

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BARTOLOME GALANG, ACCUSED-APPELLANT.

G.R. No. 70713. June 29, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Bartolome Galang was convicted of rape by the then Court of First Instance of Pampanga and sentenced to suffer "an indeterminate sentence from six (6) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum; to suffer the accessory penalties as provided by law and to pay the costs." [1]

Galang appealed his conviction to the then Intermediate Appellate Court (now Court of Appeals) which found him guilty of the crime charged. Accordingly, the Intermediate Appellate Court reached the following conclusion:

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We are satisfied that the evidence on record amply supports the appealed decision.

We, however, find error in the penalty imposed by the Court a quo. The penalty for the crime of rape under Article 335 of the Revised Penal Code is reclusion perpetua (People vs. Gonzales, 58 SCRA 265). Under Par. 1 of Article 63 of the Revised Penal Code in all cases where the law prescribes a single indivisible penalty it shall be applied by the Courts regardless of any mitigating or aggravating circumstances which may have attended the commission of the offense (People vs. Amores, 58 SCRA 505, 511). Ostensibly, therefore, the penalty imposed by the trial Court is below that prescribed by law which is reclusion perpetua. [2]

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Judgment, however, was not entered and the case, with its entire records, was elevated to this Court for review pursuant to the doctrine laid down in Daniel and other cases, [3]

From the records brought to the Court we find that a verified complaint [4] for rape was filed by Alfredo R. Pangilinan, father of the victim Alona Pangilinan, with the Municipal Court of Minalin, Province of Pampanga. The complaint reads:

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That in the afternoon of January 8, 1975 at barrio San Pedro, Municipality of Minalin, Province of Pampanga, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, did then and there, wilfully, unlawfully, feloniously and criminally abused one ALONA PANGILINAN, 6 years old by using physical force and by threatening the latter to take her life if she will not consent to his carnal desire, forcing the girl to their house and then ordered her to lie down on the bed and removed her panty thereat and started his carnal desire by inserting his penis into the vagina of ALONA PANGILINAN causing her lavia to bleed and got shocked by fear to the dishonor, and prejudice of the victim, as per Medical Certificate hereto attached.

All contrary to law.

Minalin, Pampanga, Philippines . . .
January 9, 1975

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The findings of fact of the appellate court as recited in its decision are as follows:[5]

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The evidence discloses that on the afternoon of January 8, 1975, six-year old Alona Pangilinan was playing at the family yard at Barangay San Pedro, Minalin. Bartolome Galang called her and told her to go up to his house some three houses away from the Pangilinan residence. Alona knew Bartolome since 1973 because the latter had been performing chores for the Pangilinan family and taking his meals with them so she acceded and went upstairs. Bartolome told her to lie down in bed. He removed her underwear and panty down to her knees and thereafter took off his own pants. He then went on top of Alona and inserted his penis into her vagina, after which he pulled up Alona's panty and when the girl was about to leave, he threatened her with death if she reported the incident to her father. She became frightened.

The next day, January 9, 1975, while Alona was urinating, her mother Emiliana noticed blood in her panty. Upon inquiry, Alona revealed what "Tulo" (referring to Bartolome) had done to her. Shocked by such revelation, Emiliana told Bartolome's mother about her discovery. Meanwhile, Alona was taken by her grandmother to the Central Luzon General Hospital at San Fernando, Pampanga where she was examined by Dr. Gamboa. Alona's father Alfredo, a peddler by occupation, also learned about what happened to Alona on the afternoon of January 9, 1975. He followed her to the hospital where he saw her being examined by Dr. Gamboa. The next day, January 10, 1975, he filed a criminal complaint before the Municipal Court of Minalin (Exhibit "B"). Dr. Julio Gamboa, who examined Alona issued this Medical Certificate:

"January 10, 1975

"TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT one ALONA PANGILINAN, 6 years of age, child from Minalin, Pampanga was examined in this hospital on January 9, 1975 with the following findings:

- I. Mentality-Normal.
- II. Head and Neck-No evidence of external physical injuries.
- III. Thorax:

Breast)
Nipple) not yet
Areola) developed

IV. Abdomen — Soft, flat, non-tender, no organomegaly

V. Perineum:

Pubic hair — none
Labia minora and majora-not yet well developed
Hymenal opening — admit small finger
Hymenal laceration — fresh superficial wound hematoma at the labia.

(SGD) JULIO D. GAMBOA, M.D.
Resident Physician
p. 6, Records."

Appellant now faults the trial Court in putting too much reliance on the testimonies of Emiliana Pangilinan and Alona Pangilinan; that Emiliana had no direct knowledge as to how and when the offense took place, while Alona, who was only six years old at the time, is undeserving of credence because she made no outcry; that there was no threat before and during the alleged incident; and that instead Alona just walked calmly back to her house without telling her mother about the incident until the next day.

After a careful review of the entire record, We find no merit in the appellant's contentions. To begin with, the testimony of Emiliana Pangilinan has no reference whatsoever to the actual incident but merely to the fact that she herself saw her daughter's panty smeared with blood which led her to inquire from Alona about it and which finally yielded Alona's revelation that she had been sexually abused by Galang.

Alona's testimony that the appellant had sexual intercourse with her without her feeling any pain, is adequately explained by the fact that the "Hymenal laceration is a superficial wound at the labia" (Exh. "A"). She also attributed her failure to tell her mother to (sic) the fact that she became frightened when, immediately after being sexually abused and as she was about to leave the appellant's house, the latter threatened her with death should she relate the incident to her father or to anyone else. Alona's behavior is therefore understandable (*People vs. Tamayao*, 120 SCRA 412; *People vs. Oydoc*, 125 SCRA 250). Alona was a six-year old child at the time of the incident and the appellant failed to show why a country girl like her would impute such a serious crime against him for no reason at all (*People vs. Flores*, 125 SCRA 244; *People vs. Ferrer*, 124 SCRA 663; *People vs. Terrobias*, 103 SCRA 321).

Appellant further assails the medical finding that Alona was sexually abused arguing that her vagina only admits one finger and the laceration is a mere superficial wound on the labia; that Alona might have scratched or inserted something to relieve itchiness in her vagina; and that the laceration was not caused by sexual abuse. We find no merit in this pretense. The fact that the victim's vagina admits one finger and that there was only a superficial wound in the labia does not negate rape because being of tender age, the penetration could only be as deep as the labia. Indeed, even a slight penetration, without emission, is sufficient basis for conviction of rape (*People vs. Bautista*, 102 SCRA 438; *People vs. Franco*, 114 SCRA 737).

Appellant asserts that Alona's testimony that she went to the Minalin Municipal Building only once on January 9, 1975 is contradicted by her father Alfredo's testimony that they went home from the hospital on January 9, 1975 and it was only on January 10, 1975 that he and his daughter went to said Municipal building to file the criminal complaint. Appellant draws the inference that Alona and her father were not being truthful and that, therefore, they do not deserve to be believed.

This contention is likewise unmeritorious. Alona's testimony that she went to the Minalin Municipal Building on January 9, 1975 may be due to her confusion of the dates considering that she was only six years old at the time of the assault and she took the witness stand two years thereafter. In any event, the confusion as to the date the report was made with the authorities or the date when her complaint was filed is so trivial and minor that it could not detract from her overall credibility (*People vs. Reyes*, 69 SCRA 476).

Finally, appellant insists on his version that he was in school at the Minalin Academy from morning till afternoon of January 8, 1975. Appellant's alibi deserves no credence. He admitted that he saw Alona at about 12:30 P.M. or at noon of the same day. The act imputed to him could have been made at noon before returning to school or he could have easily gone home during his vacant period between 3 and 4 in the afternoon considering that, as observed by the trial court, his house is only a short distance to the school. In the face of the positive identification made of him by Alona, who had known him for no less than two years before the incident having performed chores for her family at their house, appellant's alibi cannot be sustained (*People vs. Boado*, 103 SCRA 607; *People vs. Terrobias*, supra).

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We find no reason to disturb the findings of the appellate court. This is in accordance with the long established rule that when issues raised are basically factual and essentially involve an appreciation of evidence, the findings of the trial court, affirmed by the appellate court, are in turn binding on this Court in the absence of a misapprehension of facts of grave abuse of discretion.[6] Moreover, there is the time-honored doctrine, which is applicable here, that appellate courts will generally not disturb the findings of the trial court on the issue of credibility of witnesses, unless certain facts of substance and value have clearly and plainly been overlooked or neglected and that, if considered, might affect the result of the case.

We do not, however, agree with the appellate court that the penalty that should be imposed upon the accused is reclusion perpetua despite the provisions of Articles 63 and 335 of the Revised Penal Code.

Born on August 24, 1958,[7] the accused was sixteen (16) years, nine (9) months and fourteen (14) days old at the time of the commission of the offense on January 8, 1975;[8] he was eighteen[9] (18) years when he took the witness stand on April 15, 1977 and twenty (20) years old at the time of the promulgation of the decision on November 21, 1978.[10]

Thus, the trial court correctly found him not to be entitled to the benefit of suspension of sentence under Article 192, Chapter III of the Youth and Welfare Code [Presidential Decree (P.D.) No. 603]. Instead, the court pronounced a judgment of conviction after crediting him with the privileged mitigating circumstance under Article 68 of the Revised Penal Code and the Indeterminate Sentence Law. That is consonant with our holding in *People vs Verano, Jr.*[11]

We are, however, of the considered opinion, in view of the heinousness of the offense and the tender age of the offended party, who shall live with the stigma of such ravishment all her life, that the penalty imposed by the trial court should be increased.

The imposable penalty for the offense of rape as provided in Article 335 of the Revised Penal Code is reclusion perpetua, a single indivisible penalty which, pursuant to the first paragraph of Article 63 of the same Code, should generally be applied regardless of any mitigating or aggravating circumstances that might have attended the commission of the deed. In fact both the Solicitor General and the Court of Appeals are of the view that pursuant to said provision the penalty should be reclusion perpetua.

Be that as it may, we hold that Article 68 of the Revised Penal Code which is hereunder quoted in part:

xxx Penalty to be imposed upon a person under eighteen years of age. — When the offender is a minor under eighteen years and this case is one coming under the provisions of the paragraph next to the last of Article 80[12] of this Code, the following rules shall be observed:

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2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed but always in the proper period.

is an exception or limitation of the first paragraph of Article 63 because, first, the said first paragraph of Article 63 is a general rule; secondly, Article 68 follows, or comes after, Article 63; and thirdly, Article 68 is favorable to the accused. All these grounds are sanctioned by well known rules of statutory construction which need not be stated here.

Whether or not Article 68 is applicable to this case, notwithstanding the fact that the accused was not given the benefit of a suspension of sentence under Article 192 of P.D. No. 603, as amended by P.D. No. 1179 (which repealed Article 80), was settled by this Court in the case of *People vs. Garcia*.^[13] In the said case, the Court was confronted with the issue of whether or not the therein appellant, being 17 years of age at the time of the commission of the crime, was entitled to the privileged mitigating circumstance provided in Article 68, paragraph 2, of the Revised Penal Code. In resolving the issue the Court made the following disquisition:

We find no irreconcilable conflict between Article 68, paragraph 2, as it now stands and article 80 as amended. There is no incompatibility between granting accused of the ages of 15 to 18 a privileged mitigating circumstance and fixing at 16 the maximum age of persons who are to be placed in a reformatory institution. In other words, there is no inconsistency between sending defendants of certain ages to prison and giving them a penalty lower than the imposable one on adults under the same or similar circumstances. Let it be remembered that the privilege of Article 68, supra, is not by its nature inherent in age but purely statutory and conventional, and that this privilege is granted adult offenders under given conditions.

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A close examination of Articles 68 and 80 will disclose that Article 68, according to its main paragraph, is to lay off and watch while the minor is in the hands of a charitable institution or person mentioned in Article 80 trying to reform him or her. This has to be so because Article 68 is a rule for the application of penalties, and there is no penalty when there is no judgment, and there is no judgment when the delinquent is in Welfareville or other place of similar character or entrusted to the care of a private person. However, if and when the minor turns out to be hopeless or incorrigible, he is returned to the proper court and the court passes sentence on him or her. In other words, Article 80 withdraws, as it were, and sub-paragraphs 1 and 2, as the case may be, of Article 68 takes control.

From this it will be seen that Article 68 is not dependent on Article 80, nor do these articles complement each other if by complement is meant that they are two mutually completing parts so that Article 68 could not stand without Article 80. It is more appropriate to say that Article 68 merely adjusts itself to Article 80 but is, in all other respects, self-sufficient and independent of the latter. Parts of one system of penology and working in coordination with each other, they pursue different ends. It is to be noticed that Article 68 falls under Section 2 of Chapter IV entitled "Application of Penalties," while Article 80 comes under Section 1 of Chapter V entitled "Execution and Service of Penalties." Two different subjects, these.

It will also be seen that Article 68, sub-paragraphs 1 and 2, and article 80 of the Revised Penal Code do not function at the same time and are designed for different purposes. Each has its assigned, separate sphere of action without in any way intermingling with the other. When Article 80 operates, Article 68 keeps out of the way; Article 68 steps in when article 80 steps out.

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It is the minors so situated; it is the selection of who should be committed to a reformatory school or to the custody of a private person with which Article 80 has to do, and no more. Article 80 does not concern itself with what should be done with minors when they are consigned to jail because of misbehavior; much less is it concerned over minors who, after the passage of Republic Act No. 47, are condemned to prison without having been under the custody of a benevolent institution or private person like youths between 16 and 18. On the other hand, Article 68 is intended for minors who are sent to jail, a matter foreign to the province of Article 80.

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But, as we have indicated, Article 68 as well as its predecessor is an independent provision and has not been merged with article 80 or any other article of the Revised Penal Code. It is an independent provision inoperative only during the suspension of the sentence but possessing all the vigor which Article 85 of the Spanish Code had, when the minors are sentenced to jail.

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Verily the accused is entitled to the privileged mitigating circumstance of minority. Hence, the imposable penalty is reclusion temporal in its medium period, absent any other mitigating or aggravating circumstance.[14]

Applying the Indeterminate Sentence Law to the accused, the maximum of the penalty to be imposed upon him shall be the medium period of reclusion temporal, that is from 14 years, 8 months and 1 day to 17 years and 4 months. The minimum of the indeterminate penalty shall be within the range of the penalty next lower to that prescribed by the Code for the offense which is prision mayor to be applied in any of its period in the discretion of the Court. Exercising its discretion this Court fixes the minimum period from 10 years and day to 12 years.

WHEREFORE, the appealed judgment is hereby MODIFIED in that the appellant Bartolome Galang shall suffer an indeterminate penalty often (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months of reclusion temporal, as maximum, and to indemnify the complainant in the sum of Twenty-Five Thousand (P25,000.00) Pesos. The rest of the judgment is AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Padilla, and Regalado, JJ., concur.

[1] Rendered by Judge Ignacio M. Capulong.

[2] Decision, Intermediate Appellate Court, Rollo, 70, Sison, Juan A., ponente; Nocon, Rodolfo A. and Alfonso, Federico B., Jr., concurring.

[3] People vs. Daniel, L-40336, Nov. 20, 1978, 86 SCRA 5 11; People vs. Ramos, L-49818, Feb. 20, 1979, 88 SCRA 486; and People vs. Centeno, L-48744, October 30, 1981, 108 SCRA 710.

[4] Criminal complaint, Original Record, 3.

- [5] Decision, Intermediate Appellate Court, Rollo, 67-70.
- [6] Alfonso Vallarta vs. The Hon. Court of Appeals, el ah, G.R. No. L-36543, July 27, 1988.
- [7] Decision, Regional Trial Court, Original Record, 132.
- [8] Criminal Complaint, Rollo, 4.
- [9] T.S.N., April 15, 1975, 2.
- [10] Motion for Reconsideration and/or New Trial, Rollo, 135.
- [11] G.R.L-45589, July 28, 1988, citing People v. Casiguran, G.R. L-45387, November 1, 1979, 94 SCRA 244.
- [12] Now Art. 192, PD No. 603, as amended.
- [13] No. L-2873, February 28, 1950, 85 Phils. 651, 663.
- [14] Art. 64(1).

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