PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLONIO ACOSTA, ACCUSED-APPELLANT.

G.R. No. 142726. October 17, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is an automatic review of the decision of 3 February 2000 of the Regional Trial Court, Br. 46, San Jose, Occidental Mindoro, in its Crim. Case No. R-4328 finding accused Apolonio Acosta guilty of rape and imposing upon him the penalty of death and ordering him to pay his victim P50,000.00 as civil indemnity and P50,000.00 as moral damages.[1]

Maritess Acosta was born on 16 January 1985 in Barangay Canwaling, San Jose, Occidental Mindoro, where she lived with her family, the third of seven (7) children of the spouses Pablo Acosta and Narcisa Acosta. She did not finish Grade One although she could write her name.

In December 1997 Maritess was left home to take care of her two (2) younger sisters and a less-than-a-year old brother Joseph as her parents went to the mountains to gather cogon, which was their routine, and would be home only after a week. At about 12 o'clock noon, while her two (2) younger sisters were asleep and she was taking care of her baby brother Joseph, her paternal grandfather Apolonio Acosta who was living about a hundred meters away, arrived. Apolonio shouted invectives at Maritess and ordered her to go to his house, or else he would kill her.[2] At around 3 o'clock in the afternoon, Maritess did as she was told, carrying Joseph with her but leaving behind her two (2) younger sisters. When she arrived at the house of Apolonio, the latter took Joseph from Maritess and placed him on the floor. Apolonio then poked a bolo at Maritess and undressed her, removing first her t-shirt and then her skirt. She did not resist as she was scared of the bolo pointed at her. Thereafter, Apolonio undressed himself. He told Maritess to lie down on the floor and then placed himself on top of her. While mashing her breasts, Apolonio inserted his penis inside her vagina. She felt pain and sensed that she was bleeding.[3] She could not muster enough strength to fight him because he was bigger than she was and his bolo was pointed at her all the while. When it was over, Apolonio instructed Maritess to get dressed and warned her not to report the incident to anybody otherwise he would kill her. Maritess cried but could not do anything. After Apolonio gave her P60.00, she picked up Joseph from the floor and went back home. Apolonio followed her and again threatened to kill her if she told anybody about the incident. This turned out to be only the first of so many other similar incidents she had with her grandfather Apolonio.

In March 1998, while Maritess and her father Pablo were resting outside their home, Apolonio dropped a hundred peso bill (P100.00) in front of her. Pablo asked Apolonio about it but the latter remained silent and left. Pablo then turned to Maritess who likewise remained quiet, as she was ashamed, embarrassed and afraid. Later, with her mother Narcisa around, Maritess opened up and finally told her parents that Apolonio had raped her several times. Narcisa lost no time in reporting the matter to Leonida Santiago, Barangay Captain of San Isidro, who instructed her to submit Maritess to a medical examination.

On 20 March 1998 Narcisa brought Maritess to Dr. Nuela Manzanida, Municipal Health Officer of San Jose, Occidental Mindoro. As reflected in Maritess' medico-legal certificate, Dr. Manzanida had the following findings: Hymen - healed lacerations at 3 o'clock and 6 o'clock positions; Location - nulliparous and admits one finger. Dr. Manzanida opined that the healed lacerations were approximately one (1) - month old and could have been caused by a human penis.[4]

Not long after, as private complainant, Maritess charged Apolonio with rape, qualified by relationship.[5]

Apolonio denied the charge. He claimed that for the whole month of December he lived in Sabadeco in the house of Arsenio Mactal where he worked as a farm helper and caretaker of the latter's ampalaya plantation. Meantime, his daughter Violeta Carman and her family lived in his house in San Jose, near the house of his son Pablo, father of Maritess. Apolonio argued that he could not have raped Maritess as he did not visit his house in December 1997, not even on Christmas Day nor on New Year's Eve, as he was busy in the plantation.

Violeta Carman, Apolonio's daugther corroborated his statement by claiming that she never for a moment left the house because she was then looking after her youngest child; thus, with her being around, she insisted that Apolonio could not have had the opportunity to rape Maritess in his own house. Instead, Apolonio claimed that the charge stemmed from a quarrel over a piece of land to which he was granted the right to cultivate. Upon learning that he turned over his rights to Venancio, another son, Pablo got mad, accused him of favoring his brother and threw punches at him. Apolonio said that he was charged with rape as Pablo's family felt deeply aggrieved ("masakit ang kalooban nila").

The trial court found the testimony of Maritess consistent and free from serious contradictions, and on the basis thereof, convicted Apolonio. The court rejected his defense of alibi and denial. It ruled that the physical impossibility of Apolonio being at the locus criminis was not properly established as Apolonio's house in Canwaling was only a thirty (30)-minute walk away from the farm of Arsenio Mactal where he claimed to have stayed in December 1997. Moreover, defense witnesses themselves testified to have seen him on occasion in Canwaling thereby nullifying his claim of absence.

The court a quo likewise cast aside the defense's contention of family discord over cultivation rights as Pablo Acosta was a laborer and not a farmer. He did not own a carabao or any farm implement, and therefore had no interest in tilling the land. Significantly, the trial court found that Apolonio's own daughter, likewise named Maritess, had previously charged him with rape although the case was dismissed. Thus, the trial court sentenced him to death, and ordered him to pay his granddaughter Maritess P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Accused-appellant now imputes to the trial court error in imposing upon him the penalty of death when the minority of the victim was not alleged in the Information. He argues that minority is a qualifying circumstance which, aside from the relationship of the victim with the accused, should be so alleged in the information for capital punishment to be imposed, failing which the sentence should be reduced to reclusion perpetua.

It should be noted that accused-appellant, in an apparent display of resignation, no longer urged the Court to reexamine the findings of fact by the court a quo and the conclusions derived therefrom, but merely exhorted it to review the penalty of death meted on him. Be that as it may, in accordance with the mandate of the Court to automatically review all cases where the imposable penalty is death, we scrutinized the records anew and found the trial court's factual determinations to be accurate and proper.

Like the trial court, we find the testimony of Maritess to be true, credible and convincing, thus leaving no doubt that she was raped by Apolonio. Pitted against the evidence of the defense, Maritess' testimony gains strength as

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defense witnesses, particularly Apolonio, did not categorically deny the act of rape but merely posed the impossibility of its commission in his own home, which this Court also rejects. Accused-appellant failed to sufficiently show that he did not return to his home in Canwaling at any time in December 1997 as it was only a thirty (30)-minute walk away from the plantation of Mactal, and his daughter Violeta Carman even testified that he visited his home once in a while but stayed only for short durations.[6]

Violeta Carman's claim that Maritess could not have been raped in Apolonio's home as she was then residing there likewise deserves no merit as earnest inquiry by the trial court revealed that she moved to Canwaling only after 1997.[7]

We also reject the accused-appellant's claim that the charge was heaped against him as Pablo seriously lamented his favoring Venancio over him when he turned over his cultivation rights to Venancio. The principle that a mother will not subject her daughter to the shame and horror of trial involving rape if not to avenge her daughter's fate applies with equal force to a father, especially when the offender is his own father. Moreover, it is highly improbable that the feud between Pablo and Apolonio was the impetus for the charge as the quarrel happened in 1996, with Pablo and Apolonio having already reconciled the same year, way before the rape incident in 1997.[8]

Now, to accused-appellant's lone assigned error - solitary it may be - it may very well spell the difference between life and its extinguishment for accused-appellant, which we therefore seriously consider.

We find the argument meritorious. Article 335 of The Revised Penal Code, as amended by Sec. 11 of RA 7659, provides inter alia that the death penalty shall be imposed if the crime of rape is committed 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. Minority and relationship partake of the nature of a special qualifying circumstance and not merely an aggravating circumstance, which must concurrently and simultaneously be alleged in the information for capital punishment to be imposed.

Here, the Amended Criminal Information filed against Apolonio Acosta adequately cited his relationship to Maritess but failed to allege Maritess' minority, thereby proscribing the imposition of the death penalty against accused-appellant. The presentation of evidence during trial showing that Maritess was merely twelve (12) years old when the sexual abuse was committed, albeit without any objection from accused-appellant, did not cure the omission nor did it render the requirements of the law substantially complied with by its mere presentation.[9]

An accused has the constitutionally guaranteed right to be properly informed of the nature and cause of the accusation against him, to enable him to properly prepare for his defenses. This right cannot be tampered with nor reduced even upon a finding of guilt beyond reasonable doubt on the accused. It would be a denial of the right of the accused to due process if he was charged with simple rape, on which he was arraigned, and be convicted of qualified rape, punishable by death, the elements and circumstance of which he was not adequately apprised with. The failure to allege the special qualifying circumstance of minority in the Information effectively bars the imposition of the death penalty on accused-appellant, hence, the penalty imposed upon him should be reduced to reclusion perpetua.

On the matter of accused-appellant's civil liability ex delicto, it has been the ruling of the Court to outrightly award P50,000.00 as indemnity to victims of rape, hence, the imposition of the amount is proper. Likewise, the award of P50,000.00 for moral damages is justified in accordance with our ruling in People v. Prades.[10]

WHEREFORE, the Decision of the Regional Trial Court, Br. 46, San Jose, Occidental Mindoro, in Crim. Case No. R-4328 finding APOLONIO ACOSTA guilty of RAPE is AFFIRMED with the MODIFICATION that his

death sentence is reduced to reclusion perpetua. The order requiring him to pay the victim Maritess Acosta the sums of P50,000.00 for civil indemnity and another P50,000.00 for moral damages is AFFIRMED.

SO ORDERED.

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

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[1] Decision penned by Judge Ernesto P. Pagayatan.

[2] TSN, 20 August 1998, p. 5.

[3] Id., p. 7.

[4] TSN, 19 August 1998, p. 5.

[5] The 25 August 1998 Amended Criminal Information reads -

> "That on or about the month of December 1997 and days thereafter, in Barangay San Isidro, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused who is the grandfather of the private complainant, as her father is the son of the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Maritess Acosta, a woman against her will and consent.
>
> CONTRARY TO LAW."

[6] TSN, 26 July 1999, p. 26.

[7] Id., pp. 21-23.

[8] TSN, 5 August 1999, pp. 11, 18.

[9] People v. Calayca, G. R. No. 121212, 20 January 1999, 301 SCRA 192.

[10] G.R. No. 127569, 30 July 1998, 293 SCRA 411.

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