

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY APILO, ACCUSED-APPELLANT.

G.R. Nos. 101213-14. October 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Despite the effort of our officers in law enforcement and in the administration of justice, the incidence of rape and other violent crimes against minors has continued unabated, constituting a veritable flood tide of barbarism, depravity and bestiality that threatens to engulf and destroy the innocent and helpless youth of our country. Thus, while we hail the accused's conviction in this case as another important victory in the battle against dastardly and vicious crimes, our elation is dampened by our consternation at the sheer indiscretion and apparent dereliction of duty on the part of the prosecutor who charged only the accused-appellant notwithstanding the offended party's insistent testimony that another person was involved in the multiple rapes.

Accused-appellant Henry Apilo was charged with two (2) counts of rape committed on October 1 and 2, 1989. The two Amended Informations[1] contained identical allegations, except only as to the dates of the incidents:[2]

"AMENDED INFORMATION

The undersigned Assistant Prosecutor, hereby accused (sic) HENRY APILO of the crime of RAPE, at the instance, relation and written complaint of MADONNA SALDIVAR, copies of her statements are hereto attached and made an integral part of this Information, committed as follows:

That on or about the 2nd day of October, 1989, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of force or intimidation with the use of a handgun, have carnal knowledge of the complainant MADONNA SALDIVAR, a minor -- 11 years of age, against the latter's will and consent."

On arraignment, appellant, duly assisted by counsel, pleaded not guilty to both charges.[3] Thereafter, trial on the merits ensued.

The prosecution presented five (5) witnesses, including complainant Madonna Saldivar. On the other hand, the defense presented the accused-appellant and two former elementary school teachers of the complainant.

After trial, the trial court[4] rendered judgment finding appellant guilty of both counts of rape and sentenced him thus:[5]

"Wherefore, Judgement (sic) is hereby rendered as follows:

1. In Criminal Case No. 7129-R, the Court Finds accused Henry Apilo guilty beyond reasonable doubt of the offense of Rape defined and penalized under Article 335 of the Revised Penal Code as charged and hereby sentences him to suffer imprisonment of Reclusion Perpetua; to indemnify the offended party Madonna Saldivar the sum of P40,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Henry Apilo being a detention prisoner is entitled to 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.

2. In Criminal Case No. 7130-R, the Court Finds accused Henry Apilo guilty beyond reasonable doubt of the offense of Rape defined and penalized under Article 335 of the Revised Penal Code as charged and hereby sentences him to suffer imprisonment of Reclusion Perpetua; to indemnify the offended party Madonna Saldivar the sum of P40,000.00 as Moral Damages without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Henry Apilo being a detention prisoner is entitled to 4/5 of his preventive imprisonment in the service of his sentence in accordance with Art. 29 of the Revised Penal Code."

The Facts

The trial court made the following factual findings:[6]

"x x x Madonna Saldivar is a young orphan, born of the late Sally Saldivar with an unknown father sometime May 23, 1978 (Exhibit H), living with her grandmother Esperanza Saldivar Laureta at San Roque Village, Baguio City, and a Grade III pupil of the Baguio Central School.

On October 1, 1989, at about 3:30 PM, Madonna Saldivar stayed at the house of her classmate, Princess Balisi, because her (Madonna) grandmother lost some money and she was afraid to go home as she may be whipped.

The house of Princess Balisi is located at San Carlos Heights, Baguio City. At the time Madonna Saldivar stayed in the Balisi house, with Catherine, another classmate, those who were in the house were Princess Balisi, her brother Victor Balisi, their mother Rhodora Balisi, the accused Henry Apilo, who was a visitor in said house and Joey (Jun) Balisi. The Balisi house has three rooms.

On the night of October 1, 1989, Madonna Saldivar, Princess Balisi and Catherine, who were all classmate, slept in the room of Princess. However, sometime later that night, Princess Balisi and Catherine were called by the mother of Princess. While waiting for them to come back, Madonna fell asleep only to be awakened subsequently as she felt somebody who was naked embraced her. Madonna saw accused Henry Apilo on top of her and Victor Balisi at her feet.

Henry Apilo boxed Madonna on the stomach, put a cloth in her mouth, and then carried and transferred her to the other room, the third room. There, Henry Apilo ordered her to remove her dress while holding a gun. Scared, Madonna complied. Henry Apilo placed himself on top of Madonna and had sexual intercourse with her by spreading her legs and inserting his penis on her vagina and Madonna felt a white sticky substance in her vagina.

Thereafter, Henry Apilo went out and Victor Balisi entered the room and did the same thing to her. Afterwards, they locked Madonna inside the room.

The next day, October 2, 1989, Madonna was afraid to go home as she might be killed and besides she was locked inside the room.

And on the night of October 2, 1989, Bong Balisi, together with two others entered the room and were told by Victor Balisi to use Madonna or to have sexual intercourse with her. But Bong Balisi and the two others said they could not do it with her and so went out of the room.

Thus, Henry Apilo entered the room again but this time without a gun. Instead, Henry Apilo had a knife and told Madonna not to shout or he will kill her. And he again put himself on top of Madonna, kissed her, touched her breasts, and inserted his penis in her vagina, and moved his body up and down, and after which Madonna felt a whitish sticky substance went out of him. And after the sexual intercourse, Henry Apilo went out of the room.

Like the first time, Victor Balisi followed inside the room thereafter and did the same thing to Madonna. Victor

Balisi went on top of her, spread her legs, inserted his penis inside her vagina, and had intercourse with her. And when the whitish sticky substance came out of him, Victor Balisi left the room and locked Madonna inside the room.

The next morning of October 3, 1989, Henry Apilo told Madonna to dress up as he was bringing her home. But instead, he took her in a taxi to the Victory Liner Bus Station. And they rode in a Victory Bus going down all the way to a place Madonna did not know. (The place could be Pasay City in Metro Manila as that is the last station of Victory Liner in their Baguio Pasay route) Henry Apilo took Madonna to his Auntie's place which appears to be a Disco house or a club as at night they told her to dress up and put on some make-up as she would be invited to a table by a male customer apparently to be a hostess or a hospitality girl.

Madonna stayed in said place for about 5 days only as on the fourth day she did not like the work and so was made a janitor and cleaner of the place. And when she took money as she wanted to go back to Baguio and told them about it, they relented and allowed her to go back to Baguio. Thus, the aunt of Henry Apilo even called for a police to accompany Madonna to the Victory Liner Station and, ultimately, Madonna was able to go home to Baguio.

Back in Baguio, Madonna immediately proceeded to her lola at the latter's store at the Empire theatre and related all that happened. And her lola told her to tell her Ninong Bert Arquinte, who worked at City Hall at the City Jail, about it.

And so by the morning of October 9, 1989, Madonna went to the police station to report but her ninong was not around and by chance she met Atty. Rolando Vergara of the NBI, who was at the Police Station at the time to whom she reported the incident and who invited her to go to the NBI office.

Thus, on October 10, 1989, Madonna Saldivar went to the NBI office and complained about what happened to her and signed a Complaint Assignment Sheet under oath (Exhibit B). After which, Atty. Rolando Vergara brought her to the Baguio General Hospital for medical examinations by Dr. Eileen Mae Bandonill, whose findings (Exhibit A) were as follows:

'Republic of the Philippines
Department of Health-CAR
DR. EFRAIN C. MONTEMAYOR MEMORIAL MEDICAL CENTER
Baguio City
11 October 1989

TO WHOM IT MAY CONCERN:

This is to certify that I have seen and examined MADONNA SALDIVAR, 13 years old, from #12 San Roque Village, Baguio City who was brought by Atty. Rolando Vergara because of alleged rape (multiple) committed against her person by known assailant

NOI : Alleged Rape (Multiple) (4x)

DOI : October 1 and 2, 1989

TOI : Unrecalled (nighttime)

POI : San Carlos Heights, B.C.

Menstrual History : No menarche yet.

Pertinent P.E.:

General Survey: Fairly nourished, fairly developed, conscious, coherent, ambulatory, with no signs of external physical injury at the time of examination.

Perineal Inspection: No hematoma nor lacerations noted at the vulva ad perineum.

Hymen - - with old laceration at 5 & 7 o' clock position.

Internal Exam.: Non-parous introitus

Vagina admits 2 fingers snugly.

Cervix-small, closed, non-tender.

Uterus-small, non-tender.

Bleeding-none.

Discharge-minimal, whitish, non foul discharge.

Specimen taken for gram's stain and sperm cell identification.

(Sgd) EILEEN MAE B. BANDONILL, M.D.

OB-Resident on Duty - 101-10-89

Result :

Gram Stain : Smear shows plenty of gram (-) negative rods and coccie in pairs.

Pus cells - rare

Sperm cell Identification: Negative for sperm cell.'

Dr. Bandonill, in her testimony in Court, explained that the old laceration of the hymen at 5 to 7 o'clock position is indicative of the fact that Madonna had sexual intercourse prior to the examination as her hymen is no longer intact and that means her vagina was already penetrated by a male organ possibly more than 7 days prior to examination.

After the medical examination of October 10, 1989, Madonna returned to the NBI office in Baguio and there the NBI formed a team to apprehend Henry Apilo and Victor Balisi since Madonna said she can identify them and point to their place.

And so NBI agent Rolando Vergara and other NBI agents, with Madonna Saldivar, proceeded to the Balisi house in San Carlos Heights in the afternoon of October 10, 1989.

Once inside the Balisi house, Madonna Saldivar immediately saw Henry Apilo and pointed to the letter, who was thus arrested by the NBI. On the same occasion, Victor Balisi, too, was apprehended.

Thus, Henry Apilo, Victor Balisi and Rhodora Balisi were apprehended, while Joselito Balisi and Albert Balisi were invited for questioning. And all were brought to the NBI office."

Not unexpectedly, accused-appellant interposed the defense of alibi and narrated, in essence, that on the dates of the incidents, he was in Metro Manila with Victor and Lito Balisi. Thereafter, he was invited by the two to go to Canlubang, Laguna and they stayed there for one week.[7]

Having failed to persuade the trial court, appellant is now before this Court reiterating his plea of innocence.

The Issues

To secure his acquittal, accused-appellant raised the following errors alleged to have been committed by the trial court:[8]

"I

That the trial court erred in convicting the accused despite the fact that his guilt was not proven beyond reasonable doubt.

II

That the trial court erred in giving credence to the incredible and unbelievable testimony of the private complainant.

III

That the informations are null and void and do not confer jurisdiction on the trial court over the case considering that the very affidavit of the private-complainant supporting said informations is (sic) being denied as duly executed by said private-complainant."

We shall first take up the issue of the credibility of complainant and her testimony, followed by the question of sufficiency of the prosecution's evidence, and lastly, the question of whether the offended party filed a valid complaint sufficient to confer jurisdiction upon the trial court over the case.

The Court's Ruling

First Issue: Credibility of the Complainant and Her Testimony

Appellant contends that the trial court erred in giving credence to the "incredible and unbelievable" testimony of the offended party.

In particular, appellant claims that the Balisi family is not the type that would allow a member of their family, Victor Balisi, or one of their guests, herein appellant Apilo, to commit such despicable acts against a friend of Princess Balisi.[9]

Also, appellant contends that the testimony of Madonna Saldivar to the effect that "there was no blood that came from her vagina on the first time she was raped but claimed that there was blood that came out from her vagina on the second time on October 2, 1989"[10] is unbelievable, medically-speaking, as well as contrary to common human experience.

Moreover, appellant points out that "considering the changes of time concerning the knowledge of the youth regarding sex, it would not be surprising that private complainant, even to the extent of fabricating a story could narrate what really happens in an actual sexual intercourse."[11]

These "arguments" fail to persuade, consisting as they do of little else than desperate attempts at impugning the character of the complainant based on completely unfounded speculation and gratuitous conjecture.

The court a quo found the testimony of complainant Madonna Saldivar worthy of full credence:

"x x x the clear, positive, candid and natural testimony of Madonna Saldivar strikes the Court as logical, credible, consistent and convincing.

For one thing, how can a young girl like Madonna Saldivar, under 12 years of age, vividly described (sic) in detail the two occasions she was sexually abused if the sexual intercourse forced upon her by accused did not happen.

Obviously, the exhaustive details narrated by her on the witness stand could not just be the product of her imagination but were actually the unforgettable horrifying (sic) experience left imprinted in her mind. Consider the details she described about the night of October 1, 1989 x x x.

And consider, too, the details she described about the second night of October 2, 1989 x x x.

Surely, a young girl like Madonna Saldivar, if she did not go thru the traumatic sexual experience, cannot describe the details of the sexual intercourse as only in the actual act may all these be known. These matters are not ordinarily taught to Grade III pupils and are not the subject of conversation of girls her age. These details described by Madonna can only mean that indeed, she was raped twice by accused.

Her declarations has all the earmarks of truth and cannot just be concocted."

The trial court further held that "(t)he spontaneous and candid narration of Madonna", whom the court found to be "a guileless young girl who is very shy", "was not shown to have been animated by any dishonest motive in imputing rape to the accused x x x".

Conclusions as to the credibility of witnesses in rape cases lie within the sound judgment of the trial court. Time and again, this Court has said that we will not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence which the trial court over-looked, misunderstood or misappreciated and which, if properly considered, would have altered the results of the case.[12] The reason for this is that the trial judge enjoys the peculiar advantage of observing directly and at first-hand the witnesses' deportment and manner of testifying and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.[13] In any event, our perusal of the records of the case, including the transcript of stenographic notes, convinces us that the trial court's factual findings are indeed well-supported by the evidence presented and that the court a quo correctly appreciated the victim's testimony.

In regard to appellant's several other contentions, we shall endeavor to discuss them in some detail here. It is puerile for appellant to argue that the Balisi family is not the type of family that would tolerate, much less allow, a member of their family or a house guest to commit such acts of depravity inside their home. Even if we assume that appellant is right, this does not preclude the possibility that the crime did in fact occur right inside their home. The victim was raped behind locked doors in one of the rooms, hidden from the eyes of the other occupants of the house. It cannot therefore be gainsaid that the molestation could have occurred without the knowledge of the rest of the Balisi family. Incidentally, the question of the Balisi family's alleged integrity and character was never raised in the proceedings before the trial court, hence the same may not be raised for the first time in this appeal.

The presence or absence of vaginal bleeding of after the rapes does not affect the victim's credibility. As held by this Court in *People vs. Pelias Jones*,[14] that the fact that a young girl does not notice any bleeding does not negate rape where the physician positively found hymenal lacerations. In the instant case, Dr. Eileen Mae Bandonill testified that upon conducting the medical examination of complainant, she found hymenal lacerations at the 5 and 7 o'clock positions.[15] Dr. Bandonill also added that the laceration could have been caused by a male organ under normal circumstances. It is therefore of no moment whether the victim noticed any bleeding after she was raped the first time.

Appellant's contention that today's youth are more knowledgeable about sex and that complainant could have fabricated her testimony based on her knowledge of what happens during an actual sexual encounter, is completely speculative, and is readily overcome by a perusal of the testimony of the offended party. We cannot but agree completely with the trial court's observation that a young girl like the victim, under 12 years of age at the time, would not have been able to vividly describe in gory detail the sexual abuse committed upon her [(accused) "went on top of her; kissed her; touched her breasts; inserted his penis in her vagina; made his body move up and down; and consummated the sexual intercourse with a whitish sticky substance emitted by him x x x."] unless she actually underwent the traumatic experience. To our mind, it is beyond dispute that the court a quo was correct when it said that these things may only be known in the actual act, and are not ordinarily taught to Grade III pupils, nor are they the subject of conversation of girls her age.

Moreover, no improper motive could be ascribed to complainant. Clearly, she was actuated by none other than the desire to tell the truth and obtain redress for the loathsome wrongs inflicted on her. We have time and again ruled that the testimony of a rape victim is credible where she has no motive to falsely testify against the accused.

Courts usually lend credence to testimonies of young girls, especially where the facts point to their having been victims of sexual assault. Youth and immaturity are generally badges of truth and sincerity.[16] Furthermore, we have held that no woman of decent repute and unaware of the ways of the world would file a complaint for rape and publicly expose herself to shame and scandal unless that is the truth and only in redress for her defilement. Madonna's naive and candid testimony attests to her honest intention to seek justice for the shame inflicted upon her, which has permanently damaged her, psychologically and emotionally.[17]

Clutching at straws, appellant tries to make capital of the complainant's testimony that "she does not know how to read," which he alleges to be "incredible and not worthy of belief",[18] and contradicted by the offended party's teacher[19] in elementary school, who testified that "she could read." [20] However, such allegation relates to a minor detail which does not detract from the main thrust of complainant's testimony that she was raped by appellant, and which therefore cannot be given any evidentiary weight.

Reviewing the supposed inconsistencies pointed out by appellant, we are persuaded that these are not vital or significant but are only minor and inconsequential lapses which cannot affect complainant's credibility. Clearly, she could not be expected to respond with total accuracy to questions regarding the ugly incident, especially since she was still in her tender years at that time. As we have repeatedly held in many other cases, such minor errors tend to buttress rather than weaken the victim's credibility since thereby one could hardly doubt that her testimony was not contrived.[21]

Finally, still on the credibility of complainant, appellant argues that when complainant was allegedly taken to Manila, she "did not make any moved (sic) to escape nor sought help from others." [22] Appellant further ventures that complainant concocted her testimony of being forced to go to Manila with appellant because "nothing happened to her on October 1 and 2, 1989 so if she would be examined on October 3, 1989 she would still have old lacerations which may have been incurred through her sexual intercourse with other persons other than the accused." [23]

Appellant's contentions are desperate and spiteful. Accusing an 11-year-old girl of promiscuity on plain conjecture is the worst defense an appellant can submit to this Court. It is, to use the hackneyed cliches, adding insult to injury, rubbing salt on the wounds.

Complainant has persuasively explained why she did not try to escape upon being brought to the bus terminal or on boarding the bus bound for Manila. She was afraid that in the event she attempted to flee she would be brought home by appellant.[24] A girl of her age can hardly be expected to be assertive and on constant alert for every opportunity to escape. After having been subjected to such harrowing experience under pain of death, it was wisdom on her part not to provoke the appellant into doing her any further harm. Besides, a girl of tender age could easily be subdued and cowed to obey in fear.[25] It is understandable that the victim did not react to her ordeal in the well-ordered manner of an adult wise in the ways of the world and possibly also of the law. In plain words, the little girl just did not know what to do.[26]

The aforesaid tactics of appellant are not unexpected, for we note that, in spite of rigorous cross-examination of the complainant lasting five days,[27] the defense failed to dent her testimony nor elicit any significant contradiction from her. On the contrary, such cross-examination merely established more firmly the guilt of the appellant.

Second Issue: Sufficiency of Evidence to Sustain Finding of Guilt

As a rule, a victim of rape will not come out in the open and make public the offense committed on her, undergo the agony and humiliation of a public trial and endure the ordeal of testifying on all the sordid details of the crime, if she had not in fact been raped, and if her motive was not to obtain justice and her testimony as to who abused

her is not the truth. Thus, when a woman, more so if she be a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed, and if her testimony meets the test of credibility, as is true in this case, the accused may be convicted solely on the basis thereof.[28]

Well-settled is the rule that the lone testimony of the victim in the crime of rape if credible is sufficient to sustain a conviction. This is so because from the nature of the offense the only evidence that can oftentimes be offered to establish the guilt of the accused is the complainant's testimony.[29]

But in the instant case, we have not just the testimony of the rape victim, but also the results of the medical examination, and the testimony of the doctor who conducted the examination on the victim. And so the trial court concluded, and we agree, that:

"x x x it was clearly established beyond reasonable doubt by the evidence above narrated that accused Henry Apilo had carnal knowledge of Madonna Saldivar, a young girl under 12 years of age, by force and intimidation twice; the first, on the night of October 1, 1989 with accused threatening Madonna with a gun to consummate the intercourse; and the second, on the night of October 2, 1989, with accused threatening to kill Madonna while holding a knife to consummate the intercourse; both committed at the Balisi house at San Carlos Heights, Baguio City."

The trial court was also correct in holding that, even assuming *arguendo* that appellant did not resort to force and intimidation and complainant willingly consented to have sexual intercourse with him, such act would still constitute rape since she was below twelve (12) years of age at the time of the commission of the act, as evidenced by her certificate of live birth[30] which shows that she was born on May 23, 1978 and was 11 years old on the dates of the incident on October 1 and 2, 1989.[31]

Third Issue: Sufficiency of Informations

Appellant contends that the Amended Informations are null and void and did not confer jurisdiction on the trial court over the case for they were not signed by the complainant, and the due execution of the affidavits supporting said Informations had been denied by complainant in her testimony.

Appellant's contentions are wholly without merit.

Informations in criminal cases are not required to be signed by the complaining party. Section 4, Rule 110 of the Revised Rules of Court states:

"Sec. 4. Information defined. -- An information is an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court." (Underscoring supplied).

Clearly then, complainant's failure to sign the Amended Informations is of no moment as she was not required under the law to sign the same.

As to appellant's allegation that complainant purportedly denied in her testimony that she executed an affidavit-complaint to support the abovementioned Amended Informations, her testimony on cross-examination clearly reveals that she signed the affidavit-complaint charging appellant with the crime of rape and that the contents thereof were fully explained to her. She testified:

"Q

Now, Madam witness, what time, if you know, was the *sinumpaang salaysay* finished?

A

I cannot remember sir.

Q

And definitely, you signed the sinumpaang salaysay, is that correct, Madam witness?

A

Yes, sir.

Q

And that you did not read the sinumpaang salaysay, Madam witness, because you do not know how to read, Madam witness, is that correct?

A

I did not read this but it was interpreted and explained to me.

Q

And who explained to you this sinumpaang salaysay, Madam witness.

A

Atty. Vergara, sir.

Q

You believed what Atty. Vergara explained to you despite not having read (sic) this document, is that correct, Madam witness?

A

Yes, because I was the one who gave the statement, sir.

Q

Up to now, Madam witness, you do not know word by word what is contained in the sinumpaang salaysay, is that correct, Madam witness?

A

I know sir.

Q

Because it was explained to you by Atty. Vergara, is that correct?

A

Yes, sir.

Q

You signed this document, Madam witness, is that correct?

A

Yes, sir.

Q

And you affixed your thumbmark, is that correct?

A

Yes, sir.

Q

Now, do you know the reason why inspite of the fact that you were asked to sign the document, your thumbmark is (sic) still placed, is that correct, madam witness?

A

What I know is that, when I was asked to affix my signature here I was (sic) made to state if all the contents of this document is true. That is why I affixed my thumbmark.

Q

So, madam witness, you signed and affixed your thumbmark on this document because you believed that what was explained to you by Atty. Vergara was as it is written here in the document?

A

Yes, sir."[32]

From the foregoing, it is evident that appellant's contention is totally baseless.

What was denied by her was the statement in her affidavit-complaint alleging that the offense was committed only by appellant. She was insistent -- from the time of the investigation conducted by the NBI up to the reproduction of her sinumpaang salaysay into complaint-affidavit from before the prosecutor -- that Victor Balisi also raped her. Thus her refusal to acknowledge the complaint charging only the appellant of rape. She testified:

"Atty. Orate:

Q

Now, Madam witness, definitely, you do not want your case against Victor Balisi to be dropped, is that correct Madam witness?

A

Yes, sir.

x x x x x x x x

Q

Why did you agree, Madam witness, to sign this document despite the fact that you (sic) know that Victor Balisi would be dropped if really you are angry with Victor Balisi and Henry Apilo?

A

Because according to Rhodora, she has paid already the NBI the amount of P10,000.00 they told me to sign that document so, I signed it.

Q

Does Vicky or Rebecca know about that?

A

No, sir.

Q

Now, Madam witness, was it not a fact that before you sign this affidavit dated October 18, 1989, it was explained to you fully by that person with eyeglasses?

A

No, sir, it was not explained to me.

Q

Madam witness, you trust very much Atty. Vergara. Why did you not try to contract Atty. Vergara before signing this document?

A

No, I did not call (sic) anymore for Atty. Vergara because I thought it was true that Rhodora had already the NBI that amount (sic)

Q

So, are we made to understand, Madam witness, that if you are paid, you are willing to drop all your cases?

Fiscal:

Misleading, Your Honor, because he is (sic) not being paid.

Atty. Orate:

I withdraw that.

Q

Do you mean to say that if the NBI will be paid certain amount for all those people involved in this case or in that other case, you are willing to change this sinumpaang salaysay, Madam witness?

A

No, sir.

Q

Why then did you agree as in the case of Victor Balisi, Madam witness?

A

Because of the fact that Rhodora Balisi told me that they gave money to the NBI so I was forced to sign.

Q

Were you able to verify from the NBI whether that is true, Madam witness?

A

When I went to the office of the NBI, I asked if it is true that Rhodora Balisi paid that amount but they told me

‘no.’ I was very mad and said to myself I am ‘tanga’ so I signed."

Let us be very clear about one thing: the complaint at the time of her testimony was 12 years of age, barely able to comprehend the legal implications of her signing the affidavit to support the Information. In the proceedings below, Madonna did not have kith nor kin to aid her. In fact, during the preliminary investigation, she was "assisted" only by Rhodora Balisi, whose importunings and false representation (of having paid the NBI P10,000.00 so that Victor Balisi would be dropped) finally led Madonna to sign the affidavit. Perhaps, she may have thought it right, out of gratitude to the NBI who assisted her in preparing her sinumpaang salaysay and to Atty. Vergara who arrested the appellant, that if the NBI was paid for the exoneration of one of the accused, she should so act according to the terms of such arrangement. Her ignorance of the fact that criminal cases cannot be compromised, borne of her tender age, plus the pressures being applied by the adults around her, should not be taken against her. Undeniably, the intent was there: she wanted to prosecute the appellant for the crime of rape, and she had acted accordingly.

We likewise find the inquest fiscal, Elmer Sagsago, to have acted in grave abuse of discretion, in disregarding the insistent complaint of the victim that Victor Balisi also raped her. Even the trial court held:

"x x x However, the Court feels Victor Balisi should have been included in the charge of Rape in the two occasions."

Thus, we also order the conduct of preliminary investigation to ascertain if there is probable cause to warrant the filing of an Information against Victor Balisi for rape.

The trial court correctly convicted appellant of two (2) counts of rape. The indemnities under the Revised Penal Code, however, are separate and distinct from the lower court's award of P40,000.00 as moral damages for each act of rape. In line with the recent rulings of this Court,[33] there should also be civil indemnity under Article 100[34] of the Revised Penal Code, in addition to moral damages. We therefore award civil indemnity to the offended in the amount of P50,000.00 for each count of rape,[35] or a total of P100,000.00. The rationale for this increased award of P50,000.00 is explained in the case of *People vs. Escoto*:[36]

"x x x This case involves the crime of rape committed against a very young girl who has been further denied thereby of her right to grow up and discover the wonders of womanhood in the normal way. As we have heretofore declared, uncompromising judicial sanction should stem the growing tide of paraphilia that seeks the youth for its victims, leaving inevitable traumatic and psychological scars on their young and innocent lives."

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the **ADDITION** of civil indemnity of P50,000.00 for each count of rape, for a total of P100,000.00. The Department of Justice is likewise **DIRECTED** to conduct a preliminary investigation to determine if there is probable cause to file an Information for rape against Victor Balisi.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] In Criminal Cases Nos. 7129-R & 7130-R.

[2] Original Records for Criminal Case No. 7129-R, p. 18.

[3] Original Records for Criminal Case No. 7129-R, p. 36.

[4] Regional Trial Court of Baguio City, Branch 6, presided by Judge Ruben C. Ayson.

- [5] Decision, p. 9; rollo, p. 19.
- [6] Decision, pp. 2-6.
- [7] TSN, February 20, 1991, pp. 7-8.
- [8] Appellant's Brief, pp. 3-4.
- [9] Appellant's Brief, p. 10.
- [10] Ibid., p. 12.
- [11] Appellant's Brief, p. 12.
- [12] *People vs. Gapasan*, 243 SCRA 53, March 29, 1995.
- [13] *People vs. Malunes*, 247 SCRA 317, August 14, 1995; *People vs. Pablo*, 239 SCRA 500, December 28, 1994; *People vs. Abapo*, 239 SCRA 469, December 28, 1994; *People vs. Utinas*, 239 SCRA 362, December 22, 1994; *People vs. Flores*, 239 SCRA 83, December 8, 1994; *People vs. Escalante*, 238 SCRA 554, December 1, 1994; *People vs. Cuachon*, 238 SCRA 540, December 1, 1994; *People vs. Tañote*, 238 SCRA 443, November 28, 1994.
- [14] 137 SCRA 166, June 24, 1985.
- [15] TSN, September 12, 1990, p. 4; Original Records for Criminal Case No. 712-R, p. 93.
- [16] *People vs. Casil*, 241 SCRA 285, February 13, 1995, citing *People vs. Cabilao*, 210 SCRA 326, June 25, 1992 and *People vs. Abuyan, Jr.*, 211 SCRA 662, July 21, 1992.
- [17] *People vs. Bantasil*, 249 SCRA 367, October 18, 1995; *People vs. Pasco*, 181 SCRA 233, January 22, 1990; *People vs. Ramilo*, 146 SCRA 258, December 15, 1986; *People vs. Ibal*, 143 SCRA 317, July 31, 1986; *People vs. Senon, Jr.*, 121 SCRA 141, March 25, 1983; *People vs. Morales*, 94 SCRA 191, November 7, 1979; *People vs. Cawili* 65 SCRA 24 July 15, 1975; *People vs. Savellano*, 57 SCRA 320, May 31, 1974.
- [18] Appellant's Brief, p. 14.
- [19] A certain Alicia Salazar..
- [20] Appellant's Brief, p. 13.
- [21] *People vs. Ching*, 240 SCRA 267, January 19, 1995, citing *People vs. Querido*, 229 SCRA 745, February 7, 1994.
- [22] Appellant's Brief, p. 15.
- [23] Appellant's Brief, p. 16.
- [24] TSN, November 23, 1990, p. 4.
- [25] *People vs. Tayag*, 227 SCRA 169, October 12, 1993.
- [26] *People vs. Obejas*, 229 SCRA 549, January 27, 1994.
- [27] November 13, 21, 22 & 23, 1990 and January 3, 1991.
- [28] *People vs. Vitor*, 245 SCRA 392, June 27, 1995.
- [29] *People vs. Lao*, 249 SCRA 137, October 6, 1995; *People vs. Junio*, 237 SCRA 826, October 28, 1994; *People*

vs. Arce, 227 SCRA 406, October 26, 1993; People vs. Tamayo, 226 SCRA 527, September 17, 1993; People vs. De la Cruz, 224 SCRA 506, July 6, 1993; People vs. Arnan, 224 SCRA 37, June 30, 1993; People vs. Alib, 222 SCRA 517, May 24, 1993; People vs. Martinez, 219 SCRA 502, March 4, 1993; People vs. Magallanes, 218 SCRA 109, January 29, 1993.

[30] Original Records for Criminal Case 7129-R, pp. 103-104.

[31] People vs. Mangalino, 182 SCRA 329, February 15, 1990; People vs. Rebancos, 172 SCRA 425, April 18, 1989; People vs. San Buenaventura, 164 SCRA 150, August 8, 1988; People vs. Villegas Jr., 127 SCRA 195, January 30, 1984; People vs. Morales, 94 SCRA 191, November 7, 1979; People vs. Conchada, 88 SCRA 683, February 28, 1979; People vs. Celis, 35 SCRA 129, September 30, 1970.

[32] TSN, November 23, 1990, pp. 22-23.

[33] People vs. Jimmy Conte, 247 SCRA 593, August 23, 1995; People vs. Magallanes, 218 SCRA 109, January 29, 1993.

[34] "Article 100. Civil liability of a person guilty of felony. -- Every person criminally liable for a felony is also civilly liable."

[35] People vs. Padre-e, 249 SCRA 422, October 24, 1995.

[36] 229 SCRA 430, January 21, 1994.

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