

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOMEDES CANON, ACCUSED-APPELLANT.

G.R. No. 141123. July 23, 2002

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PER CURIAM:

Before the Court on automatic review is the Decision dated October 22, 1999 of the Regional Trial Court of Palawan, Branch 52, in Criminal Case No. 12929 finding accused-appellant Nicomedes Canon guilty of qualified rape.

On March 19, 1996, an information charging accused-appellant of rape was filed by Prosecutor Cesar Estolano upon a sworn complaint filed by private complainant Genelyn Barnuevo Canon. The information alleged-

That on or about the 22nd day of January, 1996, more or less 4:00 o'clock in the afternoon of Sitio Salvador, Barangay Dumarao, Municipality of Roxas, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court the said accused with force, threat and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, a girl of nine (9) years of age, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.[1]

Upon arraignment, accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented as its witnesses accused-appellant's wife, Asuncion Canon; complainant Genelyn Barnuevo Canon, and Dr. Leo Salvino, the examining physician.

Asuncion Canon ("Mrs. Canon") testified that at about 4:00 p.m. on January 22, 1996, she went out of the house where she, accused-appellant and their children, including complainant Genelyn Barnuevo Canon ("Genelyn"), stayed because she heard a loud voice from outside, particularly from the area beside their cornfield. She realized that the voice belonged to her husband, the accused-appellant. Mrs. Canon began to walk towards the area where she heard accused-appellant's voice. When she was about 50 meters away from their house, she saw the accused-appellant lying on top of their daughter Genelyn and making some pumping motions while in that position. Mrs. Canon said that she was about 20 meters away from where accused-appellant and Genelyn lay.

Mrs. Canon exclaimed "Por Dios, Por Santo, bakit mo yan nagawa sa anak natin." (My God, why did you do that to our daughter?) Thereafter, accused-appellant stood up, put his brief and pants on and chased her with a bolo in his hand. Mrs. Canon ran toward their house and shouted for help so that their son Wilson, who was also at home then, could hear her and protect her from her husband.[2]

Mrs. Canon stated that Genelyn, who was born on July 25, 1988, was only nine years old when she was raped by accused-appellant on January 22, 1996.[3]

Genelyn testified that she was walking home from school in the afternoon of January 22, 1996 when she met the accused-appellant along the way. Accused-appellant gave her some money so that she could buy bread. Thereafter, he removed her underwear and removed his pants and brief. He then knelt in front of Genelyn and

asked her to lie down on the ground. Afterwards, accused-appellant went on top of her and made pumping motions. Accused-appellant then inserted his penis into the vagina of complainant. Genelyn said that she felt pain in her vagina. At that point, she saw her mother standing at some distance away from where she and accused-appellant lay.[4]

Genelyn narrated that accused-appellant stood up and ran after Genelyn's mother with a bolo in his right hand.[5]

Dr. Leo Salvino, Medical Officer III of Roxas, Palawan, the physician who conducted an examination of Genelyn on January 24, 1996, found erythematous irritations on the labia majora of Genelyn. He opined that said irritations could have been caused by some rubbing of the labia majora. He further stated that said irritations could have been caused by an erect adult male penis placed on top of the labia majora.[6] The physician also said that he did not find any lacerations on Genelyn's hymen.[7]

Accused-appellant, the lone witness for the defense, testified that from 7:00 a.m. up to 3:30 p.m. of January 22, 1996, he engaged in a drinking spree with three companions in his home. They were able to consume 23 bottles of gin. He said that he was no longer aware of what transpired that afternoon since he was already dead drunk. When asked if he raped his daughter Genelyn that afternoon, accused-appellant replied, "Aminado ako kung ginawa ko." (I admit if I did it.)[8]

Accused-appellant admitted that at the time of the alleged rape, his daughter Genelyn was only nine years of age.[9]

On October 22, 1999, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, Nicomedes Canon, guilty beyond reasonable doubt as principal of the crime of rape as charged in Criminal Case No. 12929, and as the commission of the offense had been attended by the qualifying circumstance that, the offense charge was committed against a victim below eighteen (18) years of age and by an offender who is a parent of the offended party, the accused is hereby sentenced to suffer the penalty of DEATH in a manner prescribed by law; to pay the offended party, Genelyn Canon, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

IT IS SO ORDERED.[10]

In his Appeal Brief, accused-appellant contends that the trial court erred in holding that his guilt was established beyond reasonable doubt, and in imposing upon him the death penalty.[11]

Accused-appellant denies having raped his daughter Genelyn and points out that Dr. Leo Salvino, the physician who examined complainant, found the latter's hymen to be intact and without lacerations.[12] He states that "it is very unlikely for [him] to commit such a heinous crime because he and his wife have at least nine (9) children to attend to and take care of." [13]

It is likewise alleged by accused-appellant that Genelyn filed charges against him upon her mother's prodding, because the latter has an ill motive against accused-appellant.[14]

Accused-appellant argues further that the prosecution was not able to establish with certainty the age of Genelyn at the time he allegedly raped her, and that Genelyn herself was not sure of her age at the time of the incident.[15]

Lastly, accused-appellant contends that the information filed against him is defective in form and in substance, since said document allegedly failed to state the name of the victim.[16]

After a careful scrutiny of the records, the Court finds that the trial court did not err in holding accused-appellant

guilty beyond reasonable doubt of raping his daughter Genelyn on January 22, 1996.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 (the Death Penalty Law), states:

When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

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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:

- 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.

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The Court agrees with the trial court's finding that the fact that accused-appellant had carnal knowledge of his daughter Genelyn was established beyond reasonable doubt during the trial. Genelyn testified that accused-appellant inserted his penis into her vagina:

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FISCAL ESTOLANO

When you said he undressed you, what particularly did he remove from your body?

A My underwear

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Q After the accused undressed you, what did he do to himself?

A He went to me.

Q What did he do to his pants and brief?

A He also undressed himself.

Q How about your dress did he also remove your shirt?

A Yes, sir.

Q After the accused undressed you and remove his pants and brief, what did he do?

A He knelt on me.

Q What was your position?

A I was lying down.

Q When he knelt in front of you, what else did he do?

A He let me lay down.

Q After kneeling in front of you, what else did he do?

A He went on top of me.

Q After going on top of you, did he make pumping motion?

A Yes, sir.

COURT

(to witness)

What did he do with your private part?

A He inserted his male organ in my vagina.[17]

Her testimony corroborates her earlier declaration in her Sworn Statement dated January 29, 1996 that accused-appellant inserted his penis into her vagina while he was lying on top of her near their cornfield at about 4:00 p.m. on January 22, 1996.[18]

In contrast, all that the defense presented to rebut the charge of rape was the bare statement of accused-appellant that he could not recall the events which transpired in the afternoon of January 22, 1996 because he was dead drunk. The Court has repeatedly held that alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim who convincingly identified accused-appellant as the person who sexually abused her.[19]

The Court finds no reason to depart from the rule that the trial court's evaluation of the credibility of the testimonies of the witnesses is accorded great weight because it has the unique opportunity of hearing the witnesses testify and observing their deportment and manner of testifying. The trial court judge is indisputably in the best position to determine the truthfulness of the complainant's testimony. Thus, unless it is shown that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance that would otherwise affect the result of the case, its findings will not be disturbed on appeal.[20]

That Genelyn was raped by accused-appellant is also supported by the findings of the examining physician that the victim's labia majora had "erythematous irritations" which could have been inflicted by the pressure of an erect adult penis.[21]

The physician's findings that Genelyn's hymen was still intact and without lacerations does not necessarily negate the fact that she was raped, for it is settled that penetration, no matter how slight, or the mere introduction of the male organ into the labia of the pudenda constitutes carnal knowledge. Hence, the mere touching of the penis of the accused-appellant and the labia majora of the victim in this case already constitutes rape.[22]

The special qualifying circumstances of minority and relationship were also sufficiently established by the prosecution. The father-daughter relationship between accused-appellant and Genelyn was alleged in the information and proven in the course of the trial.[23] Genelyn's minority was also sufficiently established by her mother's testimony[24] even though the prosecution failed to present her birth certificate or other documentary evidence such as her baptismal certificate, or school records in lieu thereof. In the cases of *People vs. Valez*,[25] and *People vs. dela Cruz*,[26] the Court held that the testimony of the victim's mother that her child was still a minor at the time of the rape sufficiently proved the victim's minority, since as a mother she is presumed to have personal knowledge of the age of her child. Moreover, accused-appellant himself admitted in his testimony that in January 1996, Genelyn was only nine years old:

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COURT:

Q At the time of the alleged rape, what was the age of your daughter?

A 9 years old, sir.

Q She was only nine years old and you are very sure of that?

A Yes, sir.

xxx[27]

The alibi of accused-appellant that he did not know what transpired at about 4:00 p.m. on January 22, 1996 because he was dead drunk cannot prevail over the testimonies of Genelyn and Mrs. Canon, who categorically stated that accused-appellant raped Genelyn on that date and time. The Court has consistently held that alibi is an inherently weak defense and, unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim who convincingly identified the accused-appellant as the person who abused her sexually.[28]

The Court also notes that accused-appellant's bare allegation that Genelyn charged him of rape because she was urged to do so by her mother who had an ill-motive against accused-appellant was also not proven by the prosecution.

There is likewise no merit in accused-appellant's claim that the information charging him with rape "failed to name any victim." [29] He contends that because the paragraph describing the circumstances surrounding the commission of the rape did not state the name of the offended party. It only described the latter as accused-appellant's "daughter, a girl of nine years." [30] However, the first paragraph of the information, quoted hereunder, named the offended party as Genelyn Canon:

The undersigned upon prior sworn complaint filed by the offended party, GENELYN BARNUEVO CANON, before the MCTC of Roxas-Cagayancillo, Palawan, hereby accuses NICOMEDES CANON of the crime of "STATUTORY RAPE", committed as follows:

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Clearly, the information when read in its entirety, is sufficient in form and substance and does not violate the constitutional right of the accused-appellant to be informed of the nature and the cause of the accusation against him.

The Court also finds it necessary to increase the award of damages by the trial court. The lower court in its decision ordered accused-appellant to indemnify the complainant in the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity. However, recent decisions require when the penalty imposable is death, the civil indemnity must be increased to Seventy Five Thousand Pesos (P75,000.00).[31]

In addition to civil indemnity, moral damages are automatically granted to the victim in rape cases without need of proof for it is assumed that the private complainant has sustained mental, physical and psychological suffering.[32] Hence, moral damages in the amount of Fifty Thousand Pesos (P50,000.00) must be awarded to the victim, in accord with the current rulings of this Court.[33]

Further, where the existence of an aggravating circumstance is proven, as in the case of at bar where both the circumstances of minority and relationship were established, exemplary damages may be awarded, in accordance with Article 2230 of the Civil Code.[34] An award of exemplary damages in the amount of Twenty Five Thousand (P25,000.00) should therefore be granted to the victim.

WHEREFORE, the Decision of the Regional Trial Court of Palawan, Branch 52, in Criminal Case No. 12929

finding accused-appellant Nicomedes Canon guilty of qualified rape and imposing upon him the penalty of DEATH is hereby AFFIRMED,[35] with the MODIFICATION that the accused-appellant is hereby ordered to pay the offended party, Genelyn Canon, the amounts of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and twenty Five thousand Pesos (P25,000.00) as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this decision, let the record of this case be forwarded to the Office of the President for possible exercise of clemency and pardoning power.

SO ORDERED.

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

Davide, Jr., CJ., on official leave.

Bellosillo, J., no part. Did not participate in deliberation.

[1] Rollo, p. 6.

[2] TSN, June 10, 1997, pp. 15-17.

[3] Id., at 4.

[4] Id., at 24-30.

[5] Id., at 30.

[6] TSN, January 27, 1998, p. 4.

[7] Id., at 6.

[8] TSN, March 24, 1998, pp. 3-9.

[9] Id., at 5.

[10] Rollo, pp. 17-18.

[11] Accused-Appellant's Brief, Rollo, pp. 44, 46.

[12] Id., at 45

[13] Id.

[14] Id.

[15] Id., at 46.

[16] Id., at 47.

[17] TSN, June 19, 1997, p. 28.

[18] Genelyn's Sworn Statement dated January 29, 1996, (Exhibit "B") reads:

xxx

11-T Noong niyayapos at dinadapaan ka ni Papa mo ano pa ang kanyang ginawa sa iyo?

S Binubuka niya ng kanyang daliri ang akin puki at inilalagay niya ang kanyang oten sa aking puki.

12-T : Bukod sa ibinubuka niya xxx ng kanyang daliri ang iyong puki at inilalagay niya ang kanyang oten sa iyong puki ano pa ang kanyang ginawa?

S Kinakanyod-kanyod niya ako.

13-T : Nakapasok ba ang oten ni Papa mo sa iyong puki?

S : Hindi po.

14-T : Bakit hindi naipasok ni Papa mo ang oten niya sa puki mo?

S : Dumating ang aking ina at nahuli kami.

xxx (Records, p. 9)

[19] *People vs. Cabana* 331 SCRA 569, 583 (2000); *People vs. Penaso*, 326 SCRA 311, 320 (2000).

[20] *People vs. Yaoto*, G.R. Nos. 136317-18, November 22, 2001; *People vs. Rebato*, G.R. No. 139552, May 24, 2001; *People vs. Villadares*, G.R. No. 137649, March 8, 2001, *People vs. Saladino*, GR. Nos. 137748811-83 & 138455, March 7, 2001.

[21] See testimony of Dr. Leo Salvino, TSN, January 27, 1998, p. 4

[22] *People vs. Morata*, GR. Nos. 140011-16, March 12, 2001; *People vs. Domended*, G.R. No. 137564, March 30, 2001.

[23] TSN, March 24, 1998, p. 4

[24] The pertinent portion of Mrs. Canon's testimony states:

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COURT

(to witness)

What is the age of your daughter?

A Nine (9) years old.

Q Why? When was she born?

A 1988.

Q What month?

A July 25.

xxx (TSN, June 10, 1997, p. 4.)

[25] G.R. No. 136738, March 12, 2001.

[26] 338 SCRA 582 (2000), citing *People vs. Balgos*,

[27] TSN, March 24, 1998, p. 5.

[28] *People vs. Dumlao*, G.R. Nos. 130409-10, November 27, 2001; *People vs. Cabana*. 331 SCRA 569, 583 (2000); *People vs. Penaso*, 326 SCRA 311, 320 (2000).

[29] Accused-appellant's Brief, Rollo, p. 47.

[30] Rollo, p. 6.

[31] People vs. De Guzman, GR. Nos. 140333-34, December 11, 2001, People vs. Alpe, GR. No. 132133, November 29, 2001.

[32] People vs. De Guzman, *supra*.

[33] *Id.*; People vs. Balas, G.R. No. 138838, December 11, 2001; People vs. Dumlao, G.R. Nos. 130409-10, November 27, 2001.

[34] *Id.*; *Id.*; *Id.*

[35] Three (3) members of this Court maintain their position that R.A. No. 7659, insofar as it prescribes the death penalty is unconstitutional. Nevertheless, they submit to the ruling of the majority that the said law is not unconstitutional and that the death penalty should be imposed in this case.

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