

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO DULINDO ESUREÑA, ACCUSED- APPELLANT.

G.R. No. 142727. January 23, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Antonio Dulindo Esureña was charged with rape of his 13-year old daughter before the Regional Trial Court of Lucena City, Branch 58. The Information reads:

That on or about the 1[st] day of August 1994, at xxx, Province of Quezon, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 13 years of age, and a daughter of said accused, against her will.

Contrary to law.[1]

The victim, AAA, is the eldest of six daughters of BBB and accused-appellant, Antonio Dulindo Esureña (hereinafter Antonio).[2] On August 1, 1994, at 8:00 in the morning, Nena and three of her younger sisters, namely, CCC, DDD and EEE, went with their father Antonio to the woods in xxx to gather anahaw leaves to be used as roofing material for their house.[3]

While they were in the woods, Antonio lured AAA into a secluded area. He pushed her to the ground and removed her shorts, panties and blouse, while he took off his short pants and briefs. While AAA was lying on the ground, Antonio held her hands and forced her legs apart, then inserted his penis into her vagina. He made up and down movements while he was on top of AAA who struggled to free herself but she was pinned down by Antonio. AAA felt pain in her vagina and hips. After about fifteen minutes, Antonio stood up and told AAA not to tell anyone of what happened or else he will kill her.[4]

The rape was witnessed by AAA's sisters. Antonio threatened to kill AAA if they came nearer. The three of them could do nothing but watch and cry.[5]

AAA could not tell her mother what happened for fear of her father's threats. After two weeks, AAA's sister reported the rape to their mother, BBB. Consequently, BBB questioned AAA until the latter was forced to admit that her father had indeed sexually abused her. BBB relayed the incident to her brother and mother. BBB's brother went to Barangay Captain Gerson Pabria who, in turn, reported the matter to the police.[6]

On October 11, 1994, AAA was brought to the Provincial Health Office, xxx for examination. The Medical Officer, Dr. Ma. Amelia A. Tolentino, found deep healed lacerations at 4 and 7 o'clock positions and superficial lacerations at 3 and 11 o'clock positions on her hymen.[7]

Antonio admitted that in the morning of August 1, 1994, he went to the woods with his four daughters, AAA, CCC, DDD and EEE, to gather anahaw leaves. However, he denied the charge of rape. He alleged that his father-in-law, Gabriel Decano, made up the accusation because he was mad at him for being a drunkard.

According to Antonio, he had a tendency to throw things around the house and hack the door with his bolo whenever he was drunk which scared his daughters and angered his father-in-law.[8]

On January 12, 2000, the trial court rendered judgment convicting Antonio of the crime of rape and sentenced him to death. The decretal portion of the decision reads:

WHEREFORE, finding the accused ANTONIO DULINDO ESUREÑA guilty beyond reasonable doubt of the crime of rape, having committed by the accused against his own daughter of 13 years of age and in full view of the other children, said accused is hereby sentenced to suffer the penalty of DEATH and he is ordered to pay the offended party, AAA, the amount of P100,000.00 as compensatory damages and P50,000.00 as moral and exemplary damages and also to pay the costs of the suit.

SO ORDERED.[9]

Hence, this automatic review pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. No. 7659.

In his lone assignment of error, Antonio does not assail the trial court's Decision insofar as it concludes that the evidence proved beyond reasonable doubt that he raped his own daughter. However, he faults the trial court for imposing the supreme penalty of death contending that: (a) the minority of the victim was not proved clearly and convincingly; and (b) the other qualifying circumstance that rape was committed in the presence and in full view of the victim's relatives of the third degree of consanguinity was not alleged in the information.

A careful review of the evidence on record shows that AAA's testimony on the details of the rape was narrated in a straightforward, positive and convincing manner. She did not waver even during cross-examination, despite her tender age. It is an established rule that courts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.[10]

More importantly, the fact of rape is corroborated by CCC, AAA's younger sister. There is nothing in the record which would indicate ill-motive on the part of Nelly to testify falsely against her father. Furthermore, the medical evidence, notably the finding of healed lacerations on the victim's private parts, supports the theory that AAA had been a victim of rape.[11]

While we affirm the trial court's judgment of conviction, we do not agree with the trial court's imposition of the death penalty. Under Republic Act No. 7659, the imposition of the death penalty in rape cases becomes mandatory when the offended party is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The qualifying circumstances of age and relationship of the victim to the accused must specifically be alleged and proved.[12]

In the case of *People v. Manuel Liban*,[13] this Court ruled that the birth certificate of the victim or in lieu thereof, any other documentary evidence that can help establish the age of the victim should be presented.

In *People v. Javier*,[14] we required the presentation of the birth certificate of the victim to prove her minority, failing which the imposition of the death penalty cannot be upheld.

In the case at bar, although the minority of the victim was alleged in the information, the same was not duly proved during the trial of the case. No evidence was presented to show AAA's age, save for her own testimony. It has been held that while the testimony of a person as to her age, although hearsay, is admissible as evidence of

family tradition, it cannot be considered proof of age beyond reasonable doubt.[15] Hence, the qualifying circumstance of minority cannot be appreciated, and accordingly the death penalty cannot be imposed.[16]

It is a time-honored principle that in a criminal prosecution, especially where the life of another human being is hanging on the balance, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which the accused is charged must be established in order for the corresponding penalty thereto to be upheld.

On the other hand, the qualifying circumstance that the rape was committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity,[17] although proved, was not alleged in the Information. As such, it also cannot be appreciated to warrant the imposition of the death penalty. Qualifying circumstances which increase the penalty by degree rather than merely affect the period of the 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.[18]

Since accused-appellant Antonio is only guilty of simple rape, the amounts awarded as damages must be modified. The amount of P100,000.00 which the trial court awarded as compensatory damages must be reduced to P50,000.00, while the award of P50,000.00 as moral damages is justified and should be maintained.[19] Further, the amount of P25,000.00 should be awarded as exemplary damages, to deter fathers with perverse tendencies and aberrant sexual behavior, like accused-appellant, from sexually abusing their daughters.

WHEREFORE, the decision of the Regional Trial Court of xxx, Branch 58, in Criminal Case No. 95-35, finding accused-appellant Antonio Dulindo Esureña 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 only, instead of death and he is ordered to pay the victim, AAA the sum of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

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

[1] Criminal Case No. 95-35; Record, p. 2.

[2] TSN, August 28, 1996, p. 12.

[3] Record, p. 10.

[4] TSN, August 28, 1996, pp. 3-6; Exh. C.

[5] TSN, October 11, 1996, p. 4.

[6] TSN, August 28, 1996, pp. 6-7.

[7] Exh. A.

[8] TSN, April 23, 1997, pp. 4-12.

[9] Penned by Judge Ismael B. Sanchez; Record, pp. 231-244.

[10] *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3, 2001.

[11] *People v. Seguis*, G.R. No. 135034, January 18, 2001.

[12] *People v. Villaraza*, G.R. Nos. 131848-50, September 5, 2000, p. 22, citing *People v. Manggasin*, 306 SCRA 228 [1999].

[13] G.R. No. 138330, November 22, 2000.

[14] 311 SCRA 122 [1999].

[15] *People v. Pine*, 346 SCRA 383, 393 [2000].

[16] *People v. Virrey*, G.R. No. 133910, November 14, 2001.

[17] Revised Penal Code, Article 266-B, sixth paragraph, subparagraph (3).

[18] *People v. Labayne*, G.R. No. 132170, April 20, 2001.

[19] *People v. Pamilar*, G.R. No. 130846, October 23, 2001.

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