

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN JABIEN, ACCUSED-APPELLANT.

G.R. Nos. 133068-69. May 31, 2000

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PER CURIAM:

This is an automatic review of the decision[1] of the Regional Trial Court, Branch 19, Cagayan de Oro City[2] convicting accused-appellant, Efren Jabien, of two counts of rape committed against his minor daughter, Emie Jabien, and imposing on him two death penalties. The informations aver:

CRIM. CASE NO. 98-06

"That sometime in April 1997 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, under eighteen (18) years old, against her will." [3]

CRIM. CASE NO. 98-07

"That sometime in December 1995 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, a minor aged eleven (11) years old only, against her will." [4]

CRIM. CASE NO. 98-08

"That sometime in OCTOBER 1996 at Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the private offended party, Emie Jabien y Pacala, his daughter, under eighteen (18) years old, against her will." [5]

Atty. Manuel Felicia of the Public Attorney's Office (PAO) assisted the accused during the arraignment on January 20, 1998. He pled guilty to Criminal Cases Nos. 98-06 and 98-07. He entered a not guilty plea in Criminal Case No. 98-08.

Despite his plea of guilt in Criminal Cases Nos. 98-06 and 98-07, the trial court required the prosecution to present its evidence. The prosecution evidence showed that Emie was the youngest among nine (9) children of Efren Jabien and Amadia Pacala. She was born on January 4, 1984. Her misery started sometime in December 1995 when she was only eleven (11) years old.

At about 10:00 P.M., while Emie was reading the bible at the upper part of their house at Sitio Sili, Tignapoloan, Cagayan de Oro City, her father joined her and read to her Psalm 121. [6] After reading the bible, Emie turned out the lamp inside her room and went to sleep. While drifting off to sleep, her father returned and warned her, "Mei, do not make any noise because if you will make any noise something evil will happen to all of you." [7] He then removed her skirt and put himself on top of her. He held up her arms and pressed his thighs against her thighs.

Emie tried to extricate herself but her father proved too strong for her. He forcefully went inside her. He executed push and pull movements with his pelvis. His thrust inside her caused excruciating pain which she felt all over her body.[8]

The accused ravished Emie for three (3) to four (4) minutes. While performing his bestial act, Emie saw him laughing while saliva dripped from his mouth. After satisfying his lust, he told her that he just wanted both of them to be happy. Emie cried the whole night after her father left.

Emie felt very weak the next morning. The pain all over her body remained. She had difficulty working. She saw blood on the panty she wore that night. Her mother observed her condition but thought that this was due to menstruation. Emie did not say anything. She did not tell her mother about the incident for fear of the threats made by her father.[9]

After the first incident, the accused molested Emie everyday for a week. After the first week, he defiled her in the same place about three (3) to four (4) times a week. This sexual abuse lasted from December 1995 to October 1996. It stopped momentarily when Emie left to live with her aunt, Arlene Damalan, at Centro Tignapoloan, Cagayan de Oro City. This was prompted by her enrolment in grade six at the Tignapoloan Elementary School. Sadly, her respite lasted only for a month.[10]

One afternoon in the first week of December 1996, she returned to her parents who changed residence near Centro Tignapoloan. They transferred to the house of a certain Alex Abalde. Upon arriving in their new home, she learned about the frequent quarrels of her parents as her father did not consent to Emie's stay at the house of Damalan. Esm

In that fateful night, Emie and her parents slept in the same room. Her mother was in the middle while Emie slept by her right side. When her mother was asleep, the accused crawled toward her and, in the words of Emie, "[t]he same thing happened [like] the first rape, he held my two (2) arms and pressed his two (2) thighs on my thighs." [11] Her mother did not wake up and neither did Emie wake her up. She was prevented by the evil that the accused forewarned would happen if Emie made any noise. During their stay at the house of Abalde, the accused violated her three (3) to four (4) times a week.[12]

After Emie graduated from elementary school on March 21, 1997, her family returned to Sitio Sili. They lived in a different house. The accused did not immediately join them as he attended a religious seminar at the Poblacion of Tignapoloan for a week. During this time, Emie realized that she was pregnant. When the accused came home and discovered her pregnancy, he told her that he would abort the child.[13]

The accused apparently changed his mind regarding the fate of the child. In April 1997, he approached Emie while they were tending their farm. He told her that if someone inquires about the father of her child, she should say that she was raped and that she does not know the identity of her rapist because he wore a mask.

Her mother noticed Emie's bulging stomach and suspected that she had a tumor. The accused suggested that he massage Emie which he did later that night. At dawn, he repeated massaging her stomach while his wife prepared their breakfast below their house. In the process, accused pulled down Emie's skirt and penetrated her for about two (2) minutes. When his wife joined them, he pretended massaging Emie and told his wife that Emie was raped by a masked man.[14]

Emie's parents took her to Tablon, Cagayan de Oro City to relay the rape to her aunt, Amada Jabien. Amada confirmed that Emie was pregnant. Bernie Jabien, a brother of Emie, suggested that Emie seek the assistance of the Department of Social Work and Development (DSWD) in the delivery of her baby.

In July 1997, Rosita Jabien, Emie's sister-in-law, accompanied her to the DSWD. Before proceeding to the DSWD, her sister Judith, and her mother told Emie that she should not divulge the identity of the person who raped her because he already changed for the better.

Daisy Barbiera, a social worker, admitted Emie in the DSWD office at Macanhan, Cagayan de Oro City. When she asked Emie about the person who raped her, Emie replied that she does not know her rapist. On August 1, 1997, Emie gave birth to a cephalic baby boy who was named Lowie Pacala Jabien.

In a case conference at the DSWD on August 14, 1997, Emie's mother, Amadia, came to assist her. Barbiera suggested to Amadia that they blotter the rape incident but Amadia disagreed explaining that the man who raped Emie has reformed and was serving the church. Barbiera perceived that Amadia knew Emie's rapist all along. She confronted Amadia but the latter only cried. She confirmed that she knew who molested Emie but refused to reveal his identity. Thus, Barbiera questioned Emie in a separate room. She learned that it was the accused who violated Emie.[15]

After the case conference, Amadia frequently visited Emie to dissuade her from filing a case. On August 18 and August 22, 1997, Amadia admitted to Barbiera that the accused molested Emie. She also tried to convince Barbiera not to pursue the case as the accused has changed and was active in church activities. Barbiera made handwritten reports[16] about these visits. The accused also went twice to the DSWD and admitted that he raped Emie.[17]

On September 15, 1997, Emie executed a sworn statement[18] at the National Bureau of Investigation, Cagayan de Oro City against the accused. On September 22, 1997 Amadia handed Barbiera a letter.[19] It came from the accused and it read:

"Mam:

"I am requesting information with due respect to your office as to the status of Emie. Whether you have already filed a case against me so that I could then voluntarily surrender.

"But if none yet, I am willing to be under the custody of the NBI this city...

"I also would like to request that this matter will not be aired as my family and its descendants is pitiful, whether true or not.

"I am thankful for your good treatment of Emie so with your assistance for the speedy trial of the case.

"xxx.

"P.S.

"Hopefully, with God's help the child will be given good future."[20]

A week after, Barbiera received an undated letter,[21] also from accused. It read:

"Allow me to disturb you in your works with this last letter. Thank you for being successful in guiding Emie. I would accept this with humility for this is my fate and my way to the truth that God wanted me to follow.

"Just help me to have a speedy trial of the case so judgment would be rendered by the Court.

"But even then I am not hurt with what happened to me, with the hope that all of us will die of sin before going back to our Heavenly Father.

"It is wonderful for a man to know of his death. Because he has still the chance to ponder upon the seven last words which the Lord shouted to forgive the repentant sinners that know him.

"But then I am making use of the few days left to endeavor for my obligations to my family, with the intention that when I leave they could finish their studies this year."

Subsequently, Amadia informed the DSWD that the accused surrendered to the authorities on January 4, 1998.[22]

The accused did not present any evidence. Kyle

On February 16, 1998, the trial court rendered its judgment[23] the dispositive portion of which reads:

"WHEREFORE, ACCUSED Efren Jabien is hereby found guilty beyond reasonable doubt of raping his own legitimate daughter when she was between 11 and 13 years of age, and siring a son by her as a consequence. He is hereby sentenced to suffer double deaths for the two (2) rapes, to indemnify Emie Jabien P50,000.00 for each of said rapes, and to pay the costs of the case."[24]

In this automatic review, accused-appellant assigns a single error, that:

"THE COURT A QUO GRAVE (sic) ERRED IN ACCEPTING ACCUSED-APPELLANT'S IMPROVIDENT PLEA OF GUILTY TO A CAPITAL OFFENSE AND IN FAILING TO CONDUCT A SEARCHING INQUIRY TO DETERMINE WHETHER THE ACCUSED-APPELLANT FULLY UNDERSTOOD THE CONSEQUENCES OF HIS PLEA."

The accused-appellant contends that the trial court failed to inform him of the consequences of his guilty plea. No searching inquiry was conducted regarding the voluntariness, full comprehension, as well as the possible repercussion of his plea. It also failed to ask "verifying questions" to ascertain whether or not he fully understood his answers. He argued that the number and character of the questions propounded to him, after he entered his plea, were too sparse as to qualify as searching inquiry.

Section 3, Rule 116 of the Rules of Court provides the procedure that the trial court should follow when an accused pleads guilty to a capital offense. The court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. This rule incorporates this Court's holdings ever since the case of *People vs. Apduhan, Jr.*[25] It is mandatory. It requires the judge to do the following, viz: (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea; (2) to require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and (3) to inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he so desires.[26] Courts must proceed with more care where the possible punishment is in its severest form-death-for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose then is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance, and consequences of his plea.[27] The procedure also helps this Court fulfill its duty of reviewing death sentences.[28]

In the case at bar, we rule that the trial court was not remiss in its duty to conduct a searching inquiry. After accused-appellant pled guilty, the following transpired:

"COURT: (To the accused).

Q You pleaded guilty to the first two charges, and you pleaded not guilty to the third one. You have done that freely?

A Yes.

Q These are all voluntary pleas (sic), nobody coerced you?

A It is on my own volition.

Q And you understand completely these three charges?

A Yes.

Q Do you know the penalty that will be imposed upon you?

A Yes, death penalty.

Q Are you ready to die?

A If my daughter will accuse me, then I am ready to die even now.

Q Why did you not plea (sic) guilty to the third offense?

A I was not in that place at that time.

Q Do you understand that since you did not plea (sic) guilty to the one charge, of course you will not die twice? (sic)

A

Even if three death penalties will be imposed upon me that will be followed. (sic)

INTERPRETER: (To the accused).

Q What is your educational attainment?

A Elementary graduate.

Q Can you read?

A In biasayan (sic) dialect.

ASST. FISCAL DAMASING: (To the Court).

May I manifest on record Your Honor, that upon arrival of the father of the victim, the victim cried.

"x x x x x x x x"[29]

The order of the trial court recited that:

"All of the three cases against Efren Jabien were called this morning and he was represented by Atty. Manuel Felicia of the PAO. Upon arraignment, he pleaded guilty to the first two cases, namely: criminal case No. 98-06 and 98-07, but entered a plea of not guilty to the third case which is criminal case No. 98-08. The Court queried him thereafter, if his pleas were not influenced from outside, and he said that they were not, he having not been coerced to do so. Considering that this is one of the most serious offenses in the books, and if found guilty, accused would be meted out the death penalty, accused was again asked by the Court if he understood his pleas and he said, yes. And when he was asked about the imposable penalty, he said, it is death. When asked further, he answered that he is ready to die even now.

"The Court, pursuant to the existing rule, addressed the prosecution and defense to chose (sic) the dates for the

reception of the evidence of the prosecution to substantiate the accused's plea of guilty. xxx.

"Meanwhile, the trial of the third case, namely: criminal case No 98-08 is held in abeyance." [30]

We agree with the trial court and the Solicitor General that accused-appellant was neither coerced nor intimidated in entering his plea of guilty to the charge that he raped his minor daughter. [31] Significantly, accused-appellant even pled not guilty to one of the charges of rape on the pretext that he was not present at the scene during that time. This shows the voluntariness of his plea and that it was based on a free and informed judgment. He understood the consequences of his plea and was aware that he will be meted the death penalty.

To be sure, accused-appellant did not only give an informed plea of guilt. His guilt was proved by the evidence presented by the prosecution. In *People vs. Derilo* [32] we held:

"While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand the case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner on which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on evidence proving the commission by the accused of the offense charged.

"Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction. As already observed, the prosecution had already rested when appellant decided to change his plea. The prosecution then had all the opportunity to verify the material allegations in the information... (Underscoring supplied). [33]

In *People vs. Tahop* [34] we also ruled that "even if [the] accused [s] xxx plea was improvidently made, if the evidence presented thereafter by the prosecution is sufficient to prove his guilt beyond reasonable doubt, the court's verdict of guilt based solely on the hard evidence presented can be sustained. At this point then, the improvidence of the plea of guilt is irrelevant."

In the case at bar, there is overwhelming evidence that established the guilt of accused-appellant. The testimony of Emie is clear and convincing. It contains the horrid details of her deflowerment and the frequent sexual assaults by her father. We do not find any circumstance to disbelieve her testimony. Indeed, accused-appellant admitted his guilt in his letters to Barbiera.

The rapes to which accused-appellant pled guilty and which were proven by the prosecution were committed sometime in December 1995 and April 1997. Rape was then punished under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659. It provides, among others, that the death penalty shall be imposed if the crime of rape was committed when the victim was under eighteen (18) years of age and the offender is a parent.

Although the plea of guilt of the accused-appellant may be taken as a mitigating circumstance, the same will not affect the imposable penalty. In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. [35]

The award of civil indemnity should be increased from P50,000.00 to P75,000.00 for each rape. [36] Accused-appellant should also pay the victim the sum of P50,000.00 as moral damages for each rape. This requires no further pleading or proof. [37]

Four justices continue to maintain that Republic Act No. 7659, insofar as it imposes the death penalty, is

unconstitutional. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

In view whereof, the decision in Criminal Cases Nos. 98-06 and 98-07 convicting Efren Jabien of the crime of qualified rape and imposing upon him two death penalties is affirmed with modification that, for each rape, accused-appellant is ordered to pay P75,000.00 as civil indemnity and P50,000.00 as moral damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Davide, Jr., C.J., on official leave.

Panganiban, Quisumbing, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

[1] Criminal Cases Nos. 98-06 and 98-07.

[2] Presided by Judge Anthony E. Santos.

[3] Records, p. 1.

[4] Ibid., p. 8.

[5] Ibid., p. 18.

[6] I lift my eyes to the hills. From whence does my help come? My help comes from the Lord, who made heaven and earth.

He will not let your foot be moved, he who keeps you will not slumber. Behold, he who keeps Israel will neither slumber nor sleep.

The Lord is your keeper; the Lord is your shade on your right hand. The sun shall not smite you by day, nor the moon by night.

The Lord will keep you from all evil; he will keep your life. The Lord will keep your going out and your coming in from this time forth and for evermore.

[7] TSN, February 3, 1998, p. 14.

[8] Ibid., pp. 10-18.

[9] Ibid., p. 19.

[10] Ibid., p. 21.

[11] Ibid., p. 25.

[12] Ibid., pp. 22-26.

[13] Ibid., pp. 26-27.

[14] Ibid., pp. 27-28.

[15] Ibid., pp. 32-35.

[16] Exhibits "B" and "C"; Records, pp. 97-98.

[17] TSN, January 27, 1998, pp. 5-6.

[18] Exhibit "G"; Records, p. 14.

[19] Exhibit "D"; Records, p. 101. The letter was written in the Cebuano dialect.

[20] Translation of exhibit "D" marked as Exhibit "D-1"; Records, p. 102.

- [21] Exhibit "E"; records, p. 103. It was also in the Cebuano dialect.
- [22] TSN, January 27, 1998. p. 10.
- [23] Records, p. 250.
- [24] Ibid., p. 7; p. 256.
- [25] 24 SCRA 798 (1968).
- [26] People vs. Camay, 152 SCRA 401 (1987); People vs. Dayot, 187 SCRA 637 (1990).
- [27] People vs. Albert, 251 SCRA 136 (1995), citing People vs. Gonzaga, 127 SCRA 158 (1984); People vs. Havana, 199 SCRA 805 (1991).
- [28] People vs. Villacores, 97 SCRA 567 (1980); See People vs. de Luna, 174 SCRA 204 (1989).
- [29] TSN, January 19, 1998, pp. 3-5.
- [30] Records, p. 35.
- [31] Brief for the Appellee, p. 16.
- [32] 271 SCRA 633 (1997).
- [33] Rollo, pp. 72-73.
- [34] G.R. No. 125330, September 29, 1999.
- [35] Revised Penal Code, Article 63.
- [36] People vs. Victor, 292 SCRA 186 (1998).
- [37] People vs. Prades, 293 SCRA 411 (1998).

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