

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS DE LA CRUZ, DEFENDANT-APPELLANT.*G.R. No. 78470. March 11, 1988*

Ponente: CRUZ, J.

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The accused-appellant was convicted of rape and sentenced to death by the regional trial court of Olongapo City on January 6, 1987. The case was appealed to this Court. After the abolition of the death penalty under the new Constitution, he was asked to manifest if he still wished to continue his appeal. He declared that he did. Accordingly, the Court proceeded to examine his plea that the trial court had erred and that he was innocent of the charge against him. Our ruling is that it was he who erred.

The trial court found that the accused-appellant raped Necitas D. Sagadal, an 11-year old girl, in the evening of December 28, 1979, in the public market of Subic.[1] This finding was based mainly on the testimony of the victim herself as corroborated by the other prosecution witnesses[2] and the medical evidence.[3]

The complaining witness testified that on the night in question, while walking back to where her mother was selling refreshments near the carnival, she met her friends Biday and Aba, who asked her to join them. She did. A certain Ben came later, followed by the accused-appellant himself. The group went inside the public market and into a vacant stall. Carlos de la Cruz gave money for the purchase of ESQ rum, which she was asked to buy. The others drank the liquor and urged her to do so too. She reluctantly acceded but vomited the drink because she was not accustomed to it. She went out and Ben and Carlos did too, leaving Biday and Aba inside. When she moved to return to the stall, Ben cautioned her not to as the two inside might get angry. Later, the couple came out and suggested that they move to another stall where they could all sleep. Ben had left in the meantime. The four of them entered this stall and, feeling dizzy, she lay down. Suddenly she felt somebody embracing her in the dark and found it was the accused-appellant. She resisted and sat-up, saying, “Walang ganyanan.” Aba sidled up to her and advised her to consent because Carlos was a barangay tanod and the son of a policeman. Carlos asked Biday and Aba to leave. Left alone with the complainant, Carlos suddenly pinioned her and, while she was struggling to free herself, forcibly removed her shorts. He pulled her down. Against her will, he kissed and fondled her and finally succeeded in violating her. Her maidenhead was ruptured. Her shorts were bloodied. The deed done, and while she was crying in pain and anger, he advised her to tell him if she should get pregnant so he could have the fetus aborted. Confused and afraid, Necitas did not go home that night or the day after or the day after that. It was only on December 31, 1979, that her mother found her by the seawall and took her home. She related what Carlos had done to her. Her mother immediately sought the counsel of the barangay captain, who told them to report the matter to the police. The police sent her to the Olongapo City General Hospital, where she was medically examined on January 1, 1980, and found with “fresh vaginal laceration.”[4]

Regina Sagadal, the complainant’s mother, testified that Necitas was born on March 20, 1968, IN San Jorge, Guidara, Samar, although she was not sure if her birth had been registered.[5] There is no entry of such birth in the local civil registry of her supposed birthplace,[6] but the prosecution presented a school record of Necitas

where her date of birth is indicated as March 20, 1968.[7] The mother described how she searched for her daughter after she did not return on December 28, 1979, and how she found her three days later by the seawall disheveled and depressed.[8]

In his defense, Carlos testified that he was in his house when the rape was supposedly committed, but on cross-examination said his house was some five hundred meters only from the public market.[9] This meant the scene of the crime could have been reached by him within minutes from the place where he was living. His father sought to bolster his son's testimony but did not succeed. On the contrary, he might have weakened the accused-appellant's alibi. According to Eligio de la Cruz, he fetched Carlos from the market at 6 o'clock in the evening of December 28, 1979, and they went together to his house, where they had supper. Thereafter, Carlos retired to his own house on the next lot. The father testified he never saw Carlos again that night and it was only the following morning that his son returned to join him for breakfast.[10]

This witness had some difficulty in explaining on cross-examination why he had to fetch Carlos and bring him home from the market, considering that the latter was already twenty-six years old at the time. As the municipal policeman assigned to guard the public market from 6 o'clock in the evening to 6 o'clock the following morning, he said he deserted his post that night so he could bring his son home with him.[11]

The alibi must fail because not only of the inherent weakness of this kind of defense but also of its inconclusiveness and unreliability. It simply is not believable. And even assuming that the father really fetched Carlos and brought him home, there is no showing that the accused-appellant could not have gone back to the public market that night and committed the rape. More important than this, there is the positive identification made by Necitas, who from the very start had pointed to Carlos as her attacker.

None of the defense witnesses questioned Necitas's motives in accusing Carlos as the one who had raped her. In the brief filed by the accused-appellant, there is the assertion that the complainant was trying to extort money from him, followed by the meaningful admission that he was willing to make a settlement if only "to buy peace" except that the demand was too steep for him to meet.[12] The Court wonders why he would want to "buy peace" if he was really innocent. After all, he was dealing not with an influential or powerful complainant but with a simple third grade 11-year old child helping her mother make a humble living by selling gulaman and samalamig.

It having been established that Necitas was less than twelve years old at the time of the incident, it is not necessary to prove that force had been exerted on her. Even assuming that the complainant had consented, the conviction would still stand as the theory of the law is that her age would not have given her the discernment to resist. In fact, even if it be supposed that Necitas was already above twelve years old when she was deflowered, the crime would be deemed just the same to have been committed by Carlos. There is ample evidence of the force employed by the accused-appellant, a full-grown man of twenty-six years, upon the ravished child, who was not yet in her teens at the time of the rape.

The rape committed in the circumstances above narrated is punishable with reclusion perpetua under Article 335 of the Revised Penal Code. This being a single indivisible penalty, the trial court should have imposed it regardless of any mitigating or aggravating circumstance, in accordance with Article 63 of the same Code. The Court cannot understand why the trial court instead, taking into account the aggravating circumstances of nighttime and abuse of superior strength, raised this penalty to the next higher penalty, i.e., death. There is no authority for this increase under the rules on the application of penalties in the Revised Penal Code. The method employed by the judge is a strange and unlawful process. Judge Esther Nobles Bans is sternly advised to be more careful in the determination of the applicable penalties, especially where capital offenses are involved, as in this case. She should have pondered the matter thoroughly before condemning the accused-appellant to death on the

strength of her rash and erroneous reading of the law.

Curiously enough, neither the defense counsel nor the Solicitor General noticed the serious mistake.

At any rate, it now appears that the appealed judgment is not affected by the constitutional provision abolishing the death penalty as it is plainly not applicable in this case. The death penalty imposed by the trial court is reduced not because of Article III, Section 19(1) of the Constitution but because the appropriate sentence is really reclusion perpetua.

What evil might have possessed the accused-appellant when he inflicted his lust upon his defenseless victim is a matter he must explain to his conscience if he has any. The explanation he has offered this Court is feeble and unacceptable as against the firm and conclusive evidence presented by the prosecution. His conscience may not bother him, but the Court for its part will not look the other way. For his despicable outrage of the virgin child, the law will send him to prison for the rest of his life.

WHEREFORE, the judgment of the trial court is AFFIRMED except that the penalty of death is reduced to reclusion perpetua and the civil indemnity is increased to P30,000.00. Costs against the accused-appellant.

SO ORDERED.

Teehankee, C.J., Narvasa, Gancayco and Grino-Aquino, JJ., concur.

[1] Rollo, p. 58.

[2] Reginal Sagadal, Alicia Bustamante and Dr. Justo Agpoon.

[3] Exh. "C-1" (p. 466, Original Records).

[4] TSN, pp. 31-53, April 3, 1981; pp. 22-24, Sept. 28, 1981; p. 7, Oct. 17, 1983; Exh. "C-1" (p. 466, Original Records).

[5] TSN, pp. 4-5, Sept. 28, 1981.

[6] Exh. "G" (P. 471, Original Records).

[7] Exh. "D" (p. 467, Original Records).

[8] TSN, pp. 9-10, Sept. 28, 1981.

[9] Ibid., pp. 28, 33, 35, March 5, 1985.

[10] Id., pp. 3-6, Nov. 13, 1984.

[11] Id., pp. 12-14, Nov. 13, 1984.

[12] Appellant's Brief, p. 6 (Rollo, p. 85).

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