

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DE LA CRUZ Y DIZON, ACCUSED-APPELLANT.

G.R. No. 78582. June 10, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Acting in accordance with Rule 124 of the Rules of Court on Procedure in the Court of Appeals more particularly Section 13 which, in part, provides:

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"Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or reclusion perpetua as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review."

and the ruling of this Court in *People v. Daniel* (86 SCRA 511), the Court of Appeals elevated this case to us for final determination.

The decision penned by Associate Justice Jose C. Campos, Jr., and concurred in by Associate Justices Reynato S. Puno and Venancio D. Aldecoa, Jr., reads:

"This is an appeal from the decision of the Honorable Oscar C. Fernandez, Presiding Judge of the Regional Trial Court of Manila, Branch XLIX, finding the accused-appellant guilty of the crime of rape as follows:

"'WHEREFORE, the Court hereby finds the accused DANTE DE LA CRUZ Y DIZON guilty beyond reasonable doubt of the crime of rape, and hereby metes upon him an indeterminate sentence of Six Years and One day of prison mayor as minimum, to sixteen years and one day of reclusion perpetua, as maximum, to indemnify the complainant witness the sum of Twelve Thousand Pesos, plus costs. The period of preventive imprisonment the accused may have undergone, if at all, is credited in his favor.' (Original Record, p. 152).

"On February 4, 1983, the accused was charged with the crime of rape committed as follows:

"'That on or about December 11, 1982, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously by means of force and intimidation, that is, by then and there forcibly laying her on the floor, embracing her, kissing her and touching her breasts at the same time sucking the same, having sexual intercourse with the undersigned complainant, a minor, 15 years of age, unmarried girl, against her will and consent.

"'Contrary to law.' (Original Records, p. 1).

"It appears from the evidence that herein complainant Lourdes Cawaling, unmarried, 15 years of age and a native of Ormoc, Leyte had been living in Manila with her foster mother, Esmeralda Nunez, a vegetable

vendor at Paco.

"Sometime in December 1982, Lourdes' two aunts, Nieves Cawaling and Eufrosina Cawaling who were co-workers of Celia de la Cruz (the girl friend of accused Dante de la Cruz, who later eloped with the latter and lived together), introduced Lourdes to the accused to work as a household help.

"Lourdes Cawaling started working with the accused on December 7, 1982 as a baby-sitter of the latter's six year old son by a former marriage for a monthly salary of P100.00 with free board and lodging and a day-off every Sunday.

"The house of the accused where Lourdes worked was a one-room apartment measuring about 4 by 4 meters in area with a matrimonial bed occupying most part of the room. The arrangement was such that the accused and his son would sleep on the bed, while Lourdes the baby-sitter, slept on the floor directly beside the bed adjoining the door leading outside of the room (Exhs. "2", "3", "5" and "6").

"One night in December 1982, at about 2:00 o'clock in the morning, Lourdes woke up and noticed the accused already at her side (on the floor). The accused began to kiss her on the neck, ears and on her private parts while the accused held a knife at her throat threatening to kill her should she make any noise. The accused succeeded in having sexual intercourse with Lourdes Cawaling after which he went back to bed to sleep. The following morning, Lourdes was again warned not to tell anyone or he would kill her and her family.

"This incident was repeated for a second time and a third time in January, 1983. During all these times, Lourdes resisted the advances of the accused by trying to stand up or by turning from side to side but the accused would always overpower her, grab her and pin her down on the floor and threaten her with a knife. On the third time, the accused tore her dress which Lourdes presented as evidence.

"On January 14, 1983, Lourdes Cawaling left her employer and went to her aunt Eufrosina Cawaling to whom she reported the matter. They then proceeded to the National Bureau of Investigation (NBI) where Lourdes was examined by a doctor and thereafter went to the Police Station and filed the instant complaint. She likewise told her parents about this.

"The accused pleaded 'not guilty' to the charge against him and presented evidence that he was working as a watch repair man at Peping's Watch Repair Shop near the Paco Cinema, where he met his wife, Celia de la Cruz, who was working as a porter and usher at said theater. On December 5, 1982, they decided to elope as Celia was already one month pregnant with his son. They rented a one-room dwelling on the groundfloor of a 2-storey wooden house located at 1162 Craig Street, Sampaloc, Manila. On December 8, 1982, Celia brought with her to their residence Lourdes Cawaling, a jobless young woman to be their household help. He worked from 8:00 a.m. to 7:00 p.m. everyday except Sundays, same where he worked overtime until 10:00 p.m. As they were newly married, he and Celia slept together in the bed, which occupied the room and Celia testified that if her husband would lay on top of Lourdes, that would make him at level and abreast of her since she was occupying the bed on the side of Lourdes. She would then be aware of any movement beside her. Moreover, Celia alleged that as they were still on their honeymoon, from December 5, 1982 until six months thereafter, they would make love nightly from 10 o'clock to 12 o'clock in the evening without fail leaving the accused exhausted and snoring until morning.

"As affirmative defense, the accused and his witnesses tried to prove that Celia had been seeing a lesbian prior to her marriage to the accused and this lesbian had been making trouble for them ever since as she rejected the offer to go abroad and live together and leave the accused behind. Once, Celia testified she chanced upon the lesbian and Lourdes in bed in their underwears and it is her theory that said lesbian is behind all these accusations against Dante de la Cruz.

"Moreover, the accused and Celia testified that the reason why Lourdes left their employ was because she stole several pieces of jewelry valued at P6,000.00 and when Celia reported the matter to Lourdes' aunt, Eufrosina

Cawaling, the latter promised to pay the same in installments. However, they did not file a case for theft against Lourdes as the jewelries were gifts of the lesbian to Celia and the latter wanted to forget everything about the lesbian anyway. Later, when Lourdes filed this case, they reported the matter to their Barangay Captain and their lawyer and to the policeman investigating this case, but they were told to file a separate complaint as the theft case cannot be consolidated with the rape case filed against the accused herein.

"After hearing the testimonies of all the witnesses presented by both parties and receiving all documentary evidence, the Court a quo found the accused guilty of the crime of rape as charged and sentenced the accused accordingly.

"The accused appealed to this Court and raised the following errors:

I THE TRIAL COURT ERRED IN DENYING ATTORNEY LAPUZ' URGENT MOTION FOR POSTPONEMENT AND IN PROCEEDING WITH THE TRIAL BY APPOINTING A COUNSEL DE OFICIO OVER THE ACCUSED' OBJECTION;

II THE HONORABLE COURT ERRED IN DENYING DEFENSE COUNSEL'S MOTION TO RECALL THE PROSECUTION WITNESSES: PRIVATE COMPLAINANT LOURDES CAWALING AND THE NBI DOCTOR, DR. ROBERTO GARCIA, FOR ADDITIONAL CROSS-EXAMINATION QUESTIONS;

III THE HONORABLE COURT FAILED TO APPRECIATE THE UNREBUTTED EVIDENCE OF THE DEFENSE; AND

IV THE HONORABLE COURT ERRED IN NOT ACQUITTING THE ACCUSED AT LEAST ON A REASONABLE DOUBT.

"After a careful examination of the evidence on record, We find no merit in this appeal.

"FIRST: Accused-appellant alleges among others that the trial court failed to give him a fair opportunity to secure counsel of his own choice which is a denial of right to counsel.

"We do not agree.

"Applications for continuances or postponement are, in accordance with Section 2, Rule 115 of the Rules of Court, addressed to the sound discretion of the Court and its action thereon will not be disturbed by the Appellate Court in the absence of a patent and manifest abuse of discretion.

"The accused' counsel at a scheduled hearing filed a Motion for Postponement on the ground that his (new counsel's) services had only been retained and that he would need more time to go over the records of the case. The trial court denied said motion and instead appointed a counsel de oficio for the accused in the absence of his own lawyer.

"It should be recalled that the trial and hearings of this case had long been scheduled and if the accused chose to retain a new counsel and to hand over the records of the case only shortly before the trial for that day, then there can be no other conclusion but that accused was merely trying to delay the administration of justice as found by the trial court. More so, as the prosecution had finished presenting its case and it was the turn of the accused to present his witnesses and his evidence.

"In any case, accused was given a counsel de oficio who acted as his lawyer during the presentation of the accused as witness. The transcripts would show that the accused was given -- an opportunity to be heard and afforded a fair trial.

"There was no grave abuse of discretion on the part of the trial judge in not granting the motion for postponement prayed for.

"SECOND: Likewise, there was no manifest abuse of discretion in refusing to allow or recall complainant to

the witness stand for additional cross-examination on account of a newly retained counsel. The complainant had already experienced great embarrassment in narrating appellant's sexual abuses on her. To allow her to be recalled to the witness stand in spite of a previous extensive cross-examination would be tantamount to harassment.

"THIRD: The evidence on record shows that the accused succeeded in having carnal knowledge of Lourdes Cawaling by using force and intimidation and with the use of a knife (deadly weapon under paragraph 5 of Art. 335, Revised Penal Code).

"The testimony coming from the offended party is firm, categorical and straightforward considering that she was only a minor of 15 years of age and if the trial court chose to give her testimony more credence, We find no cause to disturb its findings on appeal.

"The testimony of the offended party most often is the only one availed to prove directly the commission of rape and even if the defense tried to prove that the character of the offended party is questionable, this fact constitutes no defense in a charge of rape, provided that the illicit relations were committed with force and intimidation.

"WHEREFORE, the decision appealed from is hereby MODIFIED and judgment is hereby rendered finding the accused DANTE DE LA CRUZ Y DIZON guilty beyond reasonable doubt of the crime of rape with the use of a deadly weapon and hereby sentencing the accused to reclusion perpetua; to indemnify the offended party Lourdes Cawaling in the sum of THIRTY THOUSAND PESOS (P30,000.00) plus costs. The period of preventive imprisonment the accused may have undergone may be credited against his period of incarceration." (pp. 106-111, Rollo).

A careful review of the original records of this case and of the briefs and various pleadings submitted on appeal shows that the findings of facts and conclusions of the Court of Appeals are correct. We adopt its decision as part of our own decision.

The first and second assigned errors alleging a denial of due process are without merit.

The appellant questions the denial of his motion for the postponement of the January 9, 1984 hearing. He has, however, failed to show that the trial court committed any abuse of discretion in not acceding to the postponement. A review of the records shows that nothing prejudicial to his interests or which may have affected the results in the decision took place on that date. The same is true in the denial of the motion to recall the private complainant for still another cross-examination. Lourdes Cawaling was cross-examined at length on September 5 and September 12, 1983. We agree with the Solicitor General that to have her narrate once more the sexual abuses committed by the appellant would be tantamount to harassment. The other assigned errors refer to factual matters which, from our review of the records, appear to have been correctly resolved by the trial court.

We agree with the Court of Appeals that reclusion perpetua is the penalty for rape with the use of a deadly weapon and not an indeterminate sentence of six years and one day of prison mayor as minimum to sixteen years and one day of reclusion perpetua (sic) as maximum.

Absent any unusual circumstances warranting a bigger amount, the usual indemnity in rape cases is P20,000.00.

Considering the foregoing, the Court finds accused Dante de la Cruz y Dizon guilty beyond reasonable doubt of the crime of rape with the use of a deadly weapon and accordingly sentences him to reclusion perpetua, to indemnify the offended party Lourdes Cawaling in the sum of TWENTY THOUSAND PESOS (P20,000.00) plus costs. The period of preventive imprisonment the accused may have undergone may be credited against his period of incarceration.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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