

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HENRY CARPIO Y NATIVIDAD AND JUNIE MOLINA Y NATIVIDAD (ACQUITTED), APPELLANTS.

G.R. No. 150083. May 27, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On automatic appeal is the August 15, 2001 Decision of the Regional Trial Court, Branch 16, of Zamboanga City finding appellant Henry Carpio y Natividad guilty of robbery with rape in Criminal Case No. 16481 and imposing upon him the penalty of death.

The accusatory portion of the Information[1] filed on November 12, 1999 which charged appellant, along with his first cousin[2] Jonie Molina y Natividad (Molina), with Robbery with Rape reads as follows:

That on or about June 26, 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, conspiring and confederating together, mutually aiding and assisting with one another, enter the room of the house located at Doña Benita Drive, Canelar, Zamboanga City, where LEONILA SACLOLO ZABALA and ELDEE GRACE MICHELLE SACLOLO ZABALA were then sleeping, and once inside, by means of violence against or intimidation of person that is, at knife point, hogtie, blindfold and cover the mouths of both Leonila Saclolo Zabala, mother and daughter, respectively, take, steal and carry away therefrom the following items, to wit: a .38 caliber Revolver TM-Squire Bingham with Serial No. 1013632, car stereo, jewelries and some cash money, all estimated to be worth in the total amount of P 10,000.00, all belonging to and taken against the will of said Leonila Saclolo Zabala, owner thereof, all to the latter's damage and prejudice in the said sum; that on the occasion of the commission of the above offense, said accused by virtue of their conspiracy, by means of force and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of the said ELDEE GRACE MICHELLE SACLOLO ZABALA, a 12 year old girl against her will.

CONTRARY TO LAW.

When arraigned on December 20, 1999, appellant and Molina pleaded not guilty to the offense charged.[3]

Through its witnesses, the prosecution established the following facts:

On June 26, 1999, around 5:00 a.m., while Leonila Zabala (Leonila) and her daughter Eldie Grace Michelle Zabala (Eldie Grace) were sleeping in the brightly lit master's bedroom of their house located at Doña Benita Drive, Canelar, Zamboanga City,[4] Leonila was awakened by the sound of a wallet (Eldie Grace's) being opened.[5] She stood up and saw appellant sitting on the floor.[6] On seeing Leonila stand up, appellant approached her, poked a knife at her neck and uttered: "Huwag kang sisigaw, pera lang ang kailangan ko." [7] Soon Eldie Grace woke up, and appellant also poked a knife at her and told her not to shout.[8]

Appellant thereupon tied Leonila's hands at her back with a blanket, stuffed her mouth with her husband's silk shorts and blindfolded her.[9]

Appellant subsequently also tied Eldie Grace's hands and tried to spread her legs sideways.[10] As Eldie Grace refused to spread her legs, appellant threatened her: "Gusto ka (sic) bang mamatay?" He thereafter removed her pajama and panty and inserted his penis into her private part.[11]

His lust satisfied, appellant ransacked the cabinets inside the bedroom[12] after which he exited through the jalousie window of the bedroom.[13]

When Leonila sensed that appellant was no longer inside the room, she removed the shorts of her husband from her mouth by pushing it with her tongue.[14] She then asked Eldie Grace to remove her (Leonila's) blindfold but Eldie Grace could not as her hands were also tied.[15] Leonila thus went near her daughter and untied her hands. Eldie Grace in turn untied the hands of her mother and removed her mother's blindfold.[16]

Leonila then asked Eldie Grace who was crying if appellant raped her to which she answered in the affirmative.[17]

Leonila soon after checked the ransacked cabinets and drawers and found that her husband's revolver, five rings, two wristwatches and a car stereo were missing. She was later to claim that the items cost a total of P10,000.00.[18]

Determining how appellant entered their room, Leonila found out that four blades of jalousies of the bedroom window were removed.[19] She thereupon woke up their helpers and called up her sister Arlene Diu,[20] and then brought her daughter to the Zamboanga Medical Center.

At the hospital, Eldie Grace was examined by Dr. Ma. Regina Vasquez who came up with the following findings:

I.E: Labia: Well apposed

Introitus: admits 1 finger with difficulty

Hymen: with fresh complete lacerations with bleeding to touch
at 12, 2, 5, 6, and 11 O'Clock positions

LMP: June 6-10, 1999

For Spermatozoa: Positive for spermatozoa

Analysis[21]

By the account of Dr. Vasquez, the lacerations on Eldie Grace's hymen could have been inflicted a few hours before the examination as they were still bleeding;[22] and Eldie Grace is no longer a virgin physically.[23]

Several days after the incident the police apprehended on two separate occasions appellant and Molina. From appellant were recovered a .38 caliber revolver and pawnshop receipts[24] for two pledged rings and from Molina, one ring which were later identified as among the items taken from the house of the Zabalas.[25] The confiscated pawnshop receipts were turned over by Dominador Zabala, husband of Leonila, to his wife's cousin PO3 Enrico Morales for the latter to redeem the items covered by the receipts.[26] The amount spent for redeeming the pieces of jewelry totaled P1,049.00.[27]

After the prosecution rested its case, appellant's co-accused Molina took the witness stand claiming that at noon of June 26, 1999, as he met his first cousin-appellant, he asked from him money for his fare, and appellant gave him a ring, which turned out to be one of those subject of the case at bar; and that appellant instructed him to pledge the ring as he in fact did. After Molina concluded his testimony, appellant moved, through his counsel, that he was withdrawing his earlier plea of not guilty and was instead entering a plea of guilty which the trial court granted.

The trial court thereupon conducted searching inquiry into the voluntariness and full comprehension by appellant of the consequences of his plea of guilty, following which the case was deemed submitted for decision.

By the August 15, 2001 Decision on review, the trial court found appellant guilty, acquitted Molina, and disposed as follows:

WHEREFORE, the Court finds accused HENRY CARPIO y NATIVIDAD GUILTY BEYOND REASONABLE DOUBT of the crime of Robbery with Rape, as principal, committed with the use of a deadly weapon and with aggravating circumstances of dwelling, nighttime, unlawful entry and/or breaking of window, without any mitigating circumstance to offset the same and SENTENCES said accused to suffer the penalty of DEATH and its accessory penalties; to pay Mrs. Leonila Zabala the sum of P1,049.00 pesos as actual damages; to pay Eldee Grace Michelle Xabala the sum of P75,000 as civil indemnity; the sum of P75,000.00 as moral damages; the sum of P30,000.00 as exemplary damages; and to pay the costs.

For insufficiency of evidence, accused JONIE MOLINA y NATIVIDAD is ACQUITTED with costs de oficio. He is ordered release from detention in so far as this case only is concerned.

Pursuant to Section 22 of R.A. 7659, amending Art. 47 of the Revised Penal Code, let the records of this case be forwarded to the Supreme Court for automatic review.[28]

In his brief, appellant faults the trial court for imposing the penalty of death upon him.

Appellant contends that dwelling, nighttime, unlawful entry and/or breaking of window should not be appreciated against him as they were not duly alleged in the Information[29] as required by the 2000 Rules on Criminal Procedure.[30] As for the use of a deadly weapon, while it was duly alleged in the Information, he contends that the crime for which he was held to answer is robbery with rape, not rape committed with the use of a deadly weapon, for which death is imposable only when an aggravating circumstance is present.[31]

Appellant, indeed, was charged under paragraph 1, Article 294 of the Revised Penal Code (RPC), as amended, which reads:

ARTICLE 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

- The penalty of from reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x (*Italics in the original; emphasis supplied*).

In the application of a penalty composed of two indivisible penalties, like that for robbery with rape, the RPC provides:

ARTICLE 63. Rules for the application of indivisible penalties. –

x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

- 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. (*Italics in the original; emphasis and underscoring supplied*).

A determination of whether aggravating and/or mitigating circumstances attended the commission of the crime is thus in order.

Use of a deadly weapon was duly alleged in the information. Use of a deadly weapon is not, however, among those provided in Article 14 of the RPC enumerating aggravating circumstances nor in Article 15 of the RPC enumerating alternative circumstances. Consequently, use of a deadly weapon cannot be appreciated as an aggravating or alternative circumstance against appellant.

As to appellant's contention that nighttime and unlawful entry and/or breaking of window were not alleged in the information as required by the Rules, the same is meritorious. Parenthetically, the crime was committed at 5:00 a.m., certainly not at nighttime. And so is appellant's contention with respect to dwelling, it not having been duly reflected in the information that, following paragraph 3 of Article 14 of the RPC, "the act be committed . . . in the dwelling of the offended party if the latter has not given provocation."

The earlier quoted information only describes a room of the house where the victims were sleeping. It did not, however, state that the house-venue of the crime was the dwelling of the victims. Though the aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, it should still be in terms sufficient to enable a person of common understanding to know what offense is being charged and its qualifying and aggravating circumstances.[32]

As to appellant's plea of guilty, it cannot be considered mitigating, it having been made after the prosecution had rested its case.[33]

Since there are neither mitigating nor aggravating circumstances that attended the commission of the crime, the lesser penalty of reclusion perpetua shall be imposed.

Respecting appellant's civil liability, Article 105 of the RPC includes the obligation to return to the offended parties the items appellant had taken. The .38 caliber revolver and three of the five rings having already been recovered, appellant is now only obliged to return the rest of the items taken, to wit: two wristwatches, two rings and a car stereo.

If appellant can no longer return the rest of the asported items, however, he is obliged to make reparation for their value, taking into consideration their price and their special sentimental value to the offended parties.[34]

The award by the trial court of civil indemnity to rape victim Eldie Grace is reduced to P50,000.00, however, as is the award of moral damages to P50,000.00, in line with prevailing jurisprudence.[35] As exemplary damages for the bestial act committed against Eldie Grace, this Court orders appellant to pay her P25,000.00,[36] consistent with current jurisprudence.

Finally, this Court orders appellant to pay the offended parties P25,000.00[37] as temperate damages representing expenses attendant to the redemption of the pledged jewelry and the subjection of Eldie Grace to medical examination, among other expenses.

WHEREFORE, the August 15, 2001 Decision of the Regional Trial Court of Zamboanga City, Branch 16 in

Criminal Case No. 16481 is AFFIRMED with MODIFICATION.

As modified, the judgment is as follows: Appellant Henry Carpio y Natividad is found guilty beyond reasonable doubt of robbery with rape and is hereby sentenced to reclusion perpetua; to return to the offended parties the car stereo, two wristwatches, and two rings, failing which he must pay their value to be determined by the trial court; to pay the offended parties

P25,000.00 as temperate damages; and to pay Eldie Grace Zabala P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna and Tinga, JJ., concur.

Davide, Jr. C.J., and Puno, J., on official leave.

[*] On Official Leave.

[1] Rollo at 7.

[2] Transcript of Stenographic Notes (TSN), September 26, 2000 at 4.

[3] Records at 21.

[4] TSN, August 16, 2000 at 25, 33.

[5] Id. at 28.

[6] Id. at 30.

[7] Id. at 30-32, 35.

[8] Id. at 35.

[9] Id. at 35-36.

[10] TSN, September 7, 2000 at 6-7.

[11] Id. at 7.

[12] TSN, August 16, 2000 at 39.

[13] TSN, September 7, 2000 at 9.

[14] TSN, August 16, 2000 at 41.

[15] Id. at 41.

[16] Id. at 41-42.

[17] Id. at 43.

[18] Id. at 43-44.

[19] Id. at 45.

[20] Id. at 46.

[21] Records at 11; Dra. Vasquez., during her testimony, corrected the medico-legal certificate which stated “cervix” instead of “hymen,” TSN, August 23, 2000 at 6.

[22] TSN, August 23, 2000 at 7.

[23] Id. at 9.

[24] Exhibits “L”- “L-2.”

[25] TSN, September 20, 2000 at 6-11

[26] TSN, September 4, 2000 at 4-5.

[27] Id. at 6.

[28] Rollo at 43-44.

[29] Id. at 93.

[30] Effective December 1, 2000.

[31] Rollo at 102.

[32] Section 9, Rule 110, 2000 Rules on Criminal Procedure.

[33] *People v. Bueza*, 188 SCRA 683, 689-690 (1990).

[34] *People v. Daniela*, G.R. No. 139230, April 24, 2003.

[35] *People v. Salvador*, 398 SCRA 394, 413 (2003); *People v. Bayona*, 327 SCRA 190, 202 (2000).

[36] *People v. Domingo*, 383 SCRA 43, 60 (2002); *People v. Napud, Jr.*, 366 SCRA 25, 39 (2001).

[37] *People v. Flores*, G.R. No. 137497, February 5, 2004 citing *People v. Abrazaldo*, 397 SCRA 137, 150 (2003).

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