental age must also be alleged in the information; see People vs. Lopez, G.R. Nos. 135671-72, November 29, 2000.

[16] People vs. Baldino, G.R. No. 137269, October 13, 2000.

[17] Civil Code, Art. 2230; People vs. Baldino, supra.

[18] People vs. Lustre, 330 SCRA 189 (2000).

[19] People vs. Lopez, supra; People vs. Itdang, G.R. No. 136393, October 18, 2000; People vs. Ducta, G.R. No. 134608, August 16, 2000.

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