THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO BERNABE Y RAFOL ACCUSED-APPELLANT.

G.R. No. 141881. November 21, 2001

Ponente: MELO, J.

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MELO, J.:

In an Information dated October 30, 1998, accused-appellant was charged with the crime of rape allegedly committed as follows:

> That on or about the 29[th] day of October, 1998 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Virgilio Bernabe y Rafol, by means of force and intimidation, employed upon the person of complainant Maria Esnelia Bernabe y Javier, his daughter, a 17 year old minor, did then and there wilfully, unlawfully and feloniously have carnal knowledge with said private complainant, against her will and consent.
>
> Contrary to law.
>
> (p. 13, Rollo.)

Upon arraignment, accused-appellant pleaded `not guilty'. Thereafter, trial ensued.

The People's case is succinctly summarized by the Office of the Solicitor General in its Appellee's Brief as follows:

> On October 29, 1998, around 1:30 o'clock in the morning, Maria Esnelia Bernabe was sleeping with her sister in a room of their house located at No. 1919-D Leveriza St., Pasay City, when her father (herein appellant) came home `bangag' or very drunk (p. 9, TSN, December 4, 1999).
>
> Appellant entered said room, approached Maria Esnelia and started kissing her nape as well as other parts of her body. Then, appellant removed her panty and inserted his penis into her vagina. She resisted by pushing him but to no avail. Appellant succeeded in satisfying his beastly desires on his own daughter just like what happened in the previous years starting 1994 (pp. 7-8, ibid).
>
> Maria Esnelia could not take it anymore so she reported the incident to her cousin, Cristina Martin (p. 12, ibid; p. 16, TSN, December 11, 1998). Later, she also told her aunts, Marcelina and Analyn Bernabe, about it (p. 16, ibid).
>
> At 2:00 o'clock in the morning of the same day, she was accompanied by her aunts to the Pasay City police headquarters, where she lodged a complaint for rape against appellant and executed a sworn statement (Exhibit A; p. 5, TSN, December 4, 1998; p. 18, TSN, December 11, 1998).
>
> At 4:00 o'clock in the morning, policemen came to Maria Esnelia's house and arrested appellant (p. 19, TSN, December 11, 1998).
>
> Later that day, Maria Esnelia was examined by Dra. Anabelle Soliman (pp. 5-6, TSN, December 14, 1998). In

her testimony, Dra. Soliman revealed, thus:

Q.

And based on your findings and conclusions on the victim stated when interviewed by you that she was sexually abused sometime during the period 1995 up to 1998. Now, based on your findings, would it be compatible on the said allegation?

A.

My conclusions was that, I did not find any injuries on the hymen, as well as on the outside genital parts of the victim, and the opening of the hymen is wide enough to accommodate the average size of a male organ without producing a hymenal injury.

(pp. 7-8, TSN, December 14, 1998)

Appellant, on the other hand, denied raping his own daughter. He testified that Maria Esnelia charged him with rape because he resented her boyfriend who for sometime slept in their house. He also depicted her daughter as a rebel and an ingrate who played hooky in school and neglected her studies despite the fact that he works hard to send her to school, and her elder brother had to stop schooling just so she can continue with her studies. Appellant also claimed that his two sisters assisted his daughter in filing the rape case against him because of a land dispute between them. His sisters allegedly wanted to get back at him by using his own daughter through this case. It was also argued that no rape was committed as indicated in the finding of the medico-legal officer whose examination of complainant showed that her hymen has not been injured. Appellant pointed out too that his family lives in a very congested place with complainant sharing her room with a younger sister, for which cause it was impossible for him to have raped Maria Esnelia without being detected.

On January 29, 2000, the trial court handed down its judgment of conviction, disposing:

IN VIEW OF ALL THE FOREGOING, the Court opines that the prosecution has proven the guilt of the accused Virgilio Bernabe y Rafol for the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code as amended by RA 7659 and the Court hereby sentences the accused Virgilio Bernabe y Rafol to suffer the penalty of death and to indemnify the complainant P75,000.00, moral and exemplary damages in the amount of P50,000.00.

SO ORDERED.

(p. 45, Rollo.)

Hence, the instant automatic review.

We have examined the record of the case, especially Maria Esnelia's testimony, and we find no reason to doubt that she was telling the truth when she declared that her father had raped her. Indeed, no young girl would concoct a sordid tale of so serious a crime as sexual molestation at the hands of her own father, undergo gynecological examination, subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice (People vs. Sacapaño, 313 SCRA 650 [1999]; People vs. Buenviaje, G.R. No. 130949, April 4, 2001). That Maria Esnelia was only being used by her aunts to get back at her father is too flimsy a reason to inspire belief.

It is also well-entrenched in our jurisprudence that when it comes to the issue of credibility, this Court, as any other appellate court, would ordinarily defer to the assessment and evaluation given by the trial court, for only trial courts are in so unique a position as to be able to observe that elusive and insurmountable evidence of the witness' deportment on the witness stand while testifying (People vs. Barbera, G.R. No. 130609, May 30, 2000).

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Only when such assessment is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence will the appellate courts depart from the trial court's factual conclusions (People vs. Balgos, G.R. No. 126115, January 26, 2000). No such arbitrariness or oversight appears in the case at hand. As can be gleaned from the record of the case, Maria Esnelia was candid and forthright in her narration of the harrowing experience she underwent at the hands of her own father.

Appellant harps on the fact that Maria Esnelia's hymen was intact after the alleged rape. He further contends that there were no signs of injury that would prove that he indeed raped his daughter. In People vs. de la Costa (G.R. No. 133904, October 5, 2000), we reiterated an old doctrine to the effect that the absence of external injury does not necessarily negate the commission of rape. Lack of lacerated wounds does not also negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the medical report states that the hymen of the victim is still intact does not negate rape (People vs. Bawang, G.R. No. 131942, October 5, 2000). It is well-settled that full penetration is not even required, as proof of entrance showing the slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient. (People vs. Tismo, 204 SCRA 535 [1991]; People vs. Clopino, 290 SCRA 432 [1998])

Hackneyed and discredited too is the argument that the place where the rape was committed is so congested and packed with people that any untoward incident would be well-nigh impossible. The Court may take judicial notice of the fact that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. There is no rule that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place" (People vs. Labayne, G.R. No. 132170, April 20, 2001 citing People vs. Ignacio, 233 SCRA 1 [1991]).

However, before the death penalty can be properly imposed for the crime of rape in accordance with Republic Act No. 7659, an allegation of the complainant's age as well as filial relationship with the accused is essential. Both minority and actual relationship between the parties must be alleged and proved, otherwise, barred is any conviction for rape in its qualified form (People vs. Labayne, supra). In the case at bar, while the Information alleged both the minority of the victim and her relationship with appellant, the prosecution failed to prove the victim's age when it presented only the baptismal certificate of Maria Esnelia and not her birth certificate. It is elementary that a baptismal certificate only proves the fact of baptism but not the circumstances of birth. Without essential proof on the matter of the date of birth of complainant, or other convincing evidence in the absence thereof, we cannot rule with certainty whether Maria Esnelia was indeed a minor at the time of the commission of the crime, especially so because she does not appear to be obviously a minor, as she allegedly was already 17 years old at the time of the assault. Verily, with our young girls now looking, acting, and dressing up more maturely, one would be hard put to conclude with any measure of certainty, that a budding lass is 13 or 18 years of age. Withal, the penalty of death imposed by the trial court on appellant should be reduced to reclusion perpetua as provided for by law (Article 266-A, Revised Penal Code; People vs. del Mundo, Sr., G.R. No. 132065, April 3, 2001).

The trial court likewise erred in awarding moral damages in the amount of P75,000.00 and exemplary damages amounting to P50,000.00. In line with current jurisprudence, rape victims are entitled to civil indemnity of P50,000.00 and moral damages of P50,000.00 only (People vs. Aca-ac, G.R. No. 142500, April 20, 2001). The award of exemplary damages is sustained but in the reduced amount of P25,000.00 also in consonance with prevailing jurisprudence (People vs. Bares, G.R. Nos. 137762-65, March 27, 2001).

WHEREFORE, the decision under review is hereby AFFIRMED with the MODIFICATION that the penalty imposed on appellant is downgraded to reclusion perpetua, and with the awards for civil indemnity, moral damages, and exemplary damages reduced to P50,000.00 for the first two, and P25,000.00 for the last.

No special pronouncement is made as to costs.

SO ORDERED.

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

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