PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR TORIO @ “ADONG,” ACCUSED-APPELLANT.

G.R. Nos. 132216 & 133479. November 17, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

On 22 December 1997, Salvador Torio @ "Adong" (hereafter SALVADOR) was convicted of rape in Criminal Case No. L-5516 and of attempted rape in Criminal Case No. L-5517 by the Regional Trial Court of Lingayen, Pangasinan, Branch 69.[1] Aggrieved by the trial court's judgment, SALVADOR filed a notice of appeal on 29 December 1997,[2] which this Court accepted in its resolutions of 2 September 1998[3] and 14 December 1998.[4] The antecedents follow.

For allegedly raping Racquel Castro (hereafter RACQUEL) sometime on 7 July 1991, and attempting to rape her on 18 July 1996, SALVADOR was accused in two informations filed in Criminal Case No. L-5516 and Criminal Case No. L-5517. The accusatory portions of the informations read as follows:

> Criminal Case No. L-5516:
>
> "That on or about the 7th day of July, 1991 in the morning, in barangay Namolan East, municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, by means of force and intimidation, and with the use of (a) dagger or deadly weapon, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Racquel R. Castro against her will, to her damage and prejudice.
>
> CONTRARY to Art. 335 of the Revised Penal Code."[5] (Amendments underscored)
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> Criminal Case No. L-5517:
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> "That on or about the 18th day of July 1996 in the evening, in barangay Namolan East, municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design being the stepfather of the complainant, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously drag the offended party at a place where there are shrubs, the accused having thus commenced the commission of the crime of Rape directly by overt acts but did not perform all the acts of execution which would have produced the felony by reason of some cause or accident other than accused('s) spontaneous desistance, to the damage and prejudice of Racquel R. Castro."
>
> CONTRARY to Art. 335, in relation with [sic] Art. 6, both of the Revised Penal Code.[6]

The two cases were consolidated and jointly tried. A plea of not guilty having been entered by SALVADOR in each case, trial on the merits ensued.

The evidence for the prosecution established the following facts:

At around 9:00 o'clock in the morning of 7 July 1991, 13-year old RACQUEL went with SALVADOR, the common-law husband of her mother Lydia, to Tonton, Lingayen, Pangasinan. After an hour of selling shrimps, they proceeded to the Namolan River where SALVADOR, a fisherman by profession, had moored an "alang" - a bamboo raft rigged with a hut - owned by his brother. Under the pretense that he needed his lighter, SALVADOR asked RACQUEL to get it from the "alang." The girl innocently obliged, but as she stooped to get inside the small hut, he suddenly embraced her from behind, with his right hand pointing a fan knife at her neck. When she struggled, he threatened to kill her. SALVADOR forced her to lie down and warned her not to shout. He then straddled her, removed her panty, took off his short pants and brief, and then sexually ravished her, an experience RACQUEL found extremely physically painful. After a while, SALVADOR put on his shorts, went out of the hut, and left RACQUEL crying. She later put on her panty and went home with him. Before reaching the house, he reminded her not to tell anybody about what had happened; otherwise, he would kill her.[7]

Ignoring SALVADOR's threats, RACQUEL related the incident to her mother Lydia, not once but twice, on separate days. The latter, however, simply ignored her. At that point, she was completely devastated and felt that nobody cared for her. Her father Romeo died in 1988, and any desire she had of seeking the help of her brothers, sisters, uncles and aunts was snuffed out by her mother's indifference to her plight. With SALVADOR's standing threats to kill her, she opted to suffer in silent rage[8] and finally transferred to her sister Evelyn Evangelista's house upon finishing her elementary studies in May 1992.[9]

RACQUEL peacefully lived with the spouses Cornelio and Evelyn Evangelista and their family for five years before her painful past caught up with her. As she was walking home on 18 July 1996 at about 9:00 o'clock in the evening, SALVADOR, armed with a "balisong," suddenly emerged from the bushes and grabbed her and embraced her and warned her not to shout under pain of death. Her struggle notwithstanding, SALVADOR was able to force her to lie on the grass. He went on top of her and tried to remove her pants. She continued to fight him off and managed to shout for help.[10] Fortunately, Aurora Castro and Florentina Ausena, who lived in the same barangay, heard the cries and approached the bushes. SALVADOR ran away. Aurora and Florentina recognized SALVADOR immediately, not only because the place was illuminated but also because SALVADOR was a townmate. They comforted RACQUEL and asked her what had happened. RACQUEL told them that SALVADOR tried to rape her. They then accompanied her to the house of the Evangelistas.[11]

The next day, between tears, RACQUEL related the incident to her uncles Oscar and Feliciano and aunt Lydia, all surnamed Castro. She also told them about the fate she suffered earlier at SALVADOR's hands, and explained why she did not then tell them about it.[12] Immediately thereafter, RACQUEL and Feliciano, accompanied by Barangay Captain Cesar Santiago, went to the police station in Lingayen. Upon the advice of a certain Sergeant Ferrer,[13] RACQUEL was examined by Dr. Alexis Mary Chuson, Medical Officer III of the Pangasinan Provincial Hospital, who discovered that the victim's hymen was ruptured with healed lacerations at the 1:00, 3:00, 6:00, 9:00 and 12:00 o'clock positions.[14]

SALVADOR disowned liability for both offenses. He denied raping RACQUEL in July 1991, saying that her mother never allowed her to go to the "alang."[15] This was corroborated by Lydia, RACQUEL's mother, who even denied that RACQUEL told her anything about having been abused.[16] As to the attempted rape on 18 July 1996, SALVADOR claimed that on that date, between 7:00 and 10:00 p.m., he was watching television at the house of his brother Jose, an alibi supported by Lydia and by his sister-in-law, Angelita Torio.[17] SALVADOR alleged that the criminal charges were ill-motivated. RACQUEL was prevailed upon by her brothers, sisters, uncles and aunts to fabricate the story of rape and attempted rape because they suspected him to be one of the killers of Romeo Castro, RACQUEL's father.[18]

The trial court found the testimony of RACQUEL and the other prosecution witnesses credible. It found too

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flimsy SALVADOR's defense of denial and alibi. Thus, on 22 December 1997, the trial court rendered its decision against SALVADOR and decreed as follows:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused Salvador Torio @ Adong guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. L-5516 and of the crime of Attempted Rape in Criminal Case No. L-5517.
>
> Accordingly, he is hereby sentenced to suffer the penalty of Reclusion Perpetua in Criminal Case No. L-5516 for Rape and to pay the complainant P50,000.00 as moral damages; and, the penalty of two (2) years, four (4) months and one (1) day of Prision Correccional as minimum to six (6) years and one (1) day of Prision Mayor as maximum in Criminal Case No. L-5517 and to pay the complainant P20,000.00 as moral damages and the costs.
>
> SO ORDERED.

In his appeal, SALVADOR raises issues mainly revolving around the delay in the filing of the rape charges against him, the alleged impossibility of committing the rape inside the "alang," the credibility of RACQUEL's testimony, and the plausibility of his denial and alibi.

We find no cogent reason to reverse the assailed judgment of the trial court.

In the first place, it is not accurate to say that it took RACQUEL five years to disclose to relatives and to the authorities the violations on her honor. Throwing caution to the wind, she immediately reported to her mother what SALVADOR had done to her on 7 July 1991; she even repeated her story the following day. Her mother Lydia, however, refused to believe her, so she just kept to herself and cried.[19] She considered confiding to her siblings, uncles and teacher, but thought against it when she remembered SALVADOR's threats. Moreover, if her own mother was indifferent, how could she expect anyone else to sympathize with her?[20] Her failure to recount the unfortunate incident at once, far from impairing her credibility, bolstered it, because it is not uncommon for young girls to vacillate in such instances when threatened by their ravisher, more so when the latter is a housemate. Besides, this Court held in the case of People v. Manggasin,[21] that even a delay of eight years is permissible.

Secondly, SALVADOR's argument that it is impossible to commit a rape in a small hut is untenable. We have held in a number of cases[22] that lust is no respecter of time and place. It is not impossible to perpetrate a rape even in a small room.

Regarding RACQUEL's alleged admission that she had never gone to the "alang" with SALVADOR, an examination of the transcript of stenographic notes reveals that, indeed, she said so, while being cross-examined.[23] She also testified, however, that she went there with SALVADOR after selling shrimps in the market.[24] We agree with the trial court that her statements during direct examination, taken with the other evidence, support the prosecution's version of the fateful incident. The maxim "'falsus in uno, falsus in omnibus" deals only with the weight of evidence and is not a positive rule of law; the rule is not an inflexible one of universal application. Modern trend in jurisprudence favors more flexibility when the testimony of a witness may be partly believed and partially disbelieved, depending on the corroborative evidence presented at the trial. Thus, where the challenged testimony is sufficiently corroborated in its material points, or where the mistakes arise from innocent lapses and not from an apparent desire to pervert the truth, the rule may be relaxed. It is a rule that is neither absolute nor mandatory and binding upon the court, which may accept or reject portions of the witness' testimony based on its inherent credibility or on the corroborative evidence in the case.[25]

Moving on to SALVADOR's defense of alibi in Criminal Case No. L-5517, we have time and again held to the point of triteness that for such a defense to prosper, the accused must not only prove his presence at another place

at the time of the commission of the offense but must also demonstrate that it was physically impossible for him to be at the scene of the crime at the time. It is not enough for him to be somewhere else when the crime transpired. He must also establish by compelling evidence that he was so far away that it was not possible for him to be physically present at the crime scene or its immediate vicinity during the assault.[26] In the case at bar, SALVADOR failed to convincingly show that the place where he claimed he was at the time of the attempted rape was so remote that it was impossible for him to be at the scene of the crime at the time the crime was committed. In any event, his defense of alibi cannot overcome his positive identification by three witnesses, namely, RACQUEL, Aurora Castro, and Florentina Ausena, all of whom had no improper motive to falsely testify against him.

In Criminal Case No. L-5516, the crime was committed on 7 July 1991, or before the enactment of R.A. No. 7659.[27] The governing law was Article 335 of the Revised Penal Code which imposed the penalty of reclusion perpetua to death, if committed with the use of a deadly weapon, as alleged in the Information in Criminal Case No. L-5516. However, at the time of its commission, the imposition of the death penalty was prohibited pursuant to Section 19(1) of Article III of the Constitution. Hence, the penalty of reclusion perpetua imposed by the trial court is correct.

The Court notes, however, that in Criminal Case No. L-5516 the trial court did not award any civil indemnity for rape or indemnity ex delicto. This must accordingly be corrected, in keeping with our pronouncement in People v. Atop[28] and People v. Caballes,[29] among other cases. The amount of P50,000 for indemnity is thus awarded to RACQUEL.

This Court agrees with the trial court that in Criminal Case No. L-5517, attempted rape was committed and SALVADOR's guilt was proved beyond reasonable doubt. He had commenced the commission of the crime of rape directly by overt acts, namely, by grabbing RACQUEL, embracing her, forcing her to lie on the grass, going on top of her and removing her pants - evidently with intent to have carnal knowledge of her against her will - but he failed to perform all the acts of execution which would have produced the crime of rape, not because of his spontaneous desistance[30] but by the timely arrival of Aurora Castro and Florentina Ausena who heard RACQUEL's cries for help.

The governing law when the attempted rape in Criminal Case No. L-5517 was committed is Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. The Information in Criminal Case No. L-5517 alleges that SALVADOR is the stepfather of RACQUEL. This circumstance of relationship when coupled with the minority of the victim, i.e., if the latter is below 18 years of age, is a special qualifying circumstance under said governing law which, therefore, makes mandatory the imposition of the death penalty in the consummated felony of rape. Fortunately for SALVADOR, he is not a stepfather of RACQUEL because he is only the common-law spouse of RACQUEL's mother. The relationship of stepfather presupposes a legitimate relationship. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[31] While the fact of being "the common-law spouse of the parent of a victim," if coupled with the minority of the victim is a special qualifying circumstance under R.A. No. 7659, neither is this alleged in the Information. Moreover, the victim was already above 18 years old when the attempted rape was committed. She was born on 13 May 1978.[32]

Therefore, the penalty to be reckoned with in determining the penalty for attempted rape in Civil Case No. L-5517 would be reclusion perpetua, the penalty prescribed for simple rape under Article 335, as amended by R.A. No. 7659. Pursuant then to Article 51 of the Revised Penal Code, the imposable penalty for the attempted rape in Criminal Case No. L-5517 is prision mayor, which is two degrees lower than reclusion perpetua. There being no modifying circumstance duly proven, the penalty of prision mayor may be imposed in its medium period.[33]

Since SALVADOR is entitled to the benefits of Indeterminate Sentence Law, an indeterminate penalty whose minimum shall be within the range of prision correccional, the penalty next lower to prision mayor, and whose maximum shall be the medium of the latter may be properly imposed on SALVADOR. The penalty imposed by the trial court in Criminal Case No. L-5517 is two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum. The maximum period is not correct since six (6) years and one (1) day falls within the minimum period of prision mayor. The maximum should be within the duration of prision mayor medium, to wit: eight (8) years and one (1) day to ten (10) years; and eight (8) years and one (1) day would be appropriate.

WHEREFORE, the assailed decision of 22 December 1997 in Criminal Case Nos. L-5516 and L-5517 finding accused-appellant SALVADOR TORIO @ "Adong" guilty beyond reasonable doubt of the crimes of rape and attempted rape, respectively, is AFFIRMED with the MODIFICATIONS that in Criminal Case No. L-5516, accused-appellant is further ORDERED to PAY Racquel Castro the sum of P50,000 as indemnity ex delicto, in addition to the moral damages of P50,000 awarded by the trial court, and in Criminal Case No. L-5517, the penalty should be an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of prision correccional medium as minimum to eight (8) years and one (1) day of prision mayor medium as maximum.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] OR, 92-101; Rollo (G.R. No. 132216), 26-35; (G.R. No. 133479), 27-36. Per Judge Emilio V. Angeles.

[2] Rollo (G.R. No. 132216), 36; (G.R. No. 133479), 37.

[3] Id., (G.R. No. 132216), 41.

[4] Id., (G.R. No. 133479), 42.

[5] Amended Information dated 10 June 1997; Rollo (G.R. No. 132216), 11.

[6] Information dated 5 September 1996; Rollo (G.R. No. 133479), 11-12.

[7] TSN, 9 July 1997, 3-14.

[8] Ibid., 15-16.

[9] TSN, 30 July 1997, 8-9, 14-17. SALVADOR, however, claimed that Racquel left only in 1994 to take care of the children of her sister Myrna, per TSN, 15 October 1997, 7.

[10] TSN, 9 July 1997, 17-20.

[11] TSN, 3 September 1997, 2-7; 19 November 1997, 2-7.

[12] TSN, 10 September 1997, 5-6.

[13] Ibid., 5-8.

[14] TSN, 9 July 1997, 3-6; Exhibit "A."

[15] TSN, 15 October 1997, 8.

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[16] Ibid., 20; 14 October 1997, 13-14, 25.

[17] TSN, 8 October 1997, 3-6; 14 October 1997, 15-18; 15 October 1997, 8; 21 October 1997, 12, 14-15.

[18] TSN, 14 October 1997, 11.

[19] TSN, 9 July 1997, 15 and 16.

[20] TSN, 18 August 1997, 33-34.

[21] G.R. No. 130599-600,

[22] For example, People v. Agbayani, 284 SCRA 315 [1998] and People v. Manuel, 236 SCRA 545 [1994].

[23] TSN, 30 July 1997, 7-8.

[24] TSN, 9 July 1997, 5-6.

[25] II FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 687 (7th Revised Ed., 1995).

[26] See People v. Alshaika, 261 SCRA 637 [1996]; People v. Maqueda, 242 SCRA 565 [1995].

[27] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for the Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes, which was approved on 13 December 1993.

[28] 286 SCRA 157 [1998].

[29] 274 SCRA 83 [1997].

[30] Article 6 Revised Penal Code.

[31] People vs. Dimapilis, G.R. Nos. 128619-21, 17 December 1998; People vs. Abundio Tolentino, G.R. No. 130514, June 1999.

[32] TSN, 9 July 1997, 4.

[33] Article 64, Revised Penal Code.

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