PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELECIO SAGARINO, JR. Y FAMI ALIAS "KALAMANSI", ACCUSED-APPELLANT.

G.R. Nos. 135356-58. September 04, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the joint decision[1] dated July 28, 1998, of the Regional Trial Court, of Makati City, Branch 138, finding accused-appellant Melecio Sagarino, Jr., guilty of two (2) counts of incestuous rape and one (1) count of acts of lasciviousness, after trial on the basis of the three separate informations as follows:

> Criminal Case No. 98-551:
>
> That on or about the 11th day of October, 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Aurora Sagarino y Fami who is his (accused) mother, against her will and consent.
>
> Contrary to Law.[2]
>
> Criminal Case No. 98-552:
>
> That on or about the 18th day of October, 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Aurora Sagarino y Fami who is his (accused) mother, against her will and consent.
>
> Contrary to law.[3]
>
> Criminal Case No. 98-553:
>
> That on or about the 14th day of February, 1998, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, by means of force and intimidation, did then and there willfully, unlawfully and feloniously attempted to have carnal knowledge with Aurora Sagarino y Fami who is his (accused) mother, thereby commencing the commission of the crime of Rape directly by overt acts and did not perform all the acts of execution which should have produced the crime of Rape by reason of some cause or accident other than his own spontaneous desistance, that is because of his embarrassment when his mother uttered nerve wrecking words.
>
> Contrary to law.[4]

During his arraignment, appellant pleaded not guilty to the charges. Thereafter, trial on the merits followed.

The prosecution presented as its witnesses private complainant Aurora Sagarino, Rosita Yacap, and Senior Inspector Angelita Alvarico. Their testimonies established the following facts:

AURORA SAGARINO, who was 57 years old, testified that sometime on October 11, 1997 at about midnight,

she was asleep on the sofa at the first floor of their house. Appellant, her son who lived with her, approached and poked a knife at her. Thereafter, he removed her duster and underwear. He took off his shorts and brief, and had sexual intercourse with her from behind while she was lying on her side.[5] Dissatisfied that he did not ejaculate, he masturbated in front of her and after ejaculating, sat in the sofa. The latter, who was not feeling well at that time, was either too weak to resist or too shocked that her own son violated her.[6]

According to Aurora, one week later her son again abused her. On October 18, 1997, between 1 o'clock to 2 o'clock in the morning, she was sleeping in the sofa when appellant while pointing a knife at her, undressed her and had sexual intercourse with her again. She lost consciousness thereafter.[7]

Aurora narrated that there was another incident on February 14, 1998. After taking a bath, she went to her room upstairs. Appellant appeared and poked a knife at her. Then she was only in her bra and panty. Appellant fondled her breast. He then took off his shorts and brief while stomping his feet on the floor and mouthing scurrilous words at her. She pleaded, "Bakit ginaganito mo ako, maghanap-hanap ka na ng asawa mo." Appellant, stung by these words this time, retreated.

Aurora also testified that on several occasions prior to the above incidents she saw the appellant taking shabu.[8] She reported this matter to the barangay captain who did not act on her report. She admitted she was at first hesitant to reveal her ordeal publicly.

Complainant's aunt, witness ROSITA YACAP, who lived two doors away from Aurora's house, testified that in the evening of February 14, 1998, she noticed Aurora coming in and out of her house crying. She observed that Aurora was not her usual self. She approached Aurora, and asked her what happened. It was then Aurora divulged that she was raped by her son. Rosita was speechless for a while. Then, she went to the house of Aurora's sister, Melinda Fami, who summoned her other siblings named Thelma and Teofilo. Aurora was brought to her daughter's house in Quezon City. Although Aurora and her relatives did not immediately report the incidents to the police because they thought of the humiliation it would cause their family, after two days, they eventually did.

INSPECTOR ALVARICO testified she conducted the investigation and took Aurora's statement. This was forwarded to the City Prosecutor.

Defense evidence consisted of the lone testimony of appellant MELECIO SAGARINO, JR., who denied the offenses imputed to him. He also interposed an alibi as a defense. He alleged that at about midnight of October 11, 1997 he was playing cards and drinking beer up to four or five o'clock the following morning in the house of his friend, Leo Camu, at Almazan Street, Tejeros, Makati. From there he went home and slept. He explained that his mother was no longer home when he arrived because she went to her work at her auntie's house at Alejandrino corner Apolinario Street in Makati. He woke up at 1 or 2 P.M.. At that time his mother had not yet returned home because she usually arrived between 6 to 7 P.M.. He denied sexually assaulting his mother on October 11, 1997.

Appellant said he could not recall where he was at the time the alleged October 18, 1997, incident happened. He denied sexually abusing his mother on said date. Appellant likewise could not remember where he was at 7 A.M. on February 14, 1998, when the attempted rape was allegedly committed and he denied knowing anything about his mother's story that he attempted to rape her then.

Asked what could have motivated his mother to charge him with rape, Melecio unperturbly answered that it was her way of getting back at him for not having a stable job.

On July 28, 1998, the trial court handed down its verdict of conviction. The fallo reads:

> FOR THE REASONS GIVEN the Court renders judgment as follows:

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a)

In Criminal Case No. 98-551 the Court finds accused Melecio Sagarino, Jr. y Fami guilty beyond reasonable doubt of having committed the crime of rape as the same is defined and punished by Republic Act No. 7659 and he is sentenced to suffer the capital punishment of death. He is further ordered to indemnify the complainant of the amount of Fifty Thousand P50,000.00 as and for moral damages;

b)

In Criminal Case No. 98-552 the Court finds accused Melecio Sagarino, Jr. y Fami guilty beyond reasonable doubt of having committed the crime of rape as the case is defined and punished by Republic Act No. 7659 and he is sentenced to suffer the capital punishment of death. He is ordered to indemnify the complainant the amount of Fifty thousand P50,000.00 pesos as moral damages;

c)

In Criminal Case No. 98-553 the Court finds accused guilty beyond reasonable doubt of having committed the crime of Acts of Lasciviousness and he is sentenced to suffer imprisonment of Four (4) months and One (1) day of arresto mayor to Six (6) years of prision correccional. Accused is ordered to indemnify the complainant in the amount of Twenty Five Thousand P25,000.00 as moral damages.

No pronouncement as to costs.

SO ORDERED.[9]

In his brief, appellant ascribes to the lower court the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT COMMITTED THE CRIMES CHARGED WITH THE USE OF A DEADLY WEAPON.

III

THE COURT A QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH.[10]

The issues for resolution are (1) whether the prosecution has presented credible witnesses and evidence sufficient to prove appellant guilty of the offenses charged beyond reasonable doubt; and (2) whether the death sentence has been properly imposed on him.

Appellant laments that the trial court gave undue weight to what he described as incredible, unreliable and inconsistent testimony of complainant on material points. Appellant avers that the testimony of his mother was replete with inconsistencies, which is why the charge against him could only be pure fabrication. He claims that the lower court erred in finding him guilty of the crimes charged with the use of a deadly weapon, and in rendering a verdict of conviction despite the fact that his guilt was not proved beyond reasonable doubt.

For the State, the Office of the Solicitor General maintains that findings of the trial court especially on the credibility of witnesses are entitled to great weight and respect.[11] The OSG also advances the view that the damages awarded must be increased in tune with prevailing jurisprudence.[12]

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Doctrinally, it is settled that the issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses having heard the testimonies, observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

In its decision, the trial court observed that the testimony of private complainant with respect to the sexual assaults on October 11 and 18, 1997 as well as the attempted rape on February 14, 1998 committed by appellant are clear and categorical. She answered the questions on both direct and cross-examination spontaneously. For failure of appellant to point to any fact or circumstance overlooked or ignored by the trial court to cast doubt on her credibility, we are in full agreement with the trial court's finding that the private complainant's testimony is worthy of credence.

Appellant protests that even the stenographic notes of private complainant's testimony showed no indication that she resisted nor struggled. This line of reasoning is disingenuous to say the least. Resistance or struggle is not an element of the crime of rape. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code.[13] Besides, private complainant was straightforward in her testimony that appellant, her very own son, ravished her through force and intimidation with the use of a bladed weapon, producing fear that if she does not yield to the bestial demands of the appellant, something dreadful would happen to her. This threat with the use of a bladed weapon is explanation enough to convince this Court on why there was no struggle, and that on this matter she was telling the truth.

Additionally, complainant satisfactorily explained the delay in reporting the rape incidents to the police. She stated that she suffered a stroke on account of the sexual abuses of her son (Dahil inabuso po niya ako).[14] Also, she was constrained by shame (Nahihiya po ako) to bare her son's sexual abuses on her publicly.[15]

In his attempt to discredit his mother, appellant claims that on the first charge of rape, private complainant testified that appellant poked a knife at her and threatened to kill her but later on she admitted that after a while, appellant kept the knife in the bathroom. On the second charge of rape, appellant points to private complainant's testimony that while the alleged rape was going on, she felt so afraid because appellant was poking a knife at her[16] only to declare later on that he poked the knife at her after the alleged rape.[17]

We find these alleged inconsistencies insufficient to destroy complainant's credibility. These alleged lapses in her memory regarding chronology on when appellant poked a knife at his mother are but minor inconsistencies which could be attributed to her shocking and debasing experience. We have ruled that inconsistencies on matters of minor details do not detract from the actual fact of rape. When a crime is perpetrated by a son against his mother, it is understandable if the abhorrent mind is desensitized to mere details. Moreover, slight inconsistencies are earmarks showing her testimony was not rehearsed but spontaneous.

But on material points her testimony was coherent and straightforward. Though her highest educational attainment was only Grade VI, she answered questions on both direct and cross-examination spontaneously. Thus, we see no reason to disturb the findings of the trial court, which accorded full credit to the testimony of private complainant, while disbelieving the acrimonious but self-serving assertions of appellant.

Note that appellant's defense hinges primarily on denial and alibi. Denial and alibi are the weakest of all defenses, for which reason they are generally rejected especially when the complaining witness has sufficiently and positively established the identity of the accused. The positive and candid testimony in these cases of the mother against her own son, in our view, certainly far outweighs his mere disavowals.

Equally important, a rape victim's testimony is entitled to greater weight when she accuses a close relative of rape.[18] For there can be ascribed no greater motivation for a woman abused by her own kin than the innate longing of the human spirit for truth and justice to prevail.[19] That the armed abuser was also a user of a prohibited and dangerous drug, shabu, did not deter complainant from exposing appellant's dastardly conduct. In sum, we find no reason to deviate from the finding of the trial court that appellant committed incestuous rape by threatening the complainant with the use of a knife twice, on October 11 and 18, 1997.

With respect to the occurrence during the early morning of February 14, 1998, the lower court found appellant guilty of acts of lasciviousness only. The elements of the offense encompassed by the term acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[20] In the case at bar, the complainant testified that appellant was stomping his feet and mouthing invectives as he poked a knife at her. This was patent intimidation. Likewise, the element of lewd designs was apparent when appellant removed his shorts and brief, then fondled complainant's breast. Although the information was for attempted rape, appellant could be held liable for acts of lasciviousness because the latter constitute an offense included or subsumed in the charge of attempted rape.[21]

We now come to the propriety of the penalties imposed on appellant. Section 11 of Republic Act 7659,[22] which amended Art. 335 of the Revised Penal Code, imposes the penalty of reclusion perpetua when rape is committed by using force or intimidation. But the imposable penalty becomes reclusion perpetua to death whenever the rape is committed with the use of a deadly weapon. Such is the situation in Criminal Case Nos. 98-551 and 98-552 because the use of a knife or bladed weapon by appellant in the consummation of the two rapes has been alleged and proved.

However, we are unable now to sustain the death penalty imposed on appellant in both cases. As provided in Section 8 of Rule 110 of the Revised Rules of Criminal Procedure, effective December 1, 2000, but applicable to these cases now, the complaint or information must not only state the designation of the offense given by statute and aver the acts or omissions constituting the offense, but also "specify its qualifying and aggravating circumstances." But here the informations against appellant in both cases show no specification of circumstances that aggravate the offenses charged. Note that the close relationship between the victim and the offender (mother and son) is alleged, but nothing is stated in the informations specifically concerning pertinent circumstances (such as disregard of the filial respect due the victim by reason of her age, sex, and rank) that could aggravate the crimes[23] and justify imposing the death sentence. Thus, absent any aggravating circumstance specifically alleged and proved in the two rape cases, the penalty imposable on appellant for each offense is not death but only the lesser penalty of reclusion perpetua.

For the acts of lasciviousness committed on February 14, 1998, Article 336 of the Revised Penal Code provides the penalty of prision correccional,[24] which shall be from six months and one day to six years imprisonment. Applying the Indeterminate Sentence Law, the imposable penalty for the crime of acts of lasciviousness committed by appellant should be an indeterminate imprisonment of four (4) months and one (1) day of arresto mayor as minimum[25] to four (4) years and two (2) months of prision correccional as maximum.

The Court notes that the trial court awarded the amount of P50,000.00 as moral damages to private complainant in each case of consummated rape. In addition, however, the amount of P50,000.00 for each count of rape must be awarded to her as civil indemnity in accordance with prevailing jurisprudence.[26] Lastly, exemplary damages in the amount of P25,000.00 for each rape must likewise be imposed on appellant to serve as a deterrent against bestial offenses.[27]

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WHEREFORE, the decision of the Regional Trial Court of Makati, Branch 138, in Criminal Case Nos. 98-551 and 98-552, finding appellant MELECIO SAGARINO, JR., GUILTY of two counts of rape is AFFIRMED, with the MODIFICATION that for each count appellant's sentence is reduced to reclusion perpetua. He is also ordered to pay to private complainant for each count of rape the amount of P50,000.00 as civil indemnity,P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

In Criminal Case No. 98-553, appellant MELECIO SAGARINO, JR., is found GUILTY of one count of acts of lasciviousness and sentenced to an indeterminate penalty of four (4) months and one (1) day of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum, and to indemnify private complainant in the amount of P10,000.00[28] as moral damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 17-32.

[2] Id. at 8.

[3] Id. at 9.

[4] Id. at 10.

[5] TSN, March 24, 1998, pp. 7-8.

[6] Id. at 4-12.

[7] TSN, March 26, 1998, pp. 1-2.

[8] Id. at 7; Rollo, pp. 123-124.

[9] Rollo, pp. 31-32.

[10] Id. at 51.

[11] Id. at 122-123.

[12] Id. at 125.

[13] ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

x x x

[14] TSN, March 26, 1998, p. 4.

[15] Id. at 5; Rollo, p. 121.

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[16] TSN, March 24, 1998, p. 11.

[17] TSN, March 26, 1998, p. 2.

[18] People v. Razonable, 330 SCRA 562, 574 (2000); People v. Sevilla, 320 SCRA 107, 120 (1999); People v. Catoltol, Sr., 265 SCRA 109, 117-118 (1996).

[19] People v. Francisco, 258 SCRA 558, 563 (1996).

[20] People v. Gianan, G.R. Nos. 135288-93, September 15, 2000, p. 17.

[21] Ibid.

[22] Art. 335 has been repealed by R.A. No. 8353 (Anti-Rape Law of 1997) effective October 22,1997.

"SEC. 11. Article 335 of the same Code (Revised Penal Code, as amended) is hereby amended to read as follows:

> "ART. 335. When and how rape is committed.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> "The crime of rape shall be punished by reclusion perpetua.
>
> "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.
>
> x x x

[23] Art. 14, paragraph 3, Revised Penal Code.

Art. 14. Aggravating circumstances.— The following are aggravating circumstances:

x x x

3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

[24] Art. 336. Acts of lasciviousness.— Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

[25] This is within the range allowed under the Indeterminate Sentence Law, the penalty next lower to prision correccional being arresto mayor in any of its period (1 month and 1 day to six months, Article 27, Revised Penal Code).

[26] People v. Gonzales, G.R. No. 133859, August 24, 2000, p. 13.

[27] Id. See also People v. Bonghanoy, 308 SCRA 383, 394 (1999); Article 2230, Civil Code.

[28] People vs. Abarri, 242 SCRA 39, 46 (1995); People v. Mariña, G.R. No. 132550. February 19, 2001, p. 23.

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