

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GERON, ACCUSED-APPELLANT.

G.R. No. 140758. July 23, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before this Court for automatic review is the decision of the Regional Trial Court of Caloocan City, Branch 128, finding Romeo Geron guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of death.

The case originated from an Information that read:

That on or about the month of July 1996 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there wilfully, unlawfully and feloniously repeatedly lie and have sexual intercourse with the undersigned complainant EMILY GERON y TORENTE, a minor of 15 years of age, against the latter's will and without her consent, and said accused being then the father of said minor.

Contrary to law.[1]

On March 3, 1997, Geron was arraigned and pleaded Not Guilty to the accusation.[2] However, on July 29, 1997, the accused was re-arraigned. This time, he entered a plea of Guilty.[3] The accused confirmed before the court that the plea of guilty was entered freely and voluntarily and that he was aware of the consequences of his plea.

The accused admitted before the court that Emily is his daughter.[4] When his wife, Emily's mother, died, he took care of their four (4) children.[5] He stated that he raped Emily because she looked so much like her mother.[6] He was deeply sorry for what he did and would like to ask forgiveness from his daughter.[7] However, he denied that he used any bladed weapon during the incident.[8] He likewise stated that Emily neither fought back nor resisted his advances.[9]

When called to the witness stand, Emily Geron testified that she was born on May 12, 1981.[10] She recalled that sometime in the evening of July 1996, she was fast asleep when she felt somebody pulling her blanket. She was surprised to see her father lying beside her.[11] The accused ordered her to face him and he started kissing her. She tried to resist his advances by pushing him but her father shouted and scolded her and because he was stronger, he was able to remove her clothes.[12] He next lied on top of her and he succeeded in inserting his penis inside her vagina.[13] She pleaded for her father to stop but to no avail.[14] His father raped her on several other occasions until she got pregnant.[15]

The victim remained silent about her ordeal until January 10, 1997, when her grandmother, Amparo Torente, visited her. Amparo noticed that Emily was pregnant and she prevailed upon her granddaughter to reveal what happened to her.[16] Upon learning that it was Emily's father who raped her, Amparo brought Emily to the Department of Social Welfare and Development (DSWD). At the DSWD, they were assisted in bringing the

matter to the authorities and the accused was finally apprehended.[17] Emily gave birth on March 16, 1997, but her daughter died three (3) days after birth.[18]

Dr. Amparo Annabelle Soliman, who conducted a medical examination of the victim, confirmed before the court[19] the following findings:

GENERAL PHYSICAL EXAMINATION:

Height: 140 Weight: 78 lbs.

Fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts engorged, with prominent veins, with colostrum. Areolae, dark brown, 4.5 cms. in diameter. Nipples, dark brown, protruding, 1.2 cms. in diameter.

No extragenital physical injury noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, scanty. Labia majora, coaptated. Labia minora, coaptated. Fourchette, lax. Vestibular mucosa, violaceous. Hymen, moderately thick, moderately wide, intact but distensible. Hymenal orifice admits a tube 2.5 cms. in diameter. Vaginal walls, lax. Rugosities, shallow.

Bimanual examination reveals a soft, closed cervix attached to an enlarged mass which is the uterus, size of which is compatible to 4th months gestation. Fundic height is 12 cms.

CONCLUSIONS:

- No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
- Probable signs of pregnancy present corresponding on or about the first week of the second trimester.[20]

After trial, the court ruled, as follows:

WHEREFORE, in view of all the foregoing, the accused ROMEO GERON is hereby sentenced to death by lethal injection.

The accused is also ordered to pay Emily Geron the amount of P50,000.00 as moral and P75,000.00 as actual or compensatory damages.

Further, he shall suffer all the accessory penalties attached to the penalty provided for by law.

Cost against the accused.

SO ORDERED.[21]

In assailing the accused's conviction, the defense argued before this Court that:

THE COURT A QUO COMMITTED REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE NOTWITHSTANDING THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE HIS IMPROVIDENT PLEA OF NOT GUILTY.[22]

After a careful review of the records of this case, the Court finds no reason to reverse the decision of the trial court.

It should be stressed that accused-appellant pleaded Guilty to the crime of rape. He declared before the trial court that his plea was made freely and voluntarily and that he was aware of the consequences thereof. He testified:

Atty. Ibañez

Q Earlier you were arraigned before this Court of an offense of rape against your own daughter, and you entered a plea of guilty?

A Yes, sir.

Q Did anybody forced, coerced or promise (sic) you something in order for you to enter a plea of guilty?

A No, sir, because I want to save the complainant from the trouble of coming to this Court.

Q Did this representation advised (sic) you to plead guilty?

A No, sir.

Q So, it was your free and voluntary decision to enter a plea of guilty?

A Yes, sir.

Q You are aware of the consequence of your pleading guilty?

A Yes, sir.

Q And that the Court may impose a penalty of death or life sentence?

A Yes, sir.[23]

The defense would like to impress upon the Court that when accused-appellant entered a plea of guilty, he was not fully aware that he would be imposed the penalty of death. The defense cited accused-appellant's testimony whereby he stated that he would ask the court to give him the penalty of life imprisonment.[24]

The Court is not convinced. While accused-appellant stated that he would ask for the imposition of life imprisonment, there was nothing in the records that would show that he was solely motivated by his erroneous assumption that he would be spared the penalty of death.

In any event, even without the admission by accused-appellant, the prosecution was able to duly establish the rape committed against the victim. The candid and straightforward testimony of Emily certainly deserves credence. She testified:

Q While you were sleeping, do you know if there was an unusual incident that occurred?

A Yes, sir.

Q Will you tell us what happened while you were sleeping?

A I felt that someone was pulling my blanket.

Q And did you come to know who was the one pulling your blanket while you were sleeping?

A Yes, sir.

Q Who was the one pulling your blanket?

A My father, sir.

Q And what did your father do next after he pulled your blanket while you were sleeping?

A He laid beside me.

Q What was your position when your father pulled your blanket?

A He was laying by my side.

Q You said that your father laid beside you, what did you do when your father laid beside you?

A He made me face him.

Q And what happened next after your father made you face him?

A When I was already facing him, he kissed me.

Q And what did you do when he kissed you?

A I was removing his face from my face.

Q And what else did he do when you refused his kisses?

A He scolded me.

Q How did he scold you?

A He shouted at me and told me to agree with him.

Q And did you fight back?

A Yes, sir.

Q How did you fight your father?

A I pushed him away from me.

Q And did you succeed in pushing away your father?

A No, sir.

Q Why not?

A Because the place where we were laying down is too small.

Q And was your father strong?

A Yes, sir.

Q How did you fight back?

A When he was removing my clothes, I pushed so that my clothes will not be removed.

Q And were you able to prevent your father from removing your clothes?

A Yes, sir.

Q And then, what happened next?

A When he was finally able to remove my clothings, he raped me.

Q Now, you said that your father raped you, how did your father rape you?

A He inserted his penis on my vagina, sir.

Q When your father inserted his penis inside your vagina, did you fight back?

A Yes, sir.

Q Before he inserted his penis to your vagina, did you fight back?

A Yes, sir.

Q How did you fight your father?

A I pushed him, sir.

Q Did you succeed in fighting your father?

A No, sir.

Fiscal Ralar:

At this juncture, may we manifest that the witness is already crying and she could hardly speak.

Court:

Ask her if she could testify further.

Fiscal Ralar: (To the witness)

: Can you still continue with your testimony?

A Yes, sir.

Q Now, when your father inserted his penis into your vagina, how did you feel?

A It was painful, sir.

Q And did you fight back when you felt pain in your vagina?

A Yes, sir.

Q And then, what happened next after your father inserted his penis into your vagina?

A I was crying, sir.

Q And did your father stop from sexually assaulting you when you were crying?

A No, sir.

Q And what did he do while he was on top of you?

A He just continued on his desire even I told him to stop on what he was doing.

Q Did he stop when you told him to stop?

A No, sir.

Q And then, what happened next when he did not stop?

A He just continued to sexually molest me.

Q And then, what happened next?

A He would not like to stop, sir.

Q And then, did he finally stop from sexually assaulting you?

A When he was already through with his acts, sir.

Q Now, tell us how many times did your father sexually molest you?

A Many times, sir.

Q When was the first time when your father sexually abused you?

A That was on July, 1996.

Q And when was the second time when your father sexually abused you?

A After a week, sir,

Q How many times in a week do your father sexually molest you after July, 1996?

A Sometimes twice a week, sir.

Q Up to when did the accused last sexually abuse you?

A I cannot remember anymore, sir.

Q Do you know when was your father finally arrested?

A Yes, sir.

Q Tell us when?

A That was January 11, 1997.

Q Could you approximate to us how many times your father sexually molest you from July 1996 up to the time he was finally arrested in January 11, 1997?

A I cannot remember but that was many times, sir.

Q Now, you said that you were sexually molested many times by your father, do you recall if you got pregnant?

A Yes, sir.

Q And what happened to the child you were bearing?

A The child died.

Q Tell us when was the child delivered?

A On March 16, 1997, sir.[25]

Accused-appellant denied that he used any weapon to subdue the victim. He likewise stated before the trial court that Emily did not resist his advances. On this score, we find the testimony of Emily more believable. Further, it should be remembered that accused-appellant is the father of the victim. Accused-appellant's physical and moral ascendancy are enough to cower the victim into submission to his sexual desires.[26]

Although it was established beyond reasonable doubt that Emily was raped by accused-appellant, the Court finds that the lower court erred in imposing the supreme penalty of death upon him. Republic Act No. 7659 (the Death Penalty Law), which was already in force at that time the rape was committed in July 1996,[27] requires that the circumstances of the minority of the victim and her relationship with the offender must concur for the death penalty to be imposable. Article 335 of the Revised Penal Code, as amended by R.A. No. 7659 provides:

x x x

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

x x x

The Court has previously explained that the circumstances of minority and relationship are considered as special qualifying circumstances because they alter the nature of the crime of rape and thus warrant the imposition of the death penalty. These two circumstances must be alleged in the information and established during trial for the court to be able to impose the death penalty.[28] It was, therefore, incumbent upon the prosecution to satisfactorily prove both circumstances of minority and relationship.

In the case at bar, the prosecution did not present Emily's birth certificate to prove her minority at the time of the rape. Instead, it presented the birth certificate of Raquel Geron, the child born out of the incestuous rape, which certificate indicated that Emily was fifteen (15) years old at the time of her child's birth.[29] However, such proof is merely equivalent to a bare declaration on the part of Emily as to her age because it was she who furnished the data contained therein.[30] Further, while accused-appellant also stated that Emily was fifteen (15) years old when the rape was committed in July 1996,[31] the Court notes that he merely replied "yes" to the questions propounded to him on cross-examination, thus:

Court to Witness –

Q Do you also know that when you committed rape against your daughter, she was a minor?

A Yes, your Honor.

Q That she was only fifteen (15) years old?

A Yes, your Honor.[32]

To our mind therefore, the foregoing do not prove Emily's minority beyond reasonable doubt.

In the absence of proof of Emily's minority, the penalty imposable for the offense is reclusion perpetua. It is therefore necessary to reduce the civil indemnity awarded by the lower court from P75,000.00 to P50,000.00.

WHEREFORE, the decision of the trial court is hereby AFFIRMED with MODIFICATION. Accused-appellant Romeo Geron is convicted of rape and sentenced to suffer the penalty of reclusion perpetua and is directed to indemnify Emily Geron the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J., on official leave.

Bellosillo, J., no part. Did not take part in deliberations.

[1] Rollo, p. 9.

[2] Records, p. 7.

[3] Id., at 26.

[4] TSN, July 29, 1997, p. 2.

[5] Id.

[6] Id., at 3.

[7] Id., at 4.

[8] Id.

[9] id., at 3.

[10] TSN, January 26, 1998, p. 4.

[11] Id., at 9.

[12] Id., at 10-12.

[13] Id., at 13.

[14] Id., at 16.

[15] Id., at 16-18.

[16] TSN, May 19, 1998, p. 3.

[17] Id., at 4.

[18] The death certificate indicated that the baby died of Cardiorespiratory Arrest, Severe Sepsis Neonatorium and Prematurity, Records, p. 76.

[19] TSN, May 19, 1998.

[20] Records, p. 78.

[21] Rollo, p. 12-13.

[22] Id., at 35.

[23] TSN, July 29, 1997, at 3.

[24] TSN, August 9, 1999, at 4.

[25] TSN, January 26, 1998, at 9-19.

[26] People vs. Lor, G.R. No. 133190, July 19, 2001.

[27] R.A. No. 7659 took effect on December 31, 1993.

[28] People vs. Baniqued, G.R. Nos. 130653 and 139384, December 11, 2001; People vs. Gabon, G.R. No. 127003, November 16, 2001; People vs. Ferolino, G.R. Nos. 131730-31, April 5, 2000.

[29] Records, p. 75.

[30] See Exhibit "A," Records, p. 75.

[31] TSN, August 9, 1999, p. 4.

[32] Ibid.

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