

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO DADULLA Y CAPANAS, DEFENDANT-APPELLANT.

G.R. No. 172321. February 09, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

A rapacious father who vented his lust on his own daughter without any qualms is allowed to suffer the lesser penalty because of the failure of the criminal information to aver his relationship with the victim. Even so, the Court condemns his most despicable crime.

The father is now before the Court to assail the decision promulgated on January 20, 2006 in C.A.-G.R. CR.-H.C. No. 01021, whereby the Court of Appeals (CA) pronounced him guilty beyond reasonable doubt of simple rape in Criminal Case No. 98-2304, imposing reclusion perpetua, and of acts of lasciviousness in Criminal Case No. 98-2305, thereby modifying the sentences handed down by the Regional Trial Court, Branch 272 (RTC), in Marikina City.[1]

The Charges

On January 28, 1998, the accused was charged in the RTC with rape and attempted rape through separate informations, as follows:

Criminal Case No. 98-2304-MK

That on or about the 15[th] day of January, 1998 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA,[2] against her will and consent.[3]

Criminal Case No. 98-2305-MK

That on or about the 22[nd] day of January, 1998 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously try and attempt to have carnal knowledge of herein complainant one AAA, thus commencing the commission of the crime of rape directly by overt acts but did not perform all the acts of execution that could have produced the crime of rape by reason of cause or causes other than his own spontaneous desistance.[4]

Evidence of the Prosecution

In the evening of January 15, 1998, AAA, then sleeping in the bedroom that she and her five younger siblings shared with their father, was roused from sleep by someone undressing her.[5] It was her father. AAA resisted, but the accused, wielding a bladed weapon,[6] threatened to kill her if she shouted.[7] The accused then forcibly kissed her on the lips, mashed her breasts, touched her private parts, and had carnal knowledge of her. After her ordeal, she put on her garments and just cried.[8] She recalled that her father had first sexually abused her on

February 14, 1992.[9]

On January 22, 1998, AAA was again roused from sleep by her father touching her body. Noticing that her shorts were already unzipped and unbuttoned, she zipped and buttoned them up and covered herself with a blanket. But her father pulled the blanket away and tried to unzip her shorts. However, she was able to go under the wooden bed to evade him. She resisted his attempts to pull her out from under the bed by firmly holding on to the bed. She told him that she would not get out from under the bed because what he was doing to her was bad.[10] Upon hearing her, he stopped and withdrew, telling her to leave the house. He then went to sleep.[11] In the meanwhile, BBB, AAA's younger sister, was awakened by what she thought was an argument between her father and AAA. She heard him tell AAA: Tumigil ka na nang kaiiyak, wala ka nang pakinabang. AAA just cried under the bed and did not say anything. BBB soon fell asleep,[12] but AAA could not sleep and remained under the bed until morning when the accused left to ply his jeepney route.[13]

Upon waking up, BBB saw her father as he was about to leave the house. She heard him telling AAA to leave the house.[14] As soon as he had left, BBB approached the crying AAA and asked what had happened to her. AAA related her ordeal and pleaded with BBB to help her.[15] Together, they went to their uncle, CCC, to report the incident. CCC queried AAA whether she wanted her father to be thrown in jail, and she replied in the affirmative. Thus, CCC requested his wife to accompany AAA to the barangay to file a complaint. Later, AAA and CCC's wife went to Camp Crame for the physical and genital examinations, which established that AAA had a deep healed hymenal laceration at 5:00 o'clock position.[16]

Evidence of the Defense

The accused denied molesting AAA. He narrated that on January 15, 1998, AAA and BBB left the house at around 6:30 p.m. to watch television elsewhere and returned only at around 11:00 p.m.; that on January 22, 1998, he scolded AAA for her failure to cook on time; that at around 4:00 a.m. of January 23, 1998, he struck AAA's face with his fist (dinunggol sa mukha) and told her to leave the house because he was slighted by AAA's laughing instead of answering his query of whether she had understood why he had scolded her the previous night; and that AAA was no longer a virgin due to her having been raped by Joel Cloma in 1992, and by another man in 1993.[17]

The RTC Decision

On March 24, 1999, the RTC found the accused guilty of rape in Criminal Case No. 98-2304-MK, and imposed the death penalty, ordering him to pay to AAA P50,000.00 as civil indemnity and P20,000.00 as moral damages; and of attempted rape in Criminal Case No. 98-2305-MK, and imposed the indeterminate penalty of four years, nine months, and eleven days of prision correccional, as minimum, to five years, four months, and twenty days, as maximum, ordering him to pay to AAA P20,000.00 as moral damages.

The CA Decision

On appeal, the accused assigned the following errors, to wit:

I.

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY IN CRIMINAL CASE NO. 98-2304 DESPITE THAT ACCUSED WAS NOT PROPERLY INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM WHICH IS IN VIOLATION OF HIS CONSTITUTIONAL RIGHT.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ATTEMPTED RAPE

DOCKETED AS CRIMINAL CASE NO. 98-2305.

Nonetheless, the CA disposed in its decision promulgated on January 20, 2006:

WHEREFORE, the Decision appealed from is AFFIRMED with the following MODIFICATION:

In Criminal Case No. 98-2304-MK, accused-appellant Renato Dadulla y Capanas is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of reclusion perpetua. Accused-appellant is also ordered to pay AAA moral damages in the amount of P50,000.00, in addition to civil indemnity in the amount of P50,000.00.

In Criminal Case No. 98-2305-MK, accused-appellant Renato Dadulla y Capanas, is found guilty beyond reasonable doubt of the crime of acts of lasciviousness and is sentenced to suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum, and to pay AAA the amount of P30,000.00 as moral damages.

SO ORDERED.

The CA held that the correct penalty in Criminal Case No. 98-2304-MK was reclusion perpetua because the accused was liable only for simple rape by virtue of the information not alleging any qualifying circumstances; and that in Criminal Case No. 98-2305-MK the accused was guilty only of acts of lasciviousness, not attempted rape, because his act of opening the zipper and buttons of AAA's shorts, touching her, and pulling her from under the bed constituted only acts of lasciviousness.

Ruling of the Court

We sustain the conviction but correct the award of civil liability.

I

Criminal Liabilities

The CA correctly determined the criminal liabilities in both cases.

To begin with, the finding and conclusion of the RTC that the totality of the evidence presented by the State painted a convincing tale of AAA's harrowing experience at the hands of the accused are well founded and supported by the records. Her unwavering testimonial account of the bestiality of her own father towards her reflected her singular reliability. The CA's holding that a woman would think twice before concocting a story of rape unless she was motivated by a desire to seek justice for the wrong committed against her^[18] was apt and valid. Indeed, her revelation of being sexually assaulted by her own father several times could only proceed from innate sincerity, and was entitled to credence in the absence of strong showing by the accused of grounds to disbelieve her. Also, her immediate willingness to report to and face the police investigation and to undergo the trouble and humiliation of a public trial was a badge of trustworthiness.

Secondly, the failure to allege the qualifying circumstance of relationship in the information in Criminal Case No. 98-2304-MK precluded a finding of qualified rape against the accused. Section 8,^[19] Rule 110 of the Rules of Court has expressly required that qualifying and aggravating circumstances be specifically alleged in the information. Due to such requirement being pro reo, the Court has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (i.e., the date of the effectivity of the 2000 revision of the Rules of Criminal Procedure that embodied the requirement).^[20]

The term "aggravating circumstance" is strictly construed when the appreciation of the modifying circumstance can lead to the imposition of the maximum penalty of death.^[21] Consequently, the qualifying circumstance of relationship, even if established during trial, could not affect the criminal penalty of the accused by virtue of its

non-allegation in the information. The accused could not be convicted of the graver offense of qualified rape, although proven, because relationship was neither alleged nor necessarily included in the information.[22] Accordingly, the accused was properly convicted by the CA for simple rape and justly punished with reclusion perpetua.

Thirdly, it is notable that the RTC outrightly concluded that the crime committed on January 22, 1998 constituted attempted rape, after quoting the testimony of AAA and BBB. It offered no analysis or discussion of why the accused was criminally liable for attempted rape. The omission contravened Section 14,[23] Article VIII of the Constitution, as reiterated in Section 1,[24] Rule 120 of the Rules of Court, which enjoined that decisions should state clearly and distinctly the facts and the law on which they are based.[25]

Nonetheless, the omission did not invalidate or render ineffectual the conviction, for the CA in due course reformed the RTC's error. In its disquisition on why the accused should be held liable for acts of lasciviousness, instead of attempted rape, the CA explained the true nature of the crime of the accused thus:

We likewise agree with accused-appellant that the court a quo erred in convicting him of attempted rape in Criminal Case No. 98-2305-MK. In connection with the incident that transpired on January 22, 1998, Liza testified as follows:

Pros. Dela Peña:

Q:

While you were sleeping in the evening on January 22, 1998, do you recall of any instance (sic) or incident which awakened you?

Witness:

A:

Yes, sir.

Q:

Again Miss Witness, tell us this incident that you are referring to?

A:

While I was sleeping, I was awakened that my zipper was already opened and my buttons were already loosened.

Q:

And upon noticing that the zipper and the buttons of your short[s] are already loosened or opened, what did you do?

A:

I zipped it again and unbuttoned it.

Q:

Was your father there on that night?

A:

Yes, sir.

Q:

What about your brother and sisters?

A:

They were already asleep.

Q:

Like on January 15, 1998, you slept, on January 22, 1998, you slept side by side with your brothers and sisters and your father?

A:

Yes, sir.

Q:

Did you notice the presence of your father when you said you were awakened on that night?

A:

Yes, sir.

Q:

What was he doing?

A:

He was sitting and touching me, sir.

Q:

How far was he from you?

A:

He was near me.

Q:

And upon seeing your father near you and the button and zipper of your short[s] was open, what did you do?

A:

I zipped and unbuttoned my short[s] and covered myself with blanket.

Q:

Why did you cover yourself with blanket?

A:

Because I do not want to see him beside me.

Q:

Did you not ask your father to leave because you do not want to see him?

A:

I told him.

Q:

Did your father leave?

A:

No, sir.

Q:

Why don't you like your father beside you?

A:

Because of these things he was doing to me.

Q:

And after covering yourself with blanket, what transpired next?

A:

He removed the blanket from me, sir.

Q:

And after that, what happened?

A:

He was forcibly opening my short[s].

Q:

What did you do when your father was forcibly opening your short[s]?

A:

I covered myself under the wooden bed.

Q:

How wide is this wooden bed?

A:

From that wall up to the rostrum.

Pros. Dela Peña:

About a distance of two meters in width. Why did you hide yourself under the wooden bed?

A:

In order not to repeat what he was doing to me.

Q:

After you hi[d] yourself under the wooden bed, what did your father did [sic] to you?

A:

He held me on my hands and tried to pull me out under the wooden bed.

Q:

And was your father able to pull you out under the wooden bed?

A:

No sir.

The act of accused-appellant in opening the zipper and buttons of the shorts of Liza, touching her and pulling her when she hid under the bed showed that he employed force on Liza and was motivated by lewd designs. The word "lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried in a wanton manner. Thus, the crime committed by accused-appellant is merely acts of lasciviousness, which is included in rape. The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[26]

According to *People v. Collado*,[27] the difference between attempted rape and acts of lasciviousness lies in the intent of the perpetrator as deduced from his external acts. The intent referred to is the intent to lie with a woman.[28] Attempted rape is committed when the "touching" of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness.[29] Thus, the accused's act of opening the zipper and buttons of AAA's shorts, touching her, and trying to pull her from under the bed manifested lewd designs, not intent to lie with her. The evidence to prove that a definite intent to lie with AAA motivated the accused was plainly wanting, therefore, rendering him guilty only of acts of lasciviousness in Criminal Case No. 98-2305-MK.

And, fourthly, the indeterminate penalty imposed by the RTC was erroneous for not being in accord with the Indeterminate Sentence Law. This impelled the CA to revise the indeterminate penalty, rationalizing:

Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is prision correccional. We impose the penalty in its medium period, there being no aggravating or mitigating circumstance alleged and proved. Applying the Indeterminate Sentence Law, the proper penalty imposable is from six months of arresto mayor, as minimum, to four years and two months of prision correccional, as maximum.[30]

We uphold the revision by the CA. The RTC fixed the minimum of the indeterminate penalty from within prision correccional, when Section 1[31] of the Indeterminate Sentence Law expressly required that the minimum "shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower is arresto mayor.

II

Civil liability must be modified

Under Article 2230 of the Civil Code,[32] the attendance of any aggravating circumstance (generic, qualifying, or attendant) entitles the offended party to recover exemplary damages. Here, relationship was the aggravating circumstance attendant in both cases. We need to award P30,000.00 as exemplary damages in rape and of P10,000.00 as exemplary damages in acts of lasciviousness.

Although, as earlier mentioned, an aggravating circumstance not specifically alleged in the information (albeit

established at trial) cannot be appreciated to increase the criminal liability of the accused, the established presence of one or two aggravating circumstances of any kind or nature entitles the offended party to exemplary damages under Article 2230 of the Civil Code because the requirement of specificity in the information affected only the criminal liability of the accused, not his civil liability. The Court has well explained this in *People v. Catubig*:^[33]

The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

That *People v. Catubig* was subsequent to the dates of the commission of the crimes charged did not matter. Like any other judicial interpretation of an existing law, the ruling in *People v. Catubig* settled the circumstances when Article 2230 of the Civil Code applied, thereby reflecting the meaning and state of that legal provision. The retroactivity of the ruling vis-à-vis the accused could not be challenged or be barred by virtue of its being civil, not penal, in effect.

WHEREFORE, the Decision promulgated on January 20, 2006 in CA-G.R. CR-H.C. No. 01021 is affirmed in all respects, subject to the modification that the civil liabilities include P30,000.00 as exemplary damages for the rape (Criminal Case No. 98-2034-MK), and P10,000.00 as exemplary damages for the acts of lasciviousness (Criminal Case No. 98-2035-MK).

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Peralta,[*] and Villarama, Jr., JJ., concur.

[*] In lieu of Justice Maria Lourdes P. A. Sereno who is on leave per Office Order No. 944 dated February 9, 2011.

[1] Rollo, pp. 3-14; penned by Associate Justice Marina L. Buzon (retired), with Associate Justice Aurora Santiago-Lagman (retired) and Associate Justice Arcangelita Romilla-Lontok (retired), concurring.

[2] Pursuant to Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and its implementing rules, the real names of the victims, as well as those of their immediate families or household members, are withheld and instead fictitious initials are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA Rollo, pp. 4-5.

[4] *Id.*, pp. 6-7.

[5] TSN, June 3, 1998, p. 10.

[6] Id., p. 46.

[7] Id., p. 10.

[8] Id., pp. 11-18.

[9] Id., p. 16.

[10] Id., pp. 22-26.

[11] Id., p. 26.

[12] TSN, June 9, 1998, pp. 20-21.

[13] TSN, June 3, 1998, pp. 26-27.

[14] Id., p. 24.

[15] Id., pp. 25-26.

[16] Exhibit Folder No. 2, Exhibits for the Plaintiff, marked as Exhibit B.

[17] TSN, June 24, 1998, pp. 3-16.

[18] Rollo, p. 11.

[19] 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.

[20] People v. Mondijar, G.R. No. 141914, November 21, 2002, 392 SCRA 356; People v. Marquez, G.R. No. 136736, April 11, 2002, 380 SCRA 561.

[21] People v. Orilla, G.R. No. 148939-40, February 13, 2004, 422 SCRA 620, 640.

[22] People v. Flores, Jr., G. R. No. 128823-24, December 27, 2002, 394 SCRA 325, 333.

[23] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[24] Section 1. Judgment; definition and form. - Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. (1a).

[25] People v. Ernas, G.R. Nos. 137256-58, August 6, 2003, 408 SCRA 391; People v. Bugarin, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384.

[26] Rollo, pp. 12-15; bold underscoring is supplied for emphasis.

[27] G.R. Nos. 135667-70, March 1, 2001, 353 SCRA 381, 392.

[28] People v. Mendoza, G.R. Nos. 152589 and 152758, January 31, 2005, 450 SCRA 328, 333.

[29] Supra, note 28.

[30] Rollo, p. 15.

[31] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225)

[32] Article 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.

[33] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635 (bold emphasis supplied).

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