

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALBERTO LUCERIANO, APPELLANT.

G.R. No. 145223. February 11, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

On automatic review is the Decision[1] dated 31 August 2000 of the Regional Trial Court of Baler, Aurora, Branch 96 (“trial court”), in Criminal Case No. 2340. The trial court found appellant Alberto Luceriano (“appellant”) guilty beyond reasonable doubt of rape and sentenced him to suffer the death penalty and to indemnify the victim.

The Charge

The Information for rape against appellant reads:

That at about 10:30 o’clock in the evening on January 3, 1998 at Poblacion Zone 1, Dinalungan, Aurora and within the jurisdiction of this Honorable Court, the said accused, taking advantage of nighttime and his relationship with the offended party Mysan Onde, did then and there, unlawfully, feloniously and willfully have carnal knowledge of the said eleven year old Mysan Onde in their house.[2]

Arraignment and Plea

When arraigned, appellant, assisted by counsel, entered a plea of not guilty.[3]

The Trial

Version of the Prosecution

Mysan Onde (“Mysan”) was born on 13 April 1986 to spouses Pepe G. Onde and Teresita Demetrio. The Onde spouses were lawfully married sometime in 1972.[4] Out of such union, five children were born, the youngest being Mysan. When Pepe died, Teresita started living-in with appellant. Teresita begot appellant a child whom they named Noe. As Teresita’s first four children with Pepe later got married, only Mysan continued to stay with Teresita and appellant, and her younger half-brother, Noe.[5]

On 3 January 1998, at around 10:30 p.m., Mysan was sleeping on the floor of their house in Poblacion Zone I, Dinalungan, Aurora. Teresita and Noe were then at the plaza selling candies and cigarettes to people watching the Tuklas-Talino show. Mysan woke up and saw appellant kneeling beside her. Appellant covered her mouth with his hands, then pointed a knife at her. He warned her not to tell anyone about what he was doing to her. He then ordered her to undress herself, and she did so while lying on the floor face up. Appellant undressed himself. He then mounted on top of Mysan and forced his organ into hers. He made thrusting motions. Mysan felt intense pain

in her genitalia. She was crying all the time but she was unable to shout for fear that appellant might kill her. Appellant kissed her face several times. After appellant satisfied his savage urge, he dressed up and left the room.[6]

In the afternoon of the following day, while Teresita was washing clothes outside their house, Mysan disclosed to her the rape incident. Appellant was cooking in the kitchen at the time. Teresita and Mysan immediately went to the police and reported the matter. On the same day, police officer Rene Dizon arrested the appellant.[7]

On 5 January 1998, Teresita brought Mysan to the Casiguran District Hospital and submitted her to a medical examination. The medico-legal examination conducted on Mysan contained the following findings:

- = Hymenal lacerations noted on the following:
- superficial healed lacerations at 3:00 o'clock, 9:00 o'clock
- deep healed lacerations at 2:00 o'clock and 6:00 o'clock

INTERNAL EXAMINATIONS:

- vagina admits one (1) finger w/ ease
- cervix closed, firm uterus small
- adnexac negative, negative bleeding[8]

Version of the Defense

Appellant denied that he raped Mysan on 3 January 1998. He claimed that on the night in question, he was in San Ildefonso, Casiguran, Aurora, where he had been staying from the time he left his residence in Pulilan, Bulacan. Appellant admitted that he was Teresita's common-law husband but asserted that only Teresita, Mysan and Noe transferred residence to Poblacion, Dinalungan, Aurora. Appellant averred that he worked as a farmer in a kaingin in San Ildefonso and raised livestock. He stated that he visited his family in Dinalungan only occasionally, as he could not leave his livestock in San Ildefonso. Appellant claimed that he could not have possibly gone to Dinalungan on the night in question because there was no means of transportation. It would take 2 hours by motorboat to go to Dinalungan from San Ildefonso, and 4 hours if the boat has no motor. Appellant said he has no boat.[9]

The Trial Court's Ruling

On 31 August 2000, the trial court rendered a judgment of conviction with the following dispositive portion:

WHEREFORE, judgment is hereby rendered finding the herein accused Alberto Luceriano y Bagacay GUILTY BEYOND REASONABLE DOUBT of the crime of rape, sentencing him to suffer the supreme penalty of DEATH, and awarding the victim the amount of P50,000.00 as moral damages and the sum of P75,000.00 as civil indemnity.

SO ORDERED.[10]

Hence, this automatic review.

The Issues

In this appeal, appellant contends that:

- I. The court a quo gravely erred in finding the accused guilty beyond reasonable doubt of the crime of rape committed on January 3, 1998 despite the obvious impossibility of such accusation.

II. The court a quo gravely erred in imposing upon the accused the supreme penalty of death despite the failure of the information to allege clearly the qualifying circumstance which would warrant such imposition.[11]

The Court's Ruling

We affirm the judgment of conviction but modify the penalty.

Appellant argues that Mysan's claim that he raped her on 3 January 1998 does not jibe with the results of the medical examination conducted on Mysan on 5 January 1998. The physical examination of Mysan reveals that she has two hymenal lacerations. One is a "superficial healed laceration" and the other is a "deep healed laceration." [12] On the witness stand, Dr. German Tiongson, Chief of the Casiguran District Hospital, explained the findings of Dr. Rogelio Vicente Reyes, Jr., the physician who examined Mysan two days after the incident in question. Dr. Tiongson testified that the "superficial healed laceration" could have been inflicted at least one week before the medical examination was conducted on Mysan. As regards the "deep healed laceration," Dr. Tiongson stated that it could have been inflicted one year before the night in question. [13]

Appellant claims that if it were true that he raped Mysan on 3 January 1998, then the lacerations in Mysan's hymen should still be fresh or not totally healed when she was physically examined two days after he allegedly raped her or on 5 January 1998. Appellant asserts that Mysan's testimony that he first raped her when she was 8 years old does not deserve serious consideration because the testimony is unsubstantiated and self-serving. Appellant asserts that the healed lacerations in Mysan's hymen "only prove that Mysan had engaged in prior sexual activities, although not necessarily with him."

Appellant's arguments are untenable.

The healed lacerations in Mysan's hymen do not prove that appellant did not rape her. [14] A freshly broken hymen is not an essential element of rape. [15] It is highly unlikely that a young girl like Mysan would fabricate a story that would destroy her reputation and her family life, and endure the ordeal of a trial, were it not to seek justice for herself. [16] No ulterior motive was offered to explain why Mysan would concoct a story charging appellant with the crime of rape. [17]

The presence of old healed hymenal lacerations prior to the date of the victim's medical examination does not negate the commission of rape by the accused when the victim herself has testified in vivid detail on the sexual assault on her. [18] In the present case, we entertain no doubt that Mysan told the truth. Her testimony was straightforward, consistent and unwavering. There is also her positive assertion that appellant raped her when she was 8 years old. [19]

Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent. [20] Based on the records, the prosecution sufficiently established that appellant had sexual intercourse with the victim. If the victim's testimony meets the test of credibility, that is sufficient to convict the accused. [21] When a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed. [22] Here, Mysan's testimony, particularly as regards appellant's identity, was direct, clear, and positive. We quote the transcript of stenographic notes:

Q At that time 10:30 o'clock in the evening, what were you then doing in your house?

A I was sleeping, sir.

Q What happened when you were sleeping, if you know?

A ...

Q Were you awakened?

A Yes, sir.

Q Why were you awakened?

A Because I saw him.

Q Whom did you see?

A Mr. Alberto Luceriano, sir.

Q Were you able to see him when it was night time?

A There was a lamp in my room, sir.

Q What kind of lamp was in your room?

A Lamp fueled by gaas or kerosene, placed in an empty bottle.

x x x

Q Now, you said you saw Alberto Luceriano, what was he doing when you saw him?

A I saw him inside my room.

PROS. RONQUILLO:

May we make it of record that the witness is crying.

COURT:

That fact that the complainant is crying and could not answer is noted in the record of the case.

PROS. RONQUILLO:

May we proceed, Your Honor.

COURT:

Proceed.

PROS. RONQUILLO:

Q When you saw Alberto Luceriano, was he standing up, kneeling or sitting, or in what position?

A He was kneeling.

Q How far was he from you?

A He is very near to me.

Q And what did he do when he was near you?

A He covered my mouth.

Q And how did he cover your mouth?

A By his two hands.

Q After that, what did he do?

A He pointed his knife to me.

Q And after that what did he do?

A He told me not to relay this matter. (magsusumbong)

Q After that, what else did he do?

A He undressed himself; he told me to undress my self.

Q What else did he do after he undressed you?

A He placed his body on top of my body.

Q While Alberto Luceriano was doing on this things to you, what were you doing?

A I cried.

Q Aside from crying, did you do anything else?

A None, sir.

Q Do you like what Alberto Luceriano did to you?

A No, sir.

Q Why did you not shout and ask for help?

A Because he will kill me.

Q After he placed himself on top of you, what else did Alberto Luceriano do?

A He is doing the up and down action, sir.

Q Do you know why he was doing that?

A ...

May we ask another question.

Q You said that Alberto Luceriano undressed himself, did he undress all his clothings?

A No, only his shirts and brief.

Q When you said undressed you, did he remove all your clothings or only some of your clothes?

A All my clothes, sir.

Q After removing all your clothes, what else did he do?

A There was pain.

Q Where did you feel pain?

A My vagina.

Q Why do you feel pain in your private part?

A Because he forced his penis to enter.

Q Did he succeed in making his penis to enter?

A Yes, sir.

Q How long did it take Alberto Luceriano do the up and down movement? For short time or long time?

A So long, sir.

Q On the time he was doing that, what did you feel?

A Pain.

Q When you said his penis was able to enter your private part, when he was doing the up and down movement, what did you feel about?

A Pain, sir.

Q Before he started doing the up and down movement, did you feel or notice anything in your private part?

A Yes, sir.

Q What did you feel?

A Something slippery.

Q After Alberto Luceriano stop doing the up and down movement, what did he do?

A He kissed me, sir.

Q Where?

A On my face, sir.

Q How many times?

A I could not count.

Q How about on the other part of your body, did he kiss you?

A No, sir.

Q After kissing you, what else did he do?

A None, sir.

Q Did he leave the room?

A Yes, sir.

Q Did he put on his dress after leaving the room?

A Yes, sir.

Q If Alberto Luceriano is in the courtroom, can you pinpoint to him?

A Yes, sir. (And witness pointed to a person inside the courtroom and when asked his name said he is Alberto Luceriano.)

Q How come you know Alberto Luceriano?

A I have heard his voice.[23]

An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.[24] Thus, although not raised as an issue by appellant, we deem it prudent to discuss appellant's use of force or intimidation in consummating his bestial act. Mysan testified that appellant "pointed a knife at her side." There was, therefore, the essence of force and intimidation sufficient to engender fear in Mysan's mind that she would be killed if she did not yield to appellant's bestial desire.[25] The act of holding a knife by itself is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission.[26]

Even in the absence of force, threat or intimidation, appellant's sexual intercourse with Mysan would constitute statutory rape. The Information alleged, and the prosecution proved during trial, that Mysan was only eleven (11) years old when appellant had sexual intercourse with her. Under Article 266-A(d)[27] of the Revised Penal Code, when the victim is under twelve (12) years of age, there is rape even in the absence of force, threat or intimidation.[28]

Appellant's pretense cannot prevail over the testimony of Mysan which the trial court found to be "candid, plain, and straightforward." The testimony of victims who are of tender age are credible.[29] Besides, we note that Mysan could not hold back her emotions and cried profusely at certain points during the trial.[30] The spontaneous crying of a young victim while recounting her heart-rending experience is evidence that speaks well of her credibility.[31]

There being proof beyond reasonable doubt that appellant committed the crime as charged, we affirm his conviction.

However, the penalty imposed must be reduced to reclusion perpetua. Even the Office of the Solicitor General concedes that the trial court erroneously imposed the death penalty.

Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, states in part:

Art. 266-B. Penalties – x x x.

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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 law spouse of the parent of the victim. (Emphasis supplied)

Under this provision, both circumstances of the victim's minority and her relationship to the offender must be alleged in the information. Since these attendant circumstances alter the nature of the crime of rape and increase the penalty, they are in the nature of qualifying circumstances. They must be specifically and clearly alleged in the information and proven during the trial to warrant the imposition of the death penalty.[32]

The prosecution proved Mysan's minority during the trial by presenting in evidence Mysan's birth certificate.[33] The document clearly states that Mysan was born on 13 April 1986.[34] Thus, the Information correctly alleged that at the time of the commission of the rape on 3 January 1998, Mysan was "11 years old."

We find, however, that the Information did not properly allege the relationship of appellant to Mysan as required by Section 9, Rule 110 of the Revised Rules on Criminal Procedure which reads:

Sec. 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In the present case, the Information does not state that appellant is the live-in partner of Mysan's mother. Even if the prosecution proved that appellant was in fact the common-law spouse of Mysan's mother, the death penalty could not be imposed on appellant because the Information did not specifically allege this relationship. The relationship cannot increase the crime to qualified rape if the Information does not specifically allege the relationship. Otherwise, appellant would be deprived of his right to be informed of the nature of the charge against him. Consequently, appellant is only liable for simple rape under the first paragraph of Article 266-B of the Revised Penal Code which penalizes simple rape with reclusion perpetua.[35]

Since we are reducing the penalty to reclusion perpetua, the damages awarded by the trial court to Mysan should be modified accordingly. The award of P50,000 civil indemnity is in accordance with current jurisprudence involving simple rape.[36]

In the present case, the Information did not specifically allege the relationship between appellant and Mysan although the prosecution proved during the trial the relationship with the testimonies of Mysan, Mysan's mother, and appellant's own admission.[37] Hence, even if the relationship cannot be appreciated as a qualifying circumstance, it can nonetheless be the basis of a civil award of P25,000 in exemplary damages.[38]

On the other hand, the trial court correctly ruled that P50,000 should be awarded as moral damages for the mental, physical, and psychological suffering undeniably sustained by a rape victim.[39]

WHEREFORE, the Decision dated 31 August 2000 of the Regional Trial Court of Baler, Aurora, Branch 96, in Criminal Case No. 2340, is MODIFIED in that appellant Alberto Luceriano is found GUILTY beyond reasonable doubt of simple rape, and is sentenced to suffer the penalty of reclusion perpetua and to pay the victim Mysan Onde P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages. Costs de

oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Rebecca R. Mariano.

[2] Records, p. 1.

[3] Ibid., pp. 11 & 14.

[4] Ibid., p. 22.

[5] TSN, 1 December 1998, pp. 2, 5-6; TSN, 3 July 2000, pp. 4 & 10.

[6] TSN, 7 October 1998, pp. 2-7; TSN, 17 November 1998, pp. 3-4, 10-11; TSN, 1 December 1998, p. 2.

[7] TSN, 7 October 1998, pp. 8-9; TSN, 1 December 1998, pp. 3, 4 & 7.

[8] Records, p. 6.

[9] TSN, 3 July 2000, pp. 2-6.

[10] Records, p. 189.

[11] Rollo, p. 46.

[12] Records, p. 6.

[13] TSN, 8 April 1999, pp. 2-3.

[14] *People v. Dizon*, G.R. No. 133237, 11 July 2003; *People v. Liquiran*, G.R. Nos. 105693-96, 19 November 1993, 228 SCRA 62; *People v. Ngo*, G.R. No. 95680, 4 October 1991, 202 SCRA 549.

[15] *People v. Aguiluz*, G.R. No. 133480, 15 March 2001, 354 SCRA 465; *People v. Cura*, 310 Phil. 237 (1995); *People v. Madriano*, G.R. No. 93435, 22 October 1993, 227 SCRA 363.

[16] *People v. Cana*, G.R. No. 139229, 22 April 2002, 381 SCRA 435; *People v. Caratay*, 374 Phil. 590 (1999); *People v. Ayo*, 365 Phil. 88 (1999).

[17] TSN, 3 July 2000, p. 13; *People v. Balleno*, G.R. No. 149075, 7 August 2003.

[18] *People v. Llamo*, 380 Phil. 759 (2000); *People v. Erardo*, 343 Phil. 438 (1997); *People vs. Benitez*, G.R. No. 108771, 21 June 1994, 233 SCRA 318.

[19] TSN, 17 November 1998, p. 7.

[20] Article 335, Revised Penal Code, as amended by Section 11, R.A. No. 7659; *People v. Salonga*, 385 Phil. 1124 (2000).

[21] *People v. Arriola*, G.R. Nos. 140779-80, 3 December 2002; *People v. Bali-Balita*, G.R. No. 134266, 15 September 2000, 340 SCRA 450.

[22] *People v. Ferrer*, G.R. No. 142662, 14 August 2001, 362 SCRA 778.

[23] TSN, 7 October 1998, pp. 3, 5-7.

[24] *People v. Lucero*, G.R. Nos. 102407-08, 26 March 2001, 355 SCRA 93; *People v. Mataro*, G.R. No. 130378, 8 March 2001, 354 SCRA 27.

[25] *People v. Barcelona*, 382 Phil. 46 (2000).

[26] *People v. Baltazar*, 385 Phil. 1023 (2000).

[27] Article 266-A(d) of the Revised Penal Code provides that rape is committed “[W]hen the offended party is under twelve (12) years of age x x x, even though none of the circumstances mentioned above be present,” referring to force, threat or intimidation.

[28] *People v. Rote*, G.R. No. 146188, 11 December 2003.

[29] *People v. Servano*, G.R. Nos. 143002-03, 17 July 2003; *People v. Pascua*, G.R. Nos. 128159-62, 14 July 2003.

[30] TSN, 7 October 1998, p. 5; TSN, 17 November 1998, p. 5.

[31] *People v. Galang*, G.R. Nos. 150523-25, 2 July 2003; *People v. Lima*, G.R. No. 128289, 23 April 2002, 381 SCRA 471; *People v. Tagun*, G.R. No. 137745, 15 February 2002, 377 SCRA 154.

[32] *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003; *People v. Caliso*, G.R. Nos. 131475-76, 14 October 2002, 390 SCRA 624; *People v. Dela Cruz*, G.R. No. 137405, 27 September 2002, 390 SCRA 77.

[33] TSN, 10 September 1998, p. 2.

[34] Exhibit “A,” Records, p. 22.

[35] *People v. Delos Reyes*, G.R. No. 135241, 22 January 2003; *People v. Ramos*, G.R. No. 142577, 27 December 2002; *People v. Buada*, G.R. No. 137341, 28 October 2002, 391 SCRA 251; *People v. Sajolga*, G.R. No. 146684, 21 August 2002, 387 SCRA 519.

[36] *People v. Sandig*, G.R. No. 143124, 25 July 2003; *People v. Dalisay*, G.R. No. 133926, 6 August 2003.

[37] TSN, 7 October 1998, p. 8; TSN, 1 December 1998, pp. 2 & 6; TSN, 3 July 2000, pp. 2 & 4.

[38] *People v. Lachica*, G.R. No. 143677, 9 May 2002, 382 SCRA 162.

[39] *People v. Manahan*, G.R. No. 138924, 5 August 2003; *People v. Arofo*, G.R. No. 139433, 11 April 2002, 380 SCRA 663.

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