

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEONARDO NUGUID Y MAYAO, APPELLANT.

G.R. No. 148991. January 21, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court for automatic review is the Decision^[1] dated 16 May 2001 of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 00-179698. The trial court found Leonardo Nuguid y Mayao (“appellant”) guilty of the crime of serious illegal detention with rape and imposed on him the death penalty.

The Charge

The Information charging appellant with the crime of serious illegal detention with rape reads:

That on or about January 1, 2000, in the City of Manila, Philippines, the said accused, being then a private individual and without authority of law, willfully, unlawfully, feloniously and illegally detain (sic) ROWENA RIANZARES Y MIRANDA by then and there taking and locking her inside his room located at 1932 Firmeza Street, Sampaloc, this City, and preventing her from going out of said room for a period of three (3) hours, more or less, thereby depriving her of her liberty and during the said period of time, said accused by means of force, violence and intimidation, to wit: by poking a knife, threatening to kill her should she resist and choking her, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of her, against her will and consent.

Contrary to law.^[2]

Arraignment and Plea

When arraigned on 14 February 2000, appellant, with the assistance of counsel de oficio, entered a plea of not guilty.^[3]The Trial

Version of the Prosecution

The prosecution presented four witnesses: (1) complainant Rowena Rianzares (“Rowena”); (2) Dr. Mirasol Pangan of the U.P. Philippine General Hospital Obstetrics and Gynecology Department, who examined the complainant; (3) Eldee Eusebio; and (4) Dante Magat.

The Solicitor General summarized the prosecution’s version of the incident in the People’s Brief as follows:

On December 31, 1999, about 7 o’clock in the evening, appellant and his companions (names not on record) were having a drinking spree outside the house of Jun Rianzares xxx. (p. 5, TSN, May 22, 2000).

About 2 o’clock in the morning of the following day or right after the New Year’s eve celebration, Jun Rianzares left their house to see a friend. His wife, Rowena Rianzares, was left behind sleeping inside the

room of their house with their daughter [six (6) years old] and son [three (3) years old] (pp. 3-4, *ibid.*).

After a while, Rowena Rianzares heard a knock at the door of their room. Consequently, she rose from the bed and partially opened the door to look [at] who was knocking. It was appellant. Appellant tried to push open the door, telling Rowena Rianzares that her husband was asking for money to buy liquor. Rowena Rianzares got suspicious because her husband had money at that time and he would not ask money from her. Rowena Rianzares thus closed the door (pp. 3-5, *ibid.*)

Thereafter, Rowena Rianzares went back to sleep. A few minutes later, she heard appellant upstairs repeatedly shouting that her husband was very mad because he did not have money to buy liquor. When she heard appellant say that her husband was allegedly mad, she opened the door of their room and went out. She went inside appellant's room which was located in front of their room to confront him. She told appellant: "Bakit hihingi ng pera si Kuya Jun mo may pera naman siya?" Immediately thereafter, appellant rushed to her back and placed his left arm around her neck with his right hand holding a kitchen knife, about twelve (12) inches long (pp. 5-6 and 12, *ibid.*).

Rowena Rianzares got surprised and, consequently, pushed appellant's left arm. In the process, Rowena Rianzares got off balance and fell down xxx the stairway screaming. She asked for help shouting her husband's name (p. 11, *ibid.*)

Appellant immediately went after Rowena Rianzares and upon catching up with her, appellant held her hair and left arm. He then dragged her upstairs towards his (appellant's) room (pp. 5-6, *ibid.*)

Inside the room, appellant asked Rowena Rianzares to undress while pointing the knife he was holding at her right rear side of the body. He threatened to kill Rowena Rianzares if she did not undress herself. Out of fear, she was forced to undress herself.

Then, appellant kissed the different parts of her body. Rowena Rianzares struggled and resisted. She grappled for possession of the knife and succeeded in holding its bladed portion causing her injury on the right palm. She persisted in grappling for possession of the knife but failed. In the process, she sustained a further injury on her left arm. Instead of relenting, appellant pulled her and slapped the back of her head. Thereafter, appellant dragged and forced her to lie down on the lower portion of the double [deck] bed located inside appellant's room (pp. 6-13, *ibid.*).

While Rowena Rianzares was xxx lying down xxx with her legs spread apart, appellant placed himself on top of her. He placed his left foot under Rowena Rianzares' left leg and his right foot on Rowena Rianzares' right leg. While in that position, appellant forced his private organ into Rowena Rianzares' private part. Rowena Rianzares continued to shout for help but appellant poked the knife at the left side of her body. While appellant was raping her, he pointed the knife at Rowena Rianzares' private part and told her that he wanted to get [a] thrill out of it because he could not get a full erection since he was under the influence of "shabu." Rowena Rianzares pleaded [with] appellant to stop and assured him that she would help him get out xxx but appellant remained unmoved (pp. 13-17, *ibid.*).

About ten (10) minutes after Rowena Rianzares was dragged by appellant to his room, somebody knocked at appellant's door and shouted: "Bernie ano ba ang ginagawa mo dyan?" Appellant answered back: "Umalis kayo kundi papatayin ko ito." (pp. 18-19, *ibid.*).

Eldee Eusebio, a neighbor of spouses Jun and Rowena Rianzares at Firmeza Street, Sampaloc, Manila (p. 7, TSN, May 30, 2000), testified that on January 1, 2000, about 2:15 in the morning, he went to the house of his Kuya Jose "Jun" Rianzares because he was summoned by the latter (p. 4, TSN, May 30, 2000). When he was about to enter the house, Eldee Eusebio heard Rowena Rianzares shout. Immediately, Eldee Eusebio kicked the entrance gate of the house to open it. He then hurriedly went upstairs and saw Rowena Rianzares using her feet in trying to prevent the door of appellant's room from closing. After the door was closed, he immediately

knocked at the door. Appellant, however, shouted, telling him to leave and nobody should go up; otherwise, he would kill Rowena Rianzares (pp. 4-5, *ibid.*).

Consequently, Eldee Eusebio went outside the house to look for Jun Rianzares because he did not see him inside the house. When he found Jun Rianzares, he told him that there was a problem in his house (p. 5, *ibid.*).

About thirty (30) minutes later, Rowena Rianzares' husband arrived. Jun Rianzares knocked at appellant's door and asked appellant what was he doing to his wife. Appellant pounded the floor, using the handle of the knife and shouted. He asked Jun Rianzares to leave him alone; otherwise, he would kill his wife (pp. 18-19, May 22, 2000).

Thirty (30) minutes thereafter, Barangay Councilor Nida Magat, together with her husband, Dante Magat, arrived. She and her relatives negotiated for Rowena Rianzares' release. However, appellant told them to leave; otherwise, he would kill Rowena Rianzares. While they were negotiating for Rowena Rianzares' release, appellant was still on top of her (Rowena Rianzares) (pp. 19-20, *ibid.*).

After more than an hour of failed negotiations by Barangay Councilor Nida Magat, the policemen took over (pp. 2-4, TSN, July 11, 2000).

The policemen (names not on record) forcibly opened the door and immediately, thereafter, they got hold of appellant. Before they could get hold of appellant, however, he (appellant tried to stab Rowena Rianzares but the latter was able to evade the thrust. Instead, she was hit on her left arm. Then a certain Colonel Castro pulled Rowena Rianzares and immediately covered her with a blanket (p. 20, TSN, May 22, 2000).

xxx

Dr. Mirasol Pangan testified that she was the one who physically examined Rowena Rianzares. She testified that she examined Rowena Rianzares' body from head to foot. She found the following injuries on her body:

- one (1) hematoma on the right neck;
- two (2) abrasions at the left lower hip approximately 0.5cm.;
- one (1) abrasion at the left forearm;
- one (1) abrasion hematoma-circular at the left lower arm;
- multiple abrasion hematoma at the volar aspect of the second, fourth digits of right hand and under the nose;
- one (1) hematoma at the back and the anterior tract the largest of which measures 6 x1 cm.;
- one (1) stab wound at the left forearm; and
- one (1) hematoma measuring two cm. at the right labia minora of the genitalia.[4]

Version of the Defense

Appellant Leonardo Nuguid was the sole witness for the defense. The Public Attorney summarized the defense's version of what transpired, as follows:

Leonardo Nuguid testified that he knew the victim because he worked in the latter's Manila K-9 college as their dog trainer. He had been working with the Rianzares [spouses] for five (5) years. (TSN, September 11, 2000, pp. 1-4)

On December 31, 1999 at about 10:30 p.m., Rowena Rianzares entered his room. He asked her what she wanted but Rowena did not answer and instead she kissed him on the lips. He had sex with Rowena and the latter's husband arrived. Jun called up for Rowena but the latter told her husband that she was in the

accused-appellant's room talking with the latter. Jun left at around 11:00 pm and Rowena stayed in his room until the police called by her husband arrived. He told Rowena to go out of the room but the latter refused to do so. The police kept on convincing them to go out of the room but Rowena told them that they were just talking and they would go out soon. The police kicked the door open and he was arrested. He was brought to the police station wherein he was mauled and was forced to confess that he raped Rowena. The first time he had sexual intercourse with Rowena was the middle of 1998 when they went to Bulacan. Rowena told her then that she saw in him what was lacking in her husband. Rowena's husband was an alcoholic and a drug user. He does not know why she filed [t]his serious illegal detention with rape [charge] against him. (TSN, September 11, 2000, pp. 1-15)

He testified that he had worked with Rianzares from 1995-2000. There was a time he had an argument with Jun so he was asked to leave the Rianzares' house. (TSN, September 11, 2000, pp. 15-16)

The first time he had sexual intercourse with Rowena was when they went to Bulacan to get rice from Rowena's parents. Prior to January 1, 2000, he had several sexual intercourse (sic) with Rowena. Rowena gave him several lovenotes but he lost them all. (TSN, September 11, 2000, pp. 15-16)

On January 1, 2000, he did not notice that Rowena was bleeding when she emerged from the room. He was holding a knife when the police arrested him because he was forced to fight back at the police who were mauling him inside his room. He had a kitchen knife inside his room because Rowena's husband told him to bring the kitchen knife inside him (sic) room so that he could easily open the box of firecrackers in case anybody came to buy. (TSN, September 11, 2000, pp. 24-30)[5]

The Trial Court's Ruling

The trial court considered the testimonies of Rowena and the other prosecution witnesses to be straightforward and credible. The physical injuries Rowena suffered, confirmed by the examining physician and observed by the trial court, corroborated her version of the events.

On the other hand, the trial court found dubious appellant's story that he and Rowena were sweethearts. The trial court held that:

The accused's sweetheart defense is of doubtful nature and undeserving of credence. Firstly, the accused's version of the incident is unnatural and contrary to common human experience. If it was true that the complainant was in the accused's room on the second floor at 11:00 p.m., when her husband called her from the ground floor, she would surely have quickly gotten out of the room, instead of coolly telling her husband that she was with the accused in the latter's room. Secondly, the accused's declaration is contradicted not only by the straightforward, convincing and believable testimonies of the complainant and prosecution witnesses Eusebio and Magat, but also by the physical evidence of the injuries sustained by the complainant on the occasion of the commission of the crime, Exhibits "F" and "F-1".[6]

The trial court ruled that the acts of the appellant in locking up Rowena against her will in his room for three hours, threatening to kill her and then sexually assaulting her, constituted the crime of serious illegal detention with rape. The dispositive portion of the trial court's Decision of 16 May 2001 reads:

WHEREFORE, the accused Leonardo Nuguid y Mayao, is hereby convicted of the crime of serious illegal detention with rape under Article 267 of the Penal Code and sentenced to suffer the severe penalty of death by lethal injection and accessory penalties provided by law and to pay the costs.

On the civil liability of the accused, he is also sentenced to pay the complainant, Rowena Rianzares y Miranda, moral and nominal damages in the respective sums of P100,000.00 and P50,000.00, with interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.[7]

Hence, this automatic review.

The Issues

Appellant seeks the reversal of his conviction by contending that:

THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF SERIOUS ILLEGAL DETENTION WITH RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[8]

Appellant, arguing through the Public Attorney, alleged that the trial court erred in rejecting his sweetheart defense, which was not unlikely since he spent most of his time with Rowena. In the alternative, appellant claims he is liable only for simple rape because the prosecution failed to show that his primary purpose was to detain Rowena, thus:

xxx It is undeniable that the accused-appellant's primary purpose was to have carnal knowledge of Rowena Rianzares. The accused-appellant immediately ordered Rowena Rianzares to undress and raped her. As a matter of fact, even at the time the police forcibly opened the door, Rowena and the accused-appellant were still both naked and the accused-appellant was still positioned on top of Rowena.[9]

The Solicitor General agreed that appellant is only liable for simple rape under Article 335[10] of the Revised Penal Code because: (1) it necessarily follows from the Court's ruling in *People v. Lactao*[11] that there is no complex crime of illegal detention with rape;[12] and (2) appellant did not release Rowena after the rape only because her husband and the police were outside appellant's room.

In the Reply Brief, the Public Attorney raised as an additional ground for reversal the presiding judge's alleged lack of impartiality in deciding the case.

The Ruling of the Court

The Court shall first discuss the Solicitor General's contention that there is no complex crime of serious illegal detention with rape. In *People v. Lactao*, the Court ruled as follows:

It may be worth to mention at the outset that there is no complex crime of rape with serious illegal detention. If the purpose is to deprive the offended party of liberty, the crime committed is illegal detention. And, if during the course of the illegal detention, the offended party is raped, a separate crime of rape is committed; in this instance, two independent crimes are committed. However, if the objective of the offender is to rape the victim only, and in the process, the latter had to be illegally detained, only the crime of rape is committed since illegal detention is deemed absorbed in rape.

Hence, in *People v. Ching Suy Sionga*, Sionga was found guilty of two independent crimes, i.e., serious illegal detention and acts of lasciviousness, because the two acts did not come within the purview of Art. 48 of the Revised Penal Code which applies to complex crimes, for certainly, one cannot be considered as a means to commit the other. xxx[13] (underscoring supplied)

The decision in *Lactao*, promulgated on 29 October 1993, explained the rules on the treatment of serious illegal detention and rape at that time. Prior to the effectivity of Republic Act No. 7659 ("RA 7659") on 31 December 1993,[14] when the person kidnapped or illegally detained was raped, two independent crimes of kidnapping and rape were committed.

RA 7659, however, amended the last paragraph of Article 267 of the Revised Penal Code on serious illegal detention and kidnapping to read:

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or

dehumanizing acts, the maximum penalty shall be imposed.

Under this provision, when the person kidnapped or illegally detained is raped, the offense committed is the special complex crime of serious illegal detention or kidnapping with rape, punishable with the maximum penalty of death.[15] The last paragraph of Article 267 applies only to instances where the person illegally detained or kidnapped is raped. It does not provide for a complex crime of rape with serious illegal detention. As the Court ruled in *Lactao*, there is no complex crime of illegal detention with rape under Article 48 of the Revised Penal Code. There is also no complex crime of kidnapping with attempted rape under Article 48 because there is no single act which results in two or more grave or less grave felonies. Neither is illegal detention a necessary means for committing rape.[16]

Nonetheless, the Court concurs with the Public Attorney and the Solicitor General that the crime committed in this case is not serious illegal detention with rape. Rather, appellant is guilty of rape qualified by the use of a deadly weapon.

The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code[17] are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[18]

The essence of illegal detention is the deprivation of the victim's liberty. The prosecution must prove actual confinement or restriction of the victim, and that such deprivation was the intention of the appellant.[19] The accused must have acted purposely or knowingly to restrain the victim because what constitutes the offense is taking coupled with intent to restrain.[20]

We agree with the Public Attorney that the facts in the present case indicate that appellant's principal objective was not to deprive Rowena of her liberty. We quote from the findings of the trial court:

xxx Caught by surprise, the complainant struggled to free herself from the hold of the accused and ran down the stairway, but in her haste she stumbled and fell down. The accused followed her down; held her hair and left hand and dragged her upstairs to his room, while she shouted for help. Once inside the room, the accused forced the complainant to undressed (sic) and then he kissed all the parts of her body. The complainant tried to resist and in the process, she sustained a wound in her left arm and a knife wound in her right palm, Exhibit "F". The accused forced the complainant to lie on a bed and placed himself on top of her and at the same time position his knees between her legs and forced them to separate. After which he proceeded to rape her, and while doing so, he remarked to her, "Weng (complainant's nickname), pasensiya ka na. Nakabato kasi ako." (Please forgive me because I am high on drug[s]). He further told her that he would insert the knife he was holding in her vagina to enhance his excitement. xxx Finally, at around 5:00 a.m., the police officer forced open the door and barged inside the room, and subdued the dumbfounded accused who was then on top of the complainant.[21] (Emphasis supplied)

From this narration, it is clear that appellant's real aim was to have carnal knowledge of Rowena. Appellant took Rowena no further than to his room - which was only across the hall from Rowena's room - where he immediately forced her to undress. In fact, appellant was so intent on raping her that he was still naked and on top of her when the police broke into the room.[22] Taken together, these circumstances engender doubt that the intention of appellant was to detain Rowena. The detention was merely incidental to the real objective of appellant.

It is true that appellant kept Rowena inside his room for more than an hour while the police tried to negotiate with him. However, this does not constitute illegal detention in light of the fact that appellant was on top of Rowena raping her even while he was shouting at the police and other people outside. This is borne out by Rowena's testimony:

Q:

Could you tell us what was the position of the accused when the policemen forcibly opened the door?

A:

He was on top of me.

Q:

For how long [did] the accused stayed (sic) on top of you?

A:

Almost two hours from the very start.[23] (Emphasis supplied)

Appellant maintained this position until the police barged into the room and subdued him.[24] Given these facts, appellant is not liable for the crime of serious illegal detention with rape.

However, appellant is still liable for the crime of rape. When the information charges a complex crime and the evidence fails to support one of the component offenses, the defendant is still liable for the other offense supported by the evidence.[25] Thus, in *People v. Oliva*, [26] the Court found Carlito Oliva guilty of statutory rape even if the information charged him of kidnapping with rape.

Articles 266-A and 266-B of the Revised Penal Code, as amended by RA 8353, provide:

Article 266-A. Rape; When And How Committed. - Rape is Committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

xxx.

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

xxx. (Emphasis supplied)

The trial court held that appellant, with the use of a knife, succeeded in raping Rowena in the early hours of 1 January 2000. The trial court found the testimonies of Rowena and the other prosecution witnesses "straightforward, convincing and believable" and supported by the evidence of the injuries sustained by Rowena.[27]

The weighing of the testimonies of witnesses is best left to the trial court since it is in the best position to discharge that function.[28] The trial judge has the advantage of personally observing the conduct and demeanor of witnesses, an opportunity not available to an appellate court.[29] Absent compelling reasons, we will not disturb on appeal the trial court's findings on the credibility of a witness.

The Public Attorney argues that Judge Laguio was biased against appellant, and that it was clear from the judge's remarks that he had already concluded that appellant was lying before appellant had finished presenting his evidence, to wit:

PROS GURAY:

Q:

You mean to tell the court that the husband on December 31, 1999 in the evening he left the house?

A:

After we have a drinking spree he left the house.

xxx

THE COURT:

Q:

What time was that?

A:

I cannot remember.

Q:

Was it past 11:00?

A:

I cannot remember the time.

Q:

You do not know what time the husband left the house?

A:

I cannot remember.

xxx

Q:

But you said that it was around 10:30 when Rowena entered your room?

A:

Yes, sir.

Q:

So how did you know the time? [Y]ou h[a]ve a wristwatch?

A:

In my room there was a wall clock.

Q:

So you know that the husband of Rowena went out or left the house before 10:30?

A:

Yes, sir. Before he left we were drinking together.

Q:

Yes. And you said that it was after the two of you drank together that he left?

A:

Yes, sir.

Q:

And then you, went up in the room?

A:

Yes, sir.

Q:

And how many minutes after you entered your room did Rowena entered (sic) your room?

A:

10:30 ho.

Q:

Ilang minuto ang nakaraan pagpasok mo sa kuwarto mo na pinasok ka ni Rowena. Huwag ka ng magmamaangmaangan eh. Nagtatanga-tangahan ka pa eh. O Ilang minuto ang lumipas? Hindi ka naman mukhang tanga eh. Mukha ka ngang intelihensiya eh.

A:

Hindi ko na ho alam eh.

Q:

Kaya nga huwag ka ng magtangatangahan. Pagkapasok mo sa kuwarto ilang minuto ang lumipas bago pumasok sa kuwarto mo si Rowenaz

A:

10 minutes, sir.

Q:

That means that you knew that the husband of Rowena left the house before 10:30 p.m.?

A:

(Witness cannot answer)

THE COURT:

Make it on record that the witness cannot answer. Alam mo yung mga taong nagsisinungaling ganyan hindi makasagot pag nakokorner. People who tell a lie they cannot usually answer when they are cornered. I don't think there is a need to further cross-examine this witness.[30] (Emphasis supplied)

Aside from these admittedly deplorable comments, the Court finds no other indications of partiality or bias in the records of the case. The subject remarks were made after appellant was subjected to extensive direct and cross-examination.[31] The examination of appellant was no more rigorous than that of Rowena's, in which Judge Laguio also frequently intervened by posing clarificatory questions. The trial court did not prohibit appellant from presenting additional evidence or witnesses, although appellant chose not to do so. At the request of appellant's counsel, Judge Laguio ordered a continuance for the defense to continue its presentation of evidence after appellant's testimony.[32]

Further, contradictions and inconsistencies marred appellant's testimony. Appellant initially stated that at 1:00 o'clock in the morning on 1 January 2000 he was "helping in the house doing household chores like cleaning the plates and cleaning the house." [33] This conflicts with his narration that Rowena entered his room at 10:30 o'clock in the evening on 31 December 1999 and stayed with him until the police arrived and kicked his door open.[34] Appellant also stated that he had never gone out with Rowena in the 5 years that he had worked for her husband.[35] However, appellant later testified that he accompanied Rowena to her parents' house in Bulacan in 1998, where they had sexual intercourse for the first time.[36] Likewise, appellant originally claimed that he and Rowena had two sexual encounters in 1998 - once in Bulacan and 3 weeks afterwards in the house of Rowena and her husband.[37] He changed this later to many times, more than 20 times, and then to about 50 times in 1998.[38] Finally, appellant failed in four instances to answer the questions propounded to him during cross-examination.[39]

We stress that this does not excuse the assailed remarks of Judge Laguio. More circumspect conduct is expected from a judge of our courts. It is the duty of all judges not only to be impartial but also to appear impartial.[40] In

the future, Judge Laguio should adhere more closely to the rule that “a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.”[41]

Nevertheless, after a thorough review of the records, the Court finds no cogent reason to reverse the assailed Decision insofar as it found appellant to have raped Rowena. The testimony of Rowena, corroborated by the results of the medical examination and the testimonies of other witnesses, establish beyond reasonable doubt that: (1) appellant forcibly succeeded in having carnal knowledge of Rowena on 1 January 2000; and (2) that appellant committed the crime with the use of a deadly weapon, a knife.

In contrast to appellant’s erratic testimony, Rowena was candid and steadfast in her claim that appellant raped her, thus:

Q:

And what did you [do] after the accused uttered Ate Weng galit na sa iyo si Kuya Jun?

A:

I opened the door and went out of our room and I asked Bernie Bakit hihingi ng pera si Kuya Jun mo may pera naman siya.

THE COURT:

Q:

At that time where was the accused?

A:

When I talked to him he was inside his room and all of the (sic) sudden he was at my back.

THE COURT:

Continue.

PROS. GURAY:

Q:

And what did [he] do after that?

A:

He placed his left arm around my neck and his right hand which was holding a knife (stop) and I saw his right hand holding a knife.

Q:

And how did you react when the accused placed his left hand [on] your neck and you saw him holding a knife?

A:

I was surprised. (“Nagulat po ako.”)

Q:

And what did you do?

A:

And at the same time I pushed the left area of the accused and in the process I fell to the stairway all the way down.

Q:

And what did the accused do after you fell down?

A:

He immediately went down as he held my hair and my left arm and he dragged me upstairs.

Q:

And to what place upstairs did the accused drag you?

A:

To his room.

Q:

By the way, how far is his room [from] your room?

A:

The room of the accused is in front of my room.

xxx

Q:

When he succeeded in dragging you inside his room what happened next?

A:

He asked me to undress.

Q:

And did you oblige?

A:

He poked the knife he was holding at me and he threatened me. He threatened to kill me.

THE COURT:

Q:

So what did you do?

A:

I undressed.

Q:

While he was poking his knife at you and threatening to kill you. What exactly [were] the words uttered by him?

A:

Sige, maghubad ka. Kung hindi papatayin kita.

Q:

And what was he doing with his knife while he was uttering those words?

A:

He was poking his knife at the right rear side of my body.

Q:

And how did you feel at that time?

A:

I was very frightened. And I was trembling.

Q:

Now, you said that he was poking a knife at your back. Did you sustain injuries?

A:

Yes, sir.

Q:

Do you still have scars up to the present?

A:

Yes, sir.

PROS. GURAY:

May I be allowed, Your Honor to (interrupted)

THE COURT:

We will have a lady staff to look [at] the scars. xxx (At this instance the court interpreter, Ma. Elena Arcenal, accompanied the complainant inside the chambers of the presiding judge to take a look at the scars sustained by the complainant xxx)

xxx

THE COURT:

Later the court interpreter informed the court that the complainant [had] 2 scars, one is on the middle right side of her body and the other one is on the upper left side of her back.

PROS. GURAY:

Upper right side.

THE COURT:

Yes, upper right side.

PROS. GURAY:

Q:

Now, by the way when you fell on the stairs and you were grabbed by the accused did you shout?

A:

Yes, sir.

Q:

What did you shout?

A:

I shouted Jun, tulungan mo ako.

xxx

Q:

xxx Now after you removed your dress what did the accused [do]?

A:

He kissed all the parts of my body.

Q:

And what did you do after that?

A:

I struggled and resisted.

Q:

What did the accused do?

A:

I grappled with him for the possession of the knife he was holding.

Q:

Were you able to grab possession of the knife?

A:

I was able to hold it but in the course of our grappling my left arm sustained (stop) the handle of the knife forcefully hit the left portion of my arm. (Witness showing to the court slight visible scar)

THE COURT:

Will the defense and the prosecution confirm the observation of the court?

ATTY. GARCIA:

Yes, Your Honor.

PROS. GURAY:

It is very apparent.

xxx

Q:

You also mentioned that you also sustained injury on your right hand. What cause[d] the injury on your right hand?

A:

Because I was able to get hold of the bladed portion of the knife and it sliced my right palm.

Q:

By the way, will you please describe to the court the knife that was used by the accused in threatening or intimidating you?

A:

The bladed portion of the knife is about 12 inches more or less and the handle is about 6 inches more or less.

xxx

Q:

So when you were not successful in grappling the knife from the accused what did the accused do next?

A:

He pulled my hair and slapped the back of my head.

Q:

And what else did he do?

A:

He dragged me and forced me to lie down on the double bed.

xxx

Q:

And after he dragged you to the lower bed what else did you do?

A:

Yung pong paa ko eh ginanoon niya po sa paa nya. Kinross niya po.

THE COURT:

Q:

You mean doon sa pagitan ng ano mo?

A:

Yuong d[a]lawa ko pong paa ginanyan nya po yung paa ko.

Q:

Sige i-demonstrate mo.

A:

Inangkla po.

Q:

Kaya nga pinagitan nya yong sa paa niya sa side mo?

A:

Hindi po. Ganito po. Yung paa niya ginanyan po niya.

Q:

Kaya nga. Di nakabuka yung paa mo.

PROS. GURAY:

Q:

Di ba nakabukhang ganyan?

THE COURT:

Oo.

PROS. GURAY:

Tapos yung paa niya nakaganoon.

A:

Opo.

PROS. GURAY:

Pareho.

A:

Opo.

PROS. GURAY:

I do that myself so I know. (Atty. Garcia laughs)

ATTY. GARCIA:

Very incriminating. (laughs)

THE COURT:

Witness demonstrating by opening her legs and then pointing out that the accused placed his left foot under the left leg of the complainant and then locked it by raising his left leg of the accused and the same thing was done on her right leg.

THE COURT:

Q:

So you were unable to move both your legs when the accused did that?

A:

Yes, sir.

Q:

And at that juncture at that time you did not have anymore underwear?

A:

I did not have anymore underwear.

xxx

PROS. GURAY:

xxx

Q:

Now what did the accused do next after placing his two legs in between your legs?

A:

He raped me.

Q:

When you said he raped you, you mean his private parts were forced into your private part?

A:

Yes, sir.

Q:

And what did you do when the accused inserted his penis into your private part?

A:

I continued struggling and resisting but he poked the knife he was holding at the left side of my body. And I was so frightened.

Q:

And after that what happened?

A:

He did everything to me. He kissed me, he inserted his fingers in my sex organ. Everything.

THE COURT:

Q:

After he satisfied his lust on you what did the accused do?

A:

He did not allowed (sic) me to leave the room.

PROS. GURAY:

Q:

What else did he do with that knife to you?

A:

While he was in the act of raping me the accused at one time pointed the knife he was holding at my private part and he said that he would insert it in my private part to get [a] thrill out of it because he was high on shabu. Because he could not have a complete or full erection because he was under the influence of shabu ("Bato")

THE COURT:

Q:

But despite the fact that he was not able to have a complete or full erection he succeeded in penetrating you with his sex organ?

A:

Yes, sir.[42]

Rowena's account of her resistance and struggle with appellant was consistent with the results of the physical examination. Dr. Mirasol Pangan, the examining physician, testified on the gynecologic emergency sheet[43] of Rowena dated 1 January 2000 and discussed the findings, as follows:

Q:

Could you tell us your findings on the victim?

A:

There's the hematoma at the right neck, two abrasions at the left lower lip approximately 0.5cm. There's abrasion at the left for[e]arm, an abrasion hematoma circular at the left lower arm, multiple abrasions at the

volar aspect of the second ... fourth digits of right hand, under the nose, hematoma at the back and the anterior tract the largest of which measured 6x1 cm. There's a stab wound at the left forearm. In the examination of the genitalia, there's the two cms. hematoma at the right la[b]ia minora.

Q:

How about the organ of the victim, did you ... (interrupted)

A:

Yes, the last part I read was the genitalia, that referred to the organ of the victim, the right la[b]ia minora have two cms. abrasions hematoma. In reference to the vagina, the cervix, the uterus and the ovary which have no significant findings.

xxx

Q:

You have a note here at the lower portion of the report "Sexual and Physical abuse on the victim", was this your conclusion based on the physical examination?

A:

Based on the areas involved, the findings that we have, the arm and the trunk aside from the findings on the genital organ.

xxx

Q:

Could normal intercourse cause such injuries to the organ of the victim without use of violence?

A:

No, sir.

xxx

PROS. GURAY:

Q:

xxx you stated, Doctor that the kind of injuries in the genitalia of the victim could not have been caused by a normal sexual intercourse. [M]y question is, could it be the result of forceful and unwelcome penetration by a firm penis?

A:

Yes, sir, it could be caused.

Q:

It could be caused by a forceful thrust of a human finger?

A:

Yes, sir, it could also be caused.[44]

Appellant's claim that he and Rowena had consensual sex was contradicted not only by Rowena but also by neighbor Eldee Eusebio, who testified that: (1) he heard Rowena scream for help; (2) he saw her trying to sandwich her feet against the door to keep the door to appellant's room from closing; and (3) appellant shouted "papatayin niya lahat ng tao sa loob" when he knocked on the door.[45] Together with the physical injuries sustained by Rowena - which appellant said he did not even notice[46] -these statements belie appellant's assertion of consensual sex.

The sweetheart defense employed by appellant also deserves scant consideration. Aside from being inherently weak, it was uncorroborated by any evidence other than the self-serving testimony of appellant. Appellant admitted that he had no notes, letters, gifts or any other item to show for an affair that had allegedly been ongoing since 1998.[47]

The Information specifically alleged the use of a deadly weapon, a knife, in the commission of the rape and the prosecution proved that appellant used such a weapon. Under Article 266-B, the use of a deadly weapon qualifies the rape and the penalty is reclusion perpetua to death.

Since reclusion perpetua to death are two indivisible penalties, Article 63 of the Revised Penal Code applies. Article 63 provides:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

In rape with the use of a deadly weapon, the presence of an aggravating circumstance increases the penalty to death.[48] In the present case, appellant raped Rowena in her dwelling, which is an aggravating circumstance under Article 14 (3) of the Revised Penal Code.[49] However, the Information did not specifically allege dwelling as an aggravating circumstance. In *People v. Gallego*,[50] the Court ruled that where the information did not allege the aggravating circumstance of dwelling, dwelling could not raise the penalty to death. The Court held:

xxx The accused must thence be afforded every opportunity to present his defense on an aggravating circumstance that would spell the difference between life and death in order for the Court to properly "exercise extreme caution in reviewing the parties' evidence." This, the accused can do only if he is apprised of the

aggravating circumstance raising the penalty imposable upon him to death. Such aggravating circumstance must be alleged in the information, otherwise the Court cannot appreciate it. The death sentence being irrevocable, we cannot allow the decision to take away life to hinge on the inadvertence or keenness of the accused in predicting what aggravating circumstance will be appreciated against him.[51]

The 2000 Revised Rules of Criminal Procedure now require the complaint or information to state the qualifying and aggravating circumstances attending an offense.[52] When the law or rules specify certain circumstances that can aggravate an offense, or circumstances that would attach to the offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proved to justify the imposition of the increased penalty.[53]

Further, the circumstance of dwelling could not be considered in the present case even if it were properly alleged in the Information. Where the offender resided in the same house as the victim when the offense was committed, dwelling could not be considered as an aggravating circumstance.[54] It is undisputed in this case that appellant was a “live-in” dog trainer and that he stayed in the Rianzares’ house in a room across Rowena’s room. Therefore, the penalty imposable on appellant is reclusion perpetua.

A word on the examination of Rowena. A rape victim is physically, socially, psychologically and emotionally scarred, resulting in trauma which may last a lifetime.[55] It was thus highly inconsiderate for the prosecutor and the defense counsel to trade quips at the precise time Rowena was reliving her harrowing experience.[56] Courts are looked up to by people with high respect and are regarded as places where litigants are heard, rights and conflicts settled and justice solemnly dispensed.[57] Levity has no place in the courtroom during the examination of a victim of rape, and particularly not at her expense.

The trial court awarded moral and nominal damages but failed to award indemnity ex delicto. An award of indemnity ex delicto is mandatory upon a finding of guilt in rape cases.[58] We thus award P50,000 to Rowena as civil indemnity. In accordance with prevailing jurisprudence, the award of moral damages is reduced to P50,000. The award of nominal damages is deleted for lack of legal basis.

WHEREFORE, the Decision dated 16 May 2001 of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 00-179698, is MODIFIED. Appellant LEONARDO NUGUID y MAYAO is adjudged guilty of RAPE, and sentenced to suffer the penalty of reclusion perpetua and to pay Rowena Rianzares P50,000 as civil indemnity and P50,000 as moral damages.

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 Perfecto A.S. Laguio, Jr.

[2] Rollo, p. 6.

[3] Records, p. 11.

[4] Rollo, p. 66.

[5] Ibid., p. 28.

[6] Ibid., p. 13.

[7] Ibid.

[8] Ibid., p. 28

[9] Ibid.

[10] Article 335 was the old provision on simple rape. Since the events in this case took place on 1 January 2000, after the effectivity of Republic Act No. 8353 (“Anti-Rape Law of 1997”), the applicable provisions are Articles 266-A and 266-B of the Revised Penal Code.

[11] G.R. No. 56768, 29 October 1993, 227 SCRA 463.

[12] Supra, see note 4.

[13] Supra, see note 11.

[14] People v. Ramos, 358 Phil. 261(1998).

[15] In People v. Ramos, 358 Phil. 261 (1998) and People v. Mercado, 28 November 2000, 346 SCRA 256, the Court held that the last paragraph of Article 267 added by RA 7659 also introduced the “special complex crime” of kidnapping with murder or homicide.

[16] People v. Gonzales, G.R. No. 129894, 11 August 2000, 337 SCRA 590.

[17] Article 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death;

- If the kidnapping or detention shall have lasted more than three days.

- If it shall have been committed simulating public authority.

- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained: or if threats to kill him shall have been made.

- If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[18] People v. Bisda, G.R. No. 140895, 17 July 2003.

[19] People v. Gonzales, supra, see note 16; People v. Soberano, 346 Phil. 449 (1997).

[20] People v. Gonzales, supra, see note 16.

[21] Supra, see note 6.

[22] Eldee Eusebio also testified that appellant was completely naked when the police brought him out of the room, TSN, 30 May 2000, pp. 12-13.

[23] TSN, 22 May 2000, p. 23.

[24] See note 21.

[25] *People v. Santiano*, 359 Phil. 928 (1998).

[26] G.R. No. 126359, 25 October 2001, 368 SCRA 210.

[27] *Supra*, see note 6.

[28] *People v. Rapisora*, G.R. No. 138086, 25 January 2001, 350 SCRA 299.

[29] *Supra*, see note 26.

[30] TSN, 11 September 2000, pp. 27-30.

[31] The transcript of appellant's testimony numbered 30 pages, with direct and cross-examination taking some 15 pages each.

[32] Order dated 11 September 2000, records, p. 45.

[33] TSN, 11 September 2000, pp. 5-6.

[34] *Ibid.*, pp. 6-8.

[35] *Ibid.*, p. 5.

[36] *Ibid.*, pp. 9-10.

[37] *Ibid.*, pp. 10-11, 17.

[38] *Ibid.*, pp. 21-22.

[39] *Ibid.*, pp. 14, 20-21, 25-26. We quote the other three instances, as follows:

Q:

The situation there is different from your situation. Because here nobody was accusing you of raping the complainant and in fact as you said there was no rape committed by you because it was consensual. xxx So why were you afraid to go out? Was it not normal for you to go out if you were asked to go out? Unless you did something wrong. That's another matter.

A:

Nangibabaw ho yung takot ko kaya hindi ako lumabas.

Q:

Kaya nga. Ang gusto kong malaman kung bakit ka natakot. Yung inistorya mo w[a]lang analogy. Hindi pareha ang sitwason. Yoon iba yon. Nandoon yung magulang eh. Yung kaibigan mo pinagsamantalahan yung anak nila eh. Dito wala namang nagbintang sa iyo eh. Basta sinabi lang ng pulis lumabas kayo ryan sa kuwarto.

A:

(Witness cannot answer)

THE COURT:

May we put on record that the accused cannot explain why he felt threaten[ed] or afraid to go out.

xxx

Q:

You told the court that on January 1, 2000 also Rowena went inside your room at about what time again?

A:

10:00 o'clock in the evening.

Q:

[A]nd she stayed inside your room up to the time the policemen arrived?

A;

[Y]es, sir.

Q:

Did you not tell the court earlier that at 1:00 o'clock on January 1, 2000 you were helping them in their household chores?

A:

Ala una nang alin?

Q:

Nang madaling araw. Di ba sinasabi mo na tumutulong ka ng ala unang madaling araw? Noong January 1, 2000?

A:

(Witness cannot answer)

PROS. GURAY:

I would like to make it on record that there is no answer from the accused.

xxx

Q:

How come in 1999 there was only one sexual intercourse?

A:

Hindi nga ho inakala na darating yung asawa. Kasi akala nya ho yung asawa niya (interrupted)

THE COURT:

Q:

Intindihin mo yung tanong ha. Hindi naman tinatanong sa iyo noong gabi ng Disyembre 31. Ang tinatanong sa iyo kung bakit isang beses lang kayo nag-sex noong buong taong 1999? Yon. Yon ang sagutin mo.

A:

(Witness cannot answer)

Q:

Why you cannot (sic) answer? You do not know the answer?

A:

(Witness cannot answer)

THE COURT:

Make it on record that the witness cannot answer.

xxx

[40] Rallos v. Gako, 285 Phil. 4 (2000).

[41] Canon 2.01 of the Code of Judicial Conduct.

[42] TSN, 22 May 2000, pp. 6-16.

[43] Exhibit "H," Records, p. 18.

[44] TSN, 30 May 2000, pp. 2-3

[45] Ibid., pp. 4-9.

[46] TSN, 11 September 2000, p. 26.

[47] Ibid., pp. 22-23.

[48] People v. Rapisora, G.R. No. 138086, 25 January 2001, 350 SCRA 299; People v. Navida, G.R. Nos. 132239-40, 4 December 2000, 346 SCRA 821.

[49] Art. 14. Aggravating circumstances. - The following are aggravating circumstances:

xxx

- That the act be committed with insult xxx or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

[50] G.R. No. 130603, 15 August 2000, 338 SCRA 21.

[51] Ibid.

[52] Sec. 8 of Rule 110 states:

SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. xxx

[53] People v. Corral, G.R. Nos. 145172-74, 28 February 2003.

[54] People v. Bañez, 361 Phil. 198 (1999), citing People v. Morales, No. L-35413, 7 November 1979, 94 SCRA 191 and United States v. Rodriguez, 9 Phil. 136 (1907).

[55] People v. Palermo, 412 Phil. 505 (2001).

[56] TSN, 22 May 2000, p. 14.

[57] Merilo-Bedural v. Edroso, A.M. No. 00-1395, 12 October 2000, 342 SCRA 593.

[58] People v. Panganiban, 412 Phil. 98 (2001).

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