

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUISITO BAUN Y MERCADO, APPELLANT.

G.R. No. 167503. August 20, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00266 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Siniloan, Laguna, Branch 33, dated August 12, 2000, finding appellant Luisito Baun guilty of four counts of rape and imposing on him the death penalty.

The facts are as follows:

On January 15, 2002, four (4) Informations[1] for qualified rape were filed against the appellant, which read:

CRIMINAL CASE NO. S-5932

That on or about July 21, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5933

That on or about August 9, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5934

That on or about August 15, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.

CRIMINAL CASE NO. S-5935

That on or about September 30, 2001, at Brgy. Pag-asa, Municipality of Mabitac, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter [AAA], a fourteen (14) year old girl, against her will and consent, to her damage and prejudice.

That the qualifying aggravating circumstance of moral ascendancy is present in the commission of the crime, the accused being the father of the victim.[2]

CONTRARY TO LAW.

When arraigned on April 15, 2002, appellant, with the assistance of his counsel, entered pleas of "not guilty" to the crimes charged.

During the hearing on July 22, 2002, appellant, through counsel, manifested his desire to withdraw his earlier pleas of not guilty and be re-arraigned for the purpose of entering pleas of guilty. Thus, appellant was re-arraigned and pleaded guilty to the four counts of rape.

The trial court asked appellant questions to determine the voluntariness and full comprehension of the consequences of his pleas of guilty to a capital offense in accordance with Sec. 3, Rule 116 of the Rules of Court.

Notwithstanding the pleas of guilty, trial was held to determine the guilt of appellant.

The evidence presented by the prosecution consisted of private complainant's testimony, sworn statement, medical certificate and birth certificate.

Private complainant's birth certificate showed that she was born on August 10, 1987 and that the name of her father is Luisito Baun.

Private complainant testified that she was only 13 years old when appellant first raped her on July 21, 2001 and again on August 9, 2001 in their home in Mabitac, Laguna. Thereafter, she was again raped on August 15, 2001 and September 30, 2001, when private complainant was 14 years old. The four counts of rape were committed at night when everyone was asleep, and private complainant's mother was in Manila. Appellant had carnal knowledge of her in the same room where her 15-year-old brother was sleeping.[3]

Private complainant stated that she did not tell her brother about the rape incidents because she was afraid that appellant would beat her. But she confided in her friends and they advised her to report the matter to their teacher, which she did. Her teacher advised her to report the matter to the sister of her father.[4]

On October 7, 2001, private complainant, accompanied by her mother, reported the rape incidents to the police at the Mabitac Municipal Police Station where she executed a sworn statement.[5]

Thereafter, private complainant proceeded to General Cailles Memorial District Hospital of Pakil, Laguna, for medical examination. The medical certificate[6] issued to private complainant reads:

Pertinent Physical Examination:

General Survey:

F/N, F/D, afebrile, not in distress, no evidence of external physical injuries.

Genitalia:

Non-gaping vaginal orifice.

Internal Examination:

Admits 1 finger with ease; with hymenal lacerations; old, healed, complete at 3 and 9 o'clock positions; incomplete at 4 and 8 o'clock positions. Whitish non mucoidal, non foul smelling minimal discharge.

Vaginal smear done

Pus cells

0-2/hpf

RBC

0-/hpf

Bacteria

++, no sperm cells found.

After the testimony of private complainant, the prosecution formally offered in evidence private complainant's sworn statement, medical certificate, and birth certificate before resting its case.

The defense was allowed to comment on the exhibits, and it admitted the same. Hence, all exhibits were admitted by the trial court.

On August 12, 2002, the RTC rendered a decision, the dispositive portion of which reads:

WHEREFORE, finding accused LUISITO MERCADO BAUN guilty beyond reasonable doubt of not only one but four (4) cases of rape on his own daughter, [AAA], he is hereby sentenced to suffer the penalty of DEATH for each case.

Similarly, he is hereby ordered to pay the above complainant-offended party the sum of P75,000.00 as actual damages for each case or the total amount of P300,000.00 and moral damages in the sum of P50,000.00 for each case or the total sum of P200,000.00.

No exemplary damages was proven, hence, nothing is awarded to her.

SO ORDERED.[7]

The case was elevated to this Court for automatic review. The Court transferred the case to the Court of Appeals for intermediate review following *People v. Mateo*.^[8]

In the Decision promulgated on February 15, 2005, the Court of Appeals affirmed the Decision of the RTC with modification. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the decision of the Regional Trial Court of Siniloan, Laguna, Branch 33 dated August 12, 2002 is AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay the private complainant for each count of rape, the amount of P25,000.00 as exemplary damages in addition to the moral damages and civil indemnity awarded by the trial court.

In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review.^[9]

In a Resolution dated May 10, 2005, the Court accepted this case from the Court of Appeals and required the parties to simultaneously submit supplemental briefs if they so desired. Appellant, through counsel (Public Attorney's Office), submitted his supplemental brief on July 7, 2005, while appellee, through the Office of the Solicitor General, submitted its brief on August 9, 2005.

Appellant assigned these errors:

- The Court of Appeals erred in affirming appellant's conviction of the crimes charged despite his improvident plea of guilty.
- The Court of Appeals erred in finding that appellant's guilt was proven beyond reasonable doubt.[10]

Appellant contends that the trial court failed to observe the rules when an accused enters a plea of guilty to a capital offense. It failed to conduct a searching inquiry to determine whether appellant's plea of guilty was voluntary, with full comprehension of the consequences thereof, and to inquire whether appellant wished to present evidence on his own behalf.

The conduct of a searching inquiry is provided for in Sec. 3, Rule 116 of the Rules of Court, thus:

Sec. 3. Plea of guilty to capital offense; reception of evidence.--When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

People v. Aguilar[11] reiterated the guidelines prescribed by the Court in the conduct of a searching inquiry, thus:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.

The full text of the trial's court searching inquiry reads:

Interpreter :

Criminal Cases Nos. S-5932, S-5933, S-5934 and S- 5935, People of the Philippines versus Luisito Baun, for

`RAPE.'

Atty. Gatdula:

Appearing for the accused, your Honor. Your Honor, we are moving for the withdrawal of the previous plea of not guilty of the accused and to allow said accused to plead guilty to the crime of rape in all those 4 cases of rape.

Accused:

LUISITO BAUN, 37 years old, residing at Pag-asa, Mabitac, Laguna.

QUESTION OF THE COURT:

Q

Mr. Baun you have just pleaded guilty in these four (4) counts of rape against your daughter [AAA], do you know the consequences of your pleading to those 4 counts of rape?

A

Yes, your Honor.

Q

With your plea of guilty you will be sentenced to life imprisonment, do you know that?

A

Yes, your Honor.

Q

With your entry of plea of guilty as far as these 4 cases are concerned do you enter voluntarily?

A

Yes, your Honor.

Q

Nobody forced you to plead guilty?

A

None, your Honor.

Q

You were informed before entering a plea of guilty of your rights that you have the right to enter plea of guilty to the offense?

A

Yes, your Honor.

Q

Do you understand that?

A

Yes, your Honor.

Q

Last question of the Court, do you still want to maintain your plea of guilty to these four (4) cases of rape filed by your daughter against you?

A

Yes, your Honor.

Court:

That is all.

Prosecutor:

We are just seeking justice, your Honor, we are waiving our right to claim damages.

The Court notes that the trial court did not strictly observe the prescribed guidelines in conducting a searching inquiry when appellant entered a plea of guilty at his re-arraignment.

Nevertheless, the Court sustains appellant's conviction based on the evidence presented by the prosecution before the trial court. *People v. Derilo*[13] held:

While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand a case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged.[14]

The Court carefully reviewed the records of this case and found private complainant's straightforward narration of the rape incidents to be credible. Moreover, the medical certificate showed that private complainant's vaginal orifice "[a]dmits 1 finger with ease; with hymenal lacerations; old, healed, complete at 3 and 9 o'clock positions; incomplete at 4 and 8 o'clock positions," which corroborated her testimony that she was raped.

Paragraph 1(a) of Art. 266-A of the Revised Penal Code provides that rape is committed by a man who shall have carnal knowledge of a woman through force, threat or intimidation.

Settled is the rule that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation.[15] The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents.[16] Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law.[17] Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[18] The record fully bears out the incidents of rape.[19]

The 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 so long as her testimony meets the test of credibility, the accused may be convicted on that basis.[20]

It was noted in the transcript of stenographic notes that private complainant, then 14 years old, was crying while

she was testifying before the trial court. It has been held in several cases that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when she recounts the detail of her traumatic experience.[21]

No sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[22] It is against human nature for a girl to fabricate a story that would expose herself and her family to a lifetime of dishonor, especially where her charges would mean the death or the long-term imprisonment of her own father.[23] Youth and immaturity are generally badges of truth and sincerity.[24] The weight of such testimony may be countered by physical evidence to the contrary, or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[25]

The Court is not persuaded by the argument of appellant's counsel that private complainant's testimony was not free from doubt because her brother was sleeping in the same room where the rape incidents happened. It is contended that it was highly improbable for private complainant's brother not to tell his mother that he saw his father naked on top of his sister doing something since it is customary for children to disclose unusual things or events they see. They are not known to keep a secret all to themselves as they normally find ways to relate it to anybody.

The argument is without merit.

Private complainant's brother did not testify in court, and it was not stated in the transcript of stenographic notes that his sworn statement was offered in evidence. Hence, his sworn statement cannot be given any evidentiary value by this Court. Even if the trial court considered his sworn statement in its Decision, the argument raised by appellant's counsel cannot detract from the credible testimony of private complainant that she was raped by appellant.

Further, appellant's counsel contends that the medical finding showing hymenal lacerations is not a conclusive proof that appellant raped private complainant. He stressed that sexual intercourse is not the sole and exclusive reason for hymenal rupture.

The Court is well aware of such fact. However, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[26] The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse.[27]

In fine, the Court agrees with the finding of the Court of Appeals that appellant is guilty beyond reasonable doubt of the crime of rape committed four times against private complainant. The first two incidents of rape were committed when she was 13 years old, while the third and fourth incidents of rape were committed when she was 14 years old.

Under Art. 266-B of the Revised Penal Code as amended,[28] the crime of rape committed by appellant against his own daughter is punished with the death penalty, thus:

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

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the complaint or information for the penalty of death to be decreed.[29] The Constitution guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him.[30] It is a requirement that renders it essential for every element of the offense with which he is charged to be properly alleged in the complaint or information.[31]

The Revised Rules on Criminal Procedure,[32] which took effect on December 1, 2000, requires qualifying and aggravating circumstances to be stated in the Complaint or Information.

In this case, the minority of private complainant and her relationship to appellant were alleged in the four Informations and proven in court, warranting the imposition of the death penalty.

However, the imposition of the death penalty has been prohibited by Republic Act No. 9346[33] which took effect on June 30, 2006. Sections 2 and 3 of the Act provide:

Sec. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code;

x x x x

Sec. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Hence, the death penalty imposed on appellant is reduced to reclusion perpetua, without eligibility for parole.

Finally, the Court of Appeals correctly sustained the trial court's award to private complainant of civil indemnity in the amount of P75,000 and moral damages in the amount of P50,000 for each case. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[34] Private complainant is entitled to moral damages for having suffered mental and emotional injuries.[35]

The Court of Appeals also correctly awarded private complainant exemplary damages in the amount of P25,000 for each case due to the presence of the qualifying circumstances of minority and relationship.[36]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 00266 is hereby AFFIRMED with MODIFICATION. Appellant LUISITO BAUN is found GUILTY beyond reasonable doubt of committing four counts of Rape against private complainant, but the penalty of death imposed upon him is REDUCED to four penalties of reclusion perpetua, without eligibility for parole. Appellant is ordered to pay private complainant AAA moral damages in the amount of Fifty Thousand Pesos (P50,000) for each case; civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (P25,000) for each case.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Records, vol. 1, p. 1; vol. 2, p. 1; vol. 3, p. 1; vol. 4, p. 1.

[2] The names of the private complainant and members of her immediate family are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] TSN, August 5, 2002, pp. 3-6.

[4] *Id.* at 6-8.

[5] *Id.* at 8; Exh. "A," records, vol.1, p. 9.

[6] Exh. "C," records, vol.1, p. 7.

[7] CA rollo, p. 34.

[8] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[9] Rollo, p. 17.

[10] *Id.* at 39.

[11] G.R. No. 172868, March 14, 2008.

[12] TSN, July 22, 2002, pp. 2-3.

[13] G.R. No. 117818, April 18, 1997, 271 SCRA 633.

[14] Emphasis supplied.

[15] *People v. Francisco*, G.R. Nos. 134566-67, January 22, 2001, 350 SCRA 55.

[16] *Id.* at 65-66.

[17] *Id.* at 66.

[18] *Ibid.*

[19] TSN, August 5, 2002, pp. 2-8.

[20] *People v. Ambray*, G.R. No. 127177, February 25, 1999, 303 SCRA 697.

[21] *People v. Manlod*, G.R. Nos. 142901-02, July 23, 2002, 385 SCRA 134.

[22] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[23] *People v. Manlod*, *supra*, note 21.

[24] *People v. Bon*, *supra*, note 22.

[25] *Ibid.*

[26] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 634.

[27] *Ibid.*

[28] As amended by Republic Act No. 8353, the Anti-Rape Law of 1997, which took effect on October 22, 1997.

[29] *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 630.

[30] *Ibid.*

[31] *Ibid.*

[32] Rule 110, 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. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied.)

[33] "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[34] *People v. Orilla*, *supra*, note 26, at 646.

[35] *Id.* at 645.

[36] Civil Code, Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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