

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIL SAJOLGA Y OMERA, ACCUSED-APPELLANT.

G.R. No. 146684. August 21, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here on automatic appeal from the decision,[1] dated October 18, 2000, of the Regional Trial Court, Branch 8, City of Malaybalay, finding accused-appellant Ramil Sajolga guilty of rape and sentencing him to death and to pay the victim Genlei Abejaron[2] in the sum of P75,000.00 as indemnity and P50,000.00 as moral damages.

The information, filed by the Assistant Provincial Prosecutor of Bukidnon, alleged ^¾

That on or about the 17th day of October, 1998, in the afternoon, at Sitio San Ramon, Cojuangco, Kalagutay, Base Camp, Municipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd designs, with the use of force and intimidation on the person of GENLEI ABEJARON, a fifteen (15) year-old minor and accused's half-sister, did then and there, wilfully, unlawfully and criminally box the latter which caused her [to become] unconscious and while at that state, undress GENLEI ABEJARON, remove her panties, insert his penis into the vagina of GENLEI ABEJARON, and have sexual intercourse with GENLEI ABEJARON, against her will, to the damage and prejudice of GENLEI ABEJARON in such amount as may be allowed by law.[3]

Upon being arraigned, accused-appellant pleaded not guilty,[4] whereupon trial ensued.

At the pre-trial conference, the parties stipulated as follows:

- That private complainant Genlei Abejaron was born on February 15, 1983.
- That accused and private complainant are siblings, being children of Segundina Sajolga.[5]
- That before and up to October 17, 1998, private complainant was living with her mother in Agrosite, Poblacion, Maramag, Bukidnon.[6]

The prosecution presented two witnesses: complainant Genlei Abejaron and her teacher Mrs. Erlinda Alceso.[7] Their testimonies are to the following effect:

From 1997 up to 1998, Genlei Abejaron stayed in the house of her teacher, Mrs. Erlinda Alceso, during weekdays as a working student because the Maramag Elementary School, where she was studying, was some three kilometers away from her mother's house in Sitio San Ramon, Cojuangco, Kalagutay, Base Camp, Maramag, Bukidnon. She went home to her mother's house only on weekends.[8]

Genlei testified that at about 5 o'clock in the afternoon of October 17, 1998, while she was alone in her mother's house playing cards, someone knocked on the door, and, when she opened it, she saw her half-brother, accused-appellant Ramil Sajolga, who was drunk. Without warning, accused-appellant boxed her in the abdomen,

causing her to fall on the floor on her buttocks. Genlei said that she gasped for breath as she suffered excruciating pain. She tried to give accused-appellant some blows but accused-appellant proved to be stronger. Genlei said accused-appellant dragged her to the bedroom, made her lie on the bed, and took off her shorts and panties. Before she became unconscious, Genlei remembered that accused-appellant kissed her lips and neck.[9]

When Genlei recovered, she found herself naked and lying on the bed. Her body was aching and her vagina was sore, with a sticky substance, presumably semen, in her private part. Accused-appellant was lying beside her, asleep, with his naked body covered by a blanket. When she realized that she had been violated by accused-appellant, Genlei took hold of a pillow, the nearest weapon available, and pummeled the latter, all the while crying and cursing him. Accused-appellant calmly told her that there was nothing she could do and pointed out to her that she would not win any case against him as he had not been sued or jailed despite molesting her twice when she was eight years old.[10]

When her mother arrived, Genlei tried to tell her what had happened but, as she had expected, her mother only shouted at her. Genlei left for Mrs. Alceso's house the next day, without being able to tell her mother what had happened. Genlei tried to tell her mother again about her misfortune when the latter visited her in the boarding house, but once more she failed.[11]

Genlei kept her torment a secret until sometime in January 1999, when she told her teacher Maxima Cabang that she wanted to stop schooling. When Mrs. Cabang asked for her reason, Genlei told her that her half-brother had raped her. Mrs. Cabang then asked Genlei if she wanted to file a case, to which she replied that she would think it over because it would not be easy to file a case.[12]

Mrs. Alceso noticed that something was bothering Genlei. She once saw Genlei crying while watching a rape scene on television. Genlei had asked her as to what could possibly happen if her mother learned that she had been raped. Later, on the assurance that her teachers would help her, Genlei told Mrs. Alceso that her half-brother raped her but she was afraid her mother would not believe her.[13]

In January 1999, one of Mrs. Alceso's co-teachers informed her that Genlei could be pregnant, as she was seen vomiting. Mrs. Alceso confronted Genlei and told her that she might be carrying a baby. Genlei was made to hide in another teacher's (Mrs. Divina Flores) house, because she was afraid that her mother might learn about her pregnancy. In February 1999, Genlei's teachers, Mrs. Alceso, Mrs. Flores, and a Mrs. Bertrudes, took her to the Department of Social Welfare and Development (DSWD) in Maramag, Bukidnon. A DSWD officer assisted in filing a case against her half-brother.[14]

The results of the medical examination (Exh. A) conducted on Genlei by Dr. Evangeline C. Revilla of the Bukidnon Provincial Hospital of Maramag on February 10, 1999 showed the following:

- has minimal pubic hair at the mons pubis
- cervix has old healed lacerated wound at the 1:00 o'clock, 2:00 o'clock, 5 o'clock and the 11:00 o'clock position
- admits 1 finger very easily

NOTE: has minimal blood at examining finger because she's on her first day of menstruation.[15]

The defense offered no objection to the admission of the Medical Certificate, including the findings therein. For this reason, the testimony of the doctor was dispensed with.[16] The prosecution thereafter rested its case.

The defense thereafter presented three witnesses: accused-appellant Ramil Sajolga, his friend and neighbor Aurelio Manuel, and his mother Segundina Recaros. Accused-appellant Ramil Sajolga interposed the defense of

denial and alibi. He claimed that in the morning of October 17, 1999, he and his neighbor, Aurelio Manuel, went to Purok 8, about ten kilometers from Sitio San Ramon, Cojuangco. Riding on a cart pulled by a carabao, they arrived in Purok 8 at about 3 o'clock in the afternoon. They cut bamboo poles for their houses. As they were unable to finish, they stayed at Abundio Carbona's (the uncle of Aurelio Manuel's wife) house until lunch time the following day. They arrived home at about 3 o'clock in the afternoon. Accused-appellant requested his mother for hot water for coffee when he arrived. He said he did not see Genlei as she did not come home in October 1998. Accused-appellant said that Genlei had been staying with her teacher, Mrs. Erlinda Alceso. He admits, however, that the house where he and his live-in partner and their child lived was a mere five arm's length away from his mother's house. His alibi was corroborated by Aurelio Manuel. [17]

Segundina Recaros explained that Genlei seldom went home because of the danger posed by two warring groups of land claimants in the area. Both accused-appellant and Segundina stated that Genlei allegedly came home only on September 16, 1999 but went back to Maramag on the same day. According to them, Genlei was also home on December 28, 1999 for accused-appellant's birthday.[18]

On October 18, 2000, judgment was rendered by the trial court finding accused-appellant guilty of qualified rape. The dispositive portion of the decision read:

WHEREFORE, judgment is entered finding accused RAMIL SAJOLGA guilty beyond reasonable doubt of the offense of rape and penalized under Article 266-A of the Revised Penal Code, as amended by R.A. 8353 and he is therefore sentenced to suffer the extreme penalty of DEATH. He is further ordered to indemnify his victim Genlei Abejaron the sum of P75,000.00 and moral damages of P50,000.00.

SO ORDERED.[19]

Hence, this appeal. Accused-appellant alleges that—

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE WEAKNESS OF THE PROSECUTION EVIDENCE AND REASONABLE DOUBT OF ITS COMMISSION.[20]

In his reply brief dated August 1, 2002, he contends:

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, HE IS ONLY GUILTY OF THE CRIME OF SIMPLE RAPE BECAUSE THE ACCUSED IS NOT THE FULL-BLOODED BROTHER OF THE VICTIM AND NEITHER WAS THE CORRECT RELATIONSHIP STATED IN THE INFORMATION.

When an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her and, so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof. We find complainant's testimony to be straightforward, candid, and credible.

First. Accused-appellant contends that complainant failed to present credible and substantial evidence that he sexually abused her. He said that "the complaint of pain and sticky fluid in the vagina can also be felt or experienced by a woman even though there is no sexual abuse. . . . Thus, despite her testimony that accused kissed her and she saw him naked, it is dubious that she truly lost her consciousness and accused sexually abused her." [21]

The contention is without merit. Rule 133, §4 of the Revised Rules on Evidence provides:

Circumstantial evidence, when sufficient. ¾ Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In several cases,[22] we have sustained convictions based on circumstantial evidence. Indeed, a conviction based on circumstantial evidence is proper if the circumstances proven constitute an unbroken chain which lead to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[23] In this case, the totality of circumstances warrants a finding that private complainant was raped by accused-appellant while the former was unconscious. The prosecution presented credible and substantial evidence showing interlocking circumstances that accused-appellant sexually abused complainant. As pointed out by the Solicitor-General, these circumstances are:

(a) When Genlei opened the door after hearing some knocks, appellant immediately entered and boxed her on the abdomen even without any provocation on the part of Genlei (TSN, December 2, 1999, pp. 2-17, 18);

(b) When Genlei fell but still conscious, appellant dragged her and made her lie on the bed, removed her shorts and panties, after which appellant kissed her neck and lips. Then Genlei lost consciousness. There was no other man inside the house (Ibid.);

(c) When Genlei recovered, she was naked, her body was aching, her vagina was painful and she felt that there was a sticky substance on her vagina. Appellant was lying beside her and he was naked too (Ibid.);

(d) When Genlei struck appellant with a pillow and cursed him, appellant told her that there is nothing that she could do. Appellant had the guts to say this because he raped Genlei twice when she was still eight (8) years old and he is still free (Ibid., pp. 8-10, 14); and

(e) The present offense against Genlei was perpetrated on October 17, 1998 and later on Genlei became pregnant but her pregnancy was aborted (TSN, December 2, 1999, pp. 3-7; TSN, January 25, 2000, pp. 1-6; TSN, April 28, 2000, pp. 1-17).[24]

Second. Accused-appellant claims that complainant's behavior after the alleged "rape" negates its occurrence. She was, according to him, "amazingly contained" when their mother arrived home. He capitalizes on the failure of complainant to report the alleged rape until after four (4) months from its occurrence.

Complainant's silence upon her mother's arrival was sufficiently explained. She knew that her mother would just dismiss it if she told her that her brother had raped her. As Genlei said:

[FISCAL TORIBIO, counsel for the prosecution]:

Q When you filed this case, Genlei, did you not tell your mother?

A No, because she would not listen to me.

Q You mean to tell the court that there was an attempt to tell your mother but she will not believe you?

A Yes, ma'am.

Q How did you tell your mother?

A I told her, Ma, would you give in to my request, that do not drink now because I have a problem to tell you.

Q You requested your mother not to drink, you mean to say that your mother is a habitual drinker?

A She is not a habitual drinker but she drinks.

Q When you told this to your mother, what was her reaction if any?

A She told me just do that after sometime, Day, because I am very thirsty I will have to buy Fighter wine.

Q After that was there an attempt by you to tell your mother?

A Yes, at my boarding house.

Q Were you able to tell your mother what your brother did to you?

A No, ma'am.

Q Up to this time, Genlei?

A Yes, ma'am.[25]

On the other hand, Segundina claimed that she no longer understood her daughter's actions, as it seemed that the latter had lost respect for her. Genlei stayed with Mrs. Taning Taganas from December 1998 to January 1999. All the while, Genlei had been unable to talk to her mother about what happened to her as she was afraid that her mother would not believe her. It was only when classes resumed in January 1999 that Genlei was able to fully narrate her torment. Around that time, Genlei found that she was pregnant. On January 23, 1999, Mrs. Taganas had to call Segundina because Genlei was sick. Segundina stayed with her daughter for three days. But in February, Genlei had to be hidden from her mother by her teachers. She stayed at the house of one of her teacher's (Mrs. Divina Flores). By February 8, 1999, Genlei was placed in the custody of the DSWD. She suffered an abortion sometime during the months of January and February 1999.[26]

Indeed, although complainant was unable to get sympathy from her mother, she was able to find this from her teachers. This explains her silence and the delay of about four (4) months in reporting the crime to the authorities. Furthermore, the period of October 1998 to February 1999 were quite tumultuous for her. She was raped on October 17, 1998. On the 22nd of the same month, she had to spend the night at the Kalasag Center (Police Detachment) of Maramag because Mrs. Alceso's husband drove her out of their house as Genlei's presence was seen by Mr. Alceso as an extra expense. When Segundina Recaros learned about this, she made Genlei live with her friend, Mrs. Taganas.

Third. Alternatively, accused-appellant argues that the death penalty may not be imposed upon him because, although he and complainant were related, the prosecution failed to show that complainant was below 18 years of age at the time the rape took place as this was merely alleged in the information.

Article 266-B of the Revised Penal Code provides in pertinent part:

The death penalty shall 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; . . .

Although no birth certificate or document was presented to prove that complainant was 15 years old at the time she was raped, the parties stipulated that she was born on February 15, 1983. This stipulation is contained in a Pre-Trial Order issued by the trial court.[27] A stipulation of facts in criminal cases is now authorized to be made by Rule 118, §§1 and 4 of the Revised Rules of Criminal Procedure.[28] Thus, not only was complainant's age alleged in the information, it was proven, having been made the subject of stipulation and admission.

For the purpose of imposing the death penalty under paragraph 1 of Article 266-B of the Revised Penal Code, the relationship of the parties must also be alleged and proved. It cannot be the subject of stipulation of the parties. Even if such is proven, it cannot be considered in the imposition of the death penalty if it is not properly alleged in the information. The reason for this is that the age (below 18) and relationship of the offender and the offended party in Art. 266-B, par. 1 are in the nature of qualifying circumstances requiring the imposition of a more severe penalty. Hence, due process requires that the accused be informed of them as possibly qualifying the crime with

which he is charged.

Accused-appellant is not “a parent, ascendant, step-parent, or guardian or the common-law spouse” of the victim’s mother, but a relative by consanguinity. Hence, as this Court has held, it must be alleged in the information that he is a relative by consanguinity or affinity, as the case may be, within the third civil degree.[29] Not only should “relationship by consanguinity or affinity” be alleged, it is also necessary to specify that such relationship is “within the third civil degree.”[30] Mere allegation and the stipulation that accused-appellant is the brother of the victim because they have a common mother are not enough to satisfy the special qualifying circumstance of relationship.

Anent accused-appellant’s contention that “he is guilty only of simple rape and not qualified rape because he is not a full-blooded brother of the victim sister and there are no half measures in the Heinous Crime Law,” suffice it to say the law does not distinguish between full blood and half blood relatives. The law does not in fact speak of full blood and half blood relatives but “of relatives by consanguinity or affinity within the third civil degree.” As a recent study has found, “around 92% of the perpetrators in rape cases are known to the child and 39% of these cases were committed by legal or common law relatives.”[31]

In any event, because of the failure of the prosecution to allege that accused-appellant is a relative by consanguinity within the third civil degree of the offended party, accused-appellant can only be held liable for simple rape even if it was proven and stipulated that the victim was under eighteen (18) years of age and that he is a half-brother of complainant.

The penalty for simple rape is reclusion perpetua. In view of the imposition of this reduced penalty on accused-appellant, the amount of civil indemnity awarded by the Regional Trial Court to the victim should likewise be reduced from P75,000.00 to P50,000.00. The award of P50,000.00 as moral damages, however, remains.[32] Because of the aggravating circumstances of relationship and age, exemplary damages in the amount of P25,000.00 should also be awarded even if it cannot be appreciated as a qualifying circumstance.[33]

WHEREFORE, the decision of the Regional Trial Court, Branch 8, City of Malaybalay is AFFIRMED with the MODIFICATION that accused-appellant Ramil Sajolga y Omera is found guilty of simple rape and is ordered to suffer the penalty of reclusion perpetua and to pay complainant Genlei Abejaron the amounts of P50,000.00 as indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez and Corona, JJ., concur. Davide, Jr., C.J., on official business. Sandoval-Gutierrez, J., on leave.

[1] Per Judge Vivencio P. Estrada.

[2] Also referred as “Genlie” Abejaron.

[3] Rollo, p. 5.

[4] Records, p. 25.

[5] During the trial, Segundina Recaros, the mother of accused-appellant Ramil Sajolga and of complainant Genlei Abejaron, explained that her first husband, Olegario Sajolga, then already deceased, was accused-appellant’s father. On the other hand, Genlei is her daughter by her second husband, Eulalio Abejaron, also deceased, although Genlei claims that her father was living in Bohol. Segundina said she has a live-in partner whose family name (Recaros) she uses. TSN (Segundina Recaros), pp. 3-4, 18-20, Apr. 28, 2000.

[6] Pre-trial Agreement, June 1, 1999; Pre-Trial Order, June 23, 1999; Records, pp. 32-33.

- [7] Also referred to as Erlinda “Alciso” or Erlinda “Calsejo.”
- [8] TSN (Erlinda Alceso), p. 3, Jan. 25, 2000.
- [9] TSN (Genlei Abejaron), pp. 3-7, 10, Dec. 2, 1999.
- [10] Id., pp. 7-9, 14.
- [11] Id., pp. 10, 12-13.
- [12] Id., pp. 10-11.
- [13] TSN (Erlinda Alceso), pp. 3-4, Jan. 25, 2000.
- [14] TSN (Genlei Abejaron), pp. 10-11, 21, Dec. 2, 1999.
- [15] Records, p. 4.
- [16] Order, Nov. 4, 1999; Records, p. 45.
- [17] TSN (Ramil Sajolga), pp. 6-11, June 14, 2000; TSN (Aurelio Manuel), pp. 7-11, March 8, 2000.
- [18] Id., pp. 6-7, June 14, 2000; TSN (Segundina Recaros), pp. 12-13, Apr. 28, 2000.
- [19] Decision, p. 5; Rollo, p. 17.
- [20] Appellant’s Brief, p. 5, Id., p. 34.
- [21] Id., p. 8; Id., p. 37.
- [22] E.g., People v. Mercado, G.R. No. 139904, Oct. 12, 2001; People v. Tolentino, G.R. No. 139834, Feb. 19, 2001; People v. Perez, 307 SCRA 276 (1999); People v. Tabarangao, 303 SCRA 623 (1999); People v. Diaz, 262 SCRA 723 (1996); People v. Ulili, 225 SCRA 594 (1993); People v. Abiera, 222 SCRA 378 (1993); People v. Naguita, 208 SCRA 206 (1992); People v. Santiago, 197 SCRA 556 (1991); People v. Garcia, 89 SCRA 440 (1979).
- [23] People v. Mendoza, 301 SCRA 66 (1999).
- [24] Appellee’s Brief, pp. 9-11; Rollo, pp. 68-70.
- [25] TSN (Genlei Abejaron), pp. 12-13, Dec. 2, 1999.
- [26] Id., pp. 10-11, 19-21, Dec. 2, 1999; TSN (Erlinda Alceso), pp. 5-6, Jan. 25, 2000; TSN (Segundina Recaros), pp. 7, 11-15, Apr. 28, 2000.
- [27] Records, p. 33.
- [28] People v. Hernandez, 260 SCRA 25 (1996).
- [29] People v. Lachica, G.R. No. 143677, May 9, 2002; People v. Libo-on, G.R. No. 136737, May 23, 2001; People v. Banihit, 339 SCRA 86 (2000); People v. Ferolino, 329 SCRA 719 (2000).
- [30] Id.
- [31] Ateneo Human Rights Center, Human Rights Treatise on Children 46 (1999).
- [32] People v. Escaño, G.R. Nos. 140218-23; Feb. 13, 2002.
- [33] People v. Catubig, G.R. No. 137842, Aug. 23, 2001.

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