PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO MERCADO, ACCUSED-APPELLANT.

G.R. No. 139904. October 12, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an automatic review of the decision of the Regional Trial Court of Agoo, La Union, Branch 32, in Criminal Case No. A-3314, convicting accused-appellant of rape, and sentencing him to death and to pay the victim civil indemnity of P50,000.00.[1]

Accused-appellant was indicted of rape in an Information which reads:

> That on or about the 13[th] day of August, 1997, in the Municipality of Rosario, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and being then armed with a knife, by means of violence and intimidation and by tying the hands and feet of the aforenamed Melinda P. Mercado, did then and there wilfully, unlawfully and feloniously have carnal knowledge of her for five times on the aforesaid date, against her will, to the damage and prejudice of the aforenamed Melinda P. Mercado, a minor then twelve (12) years of age.
>
> Contrary to law.[2]

Accused-appellant entered a plea of "Not Guilty,"[3] after which trial proceeded.

Twelve-year old Melinda Mercado spent the afternoon of August 13, 1997 at the house of her cousin, Sonia Torralba, located in Inabaan Norte, Rosario, La Union. There she played with Sonia, Larry Torralba, and her brother, George. They also cut bamboo. At 6:00 in the evening, Melinda went to the bamboo hut of her uncle, accused-appellant Conrado Mercado, to return his bolo. The hut was located some ten to twelve meters away. When Melinda got there, accused-appellant pulled her into the hut, forced her to lie down on the floor and tied her hands and legs. Then accused-appellant gagged Melinda's mouth with a piece of cloth. Accused-appellant raised Melinda's dress and removed her panties. He then took off his shorts. While Melinda was lying on the floor, accused-appellant got hold of a knife and pointed it at Melinda's breast. He then lay down and had sexual intercourse with Melinda.[4]

Accused-appellant kept Melinda bound and gagged on the floor of the hut for six hours. During that span of time, accused-appellant had sexual intercourse with Melinda five times. At 12:00 midnight, while accused-appellant was outside the hut, Melinda was able to untie herself. She hurriedly ran out of the hut. Accused-appellant saw her and ran after her. Melinda arrived at her house and immediately told her mother that she had been raped by accused-appellant. When her mother saw the latter arriving, she threw a plastic container at him.[5]

The following morning, Melinda's mother brought her to the house of Barangay Captain Rodrigo Molina to report the matter. The Barangay Captain summoned Councilman Jose Laroya to fetch accused-appellant. Later, Melinda was brought to the Rosario District Hospital for medical examination.[6] Then, she was brought to the

police station, where she gave her statement regarding the rape.[7] Thereafter, she was brought to the Ilocos Regional Hospital for further medical examination.[8]

Melinda's cousin, Larry Torralba, also twelve years old, saw accused-appellant pull Melinda into the hut from his house. He and Melinda's brother, George, approached the hut and peeped through a hole in the wall. He saw accused-appellant force Melinda to lie down on the floor, gag her mouth and tie her hands and feet. After that, he and George ran towards his house and reported what they saw to his brother.[9]

Dr. Rosemarie Catapang, who examined Melinda at the Ilocos Regional Hospital on August 14, 1997, found incomplete healed lacerations on her genitals at 5:00 o'clock and 3:00 o'clock positions.[10]

SPO2 Rodolfo Abella and SPO1 Dominador Gali of the Rosario Police were dispatched to the crime scene on August 15, 1997 to gather physical evidence.[11] They were able to recover from accused-appellant's hut, the white t-shirt which he tied around Melinda's mouth,[12] Melinda's panties,[13] the kitchen knife which accused-appellant pointed at Melinda,[14] and the nylon rope used to tie Melinda's hands and legs.[15]

On August 15, 1997, Melinda filed a formal complaint for rape against accused-appellant with the Municipal Trial Court of Rosario, La Union.[16] After finding a prima facie case against accused-appellant, Municipal Trial Judge Caroline B. Pañgan forwarded the records of the case to the Provincial Prosecutor of La Union.[17] On September 16, 1997, the Information quoted above was filed with the Regional Trial Court of Agoo, La Union, and docketed as Criminal Case No. A-3314.[18]

The defense relied on the lone testimony of accused-appellant. According to him, he was at Linapew, Tubao, La Union in the morning of August 13, 1997, which was three kilometers away, or about twenty minutes walk from his house in Inabaan Norte, Rosario, La Union. He went there to cut weeds at the field of his cousin, Leonardo Laroya. He finished at 5:00 o'clock in the afternoon, after which he drank gin with Laroya. At 7:00 p.m., he walked home. He arrived at his house at past 8:00 p.m.[19]

Accused-appellant denied the accusation of rape against him. When asked if he knew of any reason why complainant would impute such charges on him, accused-appellant surmised that his brother, Ernesto Mercado, who is Melinda's father, wanted to take away the land where he was staying.[20]

On February 23, 1999, the trial court rendered the decision subject hereof, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing considerations, the accused Conrado Mercado is hereby found "GUILTY" of the crime charged and is hereby sentenced to suffer the extreme penalty of Death by lethal injection; to indemnify the victim in the amount of P50,000.00 for the rape and to pay the cost of the proceedings.
>
> SO ORDERED.[21]

Accused-appellant's Brief before this Court raises only one assignment of error, to wit:

> THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED BECAUSE THE QUALIFYING CIRCUMSTANCE THAT THE ACCUSED WAS A RELATIVE WITHIN THE THIRD DEGREE OF CONSANGUINITY OF THE VICTIM WAS NOT ALLEGED IN THE INFORMATION.[22]

In other words, accused-appellant does not question his conviction or the findings of the trial court as to his guilt. He merely prays that the penalty imposed on him be modified to reclusion perpetua,[23] which prayer is joined by the Solicitor General.[24]

Accused-appellant's position is well-taken. The trial court's imposition of the death penalty was based on Article 335 (now Article 266-B) of the Revised Penal Code, viz:

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> 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. xxx.

In quite a number of cases, we have consistently ruled that for death to be imposable under the above provision, both the minority of the victim and her relationship to the offender should be specifically alleged in the Information. It is not enough that the relationship was subsequently proved during the trial. Otherwise, accused-appellant can only be convicted of simple rape, the penalty for which is reclusion perpetua.[25]

> The informations merely allege the minority of complainant. However, an allegation of her filial relationship with accused-appellant is essential because these two (minority and relationship) constitute a special qualifying circumstance, which, in accordance with the settled rule, must be alleged in the information and proven. Thus, in People v. Garcia (281 SCRA 463 [1997]), it was held that qualifying circumstances, which increase the penalty by degree rather than merely affect the period of penalty as in the case of aggravating circumstances, must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him. Consequently, there would be a denial of due process if after being charged with simple rape, he is convicted of its qualified form punishable with death. In these cases, the attendant circumstance qualifying the offense was not completely alleged in the indictments on which he was arraigned. For this reason, the death penalty imposed on accused-appellant in each case should be reduced to reclusion perpetua.[26]

This case may easily be disposed of by a simple modification of the penalty as prayed for by accused-appellant. If we do that, however, we would be shirking from our legally mandated duty to review all death penalty cases.[27] This duty has been eloquently summed up by Mr. Justice Puno in this wise:

> We hold, however, that there is more wisdom in our existing jurisprudence mandating our review of all death penalty cases, regardless of the wish of the convict and regardless of the will of the court. Nothing less than life is at stake and any court decision authorizing the State to take life must be as error-free as possible. We must strive to realize this objective, however elusive it may be, and our efforts must not depend on whether appellant has withdrawn his appeal or has escaped. Indeed, an appellant may withdraw his appeal not because he is guilty but because of his wrong perception of the law. Or because he may want to avail of the more speedy remedy of pardon. Or because of his frustration and misapprehension that he will not get justice from the authorities. Nor should the Court be influenced by the seeming repudiation of its jurisdiction when a convict escapes. Ours is not only the power but the duty to review all death penalty cases. No litigant can repudiate this power which is bestowed by the Constitution. The power is more of a sacred duty which we have to discharge to assure the People that the innocence of a citizen is our concern not only in crimes that slight but even more, in crimes that shock the conscience. This concern cannot be diluted.[28]

Thus, we painstakingly sifted through the evidence presented in order to make our own determination as to accused-appellant’s guilt or innocence. We have reached the conclusion that the prosecution sufficiently proved accused-appellant’s guilt beyond reasonable doubt.

Notably, the victim, Melinda Mercado, testified in a categorical, straightforward, spontaneous and frank manner, and remained consistent even on cross-examination. Moreover, her testimony was natural and consistent with human nature and the normal course of things. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[29]

Furthermore, an eyewitness testified as to accused-appellant’s acts leading to the rape of the victim. It is axiomatic that the lone testimony of the rape victim, if credible, is sufficient to support a conviction.[30] With

more reason, her testimony would suffice where it is corroborated by other evidence in its material points. Although, admittedly, Larry Torralba did not witness the actual rape, his testimony constitutes circumstantial proof which, taken together with other evidence, more specifically, the discovery of the articles of clothing and rope inside accused-appellant's hut, tends to prove the commission of the crime.

> xxx. Conviction for rape may be based on circumstantial evidence when the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, provided that more than one circumstance is duly proved and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged. xxx.[31]

In the face of the victim's clear and positive account of the commission of the crime, accused-appellant can only offer the defense of denial and alibi. Unfortunately, the place where accused-appellant allegedly was at the time of the rape was only three kilometers away, and can be traversed by foot within twenty minutes. For the defense of alibi to prosper, accused-appellant must not only prove his presence at another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the locus criminis at the time of the commission of the crime.[32]

> Alibi and denial are inherently weak defenses and unless supported by clear and convincing evidence, the same can not prevail over the positive declarations of the victim who, in a simple and straightforward manner, convincingly identified the accused-appellant as the defiler of her chastity. In short, the positive assertions of accused-appellant's daughter that he raped her is entitled to greater weight. While denial and alibi are legitimate defenses in rape cases, bare assertions to this effect can not overcome the categorical testimony of the victim.[33]

Coming now to the civil damages, the victim should be awarded moral damages in addition to the civil indemnity imposed by the trial court. Moral damages in the amount of P50,000.00 are awarded to victims of simple rape, without need for pleading or proof of the basis thereof. The fact that the complainant in rape has suffered the trauma of mental physical and psychological sufferings which constitute the basis for moral damages are too obvious to still require recital thereof at the trial by the victim since we assume and acknowledge such agony on her part as a gauge of her credibility.[34] In the case at bar, there was proof that Melinda suffered mental anguish, and that she had to stop going to school out of sheer embarrassment and shame for her misfortune.[35]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Agoo, La Union, Branch 32, in Criminal Case No. A-3314, finding accused-appellant Conrado Mercado guilty beyond reasonable doubt of the crime of rape, is AFFIRMED with MODIFICATION. As modified, accused-appellant is sentenced to suffer the penalty of reclusion perpetua, and to pay the victim, Melinda Mercado, the additional amount of P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Buena, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, and Panganiban, JJ., on official leave.

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[1] Decision dated February 23, 1999; penned by Judge Leo M. Rapatalo.

[2] Record, p. 24.

[3] Ibid., p. 38.

[4] TSN, November 13, 1997, pp. 3-7.

[5] Ibid., pp. 8-12.

[6] TSN, December 10, 1997, pp. 3-7.

[7] Exhs. “B” to “C”.

[8] TSN, December 10, 1997, pp. 8-9.

[9] TSN, February 9, 1998, pp. 5-11.

[10] Exh. “E”; TSN, February 2, 1998, p. 3.

[11] TSN, January 29, 1998, p. 3.

[12] Exh. “G”.

[13] Exh. “H”.

[14] Exh. “I”.

[15] Exh. “J”.

[16] Docketed as Criminal Case No. 5247; Record, p. 1.

[17] Ibid., pp. 21-22.

[18] Op. cit., note 2.

[19] TSN, November 23, 1998, pp. 3-5.

[20] Ibid., p. 8.

[21] Rollo, pp. 38-39.

[22] Ibid., p. 58.

[23] Id., p. 68.

[24] Id., p. 113.

[25] People v. Mauricio, G.R. No. 133695, February 28, 2001; People v. De Villa, G.R. No. 124639, February 1, 2001; People v. Sarmiento, G.R. No. 134768, October 25, 2000; People v. Gabiana, 338 SCRA 562 [2000]; People v. Flores, 322 SCRA 779 [2000]; People v. Baybado, 335 SCRA 712 [2000]; People v. Mendez, 335 SCRA 147 [2000].

[26] People v. Bernaldez, 322 SCRA 462, 472 [2000].

[27] People v. Del Rosario, et al., G.R. Nos. 107297-98, December 19, 2000.

[28] People v. Esparas, et al., 260 SCRA 539, 551 [1996].

[29] People v. Oling, G.R. No. 129299, November 15, 2000.

[30] People v. Pecayo, Sr., G.R. No. 132047, December 14, 2000.

[31] People v. Perez, 307 SCRA 276, 290-291 [1999].

[32] People v. Elpedes, G.R. No. 137106-07, January 31, 2001; People v. Francisco, G.R. No. 134566-67, January

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[33] People v. Bawang, G.R. No. 131942, October 5, 2000; People v. Watimar, 338 SCRA 173, 190-191 [2000].

[34] People v. Magdato, G.R. Nos. 134122-27, February 7, 2000; People v. Prades, 293 SCRA 411, 431 (1998).

[35] TSN, January 13, 1998, p. 5.

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