

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANSUETO LAMBERTE, ACCUSED-APPELLANT.*G.R. No. 65153. July 11, 1986*

Ponente: MELENCIO-HERRERA, J.

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Automatic appeal from the Decision of the Regional Trial Court of Catarman, Northern Samar, Branch XX, in Criminal Case No. C-541 entitled "People of the Philippines vs. Mansueto Lamberte," convicting said accused of Rape and sentencing him to death.

The incident complained of, according to the lone testimony of complainant CLARISSA Arniño, then a thirteen-year-old first-year high school student from Catarman, Northern Samar, occurred as follows:

In the afternoon of September 26, 1982, CLARISSA was sent by her father to Barangay Washington of Catarman to buy salt and tanbark. Along the way, she met herein accused-appellant Mansueto LAMBERTE, accompanied by one Romulo Solomon and Carlito Lamberte, a thirteen-year-old boy. They asked her where she was going and where her father was. She replied that she was on her way to Barangay Washington to buy some salt and tanbark and that her father was in their farm. Even at that time CLARISSA knew who LAMBERTE was as the latter's mother and her father's mother are sisters thus making him her uncle, and because LAMBERTE is a resident of Barangay Washington where they have a farm. She was also aware that LAMBERTE had just been recently released from Muntinglupa.

On her way back home, at around 3:00 o'clock p.m., CLARISSA again met LAMBERTE and his two companions. Suddenly, while Carlito Lamberte merely watched, LAMBERTE and Solomon held CLARISSA and dragged her to a clearing far from the trail, with LAMBERTE threatening her with a small bolo locally known as "depang" and saying "If you will make noise I will kill you." Then, in spite of her resistance they forced her to lie down. While Solomon held her hands and kissed her on the face, LAMBERTE removed her T-shirt, skirt and panty, placed himself on top of her, and had carnal knowledge of her.

The act consummated, they brought her to a nearby creek and LAMBERTE ordered her to wash her vagina, which she did. Then LAMBERTE told her to go home but not to tell her father about the incident, otherwise, he would kill her.

Ignoring the injunction, upon arriving home, CLARISSA immediately told her father of the happening so the latter proceeded to Barangay Washington in search of LAMBERTE and his companions. Failing to find them, he instead brought CLARISSA to a physician in Catarman for medical examination. The medical findings as contained in the Medico-Legal Certificate (Exhibit "A") are as follows:

"Internal findings:

- Presence of laceration at 3:00 o'clock;
- Vagina admits 1 finger easily;
- Presence of old healed laceration;

- No seminal fluid found.

"External findings:

- Linear abrasion posterior portion dorso-medial distal 3rd right forearm;
- Linear abrasion anterior portion left thigh;
- Linear abrasion right knee."

Three days later, CLARISSA filed a complaint before the Municipal Court of Catarman attaching thereto her affidavit, that of Carlito Lamberte, and the Medico-Legal Certificate.

After his arrest, LAMBERTE waived preliminary investigation and moved that the records of the case be elevated to the Regional Trial Court of Catarman, Northern Samar.

On February 18, 1983, before said Court, an Information was filed reading:

"At the instance of the offended party in the above-entitled case, the undersigned Second Assistant Provincial Fiscal of Northern Samar accuses MANSUETO LAMBERTE y MANSING of the crime of RAPE, committed as follows:

That on or about the 26th day of September, 1982, at around 3:00 o'clock in the afternoon at Bgy. Washington, municipality of Catarman, province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, together with one Romulo Solomon y Moling who is still at large, by means of force, intimidation and threats and with lewd design, did then and there wilfully, unlawfully and feloniously had carnal knowledge with one Laniza Arniño, while said Romulo Solomon held her hands and pressed her to the ground and at the same time kissing her.

CONTRARY TO LAW."

Upon arraignment, LAMBERTE pleaded guilty but at the first hearing, the Court allowed him to withdraw that plea and to enter one of Not Guilty.

Testifying in his defense, LAMBERTE admitted having carnal know-ledge of CLARISSA but claimed that it was with her consent. He denied having made use of a deadly weapon; that there were other persons in-volved; and that he was related to her. But he admitted that he had been recently paroled from the National Penitentiary at Muntinglupa.

On July 2, 1983, the Trial Court adjudged LAMBERTE guilty, thus:

"WHEREFORE, this Court finds accused Mansueto Lamberte guilty beyond reasonable doubt of the crime of rape provided for in Article 335 of the Revised Penal Code, the crime having been committed with the use of a deadly weapon attended further by peculiar circumstances strongly repugnant to Filipino closely knit family relations as accused is a first degree uncle of the victim and the manifest propensity of the accused to conceal the crime by washing the vagina of the victim, and hereby sentences accused Mansueto Lamberte to the extreme penalty of DEATH and to pay the costs. The period of his detention is credited in full."

Hence, this automatic appeal, with LAMBERTE contending:

I.

"The lower Court erred in finding that defendant-appellant used a deadly weapon in the commission of the crime of rape upon the complainant.

II.

"The lower Court erred in finding that the crime of rape committed by defendant-appellant was aggravated by the circumstances of closely-knit family relations and by the propensity of defendant-appellant to conceal the crime by washing the vagina of the complainant.

III.

"The lower Court erred in imposing the capital penalty of death upon defendant-appellant."

LAMBERTE's main defense that CLARISSA had consented to the sexual act is easily demolished by the medical findings of physical injuries on her body, which unmistakably show that force was employed upon her.

Anent the first assignment of error, Appellant argues that CLARISSA's testimony on the use of a "debang" in threatening her to submit to sexual intercourse with him is inherently improbable because of certain discrepancies in her testimony, reproduced and underscored in the Brief for Defendant-Appellant as follows:

"Court:

Q.

When you were already naked what happened next?

A.

Mansueto Lamberte had sexual intercourse with me.

Q.

How did he do it?

A.

He inserted his penis to my vagina.

Q.

How about your legs, were they free?

A.

No sir.

Q.

Who opened your legs?

A.

It was Mansueto Lamberte who separated out my legs.

Q.

Was there anyone of them who played with your breast?

A.

It was Mansueto Lamberte who held my nipples.

Q.

With both hands?

A.

Yes, sir.

Fiscal Resuello:

Q.

How did you feel when he played your breast?

A.

I felt the pain.

Court:

Q.

Was Mansueto Lamberte on top of you?

A.

Yes sir.

Q.

How long was he on top of you?

A.

A quite longer.

Q.

What did he do while he was on top of you?

A.

He had carnal knowledge with me and held my nipples.

xxx xxx xxx

Court:

Q.

While Mansueto Lamberte was on top of you where was this small bolo depang?

A.

He was threatening me with the small bolo depang pointing that to my body."[1] (Underscoring supplied).

It is then argued that "if at the time of the actual sexual intercourse both hands of the Defendant-Appellant were holding the nipples of complainant, then, it would be physically impossible for Defendant-Appellant to have pointed the small bolo or 'depang' at the body of complainant" as "Defendant-Appellant would need a third hand to do this".

The argument is sophistic and untenable. CLARISSA never claimed that Appellant pointed the "depang" and held her nipples with both his hands at the same time or all the time. It may reasonably be inferred from her testimony that Appellant initially intimidated her with the "depang" but laid it aside when he was able to overcome her resistance. It is not necessary that a weapon be continually employed while the rape is committed for this circumstance to qualify the crime.

The defense also calls attention to the fact that the use of a weapon was not mentioned in the Information filed by the Fiscal. The use of a "knife"; however, was alleged in the earlier complaint. CLARISSA had filed before the Municipal Court of Catarman. But even in the absence of such an allegation in the Information, the nature of the offense charged is not altered for the use of force or intimidation in having carnal knowledge of a woman sufficiently constitutes the crime of rape[2], and its commission by two or more persons qualifies it.[3]

It is further argued that CLARISSA's claim of virginity at the time of her rape is negated by the findings of "old healed laceration" in her medical certificate. That does not necessarily belie, however, CLARISSA's claim that she was a virgin at that time because the cause of said laceration has not been determined as caused by prior sexual intercourse and may have been caused by some other means.[4] Besides, the fact that an offended party may have been of an unchaste character constitutes no defense in a charge of Rape.[5]

Next, it is contended that CLARISSA's testimony that she knew LAMBERTE before the rape incident is untrue because if it were so she would not be calling him only by his first name as she had testified. Considering the wrong that Appellant had done to her, it is but natural that she should feel abhorrence at calling him "uncle." The important fact remains that she had identified Appellant to her father soon after the incident leaving no room for doubt that she already knew him before the incident.

However, there is merit to Appellant's second and third assigned errors that the Trial Court erred in treating the circumstances of "closely-knit family relations" and "the manifest propensity to conceal the crime" by ordering CLARISSA to wash her vagina after the commission of the offense, as aggravating circumstances. The alleged "closely-knit family ties" is inaccurate because the relationship between CLARISSA and Appellant is actually five degrees removed. Besides, while it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity, regardless of whether the offender is a relative of a higher or lower degree of the offended party, it is only taken into consideration "when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender".[6] The relationship of uncle and niece is not covered by any of the relationships mentioned.[7]

In respect of Appellant's alleged propensity to conceal the crime, suffice it to state that under the Revised Penal Code, it is not a circumstance that aggravates criminal liability.

Finally, as to the penalty. Article 335 (paragraph 3) of the Revised Penal Code provides:

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

The presence of either circumstance - "use of a deadly weapon" or "by two or more persons" - qualifies the crime. If one is present, the remaining circumstance, if also attendant, is not a generic aggravating circumstance. That was our ruling in *People vs. Garcia*, 105 SCRA 6, 34 (1981), reading:

"In the prosecution of the cases at bar, two circumstances are present, namely: 1. use of a deadly weapon and 2. that two persons committed the rapes. The first was alleged in the information while the second was proved during trial. In both cases, the Court appreciated the first as a qualifying circumstance and the second as a generic aggravating circumstance, in accordance with settled jurisprudence according to the trial court.

"We do not agree. Under the law above-quoted, either circumstance is qualifying. When the two circumstances are present, there is no legal basis to consider the remaining circumstance as a generic aggravating circumstance for either is not considered as such under Article 14 of the Revised Penal Code enumerating what are aggravating circumstances. Hence, the correct penalty is the lesser penalty, which is reclusion perpetua, there being no aggravating or mitigating circumstance, pursuant to Article 63, paragraph 2, No. 2, Revised Penal Code."

The Information herein charged Appellant with the crime of Rape qualified by the circumstance that it was committed by two persons: LAMBERTE and his co-accused Romulo Solomon, who is still at-large. Although the use of a deadly weapon was proven during the trial, the Trial Court erroneously considered it a generic aggravating circumstance in the light of the *Garcia* ruling. Absent any mitigating or aggravating circumstance, the proper penalty, therefore, is the lesser penalty, or, reclusion perpetua.[8]

WHEREFORE, except for the penalty, which is hereby reduced to reclusion perpetua, the judgment under automatic review is affirmed in all other respects.

SO ORDERED.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.

[1] T.s.n., May 12, 1983, p. 13.

[2] Article 335 (1), Revised Penal Code.

[3] Article 335, parag. 3.

[4] *People vs. Tapao*, 108 SCRA 351 (1981).

[5] *People vs. Blance*, 45 Phil. 113 (1923).

[6] Article 15, Revised Penal Code.

[7] *U.S. vs. Incierto*, 15 Phil. 358 (1910); *People vs. Balondo*, 30 SCRA 155 (1969).

[8] Article 63(2), Revised Penal Code.

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