

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO DALISAY Y DESTRESA, APPELLANT.*G.R. No. 188106. November 25, 2009*

Ponente: NACHURA, J.

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For final review by the Court is the trial court's conviction of appellant Antonio Dalisay for rape. In the October 23, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02836, the appellate court, on intermediate review, affirmed with modification the April 11, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 88 of Quezon City in Criminal Case No. Q-03-119026.

The victim in this case was, at the time of the incident, a 16-year-old lass, who, together with her siblings, stayed with her mother's live-in partner, appellant Dalisay, in a rented second-floor room in Fairview, Quezon City. Their mother worked as a baby-sitter and helper in Makati City and only came home at the end of every month.[3]

On that fateful evening of July 10, 2003, the victim was alone playing cards in the aforesaid rented room, while her siblings were watching television in the common area on the ground floor. Appellant entered the room to change his clothes. He then laid himself down on the floor near the young lady, pulled her shirt up, and touched her breasts and thighs. Bent on satisfying his lust, he forced the girl down on the floor, took off her shorts and underwear, and placed himself on top of her. The defenseless lass resisted by kicking his legs and by pleading for him to stop. He, however, remained deaf to the girl's earnest entreaty, warned her that he would kill her entire family, and proceeded to bombard the gate to her chastity with his bestial toughness.[4]

Prior to this assault, appellant had already been repeatedly molesting the girl since she was 13 years old by inserting his finger into her genitalia.[5] However, paralyzed by the terror that he would make real his threats of annihilating her family, she was compelled to suffer in silence. Her trepidation was further fueled by her knowledge that appellant always carried a knife with him.[6]

In the morning of July 11, 2003, the day after the unfortunate incident, the victim and her sister had a quarrel--a blessing in disguise, so to speak, as it resulted in the latter running away from their home and disclosing to their aunt, who lived nearby, the sexual abuse. It appeared that the victim's sister witnessed an incident when appellant thought that everyone in the rented room was sleeping and pulled off his dastardly act.[7]

Alarmed by her niece's information, their aunt rushed to their home to verify from the victim the truth of the molestation. They then reported the matter to the authorities, who lost no time in apprehending appellant.[8] The ano-genital examination of the victim revealed the presence of abrasion and congestion in the perihymenal area/vestibule and in the posterior fourchette area. Revealed further were deep healed lacerations at 5 and 7 o'clock positions in the hymen. The examining physician opined that the findings were definitive evidence of previous and recent blunt penetrating trauma to the genitals of the victim.[9]

Consequently, an Information for rape in relation to Republic Act (R.A.) No. 7610 was filed, pertinently reading:

That on or about the 10[th] day of July 2003 in Quezon City, Philippines, the above-named accused, with lewd design[,] with force and intimidation[,] did then and there willfully, unlawfully and feloniously have carnal knowledge with one [name withheld], his stepdaughter[,] 16 years old, a minor[,] against her will and without her consent, to the damage and prejudice of said offended party.

CONTRARY TO LAW.[10]

Appellant, on arraignment, pleaded not guilty, and, for his defense, mainly denied the accusation. He further claimed that the filing of the charge was only upon the instigation by the victim's aunt who harbored a grudge against him.[11]

After trial on the merits, the RTC rendered the April 11, 2007 Decision[12] convicting appellant of qualified rape but imposing the penalty of reclusion perpetua in light of the passage of R.A. No. 9346.[13] The RTC further ordered appellant to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.[14]

On intermediate review, the appellate court affirmed with modification the ruling of the trial court. The CA convicted the accused not of qualified rape but of simple rape, and disposed of the case in the following tenor:

WHEREFORE, the foregoing considered, the assailed decision finding accused-appellant guilty of qualified rape is MODIFIED in that accused-appellant Dalisay is instead found guilty beyond reasonable doubt of SIMPLE RAPE and is sentenced to suffer the penalty of reclusion perpetua. The award of damages by the court a quo is affirmed.

SO ORDERED.[15]

The case having been elevated to this Court, we now finally review the trial and the appellate courts' uniform findings.

We affirm the conviction of appellant Dalisay for simple rape.

Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[16]

In a determination of guilt for the crime of rape, primordial is the credibility of the complainant's testimony, because, in rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[17] Here, the victim, in the painstaking and well-nigh degrading public trial, related her painful ordeal that she was raped by appellant. Her testimony was found by the trial court, which had the undisputed vantage in the evaluation and appreciation of testimonial evidence, to have been made in "a simple, straightforward and spontaneous manner." [18]

This eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[19] Further, deeply entrenched in our jurisprudence is the rule that the findings of the trial court on the credibility of witnesses are entitled to the highest respect and are not to be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied facts or circumstances of weight and substance which would have affected the result of the case.[20]

The Court discredits appellant's defense of denial for it is a negative and self-serving evidence,[21] which pales in comparison to the victim's clear and convincing narration and positive identification of her assailant. The Court,

likewise, does not find merit in appellant's rather belated assertion that the prosecution failed to establish force or intimidation and the resistance of the victim to the intrusion. The presence of intimidation, which is purely subjective, cannot be tested by any hard and fast rule, but should be viewed in the light of the victim's perception and judgment at the time of the commission of the rape.[22] Not all victims react in the same way--some people may cry out, some may faint, some may be shocked into insensibility, while others may appear to yield to the intrusion.[23] Here, the records show that the victim was coerced into submission by her fear that appellant would harm her family. In any event, established during the trial were that appellant was the live-in partner of the victim's mother, and that he was the one taking care of the children while the mother worked in Makati City.[24] The moral ascendancy and influence of appellant, a father figure to the victim, can take the place of threat or intimidation.[25]

The Court, therefore, finds appellant guilty beyond reasonable doubt of the crime of simple rape. While it has been proven that appellant was the common-law spouse of the parent of the victim and the child was a minor at the time of the incident, the Court cannot convict appellant of qualified rape[26] because the special qualifying circumstances of minority and relationship were not sufficiently alleged in the information. To recall, the information here erroneously alleged that appellant was the stepfather of the victim. Proven during the trial, however, was that appellant was not married to the victim's mother, but was only the common-law spouse of the latter. Following settled jurisprudence,[27] appellant is liable only of simple rape punishable by reclusion perpetua.

As to the amount of damages, the Court finds as correct the award of P50,000.00 as civil indemnity and P50,000.00 as moral damages in line with prevailing jurisprudence.[28]

As to the award of exemplary damages, the Court deems it opportune to clarify the basis for and the amount of the same. Article 2229 of the Civil Code provides that--

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Article 2230 of the same Code further states that--

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.

Prior to the effectivity of the Revised Rules of Criminal Procedure,[29] courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages.[30] Pertinent are the following sections of 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.

Sec. 9. Cause of accusation.--The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know

what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Nevertheless, *People v. Catubig*[31] laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. Catubig reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.[32]

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of Catubig; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*,[33] *People v. Victor*,[34] *People v. Orilla*,[35] *People v. Calongui*,[36] *People v. Magbanua*,[37] *People of the Philippines v. Heracleo Abello y Fortada*,[38] *People of the Philippines v. Jaime Cadag Jimenez*,[39] and *People of the Philippines v. Julio Manalili*. [40] And in the second set are *People v. Llave*,[41] *People of the Philippines v. Dante Gragasin y Par*,[42] and *People of the Philippines v. Edwin Mejia*. [43] Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

In the instant case, the information for rape was filed in 2003 or after the effectivity of the Revised Rules. Following the doctrine in the second set of cases, the Court can very well deny the award of exemplary damages based on Article 2230 because the special qualifying circumstances of minority and relationship, as mentioned above, were not sufficiently alleged.

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages--taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus--

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant--associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud--that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[44]

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, [45] the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, [46] the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, [47]

People of the Philippines v. Pepito Neverio[48] and The People of the Philippines v. Lorenzo Layco, Sr.,[49] the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in People of the Philippines v. Dante Gragasín y Par,[50] "[t]he application of Article 2230 of the Civil Code strictissimi juris in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages--to set a public example or correction for the public good."

In this case, finding that appellant, the father figure of the victim, has shown such an outrageous conduct in sexually abusing his ward, a minor at that, the Court sustains the award of exemplary damages to discourage and deter such aberrant behavior. However, the same is increased to P30,000.00 in line with prevailing jurisprudence.[51]

WHEREFORE, premises considered, the October 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02836 is AFFIRMED WITH THE MODIFICATION that the award of exemplary damages is increased to P30,000.00.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia, concurring; CA rollo, pp. 94-110.

[2] CA rollo, pp. 17-29.

[3] Id. at 21.

[4] Id. at 18 and 80.

[5] Id. at 18-19.

[6] Id.

[7] Id. at 19.

[8] Id. at 19-20.

[9] Id. at 20-21.

[10] Id. at 17.

[11] Id. at 22-23.

[12] Supra note 2.

[13] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

[14] The dispositive portion of the trial court's Decision reads:

WHEREFORE, premises considered, accused ANTONIO DALISAY Y DESTRESA is hereby adjudged guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty of reclusion

perpetua. Accused is further ordered to pay the private complainant [name withheld] the sum of P50,000.00 as civil indemnity; the amount of P50,000.00 as moral damages and the sum of P25,000.00 as exemplary damages.

SO ORDERED. (CA rollo, p. 29.)

[15] CA rollo, p. 110.

[16] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662; citing *People v. Malones*, 425 SCRA 318, 329 (2004).

[17] *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

[18] CA rollo, p. 25.

[19] *People v. Oden*, G.R. Nos. 155511-22, April 14, 2004, 427 SCRA 634, 655.

[20] *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188, 202.

[21] *People v. Baltazar*, 455 Phil. 320, 331 (2003); *People v. Berdin*, 462 Phil. 290, 304 (2003).

[22] *People v. Santos*, 452 Phil. 1046, 1061 (2003).

[23] *People of the Philippines v. Elmer Baldo y Santain*, G.R. No. 175238, February 24, 2009.

[24] CA rollo, pp. 21-23 and 40-41.

[25] *People v. Santos*, *supra* note 22, at 1062.

[26] See Article 266-B of the Revised Penal Code.

[27] *People v. Resuma*, G.R. No. 179189, February 26, 2008, 546 SCRA 728, 742; *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 526-528; *People v. Villanueva*, 393 Phil. 898, 920-921 (2000); *People v. Mendez*, 390 Phil. 449, 475-476 (2000); *People v. Flores*, 379 Phil. 857, 867-868 (2000).

[28] *People of the Philippines v. Roldan Arcosiba alias "Entoy"*, G.R. No. 181081, September 4, 2009; *People of the Philippines v. Elpidio Impas y Polbera*, G.R. No. 176157, June 18, 2009; *People of the Philippines v. Bartolome Tampus and Ida Montesclaros*, G.R. No. 181084, June 16, 2009; *People of the Philippines v. Elmer Baldo y Santain*, *supra* note 23.

[29] Effective December 1, 2000, A.M. No. 00-5-03-SC.

[30] *People of the Philippines v. Dante Gragasín y Par*, G.R. No. 186496, August 25, 2009; *People of the Philippines v. Edwin Mejia*, G.R. No. 185723, August 4, 2009; *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376.

[31] 416 Phil. 102 (2001).

[32] *Id.* at 120-121.

[33] 421 Phil. 944 (2001).

[34] 441 Phil. 798 (2002).

[35] G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620.

[36] G.R. No. 170566, March 3, 2006, 484 SCRA 76.

[37] G.R. No. 176265, April 30, 2008, 553 SCRA 698.

[38] G.R. No. 151952, March 25, 2009.

[39] G.R. No. 170235, April 24, 2009.

[40] G.R. No. 184598, June 23, 2009.

[41] Supra note 30.

[42] Id.

[43] Id.

[44] People v. Catubig, supra note 31, at 118-119.

[45] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[46] G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517-518.

[47] G.R. No. 175317, October 2, 2009.

[48] G.R. No. 182792, August 25, 2009.

[49] G.R. No. 182191, May 8, 2009.

[50] Supra note 30.

[51] People of the Philippines v. Elmer Peralta y Hidalgo, G.R. No. 187531, October 16, 2009.

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