

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO HERMANES, ACCUSED-APPELLANT.

G.R. No. 139416. March 12, 2002

Ponente: MELO, J.

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MELO, J.:

Before us on automatic review is the decision rendered by the Regional Trial Court of the 8[th] Judicial Region (Branch XXX, Basey, Samar) finding appellant Ernesto Hermanes guilty of the crime of rape and imposing upon him the supreme penalty of death.

The conviction of appellant stemmed from an Information dated September 25, 1996 which reads:

That on or about the 2[nd] day of November, 1995 at about 10:00 o'clock in the evening, at Brgy. Maligaya, Municipality of Sta. Rita, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did, then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge without the consent and against the will of the complainant MARINA HERMANES, inside her house, the accused being her step-father, with threats of killing her and all members of her family.

CONTRARY TO LAW.

(p. 7, Rollo.)

At his arraignment, appellant pleaded not guilty. Thereupon, trial ensued.

The relevant facts as presented by the prosecution are faithfully summarized in the brief submitted by the Solicitor General, to wit:

On or about November 2, 1995 at around ten o'clock in the evening, private complainant Marina Hermanes, who at that time was ten (10) years old, was in the house shared by appellant Ernesto Hermanes, her stepfather, and his wife Milagros (p. 6, TSN, July 22, 1997). Marina's natural mother already died (p. 135, Records). Marina further declared that she has been living with her stepfather, the appellant, and his wife Milagros since she was two (2) years old (p. 6, TSN, July 22, 1997).

Marina was lying in her bedroom when appellant entered and undressed her. Appellant opened his trousers, placed himself on top of private complainant, and successfully inserted his organ ("sili") into her vagina ("pipi"), Marina felt pain (p. 8, *ibid.*). Thereafter, appellant made a push and pull motion for quite some time (p. 9, *ibid.*). Having satisfied himself, appellant stood up, closed his trousers and left Marina alone to attend to his carabao (pp. 110-11, *ibid.*).

The following day at eight (8) o'clock in the morning, Marina proceeded to the house of Soltero Salubre, a Kagawad of their barangay at that time, and told him that her father, Ernesto Hermanes, raped her, and has raped her twice before the incident of November 2, 1995 (pp. 6, 12, TSN, January 14, 1998). Because of said complaint, Salubre brought Marina to the Department of Social Welfare and Development (DSWD) Office in Sta. Rita, Samar (p. 9, *ibid.*). Marina has since been in the custody of the DSWD Home for Girls (Abused)

Children, Lingap Center, Palo, Leyte (p. 5, TSN, July 22, 1997).

(pp. 4-5, Appellee's Brief.)

On November 4, 1995, or 2 days after the rape, Marina was physically examined by the Municipal Health Officer of Sta. Rita, Dra. Rusela Grapa. Marina was found to have hymenal lacerations at the 3 and 7 o'clock positions, which, according to Dra. Grapa could have been caused by the insertion of male organ (tsn, November 11, 1996, p. 5). Moreover, on direct examination, Dra. Grapa testified that these lacerations were "fresh."

Q:

When you examined the patient, what was then the nature of the lacerations? New or healing?

A:

It was a fresh healing laceration. It was fresh but starting to heal.

Q:

If these lacerations were fresh but healing, can you estimate the time of the incident?

A:

Yes.

Q:

And from your day of examination, when could have the incident happened?

A:

Between 24 to 48 hours.

Q:

This laceration, was this caused by sexual intercourse?

A:

Yes.

(tsn, August 14, 1997, p. 10-11.)

As the prosecution was about to call its last witness on January 14, 1998, appellant, through counsel, manifested his desire to withdraw his previous plea of not guilty and to change the same to a plea of guilty. The trial court allowed him to do so. Thus, appellant was re-arraigned and, with the aid of his counsel, he subsequently pleaded guilty to the crime charged (Record, p. 86).

The change in plea notwithstanding, the prosecution continued with the presentation of its last witness in order to establish appellant's guilt and precise degree of culpability (ibid.).

Thereafter, on July 14, 1998, appellant, through new counsel Atty. Mario Nicolasora, filed a manifestation in court denying that he wanted to change his original plea of not guilty to guilty. Consequently, the trial court

ordered the withdrawal of appellant's earlier plea of guilty and the reversion of his plea to not guilty (ibid., p. 104).

At the subsequent hearing set on August 12, 1998, the defense was to present appellant as its witness. Instead of so doing, Atty. Nicolasora asked that the presentation of evidence for the defense be deferred and that appellant be allowed to prove intoxication, degree of instruction and education, and the lack of intent to do so grave a wrong as that committed, in order to mitigate his liability, all for the purpose of convincing the trial court to recommend to the Office of the President the grant of executive clemency (ibid., p. 107).

On August 14, 1998, appellant, through counsel, filed a manifestation admitting responsibility for the November 2, 1995 rape, and asked for forgiveness from complainant and the public in general. Likewise, appellant manifested that he would present evidence to prove certain mitigating circumstances in his favor and reiterated his request for the trial court to recommend executive clemency (ibid., p. 108).

However, despite having been given ample opportunity to prove supposed mitigating circumstances, appellant inexplicably defaulted thereat, and given the long delay that had attended the hearing of the case for the defense, the trial court was constrained, on December 21, 1998, to consider the defense as having waived its right to present evidence. The case was thus considered submitted for final resolution.

On March 19, 1999, the trial court rendered its decision convicting appellant. The dispositive part of the decision states:

IN VIEW OF THE FOREGOING, finding the accused Guilty beyond reasonable doubt of the heinous crime of raping his own 10-year-old stepdaughter Marina Hermanes through the conclusive evidences presented by the prosecution as well as his admission of the same through his counsel, he is hereby sentenced to suffer the extreme penalty of DEATH. However, taking into consideration the underlying circumstances herein as above pointed out, the Court hereby recommends the granting of Executive Clemency to the said accused.

Upon promulgation of the above, let the record herein be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.

(pp. 23-24, Rollo.)

Appellant assails the trial court on the sole issue of the imposition of the penalty of death.

The case being one on automatic review, the Court undertook an examination and scrutiny of the evidentiary record, and on the basis thereof, it now affirms the trial court's finding of guilt.

The prevailing rule is that the testimony of rape victims who are young and immature deserves full credence (People vs. Bernaldez, 294 SCRA 317 [1998]). The Court's attention has not been called to any dubious reason or improper motive on the part of Marina that would have impelled her to charge and testify falsely against appellant in regard to so heinous a crime as rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded (People vs. Abella, 315 SCRA 36 [1999]).

The evidence establishes beyond reasonable doubt the guilt of appellant. The testimony of complainant is plain, straightforward, and positive. With clarity and candor, complainant recounted the manner in which she was raped by appellant, viz:

Q:

Okey, do you recall where were you on November 2, 1995 at about 10:00 o'clock in the evening?

A:

Yes, sir.

Q:

Where were you then, if you can recall?

A:

I was in the house.

Q:

And where is this house of yours located that you are referring to?

A:

Brgy. Maligaya, Sta. Rita, Samar.

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Q:

While you were there in your house that evening do you recall of any incident that occurred to you?

A:

Yes, sir.

Q:

And what is this incident that occurred to you?

A:

That night I was undressed.

Q:

By whom were you undressed?

A:

Ernesto Hermanes.

Q:

Where were you then particularly inside the house when you were undressed?

A:

I was in the bedroom.

Q:

How did Ernesto Hermanes undress you?

A:

He placed himself on top of me.

Q:

What were you wearing then if you can recall?

A:

I was wearing a dress.

Q:

After this Ernesto Hermanes undressed you and placed himself on top of you, what did he do to you next?

A:

He sexually abused me.

Q:

By sexual abuse, what did he actually do to you?

A:

He placed his sili (organ) inside my pipi (vagina).

Q:

Do you know where is your pipi?

A:

Here (Witness pointing between her legs).

Q:

When Ernesto Hermanes put inside his organ to your organ, what did you feel?

A:

It was very painful.

Q:

Do you know what do you mean by sili?

A:

Yes, sir.

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Q:

When his penis was already inside your vagina, what did Ernesto Hermanes do to you?

A:

He did it again.

Q:

What do you mean by saying, he did it again?

A:

I do not know how to call it.

Q:

As you were feeling the pain, what did you do next if any?

A:

(No answer)

Q:

For how long did he place his penis inside your vagina?

A:

It was 9:00 o'clock in the evening.

Q:

Was the penis of Ernesto Hermanes inside your vagina long?

A:

Yes, sir.

Q:

Did he make any movement of his penis while it was inside your vagina?

A:

Yes, sir.

Q:

How?

A:

(He was making a push and pull motion as witness indicated).

Q:

How many times did Ernesto Hermanes do this sexual abuse to you during that evening?

A:

One.

(tsn, July 22, 1997, p. 6-10.)

Prescinding from the above, and on the basis of the manifestation filed by Atty. Nicolasora on August 14, 1998, the trial court observed that appellant admitted having raped his stepdaughter, stating that “it is only in this case now that the accused herein Ernesto Hermanes has admitted guilt, manifesting his desire to ask for forgiveness, and had practically and wholly submitted himself to the discretion and compassion of this Court (Decision, p. 10).” Said manifestation, states in part:

- That after an exhausting conference with the accused, the latter informed the undersigned that he cannot bear his conscience and he would like to state completely in court the actual circumstances of the rape that transpired on November 2, 1995 at about 10:00 o'clock in the evening at Barangay Maligaya, Sta. Rita, Samar;

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- That he is now remorseful and he believes that by completely stating the truth he may be forgiven by his foster daughter, Marina Hermanes (rape victim), his spouse and the public in general;

- That the gist of the would be testimony of the accused would show that during the rape incident he was heavily intoxicated and he and his foster daughter, Marina Hermanes, were alone at their residence;

- That he will present the following mitigating circumstances in his favor, as follows: (a) intoxication; (b) plea of guilty; (c) the degree of instruction and education of the offender; and (d) that he had no intention to commit so grave a wrong as that committed.
- That he plead for the mercy and compassion of the Honorable Court that in the event the penalty prescribed by law be meted against him, he respectfully pleads to this court that it recommends executive clemency for his behalf.

A perusal of the manifestation filed by Atty. Nicolasora on behalf of appellant shows that it was signed only by Atty. Nicolasora, not by appellant. While we stated in *People vs. Balisoro* (307 SCRA 48 [1999]) that an admission made in the pleadings cannot be controverted by the party making such admission and that the same is conclusive as to him, it is also hornbook doctrine that the authority of an attorney to bind his client as to any admission of facts made by him is limited to matters of judicial procedure. An admission which operates as a waiver, surrender, or destruction of the client's cause is beyond the scope of the attorney's implied authority (*People vs. Maceda*, 73 Phil. 679 [1942]). In this case, Atty. Nicolasora's admission that appellant was heavily intoxicated at the time of the incident and that he had no intention to commit so grave a wrong as that committed practically frittered away appellant's case in favor of the prosecution. The manifestation cannot thus be held as an admission by appellant of his guilt.

The inadmissibility of Atty. Nicolasora's manifestation notwithstanding, appellant nonetheless is still criminally liable for the rape of Marina Hermanes. While appellant is not bound by the manifestation of guilt filed by Atty. Nicolasora, he is still bound by the decision of the trial court to consider the case submitted for decision due to the inordinate delay and failure of his counsel to present evidence on his behalf. It must be noted that the prosecution completed the presentation of its evidence on January 14, 1998, and that the defense was given numerous opportunities to present evidence but, for almost one year, and despite several warnings to that effect, they failed to do so, so much so that the trial court, on December 21, 1998, was constrained to consider the case submitted for decision. A client is bound by an adverse decision rendered as a result of his attorney's inaction or negligence, such as failure to present sufficient evidence. The reason for this is that the adverse judgment is a mere consequence of an omission on a procedural matter in regard to which an attorney has the implied authority to bind his client. Too, the prosecution has more than sufficiently proven appellant's guilt beyond reasonable doubt.

Appellant, however, is correct in his sole submission that he does not deserve the death penalty.

The crime of rape is punished under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 which pertinently reads:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x

x x x

x x x

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.

x x x

x x x

X X X

Summarizing the recent rulings of the Court under the aforequoted provision (*People vs. Lomibao*, 337 SCRA 211 [2000]; *People vs. Acala*, 307 SCRA 330 [1999]; *People vs. Maglente*, 306 SCRA 546 [1999]), the concurrence of the minority of the victim and her relationship to the offender constitute special qualifying circumstances and both factors must be alleged and proved with certainty, otherwise, the death penalty cannot be imposed. In the present case, while the information did state that appellant is the stepfather of the complainant, it, however, failed to mention that complainant was under 18 years of age at the time of the commission of the offense. As such, the charge of rape in the information is not in its qualified form so as to fall under the special qualifying circumstances stated in Section 11 of Republic Act No. 7659. Verily, the information's failure to allege the minority of the victim cancels out the imposition of the death penalty.

In addition to the failure of the information to allege the minority of the complainant, appellant also claims that the trial court erred in imposing the death penalty allegedly because the step-father and step-daughter relationship between appellant and the victim was never conclusively established. We deem it unnecessary to discuss this particular argument in view of the previous disquisition that the death penalty cannot be imposed for failure of the information to allege the minority of the complainant. There being no allegation of the minority of the victim in the indictment under which appellant was arraigned, he cannot be convicted of qualified rape as he was not properly informed that he is being accused of qualified rape. Appellant's conviction of qualified rape violates his constitutional right to be properly informed of the nature and cause of accusation against him. Having been apprised only of the elements of simple rape, which crime was duly established by the prosecution, appellant can be convicted only for such crime and accordingly should be sentenced to reclusion perpetua.

As to the damages, the trial court failed to award civil indemnity in favor of private complainant. Inasmuch as the death penalty is not imposable in this case due to the deficiency in the allegations of the information against appellant, private complainant is only entitled to P50,000.00 as civil indemnity, in accordance with current rulings (*People vs. Bares*, G.R. Nos. 137762-65, March 27, 2001; *People vs. Lomibao*, *supra*).

Likewise, appellant is liable to pay the rape victim the amount of P50,000.00 as moral damages, which is automatically granted in rape cases without need of pleading or proof of the basis thereof (*People vs. Alba*, 305 SCRA 811 [1999]).

WHEREFORE, the decision under review is hereby affirmed with the modifications that (a) appellant is found guilty beyond reasonable doubt only of the crime of simple rape, for which he is sentenced to suffer the penalty of reclusion perpetua; (b) that appellant is ordered to pay the victim the amount of Fifty Thousand (P50,000.00) Pesos as civil indemnity and Fifty Thousand (P50,000.00) Pesos as moral damages.

SO ORDERED.

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

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