

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. EDUARDO T. OCAMPO, ACCUSED-APPELLANT.

G.R. No. 145303. August 07, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On automatic review is the decision of the Regional Trial Court of Pasig City (Branch 166) finding accused Eduardo T. Ocampo guilty beyond reasonable doubt of the crime of rape in Criminal Case No. 113837-H, sentencing him to suffer the penalty of death, to indemnify the victim in the amount of Fifty Thousand Pesos (P50,000.00) and to pay the costs of suit.

The Amended Information reads:

“The Prosecution, through the undersigned Public Prosecutor, upon sworn complaint of Suzette H. Ocampo, a copy of which is hereto attached as Annex (sic) “A” and forms an integral part of this information, charges Eduardo T. Ocampo with the crime of rape, committed as follows:

“On or about June 21, 1994, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter, Suzette H. Ocampo, against her will and consent.

Contrary to law.”[1]

The prosecution presented three witnesses: the complainant, Suzette H. Ocampo; her mother, Susie Ocampo; and Dr. Maximo Reyes, NBI Medico-Legal Officer.

Complainant’s narration of the events that precipitated the filing of the case against appellant is as follows:

Suzette is the eldest among four children of appellant Eduardo T. Ocampo. She recalls that upon waking up inside their house in Taguig, one early morning in February, 1994, she saw bloodstains in her blanket. Upon seeing the bloodstains and knowing that she did not have her menstrual period at that time, she concluded that she was raped. She claims that because she was a sound sleeper she was not awakened when she was violated. Nevertheless, she points to her father as the culprit. When asked how he knew that it was her father who raped her, Suzette said that the former has been raping her for a long time.[2]

In the early morning of June 21, 1994, while alone in her room in the same house in Taguig, she woke up to find out that she was naked and that her father, who was also naked, was on top of her. She said that she did not shout for help because she did not want other people to know what her father was doing. Her mother, at that time, was in their canteen at Buting, Pasig while her brothers were in another room. She cried and pleaded to her father to stop what the latter was doing. After sometime, the father stopped and left. After her father left, the complainant put on her clothes and went back to sleep. When she woke up she went to school. It was only in the afternoon of the same day that she saw her mother and it was then that the latter talked to her. Her mother told her that her younger sister saw what her father did to her that early morning of June 21, 1994.[3]

The following morning, complainant and her mother went to her godmother in Sumilang, Pasig and told the latter what happened. Her godmother no longer allowed her to go home. Instead she was brought by her godmother to the house of the latter's sister in Sta. Mesa. Later, they went to the office of the National Bureau of Investigation (NBI) where complainant was medically examined. Afterwards, they filed a complaint against appellant. Two (2) Informations were filed charging him of Rape committed against her daughter Suzette, docketed as Criminal Case No. 113836-H and Criminal Case No. 113837-H.[4]

Susie Ocampo, complainant's mother, testified that she does not recall any unusual incident that happened in February, 1994. However, she said that on June 21, 1994, her youngest daughter told her that she saw her father rape her sister Suzette between 5:00 and 6:00 in the morning of the same day. After having knowledge of the said incident and fearing that appellant might do something against her and their children, Susie sought the help of Suzette's godmother who accompanied Suzette to the NBI office and helped her file her complaint against appellant.[5]

Susie likewise testified that on June 29, 1994, appellant was arrested and a case was filed against him, docketed as Criminal Case No. 106542, charging him of the crime of rape committed against Suzette. However, the case was provisionally dismissed because Suzette with the conformity of her mother Susie, filed an Affidavit of Desistance[6] declaring therein that the case does not warrant criminal prosecution and Suzette is forgiving her father, herein appellant.

The prosecution's last witness was Dr. Maximo Reyes, the NBI medico-legal officer who examined Suzette. He found no external injuries in the body of the complainant. However, complainant's genital examination revealed the presence in her hymen of an "old-healed deep laceration at 6:00 o'clock position corresponding to the face of a watch, edges of which are rounded and non-coaptable." He also testified that the laceration could have been inflicted not later than March, 1994 and that the same might have been caused by a fully erect penis or any other hard instrument inserted in complainant's vagina.[7]

Defense, on the other hand, presented appellant as its sole witness who testified that the charges against him are fabricated; that complainant's mother is his common-law wife; that the latter convinced the complainant to file the case against him because the former is jealous of appellant's girlfriend; that his daughter also filed a case against him to prevent him from getting his share in the income of the canteen that they own.

After trial, the lower court rendered judgment finding appellant innocent of the rape allegedly committed in February 1994 (Criminal Case No. 113836-H) but guilty of the rape allegedly committed on June 21, 1994 (Criminal Case No. 113837-H).

Accused-appellant assails the trial court's judgment of conviction raising the following Assignment of Errors:

"I

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE AS CHARGED IN CRIMINAL CASE NO 113837-H DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"II

"THE LOWER COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ALLEGE THE AGE OF THE VICTIM IN CRIMINAL CASE NO. 113837-H."[8]

As to the first assigned error, appellant claims that the testimony of complainant was inconsistent and lacks the

element of truthfulness and spontaneity. He contends that complainant's failure to recall the details of the incident complained of is contrary to the normal reaction of a rape victim.

We disagree. Minor lapses in a witness' testimony should be expected when a person recounts the details of an experience so humiliating and so painful to recall as rape, for rape, as a harrowing experience, is usually not remembered in detail.[9] Moreover, records show that the acts complained of were committed when complainant was still at a tender age of fourteen. As such, ample margin of error and understanding should be accorded to the young complainant who, naturally, would be seized with fear much more than adults when required to relive an experience she would most definitely rather forget.[10] The long-standing rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and as long as her testimony meets the test of credibility, the accused may be convicted thereof.[11]

Appellant claims that the testimony of the complainant is incredible and inconsistent. However, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[12] In the instant case, we find nothing on record to convince us to depart from the findings of the trial court.

Furthermore, complainant's testimony is corroborated by the findings of the NBI medico-legal officer who discovered a healed laceration in her hymen.[13] When the victim's testimony of her violation is corroborated by the physical findings of penetration, there is sufficient foundation for concluding that there was carnal knowledge.[14]

We are not convinced by appellant's defense that his wife was moved by jealousy that she prevailed upon their daughter to file the complaint against appellant. No mother in her right mind would expose her daughter to the disgrace and trauma resulting from a prosecution for rape if she was not genuinely motivated by a desire to incarcerate the person responsible for her daughter's defilement.[15]

Likewise, we are not persuaded by accused-appellant's contention that his daughter filed the instant case against him because she and her mother wanted to deprive accused-appellant of his share in the income of their canteen. A daughter, especially one of tender age would not just accuse her own father of a heinous crime had she not really been aggrieved.[16] Filing a case for incestuous rape is of such nature that a daughter's accusation must be taken seriously, it goes against human experience that a girl would fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth.[17] Moreover, it is hard to fathom that a parent would use her offspring as engine of malice, especially if the same would subject her to humiliation and stigma.[18]

The affidavit of desistance executed by the complainant with the conformity of her mother does not carry any evidentiary weight in favor of appellant for this kind of affidavit is best ignored when pitted against positive evidence given at the witness stand.[19] Courts do not attach persuasive value to affidavits of desistance, especially when executed as an afterthought.[20] Complainant's mother satisfactorily explained that they executed the affidavit of desistance after appellant pleaded for their forgiveness.[21] As we have held in *People v. Igat*, an affidavit of desistance or a pardon by the offended party cannot justify the dismissal of the complaint for rape considering that the pardon should have been made prior to the institution of the criminal action.[22] Hence, against the evidence of the prosecution, the denial of the accused-appellant, which is inherently weak, cannot prevail.

With respect to the second assignment of error, we agree with appellant's contention, as concurred in by the Office of the Solicitor General, that the trial court erred in imposing the penalty of death. Section 11 of R.A. No.

7659 states that:

“The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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. x x x”

This Court has held in a number of cases that under said provision, the concurrence of the minority of the victim and her relationship to the offender is a special qualifying circumstance which must be both alleged and proved with certainty, otherwise, the death penalty cannot be imposed. [23] In the present case, while appellant admits that the complainant is her daughter and that there is evidence to show that the latter was less than eighteen years of age when the crime was committed, her age was not alleged in the Information filed against appellant. Thus, the special qualifying circumstance of minority and relationship cannot be appreciated against him. Consequently, the penalty imposed on appellant should be modified. Pursuant to the second paragraph of Article 335 of the Revised Penal Code, appellant should be meted the penalty of reclusion perpetua.

An appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of this Court to correct such errors it may find in the appealed judgment, even if they have not been specifically assigned.[24]

In addition to the award of civil indemnity, the victim is entitled to moral damages pursuant to the principle that a conviction for rape carries with it the award of moral damages to the victim, without need of further proof.[25] Victim Suzette is entitled to Fifty Thousand Pesos (P50,000.00) as and for moral damages.[26]

In addition, exemplary damages in the amount of Twenty Thousand Pesos (P20,000.00) should be imposed on appellant considering that relationship is proven. [27]

WHEREFORE, the decision of the Regional Trial Court of Pasig City (Branch 166) convicting accused Eduardo T. Ocampo of the crime of Rape in Criminal Case No. 113837-H is AFFIRMED with the MODIFICATION that accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay Suzette H. Ocampo the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty Thousand Pesos (P20,000.00) as exemplary damages, in addition to the Fifty Thousand Pesos (P50,000.00) awarded by the trial court as civil indemnity and the costs of suit.

SO ORDERED.

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

[*] Refers to Criminal Case No. 113836-H which should not have been docketed considering that accused Eduardo T. Ocampo was acquitted of the crime of rape by the RTC of Pasig City in said criminal case.

[1] Original Records, p. 60.

[2] TSN, January 14, 1999, p. 4.

[3] Ibid., pp. 6-7.

[4] Original Records, pp. 1 and 9; Original Records, both Informations were amended on March 22, 1999, pp. 58 and 60.

[5] TSN, February 11, 1999, pp. 5-7.

[6] Exhibit “1”, p. 92, OR.

- [7] TSN, June 30, 1999, pp. 7-10.
- [8] Rollo, p. 38.
- [9] People vs. Turco, Jr., 337 SCRA 714, 727; People vs. Abalde, 329 SCRA 418, 431; People vs. Calayca, 301 SCRA 192, 200.
- [10] People vs. Matugas, G.R. Nos. 139698-726, February 20, 2002; People vs. Marcelo, 305 SCRA 105, 116.
- [11] People vs. Dumaguing, 340 SCRA 701, 709.
- [12] People vs. Navida, 346 SCRA 821, 830; People vs. Villanueva, 339 SCRA 482, 494.
- [13] Exhibit “D”, p. 76, OR.
- [14] People vs. Segui, 346 SCRA 178, 186; People vs. Brondial, 343 SCRA 600, 620.
- [15] People vs. Quilatan, 341 SCRA 247, 255.
- [16] People vs. Baniguid, 340 SCRA 92, 104; People vs. Razonable, 330 SCRA 562, 574.
- [17] People vs. Tundag, 342 SCRA 704, 713.
- [18] People v. de los Reyes, 327 SCRA 56.
- [19] People vs. De Guiang, 285 SCRA 404, 414.
- [20] People vs. Benedictus, 288 SCRA 319, 324.
- [21] TSN, March 17, 1999, p. 4.
- [22] 291 SCRA 100, 107.
- [23] People vs. Baltazar, 343 SCRA 250, 265; People vs. Arves, 343 SCRA 123, 138; People vs. Baniguid, supra; People vs. Surilla, 336 SCRA 376, 387; People vs. Decena, 332 SCRA 618, 625.
- [24] People v. Alipayo, 324 SCRA 447; People v. Taño, 331 SCRA 449.
- [25] People vs. Sarmiento, 344 SCRA 345, 357 [2000] .
- [26] Ibid.
- [27] People v. Catubig, G.R. No. 137842, August 23, 2001.

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