

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PERLITO TONYACAO, APPELLANT.

G.R. Nos. 134531-32. July 07, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us on automatic review is the Joint Decision,[1] dated October 24, 1997, of the Regional Trial Court (Branch 30), Basey, Samar (RTC for brevity) in Criminal Cases Nos. 96-2117 and 96-2118, finding appellant Perlito Tonyacao guilty beyond reasonable doubt of two counts of qualified rape and sentencing him to death for each offense.

The Information in Criminal Case No. 96-2117 reads as follows:

That on or about the 25[th] day of November, 1995, at about noontime, in Sitio Cancosep,[2] Brgy. Navatas, Daku, Municipality of Talalora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, GENELITA[3] TONYACAO, his step-daughter, against her consent and will.

CONTRARY TO LAW.[4] (Emphasis supplied)

The Information in Criminal Case No. 96-2118 reads:

That on or about the 25[th] day of November, 1995, at about nighttime, in Sitio Cancosep, Barangay Navatas, Daku, Municipality of Talalora, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, armed with a jungle bolo, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously had carnal knowledge with the complainant, GENELITA TONYACAO, his step-daughter, against her consent and will.

CONTRARY TO LAW.[5]

When arraigned on June 10, 1996, appellant, assisted by counsel de officio, pleaded guilty to the crimes charged. Appellant was asked in open court whether he knew that the possible penalty for both crimes is death and he answered in the affirmative. The prosecution was then ordered to adduce evidence and a joint trial of the cases ensued.[6]

Based on the evidence of the prosecution consisting of the testimonies of private complainant, Genelita Tonyacao and Dr. Rufina Lynor Barrot, the examining physician, the following facts are established:

Genelita is the 16-year old daughter of Felicidad Asoy Tonyacao, the common-law wife of appellant. At around noontime of November 25, 1995, while Genelita was gathering coconuts at Sitio Cancosep, Brgy. Navatas, Daku, Talalora, Samar, appellant suddenly placed himself behind her and pointed a bolo at the left side of her neck. Appellant demanded that Genelita obey his demands otherwise he will kill her and other members of her family. Appellant then struck Genelita with his elbow which caused her to fall to the ground. Genelita was ordered to lie

on her back. Appellant again threatened to kill her and her family. Appellant then stripped Genelita of her shorts and panty. After appellant removed his shorts and brief, he pressed himself on top of Genelita and inserted his penis into her vagina which caused her intense pain. Genelita cried in pain and she was scared because appellant poked the jungle bolo at her neck. Several minutes later, Genelita felt and saw a sticky white liquid in her vagina and appellant's penis. His beastly act done, appellant ordered Genelita to put on her panty and shorts. Appellant then directed Genelita to cook food. But Genelita kept on crying so appellant reiterated his threat to kill her and every member of her family if Genelita tells her mother about the incident. Silenced, appellant and Genelita went to the seashore where she cooked food. They stayed there until 4:00 in the afternoon when they went back home. At home, Genelita did not tell her mother about the rape incident as she was scared of the appellant who was nearby.[7]

Later in the evening of the same day when all the members of the family were asleep, Genelita was awakened by appellant. Appellant held a bolo in his hand and threatened to kill her and her family if she does not do what appellant says. Appellant removed Genelita's maong shorts and panty. Then appellant inserted his penis into her vagina. Again, Genelita just cried because she was scared. Several minutes later, appellant took his penis out. Genelita did not tell her mother of what happened because she was scared because appellant was always watching her.[8]

Three weeks later, or on December 17, 1995, Genelita was confronted by her mother. Apparently, appellant told Genelita's mother of what he had done in the course of one of their fights. Initially, Genelita did not say anything to her mother because of appellant's persistent threats to kill her and her family if she would report the incidents to anyone, but upon the intense inquiry of her mother, Genelita revealed that appellant raped her twice on November 25, 1995. On the same day, Genelita and her mother reported the matter to the Talalora Police Station. On December 18, 1995, Genelita submitted herself to a medical examination.[9]

Dr. Rufina Lynor Barrot, OB-GYNE, Department of the Eastern Visayas Regional Medical Center, Tacloban City, conducted the medico-legal examination[10] on Genelita and reported the following findings: (a) the hymen had old lacerations at 12 o'clock, 5 o'clock and 9 o'clock positions; (b) the hymen was ruptured or lacerated which had been caused by an insertion into her vaginal canal; (c) the cervix is pinkish, small, and closed with scanty whitish watery substance; and, (d) the uterus is small and negative of spermatozoa due to the fact the same could only live in the vaginal canal for seventy-two hours.[11]

After the prosecution rested its case, the defense presented its only witness in the person of appellant.

In stark contrast to the clear and categorical declarations of Genelita, appellant claims that he had a love affair with her and consensual sexual intercourse occurred between them on November 25, 1995. He testified as follows: At around noontime of November 25, 1995, he and Genelita agreed to have sexual intercourse; at that time, Genelita's mother and brother were in a hut about sixty meters away; Genelita suggested that they had sexual intercourse as her mother could no longer bear children; he refused as her common-law wife might discover it and file a case against him; notwithstanding his refusal, he and Genelita eventually engaged in sexual intercourse on a wooden floor near a coconut trunk for about four minutes; in the evening of November 25, 1995, he and Genelita had sexual intercourse again inside a nipa hut which lasted for almost an hour; and, a love affair started on July 1994 and lasted up to December 1995 when his common-law wife discovered it.[12]

On October 24, 1997, the RTC rendered its decision finding appellant guilty beyond reasonable doubt of the crimes charged. The dispositive part of the decision reads as follows:

IN VIEW OF THE FOREGOING, the Court finds the accused Perlito Tonyacao guilty beyond reasonable doubt of having raped his common-law stepdaughter on both Informations; and pursuant to Sec. 11 of

RA#7659 he is hereby sentenced to suffer the penalty of two (2) death sentences; and to indemnify the herein complainant Jenelita Tonyacao the amount of P100,000.00, as well as the costs of these cases.[13]

The case is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended. In his Brief, appellant submits for our consideration the following assignment of error:

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.[14]

Appellant argues that the quantum of proof for his conviction has not been met by the prosecution's evidence. Appellant claims that Genelita's testimony, on which the prosecution's evidence is mainly anchored, is of doubtful credibility for the reasons that: (a) if indeed she was raped, Genelita never shouted, used her arms and legs or offered the slightest resistance; (b) her actuation after the alleged first rape, when she cooked food for appellant, belies a person claiming to have been sexually abused; (c) Genelita testified on re-direct examination that during the first alleged rape appellant poked the bolo with his left hand towards the left side of Genelita's neck which is physically impossible; (d) during the alleged second rape, it is unbelievable that not one among her mother, brothers and sister were roused from their slumber although they were sleeping just beside her; and, (e) Genelita failed to immediately recount her ordeal to her mother.

An appeal in a criminal case, especially one in which the death penalty has been imposed, opens the entire case for review on any question including one not raised by the parties.[15] Thus, before we resolve the love assigned error of the RTC, we must conduct a thorough examination of the entire records of the case.

Prefatorily, we note that the RTC did not strictly observe the guidelines for a plea of guilt to a capital offense as required by Section 3, Rule 116 of the Revised Rules of Criminal Procedure. Under said Rule, when a plea of guilty to a capital offense is entered, the trial court is duty bound to: (a) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (b) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (c) inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he so desires.

The *raison d'être* behind the rule is that courts must proceed with caution where the punishable penalty is 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.[16] Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea.[17] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[18]

In the present cases, when appellant entered a plea of guilty to the crimes charged, he was simply asked in open court whether he knew that the possible penalty for both crimes is death and when he answered in the affirmative the RTC immediately directed the prosecution to adduce evidence on appellant's culpability.[19] We have repeatedly held that a mere warning that the accused faces the supreme penalty of death is insufficient.[20] Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry", as follows:

- Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

- Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
- Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
- Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.
- Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.
- All questions posed to the accused should be in a language known and understood by the latter.
- The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[21]

Clearly in these cases, the RTC failed to conduct a “searching inquiry” into the voluntariness of the appellant’s plea of guilt and full comprehension thereof. The plea of guilty of the appellant was improvident; hence, inefficacious.

Nevertheless, we find that the prosecution’s evidence is sufficient to sustain the judgment of conviction independently of the plea of guilt.

In rape cases, certain well-established principles and precepts are controlling, to wit: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[22]

Consequently, in rape cases the trial court is confronted, almost invariably, with the question of whom to believe – the word of the complainant or that of the accused. The task of ferreting the truth from the conflicting claims of witnesses obviously falls squarely on the trial court which must come face to face with the witnesses and observe their demeanor at the stand. It stands to reason that great reliance is placed by the appellate court on the assessment made by the trial court on the credibility of the witness.[23] The present cases are no exception for, after an exhaustive evaluation of the extant records, we find no cogent reason to depart from the rule.

We are convinced of Genelita’s credibility. She spoke in a manner reflective of honest and unrehearsed testimony. She cried when she testified; her tears added poignancy to verity born out of human nature and experience.[24] She remained steadfast and never wavered in her assertion that appellant forced her to have sexual intercourse with him during the occasions alleged, despite the intense grilling, and often confounding questions, by defense counsel on cross-examination. The rule is that when a rape victim’s testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[25]

Enlightening are the following excerpts from her candid and unequivocal testimony which we quote verbatim:

Q: Can you recall if there was anything unusual or fearful incident which happened on that noontime?

A: Yes, there was.

Q: What was it?

A: He threatened me and he had a bolo with him.

Q: And what did he say when he threatened you?

A: He said; if I do not do what he says then he will kill all of us.

Q: Where was the bolo particularly when the same was threatened at you?

A: It was on my neck.

Q: In what part of your neck?

A: On the left side of my neck as the witness indicated.

Q: After he said threatening words to you, what else did he do?

A: He hit me with his elbow and I fell to the ground. He made me lie on my back and threatened me again.

Q: What did he say?

A: He threatened me again by saying: he will kill all of us.

Q: What happened after that?

A: He took off my shorts and my panty.

Q: After that, what happened next?

A: Then he also took off his shorts and brief.

Q: Then what happened next?

A: He placed his organ to my organ.

Q: After that, what happened?

A: It was inserted for a long time.

Q: Then, what happened?

A: Then after that I felt and I saw a sticky white liquid.

Q: After that, what happened next?

A: Then he put on his brief and his shorts.

Q: Then afterwards?

A: He also made me put on my panty and my shorts.

Q: Afterwards what next?

A: First, he told me to cook but I was not able to do so because I kept on crying, so he threatened me again.

Q: What did he say to you?

A: He said that if I told my mother, he will kill all of us.

PROS. ESTORNINOS:

At this juncture your Honor, let it be on record that the witness is crying.

Q: After he said these threatening words again for the third time, what else happened if any?

A: We went to the seaside because that was where we have to cook.

Q: For how long did you stay there?

A: Up to 4:00 o'clock.

Q: At 4:00 o'clock, where did you go?

A: We went back home.

Q: Were you able to reach home?

A: Yes, Ma'am.

Q: Where was your mother when you reached home?

A: She was in the house.

Q: Did you tell your mother of what happened to you?

A: No, because I was scared as he was near me.

Q: During that nighttime on the same day, November 25, 1995, can you still recall where were you at that time?

A: I was in the house.

Q: Can you still recall if there was again any fearful incident which happened to you?

A: Yes, Ma'am.

Q: What was that?

A: He approached me and he was carrying a bolo and he was threatening me.

Q: What did he say to you?

A: He said again; if I do not do what he says, he will kill all of us.

Q: And what happened next, if any?

A: He again took off my maong shorts and panty.

Q: Where were you then at that time?

A: I was in the house and I was sleeping.

Q: At that time you were asleep, will you please tell the Court if there were other people present then?

A: There was.

Q: Who were they?

A: My brothers and sisters and my mother.

...

Q: After your maong short pants was removed and your panty, what happened next?

A: He again inserted his organ into my organ.

Q: After that, what happened?

A: Then he took it out.

Q: And what did you do then?

A: I just kept on crying because I was scared.

Q: After he took it out, what else happened if any?

A: I felt that my panty was already wet.

Q: Did you tell your mother on that particular evening of what happened to you?

A: No, because I was scared because he was near me.[26]

. . .

Q: Now, you said that your stepfather got his bolo and point it at you, do you know of any reason why your stepfather would do that, if you know?

A: I do not know of any reason.

Q: But you just allow your stepfather to pull down your shorts and also your panty?

COURT:

What do you mean by allow?

ATTY BITAS:

I mean, there is no resistance on your part?

A: I just kept on crying because I was scared because he had a bolo with him.

Q: My question is, you did not do anything? You did not shout?

A: No, because I was scared of him and his looks was fearsome and he had a bolo with him.

Q: You felt his penis go to your vagina?

A: Yes, sir.

Q: It was nice and of course gratifying?

COURT:

Not material. And this is insulting to the witness. The feeling of the witness is immaterial.

ATTY. BITAS:

We are trying to find out whether. . . .

COURT:

Reform.

Q: Now, when your father inserted his penis into your vagina you felt gratifying while his penis was inside?

A: No, I felt pain.

Q: Because you were a virgin?

A: Yes, sir.

Q: But you also felt a white substance came out from his penis while his penis was in your vagina?

PROS. ESTORNINOS:
Objection your Honor.

ATTY. BITAS:
I am asking the witness whether, while the penis was inside if there were also secretion. I am on cross your Honor.

COURT:
Go ahead.
A: Yes, sir.[27]

...

Q: Now, let me ask this, when your stepfather was on top of you where was the bolo of your father?

A: It was on his hands and was poked on my neck.

Q: While he was on top of you?
A: Yes, sir.

Q: And he was on top of you for how many minutes?
A: I cannot remember how long but it takes him time to insert his organ to my organ.

Q: And it also take long his organ inside your organ?
A: Yes, sir.

Q: And you were scared?
A: Yes. I was scared since his bolo was poked on my neck.

Q: After that incident you went home, right?
A: Yes, sir.

Q: Now, you did not tell your mother immediately what happened?
A: Yes, because I was scared and he was near me.

...

Q: You could have, while Perlito Tonyacao was on top of you you could even touched anyone of your brothers and sisters in order that they would wake up, correct?

A: I was scared because he has a bolo with him and I just kept on crying?

...

Q: And when your mother did not threaten you, you will not report to the police about that incident?

A: Yes, because I was scared and he was always watching me.[28]

Appellant faults Genelita for not shouting, using her legs and hands or offering the slightest resistance if indeed she was raped. However, we have long-recognized that when the victim is threatened with bodily injury, as when

the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[29] In such cases, physical resistance need not be established since intimidation is exercised over the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.[30] Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the victim's submission to the sexual act voluntary.[31] In these cases, Genelita clearly testified that, in the two occasions appellant raped her, he poked the jungle bolo at her and threatened to kill her and her family. She was obviously cowed into submission by the real and present threat of physical harm on her person, as well as on her family. Appellant repeatedly threatened Genelita with death upon herself and her family if she resisted his advances.[32]

Neither can Genelita's actuation after the first rape be taken against her. It is clear from her testimony that when she cooked for appellant she was forced to do so by appellant. When appellant directed her to cook food, Genelita just cried, but upon appellant's reiteration of his threat to kill her family, Genelita was silenced to do his bidding. Besides, it is not proper to judge the actions of a child who has undergone a traumatic experience by the norms of behavior expected under the same circumstances from mature persons.[33] There is no standard behavior for rape victims with which we can compare Genelita's comportment, as there is no model form of behavioral response when one is confronted with a strange, startling or frightful experience.[34]

Similarly, the credibility of Genelita cannot be assailed on the ground that it is physically impossible for appellant to have poked the bolo with his left hand towards the left side of her neck during the first rape as she testified. Such slight contradiction should not be considered to have completely destroyed her credibility. Errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape.[35] Nonetheless, in the present cases, Genelita categorically declared that on two occasions appellant used a jungle bolo to threaten her to submit to his lewd desires.

We cannot likewise sustain appellant's argument that the second rape was impossible to commit in the presence of Genelita's family members. Rape is not impossible because, per testimony of Genelita, her mother, brothers and sister were in deep slumber when appellant raped her.[36] In addition, there is no rule that a woman can only be raped in seclusion.[37] We have long recognized that rape is not impossible even if committed in the same room where the rapist's spouse was sleeping or in a small room where other household members also slept. Rapists are not deterred from committing their odious act by the presence of people nearby.[38]

Lastly, Genelita's failure to recount her ordeal to her mother is not an indication of false accusation. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if the delay is satisfactorily explained.[39] In the present cases, the records show that appellant had instilled fear upon Genelita's young mind during the sexual assaults. He threatened to kill her and her family if she would report the incidents to anyone.[40] She was continuously seized by fear at the mere presence of appellant who was always nearby.[41]

Appellant's failure to impute any ill motive against Genelita constrains us to affirm the jurisprudential presumption that she was not so moved, hence, her testimony is entitled to full faith and credence.[42] It is highly inconceivable for a young barrio lass such as Genelita, inexperienced in the ways of the world, to fabricate a charge of defloration against appellant - a person she considered as her father and carried his surname,[43] and undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she is motivated by a potent desire to seek justice for the wrong committed against her.[44]

Furthermore, the medico-legal examination conducted on Genelita confirms that she is in a non-virgin state. According to the medical findings, Genelita's hymen had old lacerations at 12 o'clock, 5 o'clock and 9 o'clock positions and the hymen was "ruptured or lacerated which had been caused by an insertion into her vaginal canal." [45] Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. [46] When the victim's testimony is corroborated by the physician's findings of penetration, as when the hymen is no longer intact, then, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. [47] Thus, Genelita's testimony and the medical evidence established that the essence of the crime of rape – sexual penetration of the female genitalia by the male organ - was committed beyond a shadow of doubt in Criminal Case Nos. 96-2117 and 96-2118.

Against these overwhelming evidence, the love affair and consensual sex theory advanced by the defense necessarily fails. Genelita is a 16-year old, unsophisticated barrio lass and there is no evidence on record that she is a pervert, nymphomaniac, temptress or in any other condition that may justify such a theory. [48] Save for his own declaration, appellant was unable to present anything else to prove his theory.

Nonetheless, the RTC erred in the imposition of the death penalty. Appellant was convicted under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which reads in part:

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. . . .

We have previously held that the circumstances of minority and relationship are considered as special qualifying circumstances because they alter the nature of the crime of rape and thus warrant the imposition of the death penalty. As such, it should be alleged in the information as a requirement of the accused's constitutional right to be informed of the nature and cause of the accusation against him. [49] These special qualifying circumstances must also be proved with certainty; otherwise, the penalty of death cannot be imposed upon the accused.

In the present cases, the Informations failed to allege Genelita's minority. Nowhere in the Informations is it stated that Genelita was only 16 years old when she was raped. Moreover, the relationship of the victim as the step-daughter of appellant was not properly proved. The evidence adduced shows that appellant is merely the common-law spouse of Genelita's mother, Felicidad Asoy Tonyacao. [50] While Felicidad and her children affixed appellant's surname, appellant was never legally married to Felicidad; appellant merely allowed Felicidad and her children to use his surname. [51] Hence, appellant could not be considered Genelita's "stepfather." The relationship between a step-father and a step-daughter presupposes a legitimate relationship, that is, the former should be legally married to the latter's mother. [52] Thus, failure of the prosecution to conjointly allege and prove the special qualifying circumstances of minority and relationship bars appellant's conviction of rape in its qualified form.

Be that as it may, we note that the Informations in Criminal Case Nos. 96-2117 and 96-2118 allege that the appellant committed rape while "armed with a jungle bolo, by means of violence and intimidation." Appellant was thus specifically charged with rape through force or intimidation qualified by the use of a deadly weapon. It must be stressed that what qualifies the crime of rape is not just the overt act of "being armed with a weapon" but the "use of a deadly weapon" in the commission of the crime, i.e., when a deadly weapon is used to make the victim submit to the will of the offender and not when it is simply shown to be in the possession of the latter. [53]

In Criminal Case No. 96-2117, Genelita clearly testified that she was threatened with a jungle bolo by appellant.

She even demonstrated how appellant poked the jungle bolo at her.[54] With respect to Criminal Case No. 96-2118, Genelita testified that appellant was holding the jungle bolo and threatened her to do what he wants or he will kill her and her family.[55] We find that, in both instances, when appellant threatened Genelita with the jungle bolo, it was sufficient to cow Genelita to submit to appellant's lewd designs.

Rape with the use of a deadly weapon is punishable by two indivisible penalties, i.e., reclusion perpetua to death, under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, to wit:

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

In relation to Article 63 of the same Code, it is provided that where the penalty prescribed by law is composed of two indivisible penalties, and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Other than the use of a deadly weapon, which is already taken into account to raise the penalty to reclusion perpetua to death, no aggravating or mitigating circumstance was alleged and proved in the case at bar. Hence, the penalty imposable for Criminal Case Nos. 96-2117 and 96-2118 is reclusion perpetua.

On the civil liability, based on prevailing jurisprudence, Genelita is entitled to indemnity ex delicto in the amount of P50,000.00 since the penalty imposed is reclusion perpetua,[56] as well as moral damages in the amount of P50,000.00.[57] Moral damages are awarded in rape cases without need of showing that the victim suffered from mental, physical, and psychological trauma as these are too obvious and already presumed from the fact of rape.[58] In addition, exemplary damages in the amount of P25,000.00 should be awarded to Genelita since the qualifying circumstance of the use of a deadly weapon was present in the commission of each rape.[59]

WHEREFORE, the Joint Decision, dated October 24, 1997, of the Regional Trial Court (Branch 30), Basey, Samar in Criminal Case Nos. 96-2117 and 96-2118, convicting appellant Perlito Tonyacao of two (2) counts of Qualified Rape and sentencing him to suffer the supreme penalty of death for each rape is MODIFIED. In Criminal Case Nos. 96-2117 and 96-2118, appellant is found guilty beyond reasonable doubt of two (2) counts of Rape with the Use of a Deadly Weapon and sentenced to suffer the penalty of reclusion perpetua for each offense and ordered to pay the offended party, Genelita Tonyacao, in each count, the amounts of P50,000.00 as indemnity ex delicto; P50,000.00 as moral damages and P25,000.00 as exemplary damages or a total of P250,000.00.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Godofredo P. Quimsing.

[2] Also spelled as "Cankusip" in the records.

[3] Also spelled as "Jenelita" in the records.

[4] Original Records, Criminal Case No. 96-2117, p. 1.

[5] Original Records, Criminal Case No. 96-2118, p. 1.

[6] Original Records, Criminal Case No. 96-2117, p. 20.

- [7] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 9-13, 22-23 and 25-26.
- [8] *Id.*, pp. 13-16 and 28-29.
- [9] *Id.*, pp. 17-20 and 29.
- [10] Exh. “A”, Original Records, Criminal Case No. 96-2118, p. 3.
- [11] TSN, Testimony of Dr. Rufina Laynor Barrot, July 9, 1996, pp. 6-7.
- [12] TSN, Testimony of Perlito Tonyacao, August 13, 1997, pp. 2-15.
- [13] Original Records, Criminal Case No. 96-2117, pp. 77-78.
- [14] Rollo, p. 39.
- [15] *People vs. Galigao*, 395 SCRA 195, 204 (2003); *People vs. Dela Cruz*, 390 SCRA 77, 83-84 (2002); and, *People vs. Tolentino*, 380 SCRA 171, 181 (2002).
- [16] *People vs. Daniela*, G.R. No. 139230, April 24, 2003, citing *People vs. Arizapa*, 328 SCRA 214, 218-219 (2000).
- [17] *People vs. Daniela*, *supra*.
- [18] *People vs. Pastor*, 379 SCRA 181, 189 (2002).
- [19] Original Records, Criminal Case No. 96-2117, p. 20.
- [20] *People vs. Principe*, 381 SCRA 642, 649 (2002); *People vs. Molina*, 372 SCRA 378, 387 (2001); *People vs. Alborida*, 359 SCRA 495, 502 (2001); and, *People vs. Hermoso*, 343 SCRA 567, 576 (2000), all citing *People vs. Nadera*, 324 SCRA 490 (2000).
- [21] *People vs. Pastor*, *supra* at. 188-189, citing *People vs. Aranzado*, 365 SCRA 649 (2001), *People vs. Chua*, 366 SCRA 283 (2001), *People vs. Alicando*, 251 SCRA 293 (1995), and *People vs. Albert*, 251 SCRA 136 (1995).
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- [23] *People vs. Bartolome*, 381 SCRA 91, 96 (2002).
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- [25] *People vs. Caralipio*, 393 SCRA 59, 75 (2002); *People vs. Ucab*, 390 SCRA 564, 572 (2002).
- [26] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 11-16.
- [27] *Id.*, pp. 22-24.
- [28] *Id.*, pp. 25-28.
- [29] *People vs. Llanto*, 395 SCRA 473, 488 (2003); *People vs. Bation*, 367 SCRA 211, 229 (2001).
- [30] *People vs. Llanto*, *supra*; *People vs. Aaron*, 389 SCRA 526, 536 (2002).
- [31] *People vs. Llanto*, *supra*; *People vs. Añonuevo*, 367 SCRA 237, 244 (2001).
- [32] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 11, 14 and 26.

- [33] *People vs. Quezada*, 375 SCRA 248, 262 (2002); *People vs. Baldoz*, 369 SCRA 690, 710 (2001).
- [34] *People vs. Baldoz*, *supra*.
- [35] *People vs. Dumanlang*, 386 SCRA 465, 476 (2002); *People vs. Bayona*, 327 SCRA 190, 198 (2000).
- [36] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 14-15 and 26-27.
- [37] *People vs. Besmonte*, 397 SCRA 513, 522 (2003); *People vs. Magtibay*, 386 SCRA 332, 343 (2002); and, *People vs. Tagud, Sr.*, 375 SCRA 291, 305 (2002).
- [38] *People vs. Cantuba*, 392 SCRA 76, 82-83 (2002); *People vs. Rebato*, 358 SCRA 230, 236 (2001); and, *People vs. Villanueva*, 339 SCRA 482, 499 (2000).
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- [40] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 11-14.
- [41] *Id.*, pp. 13, 16 and 26.
- [42] *People vs. De los Reyes*, 327 SCRA 56, 67 (2000).
- [43] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 8-10.
- [44] *People vs. Manallo*, 400 SCRA 129,142 (2003); *People vs. Perez*, 397 SCRA 12, 19 (2003).
- [45] TSN, Testimony of Dr. Rufina Laynor Barrot, July 9, 1996, pp. 6-7.
- [46] *People vs. Montemayor*, 396 SCRA 159, 172 (2003); *People vs. Daganio*, 374 SCRA 365, 372 (2002).
- [47] *People vs. Montemayor*, *supra*; *People vs. Dumanlang*, *supra* at p. 489; and, *People vs. Mendoza*, 383 SCRA 115, 129 (2002).
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- [51] Testimony of Perlito Tonyacao, August 13, 1997, p. 4.
- [52] *People vs. Hilet*, G.R. Nos. 146685-86, April 30 2003; *People vs. Baring*, 354 SCRA 371, 384 (2001); and, *People vs. Tolentino*, 328 SCRA 485, 495 (1999).
- [53] *People vs. Montemayor*, *supra* at p. 174, citing *People vs. Napiot*, 311 SCRA 772, 782 (1999). See also *People vs. Emocling*, 297 SCRA 214 (1998); *People vs. Cantos, Sr.*, 305 SCRA, 786 (1999); *People vs. Padilla*, 301 SCRA 265 (1999); *People vs. Ranido*, 288 SCRA 369 (1998); *People vs. Taton*, 282 SCRA 300 (1997); *People vs. Tadulan*, 271 SCRA 233 (1997); and, *People vs. Igdanes*, 272 SCRA 113 (1997).
- [54] TSN, Testimony of Genelita Tonyacao, July 9, 1996, pp. 11, 14 and 26.
- [55] *Id.*, pp. 14 and 27.
- [56] *People vs. Dela Cruz*, 383 SCRA 410, 438 (2002).
- [57] *People vs. Parcia*, 374 SCRA 714, 725 (2002); *People vs. Colisao*, 372 SCRA 20, 32 (2001).

[58] *People vs. Barrozo*, 383 SCRA 711, 727 (2002); *People vs. Yaoto*, 370 SCRA 284, 295 (2001); *People vs. Rivera*, 362 SCRA 153, 182 (2001).

[59] *People vs. Montemayor*, *supra* at p. 177; *People vs. Yonto*, 392 SCRA 468, 488 (2002).

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