

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICANOR SALOME, ACCUSED-APPELLANT.

G.R. NO. 169077. August 31, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

For review is the Decision rendered by the Court of Appeals on June 15, 2005 in CA-G.R. CR. No.-H.C. No. 00767, entitled "People of the Philippines v. Nicanor Salome," affirming the decision, dated April 3, 2001, of the Regional Trial Court of Virac, Catanduanes, Branch 43, in Criminal Case No. 2536, finding appellant guilty beyond reasonable doubt of the crime of rape against thirteen-year old Sally Idanan, and imposing upon him the death penalty.

The antecedents are:

On February 18, 1998, upon the complaint of Sally Idanan, an information was filed against appellant under the name Canor Sabeniano. Appellant, however, filed a motion for reinvestigation on the ground that his name is Nicanor Salome and not Canor Sabeniano.

An amended information was filed on August 26, 1998 accusing CANOR SABENIANO also known as NICANOR SALOME, of the crime of RAPE defined and penalized under Article 335 of the revised Penal Code, as amended by Republic Act 7659, committed as follows:

That on or about or within the period comprised between July 1, 1997 to July 31, 1997 in the morning, in [B]arangay Lourdes, [M]unicipality of Pandan, [P]rovince of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused, by means of force and intimidation, and with the use of a bladed weapon, willfully, unlawfully and feloniously, did lie and succeeded in having carnal knowledge of SALLY IDANAN, a minor who was then 13 years old at the time of the commission of the offense.

That the commission of the crime was aggravated by dwelling the fact that the crime was committed inside the house of the offended party.

CONTRARY TO LAW.[1]

Sally Idanan, fifteen years old, single, and a resident of Lourdes, Pandan, Catanduanes testified before the trial court that she personally knew appellant because they used to be neighbors. In 1997, they transferred residence but appellant would frequently pass by their place.[2]

Sometime in July of 1997, Sally, then thirteen years old, was sleeping with her three-year old brother inside their house when appellant entered their house. She was awakened by the presence of the latter who, allegedly, was poking a knife at the base of her neck. While holding the knife with one hand, appellant undressed her with his other hand. He threatened her that he would kill her and her family if she would tell anyone about the incident. After undressing her, appellant forced her to lie down. He removed his shorts and underwear. He then spread her legs and inserted his penis into her vagina.

According to Sally, she just closed her eyes while appellant had his way with her. She did not call for help because she was afraid that nobody would be in the next house which was about 800 meters away.[3]

She cannot remember how long appellant remained on top of her but before he left, he reiterated his threat to kill her and her family if she told anybody of what happened. After that, she would frequently see appellant but the latter never spoke to her.

Fearful for her life and for her family's safety, she did not inform anyone of the incident. Although it entered her mind that she could be pregnant, she left her province to work as a domestic helper in the house of SPO2 Constantino B. Saret in West Crame, San Juan, Manila.

On November 12, 1997, she had a pelvic ultrasound examination which confirmed her pregnancy.[4] Upon learning this, she reported the rape incident to the police on November 17, 1997. She executed a sworn statement and filed a complaint.

A criminal complaint for rape was initiated before the Municipal Circuit Trial Court (MCTC) of Pandan-Caramoran, Pandan, Catanduanes. Appellant pleaded not guilty to the charge during the arraignment.

Evidence for the prosecution consisted primarily of Sally's narration of the incident, and the testimony of Ma. Luz T. Santos, Medico Legal Officer of the Philippine National Police (PNP) Crime Laboratory, on the medico-legal report issued by Dr. Anthony Joselito Llamas[5] who examined Sally.

Ma. Luz T. Santos, while referring to the medical report, explained that the hymen has a deep healed laceration at 6:00 o'clock position but she cannot determine as to the time when it was inflicted.[6] Due to the fact that the vaginal canal was still narrow with prominent rugosities, Sally has not yet given birth although she was 18 to 19 weeks pregnant counting from the last day of her menstruation which was on July 5, 1997. On cross-examination, Santos declared that she was uncertain as to the exact date of sexual intercourse that caused the pregnancy of Sally, and that said act may have occurred days before or after July 5, 1997 on account of the fact that the life span of an average sperm cell lasts for three days.[7]

Evidence for the defense, on the other hand, consisted of the testimonies of appellant, Salvador Villarey and Manny Torralba.

Appellant denied having raped Sally and offered the defense of alibi. He claimed that in the month of July 1997, he went fishing at the sea of Gigmoto, Catanduanes on three different days but could not exactly remember when. Villarey and Torralba corroborated the fact that they went fishing with appellant in July of 1997. They maintained, however, that while they had been appellant's fishing companions, they would go their separate ways after fishing and were not aware of appellant's activities after that.

On April 3, 2001, the trial court rendered its decision convicting appellant of the crime of rape and sentencing him as follows:

WHEREFORE, finding the accused Nicanor Salome also known as Canor Sabediano GUILTY beyond reasonable doubt of the crime of Rape with the use of a deadly weapon, committed inside the dwelling of the offended party, as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, he is hereby sentenced to suffer the penalty of DEATH, to give monthly support in the sum of Two Thousand (P2,000.00) Pesos to the offspring of complainant Sally Idanan born on April 11, 1998, and to indemnify Sally Idanan in the sum of Fifty Thousand (P50,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

SO ORDERED.[8]

Due to the imposition of death penalty on appellant, the case was directly elevated to this Court for review. Subsequently, however, the case was referred to the Court of Appeals for intermediate review pursuant to our ruling in *People v. Mateo*.^[9]

The Court of Appeals, after reviewing the case, rendered its Decision on June 15, 2005 affirming the conviction of appellant, with modifications:

WHEREFORE, the Decision dated April 3, 2001 of the trial court is affirmed subject to the following modifications:

(1)

The award of civil indemnity on the amount of P50,000.00 is increased to P75,000.00; and,

(2)

Appellant is ordered to pay private complainant moral damages of P75,000.00 and exemplary damages of P25,000.00.

Pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to govern Death Penalty Cases) which took into effect on October 15, 2004, this case is elevated and certified to the Supreme Court for its automatic review.

SO ORDERED.^[10]

Appellant assigns the following errors:

I

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNCONVINCING AND IMPROBABLE TESTIMONY OF PRIVATE COMPLAINANT SALLY IDANAN; AND,

II

THE TRIAL COURT ERRED IN APPRECIATING DWELLING AS AN AGGRAVATING CIRCUMSTANCE.

As a rule, the trial court's assessment of the credibility of witnesses is generally accorded the highest degree of weight and respect, if not finality, for the reason that the trial judge has the unique opportunity to observe the demeanor of witnesses while testifying.^[11]

In giving credence to the Sally's testimony, the trial court noted that she did not have any improper motive against appellant other than her desire to tell the truth and obtain redress from the criminal act.^[12]

In the commission of rape, it is usually only the rape victim who can attest to its occurrence,^[13] and if the lone testimony of the victim is credible, convincing and consistent with human nature and the normal course of things, it is competent to establish the guilt of the accused.^[14] This is even more so if it involves the testimony of a rape victim of tender or immature age such as in the instant case. Thus, if the victim is a young, immature girl, her testimony is given credence by the courts ^[15] because no one would contrive a rape story, allow an examination of her private parts and subject herself to scrutiny at a public trial if she is not motivated solely by a desire to have the culprit apprehended and punished.^[16]

Appellant asserts that the conduct of private complainant during and after the commission of the offense militates against her credibility because it is inconsistent with human experience. She did not shout nor offer any resistance as expected of a woman being sexually abused. She likewise kept the incident to herself until she learned of her

pregnancy three months later. Appellant further claims that there is no evidence that he threatened her or her family or that he prevented her from reporting the incident to anybody.[17]

The Court finds nothing incredible in Sally's behavior. She woke up with appellant poking a knife at the base of her neck. The act of holding a knife, by itself, is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her to submission. The victim's failure to shout for help or resist the sexual advances of the rapist does not negate the commission of rape.[18] As noted by the trial court:

The fact that the accused did not shout or resist when her shorts and panty were removed because of fear (TSN, Oct. 21, 1999, p. 12) does not lessen complainant's credibility. To an innocent girl who was then barely thirteen (13) years old, the threat engendered in her a well-grounded fear that if she dared resist or frustrate the bestial desires of the accused, she and her family would be killed. Intimidation is addressed to the mind of the victim and is, therefore, subjective. It must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. The workings of the human mind when placed under emotional stress are unpredictable and people react differently. In such a given situation, some may shout; some may faint; and some may be shocked into sensibility; while others may openly welcome the intrusion. (People v. Cabradilla, 133 SCRA 413 (1984)). The test for its sufficiency under Article 335 of the revised Penal Code is whether it produces a reasonable fear in the victim that if she resists or does not yield to the bestial demands of the accused, that which the latter threatened to do would happen to her, or those dear to her, in this case, her family. Where such degree of intimidation exists, and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable to expect the victim to resist with all her might and strength. And even if some degree of resistance would nevertheless be futile, offering none at all cannot amount to consent to the sexual assault. For rape to exist, it is not necessary that the force or intimidation employed in accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. (People v. Savellano, 57 SCRA 320 (1974)).

Likewise, Sally's delay in reporting the incident to the authorities is understandable. It is not uncommon for young girls to conceal for some time the assault against their virtue because of the threats on their lives.[19] Failure, therefore, by the victim to file a complaint promptly to the proper authorities would not necessarily destroy the truth per se of the complaint nor would it impair the credibility of the complainant, particularly if such delay was satisfactorily explained.[20] As a matter of fact, delay in reporting a rape case due to threats is justified.[21] As the Court held in People v. Ballester:[22]

Neither can appellant find refuge in complainant's failure to promptly report the sexual assault to her relatives. Long silence and delay in reporting the crime of rape has not always been construed as an indication of a false accusation. In fact this principle applies with greater force in this case where the offended party was barely twelve years old, and was therefore susceptible to intimidation and threats of physical harm.

Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses is expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[23]

Appellant further denies having raped Sally, asserting that he went fishing on three occasions in July of 1997. Denial, however, is inherently a weak defense and cannot prevail over the positive declarations of the victim.[24] For the defense of alibi and denial to prosper, appellant must prove by positive, clear and satisfactory proof that it was physically impossible for him to have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.[25]

Here, appellant failed to show that it was physically impossible for him to be at the house of Sally when the crime

was committed. As the trial court aptly held:

The defense offered by the accused that he could not have raped the complainant because he went fishing three (3) times in the month of July 1997 in Sicmil, Gigmoto, Catanduanes (TSN, February 8, 2000, p. 3) is sorely inadequate to overcome the evidence adduced by the prosecution relative to his guilt, considering that his absence for only three (3) days could not prevent him from committing the offense in the remaining twenty-eight (28) days of the month. In any event, a probe into the accused's alibi readily yields the latter's inherent weakness. It is settled that for the defense of alibi to prosper, the accused must establish the physical impossibility for him to have been present at the scene of the crime at the time of its commission (*People v. Cristobal*, G.R. No. 116279, January 29, 1996) In the instant case, the accused failed to demonstrate such impossibility.

The allegation in the Information that the offense was committed within the period comprised between July 1, 1997 to July 31, 1997, sufficiently informs the accused of the approximate time of commission of the offense and affords him opportunity to show that he could not have committed the crime on any of the thirty-one (31) days of July 1997...

Additionally, Manny Torralba, one of the accused's fishing companions, declared that they went home from fishing everyday (TSN, February 28, 2001, p. 6) and that every time they went home from fishing, they parted ways as each went to his own home, and would not know what the accused would be doing while he was at his own home (*Idem*, p. 9). Thus, even in those days when the accused went to fish out at sea, the accused's presence in the house of the complainant where the subject offense was committed was far from impossible.[26]

The Court notes that appellant does not deny the existence of the knife during the commission of the rape. This Court sustains the finding that the trial court did not err in convicting appellant of the crime of rape perpetrated with the use of a deadly weapon. The presentation of the knife is not necessary to his conviction, in light of the victim's unwavering testimony as to how appellant, armed with a knife, threatened and raped her.

This is consistent with this Court's ruling in *People v. Degamo*:[27]

It is settled that the non-presentation of the weapon used in the commission of rape is not essential to the conviction of the accused. The testimony of the rape victim that appellant was armed with a deadly weapon when he committed the crime is sufficient to establish the fact for so long as the victim is credible. It must be stressed that in rape, it is usually only the victim who can attest to its occurrence and that is why courts subject the testimony of the alleged victims to strict scrutiny before relying on it for the conviction of the accused.

People v. Philippines Vitancur[28] also illustrates this principle:

The fact that the weapon with which complainant claimed she was intimidated by accused-appellant could not be presented in court could not impeach private complainant's credibility as the weapon is not essential to the prosecution of rape cases. What is important is that because of force and intimidation, private complainant was made to submit to the will of accused-appellant. ... [T]he test is whether the threat or intimidation produces in the mind of a reasonable person fear that if she persists or does not yield to the desires of the accused, the threat will be carried out.

Appellant committed the crime of rape with the use of a bladed weapon, the imposable penalty of which is reclusion perpetua to death in accordance with Article 335 of the Revised Penal Code, as amended by R.A. No. 7659:

ARTICLE 335. When and how rape is committed. ½ Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;

- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

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

Whenever by reason of or on occasion of the rape, the victim has become insane, the penalty shall be death.

In addition, and in relation to the second assignment of error, the crime of rape is aggravated by dwelling.[29] As the Court of Appeals noted:

There is no question that the amended information sufficiently alleged "that the commission of the crime was aggravated by dwelling the fact that the crime was committed inside the house of the offended party." Accused-appellant does not dispute that the crime was committed inside the victim's house. However, he posits that the prosecution must prove the absence of provocation by Sally.

It suffices to state that private complainant categorically testified that she was sleeping inside her house when appellant came and perpetrated the crime. This is proof enough of the absence of provocation on the part of private complainant. For a sleeping thirteen (13) - year old barrio girl cannot possibly give any kind of provocation to appellant under the circumstances.

Since the crime of rape was committed by appellant with the use of a deadly weapon, punishable by reclusion perpetua to death, the presence of the aggravating circumstance of dwelling, without the presence of any mitigating circumstance, justified the trial court's imposition of the death penalty.[30]

The above ruling is in accordance with Article 63 of the Revised Penal Code which provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when an aggravating circumstance, such as dwelling in this case, is present in the commission of the offense.

In *People v. Alfeche*,[31] wherein the complainant, employed as a domestic helper, was inside the house of her employer when she was raped by the appellant who was armed with a deadly weapon, the Court considered dwelling as an aggravating circumstance in convicting the latter, and affirmed the trial court's imposition of the greater penalty, which is death.

The Court of Appeals, in affirming the conviction of herein appellant and the imposition of the death penalty, concluded that:

The Court, therefore, has no recourse but to apply the law and affirm the trial court's imposition of the death penalty. This is without prejudice, of course, to the provisions of section 25, R.A. 7659 regarding the possible exercise of the pardoning power of the Office of the President upon the finality of the death sentence.[32]

In light, however, of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law by President Gloria Macapagal-Arroyo on June 24, 2006, the imposition of the death penalty has been prohibited.[33] The law provides:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

SECTION 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; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SECTION 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.

After a thorough review of the records, the Court agrees with the evaluation of the evidence by the Regional Trial Court and the Court of Appeals. Pursuant to the new law, even as the Court sustains the conviction of appellant, the penalty imposed upon him should be reduced to reclusion perpetua, but appellant shall not be eligible for parole under the Indeterminate Sentence Law.

The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano*[34] which states:

As to damages, we have held that if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be P75,000 Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of P50,000.00 as moral damages should also be increased to P75,000 pursuant to current jurisprudence on qualified rape. Lastly, exemplary damages in the amount of P25,000.00 is also called for, by way of example, and to protect the young from sexual abuse.

It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still P75,000. On the other hand, the automatic appeal in cases when the trial court imposes the death penalty will henceforth not apply, since its imposition is now prohibited, so that there is a need to perfect an appeal, if appeal is desired, from a judgment of conviction for an offense where the penalty imposed is reclusion perpetua in lieu of the death penalty pursuant to the new law prohibiting its imposition.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR. No.-H.C. No. 00767, dated June 15, 2005, is hereby **AFFIRMED** insofar as the conviction of appellant and the amount of damages are concerned. The sentence that shall be imposed upon appellant, however, is **MODIFIED**. In view of Republic Act No. 9346 prohibiting the imposition of the death penalty, appellant is hereby sentenced to reclusion perpetua without parole.

No costs.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario, Garcia and Velasco, Jr., JJ., concur.
Corona, J., on leave.

[1] CA Rollo, p.110.

[2] Id. at 23.

[3] Rollo, p.20.

- [4] Sally gave birth in their residence in Lourdes, Pandan, Catanduanes on April 11, 1998.
- [5] Dr. Anthony Joselito Llamas had been dismissed from the service at the time of the trial.
- [6] TSN, September 17, 1999, p. 5.
- [7] CA Rollo, p. 33-34.
- [8] Records, pp. 33-34.
- [9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640: "While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is reclusion perpetua, life imprisonment or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, reclusion perpetua or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, reclusion perpetua or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition."
- [10] Rollo, p. 18.
- [11] People v. Olivar, G.R. No. 138725, September 23, 2003, 411 SCRA 489.
- [12] Records, pp. 155-156.
- [13] People v. Degamo, G.R. No. 121211, April 30, 2003, 402 SCRA 133.
- [14] People v. Purazo, G.R. No. 133189, May 5, 2003, 402 SCRA 541.
- [15] People v. Alberio, G.R. No. 152584, July 6, 2004, 433 SCRA 469.
- [16] People v. Cultura, G.R. No. 133831, February 14, 2003, 397 SCRA 368.
- [17] Records, pp. 52-58.
- [18] People v. Emilio, G.R. Nos. 144305-07, February 6, 2003, 397 SCRA 62.
- [19] People v. Manalo, G.R. Nos. 144989-90, January 31, 2003, 396 SCRA 573.
- [20] People v. Ramirex, Jr., G.R. No. 149531, July 22, 2003, 407 SCRA 191.
- [21] People v. Junas, G.R. Nos. 144972-73, September 12, 2003, 411 SCRA 120.
- [22] G.R. No. 152279, January 20, 2004, 420 SCRA 379.
- [23] People v. Gonzales, G.R. No. 141599, June 29, 2004, 433 SCRA 102.
- [24] People v. Rosario, G.R. No. 144428, August 6, 2003, 408 SCRA 430.
- [25] People v. Magallanes, G.R. No. 136299, August 29, 2003, 410 SCRA 183.
- [26] Records, pp. 153-154.
- [27] Supra, note at 13.

[28] G.R. No. 128872, November 22, 2000, 414 SCRA 345.

[29] Dwelling is considered as an aggravating circumstance primarily because of the sanctity of the privacy the law accords to the human abode (People v. Delos Santos, G.R. No. 134525, February 28, 2003, 398 SCRA 436).

[30] CA Rollo, pp. 120-121.

[31] G.R. No. 124213, August 17, 1998, 294 SCRA 358.

[32] CA Rollo, p. 122.

[33] Republic Act No. 9346 took effect immediately after its publication in two newspapers of general circulation, namely, Malaya and Manila Times on June 29, 2006 in accordance with Section 5 thereof.

[34] G.R. No. 143708, February 24, 2003, 398 SCRA 106.

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