PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. IAN GONZAGA, ROY FERNANDEZ AND ELMER CASTILLON ACCUSED-APPELLANTS.

G.R. Nos. 135402-03. September 07, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the joint decision[1] of the Regional Trial Court, Cebu City, Branch 18 convicting accused Ian Gonzaga and Roy Fernandez of two counts of rape, and accused Elmer Castillon of one count of rape, and sentencing accused Ian Gonzaga to two penalties of reclusion perpetua, accused Roy Fernandez to two penalties of fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and accused Elmer Castillon to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and the three accused to indemnify Grenalyn Narbasa in the amount of P50,000.00 as moral damages for each case.

On February 4, 1998, Assistant City Prosecutor Ramon Jose G. Duyongco of Cebu City filed with the Regional Trial Court, Cebu City an information charging accused Ian Gonzaga, Roy Fernandez and Elmer Castillon with rape, under Republic Act No. 8353 in relation to Republic Act No. 7610, as amended, committed as follows:

> "That on or about the 25[th] day of January, 1998, at about 8:00 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, with the use of force and intimidation upon the person of one Grenalyn Narbasa y Lumen who is a minor of only 12 years old, with deliberate intent, did then and there willfully and unlawfully have carnal knowledge with said Grenalyn Narbasa y Lumen against the latter's will.
>
> CONTRARY TO LAW."[2]

On the same day, Assistant City Prosecutor Ramon Jose G. Duyongco of Cebu City also filed with the Regional Trial Court, Cebu City an information charging accused Ian Gonzaga and Roy Fernandez with rape, pursuant to Republic Act No. 8353 in relation to Republic Act No. 7610, as amended, committed as follows:

> "That on or about the 30[th] day of January 1998, at about 7:00 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with the use of force and intimidation upon the person of one Grenalyn Narbasa y Lumen, who is a minor of only 12 years old, with deliberate intent, did then and there willfully and unlawfully have carnal knowledge with said Grenalyn Narbasa y Lumen against the latter's will.
>
> "CONTRARY TO LAW."[3]

On February 12, 1998, the trial court arraigned accused Ian Gonzaga, Roy Fernandez and Elmer Castillon in the two cases and they pleaded not guilty to the charges.[4] Joint trial ensued.

Grenalyn Narbasa lived with her grandparents in Tanay, Pit-os, Talamban, Cebu City. Her mother, Evelyn, lived in Davao City, while her father lived in Manila.

On January 25, 1998, at around 8:00 in the evening, Grenalyn Narbasa, 12 years old, went to the house of Frenalyn Colina to play with her. A few minutes later, they both walked to a store situated at Sitio Candarong, Pulambato, Cebu City. The store stood beside an asphalt batching plant. Grenalyn wanted to get the lock of the store and bring it to her grandparents. When they reached the store, Frenalyn left Grenalyn inside the store. Not long after, accused Ian Gonzaga, Elmer Castillon and Roy Fernandez arrived. Grenalyn knew them because they lived in the same neighborhood albeit on different sides of the creek. Grenalyn's mother and the mothers of accused were close friends.

Upon seeing accused entering the store, Grenalyn attempted to leave, but accused Ian Gonzaga blocked her way. He pushed Grenalyn inside the store and punched her on the left side of her torso. Accused Roy Fernandez and Elmer Castillon then closed the door. Accused Ian Gonzaga forced her to lie on the floor. Accused Roy Fernandez held her hands while accused Elmer Castillon held her legs. Accused Ian Gonzaga removed her shirt, pants and panty. Then, accused Ian Gonzaga inserted his penis into her vagina and made pumping motions. After accused Ian Gonzaga satisfied his lust, accused Roy Fernandez and Elmer Castillon took turns in having sexual intercourse with Grenalyn.[5]

During the ordeal, Grenalyn resisted and tried to escape but she was pinned to the floor by the superior force of the accused. She tried to shout, but accused Gonzaga covered her mouth as she did so.[6] Afterwards, accused Ian Gonzaga pointed a knife at Grenalyn's face and told her not to relate the incident to her mother, or her grandparents, or else he would kill her.[7] Thereafter, all the accused left the store.

Grenalyn stated that on January 30, 1998, at around 7:00 in the evening, accused Ian Gonzaga and Roy Fernandez again raped her.[8] On that date, Grenalyn and her cousins, Frenalyn and Vanessa, went to the store. Then, Frenalyn and Vanessa left Grenalyn inside the store, removing some wires. All of a sudden, Grenalyn saw accused Ian Gonzaga and accused Roy Fernandez approaching the store. Grenalyn attempted to flee but accused Gonzaga and Fernandez blocked her way. Accused Roy Fernandez pushed her back and pressed her against the wall. Accused Ian Gonzaga pulled her towards the storeroom. Grenalyn shouted for help but no one responded. At the storeroom, accused Ian Gonzaga pulled down her pants and panty while accused Roy Fernandez held her hands and covered her mouth. Accused Ian Gonzaga then mounted her and had sexual intercourse with her. Grenalyn tried her best to wriggle out but she was overpowered. Thereafter, accused Roy Fernandez positioned himself on top of Grenalyn while accused Ian Gonzaga held her hands. Later, accused Ian Gonzaga pointed a pair of scissors at her and told her not to tell anybody about the incident, especially her mother or grandmother, otherwise he would stab her. Afterwards, the two accused left the store. Grenalyn fell asleep and woke up the next day, January 31, 1998. She refused to go home.

On February 1, 1998, Rogelio Borres found his cousin Grenalyn Narbasa at the store. Rogelio brought her to their house where Grenalyn's grandfather, Wilfredo Lumen, and Carlito Lumen interrogated her regarding her whereabouts for the past two days. She recounted to them her ordeal. They immediately brought her to the Cebu City Medical Center for medical examination.

Dr. Esterlita Fiel, attending physician of Cebu City Medical Center, conducted an examination of Grenalyn. The medical report revealed that Grenalyn's hymen had multiple healed lacerations and her vagina could admit two fingers with ease.[9] No spermatozoa was found in the vagina of the patient at the time of examination.[10]

Afterwards, her grandfather accompanied Grenalyn to the police station where she filed her complaint. She stated that she had been sexually molested. She admitted that there were previous incidents when she engaged in sexual

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intercourse. She refused to reveal to her parents her previous sexual experiences, fearing her parents' reaction and knowing the closeness of her mother to the mothers of three of the accused. She stated that she did not want her father "to become a criminal out of this incident."[11]

On the other hand, all of the accused denied the charges.

Accused Elmer Castillon, 16 years old, claimed that on January 25, 1998, he was with his girlfriend Denia Dargantas and Denia's cousin, Rubilyn Cobrado. They met at around 5:30 in the afternoon. At 6:00 in the evening, they heard mass at the Sto. Niño Parish Church in Cebu City.[12] Thereafter, they strolled around Plaza Independencia and took snacks. At 9:00 in the evening, they left for Pit-os and went to Rubilyn's rented house. They stayed there until 11:00 in the evening. Then, Elmer and Denia went home. Accused Elmer Castillon did not see co-accused Roy Fernandez and Ian Gonzaga that day. He never ventured to Candarong or in the vicinity of the store of Grenalyn. He denied having sex with Grenalyn Narbasa.[13]

Denia Dargantas, girlfriend of accused Elmer Castillon, declared that on January 25, 1998 from 5:00 to 11:00 in the evening, she was with him.[14] Robilyn Cobrado also testified that she accompanied Denia and Elmer to mass at 6:00 in the evening of January 25, 1998, and that they stayed in her rented house afterwards.[15]

Meanwhile, on January 25, 1998, accused Roy Fernandez, 16 years old, alleged that he attended a fiesta at Mansawa with co-accused Ian Gonzaga, Jeffrey Velasquez and Ramon Chavez. They met at the house of accused Ian Gonzaga at around 5:00 in the afternoon and proceeded to Mansawa on board a motorcycle. From 5:00 in the afternoon until morning of the next day, they did not go near the store of Grenalyn. On said date, they did not see co-accused Elmer Castillon or the victim, Grenalyn. Mansawa was about five kilometers from Candarong, Polambato, Cebu City.

Accused Roy Fernandez stated that on January 30, 1998, he was with his girlfriend, Marilou Miñoza, from 5:20 in the afternoon to 10:35 in the evening. He did not see Grenalyn Narbasa. He denied having any sexual contact with Grenalyn.[16] His testimony was corroborated by Marilou Miñoza.[17]

According to Jeffrey Velasquez, 19 years old, on January 30, 1998, he drove a dump truck for Duros Develepment Corporation with accused Ian Gonzaga, 20 years old, as his truckboy that day.[18]

Frenalyn stated that she was the cousin of accused Elmer Castillon. Frenalyn further alleged that on January 25, 1998, at around 8:00 in the evening, she was at her house sleeping. She denied Grenalyn's testimony that they played together or went to the store together that day. She did not see Grenalyn that day. On January 30, 1998, from 4:00 to 9:00 in the evening, she was at night school and did not see or play with Grenalyn.[19]

Vanessa Colina denied seeing Grenalyn on January 30, 1998.[20] She claimed that she was washing clothes that day and did not play with Grenalyn. She asserted that she used to be friends with Grenalyn, until around November 1997.

Rolly Pomador,[21] Marciso Miñoza,[22] Alfredo Colina[23] cited previous occasions when Grenalyn invited them to have sex with her for a fee.[24]

After due trial, on June 9, 1998, the trial court rendered a decision, the dispositive portion of which reads:

> "WHEREFORE, premises all considered, JUDGMENT is hereby rendered convicting each of the accused in the above-entitled cases as follows:
>
> "In Criminal Case No. CBU-46283, accused Roy Fernandez & Elmer Castillon are hereby sentenced each to suffer an imprisonment of 14 years, 8 months and 1 day to 17 years and 4 months of Reclusion Temporal, medium and Ian Gonzaga is sentenced to suffer the penalty of Reclusion Perpetua, with the inherent accessory

penalty provided by law; to indemnify the victim jointly and severally the sum of P50,000.00 as moral damages and to pay the costs.

"In Criminal Case No. CBU-46284, accused Ian Gonzaga is hereby sentenced to suffer the penalty of Reclusion Perpetua while accused Roy Fernandez is also sentenced to suffer an imprisonment of 14 years, 8 months and 1 day to 17 years and 4 months of Reclusion Temporal, medium, with the inherent accessory penalties provided by law; to indemnify the victim jointly and severally the sum of P50,000.00 as moral damages and to pay the costs.

"SO ORDERED.

"Cebu City, Philippines.

"June 9, 1998.

"(Sgd.)GALICANO C. ARRIESGADO
"Judge"[25]

Hence, this appeal.[26]

Accused-appellants assailed the credibility of the victim, Grenalyn Narbasa, averring that she was a prostitute, seeking sexual favors for money. Moreover, the medical findings did not support the victim's allegation that she was raped. Further, the victim tarried in reporting the alleged rape to her parents or to any person in authority despite her allegation that she was raped by accused-appellants for six times since September 1996.

We find the appeal without merit.

Under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, rape is committed:

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation; x x x"

In a prosecution for rape, the credibility of the victim is almost always the single most important issue to hurdle.[27]

Accused-appellants attempted to discredit the victim by presenting testimonies that she was a prostitute. At a tender age of 12 years, it is difficult to believe that complainant would engage in such sexual disgrace. Even if it were so, the fact that one was a prostitute did not negate the commission of rape. Even a prostitute can be a victim of rape.[28]

The victim's character in rape is immaterial.[29] When a victim of rape says she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[30] The question now is whether the victim's testimony is credible.

On this point, we reiterate the rule that the findings of the trial court are generally considered final and accorded great weight, given their advantage of being able to observe the manner and demeanor of the witnesses as they testified in court.[31] From our reading of the transcript of stenographic notes, we noticed that the complainant testified in a candid and straightforward manner, though sometimes confused by dates and the number of times she had been raped on previous occasions by accused-appellants. Such confusion is understandable, considering her young age.

More importantly, she positively identified accused-appellants as the persons who raped her. Grenalyn was

familiar with accused-appellants because they lived in the same area and their parents were close friends. Grenalyn gave a detailed account of how the accused-appellants ravished her. On both occasions alleged by the victim, accused-appellants used force in order to have sexual intercourse with the victim. Accused-appellants had carnal knowledge of Grenalyn, one by one, while the others held her hands and her legs, pinning her down and rendering her unable to escape.

Accused-appellants averred that the medical findings did not support the accusations hurled against them by the complainant.

First, the medical examination conducted two days after the alleged rape revealed an absence of spermatozoa in the victim's body. However, the presence or absence of spermatozoa is immaterial since it is penetration, not ejaculation, which constitutes rape.[32]

Second, accused-appellants pointed out that there were no signs of new or recent lacerations in the victim's private part. Laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not essential to establish the consummation of rape.[33] Absence of lacerations in the victim's genitalia does not negate the commission of rape.[34]

Third, accused-appellants alleged that no external sign of physical injuries was found on the victim's body that would indicate struggle against the force exerted upon her by accused. However, proof of external injuries inflicted on the complainant is not indispensable in a prosecution for rape committed with force or violence.[35] Proof of injury is not an element of rape.[36]

Accused-appellants asserted that complainant delayed in reporting the alleged rape to her parents, grandparents or person in authority.However, it is not uncommon for a young girl of tender age to be intimidated into silence. The victim was fearful of the repercussions of her action if she revealed the ordeals she had undergone at the hands of accused-appellants. She feared for her life, as well as the life of her family. Delay in reporting rape does not undermine the charge where it is grounded on death threats by accused-appellant against the victim and her family.[37]

On the other hand, accused-appellants invoked alibi. For the defense of alibi to prosper, accused must prove not only that they were somewhere else when the offense was committed, but also that it was physically impossible for them to have been at or near the crime scene.[38] In this, the accused-appellants failed to prove either situation.

Mansawa, where accused-appellants Ian Gonzaga and Roy Fernandez claimed they were on the evening of January 25, 1998, was merely five kilometers from the scene of the crime and may be traversed in five minutes by motorcycle or vehicle. Accused-appellants Ian Gonzaga and Roy Fernandez also attempted to establish that they were not in the vicinity of the store at Polambato on the night of January 30, 1998. However, corroborating evidence given by the girlfriends and the relatives of accused-appellants were not credible, since they showed bias and partiality towards the accused-appellants

In the absence of strong and convincing evidence, alibi can not prevail over the positive identification of the victim, who has no improper motive to testify falsely against the accused-appellants.[39]

Hence, the trial court correctly found accused-appellants guilty of rape. At the time of the commission of the offense in 1998, Republic Act No. 8353 (otherwise known as The Anti-Rape Law of 1997) was in effect.[40] Whenever rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.[41]

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Accused-appellants Roy Fernandez and Elmer Castillon were sixteen years old, or minors, at the time of the commission of the offenses. Thus, they must be meted the penalty one degree lower than the imposable penalty.[42] Consequently, one degree lower than the indivisible penalty of reclusion perpetua to death is reclusion temporal.[43] Applying the Indeterminate Sentence Law, the penalty imposable is prision mayor in any of its periods, as minimum, and reclusion temporal in its medium period, as maximum, in the absence of any modifying circumstance.

As to accused-appellant Ian Gonzaga, who was 20 years old at the time of the commission of the offense, the penalty imposable is reclusion perpetua.

Regarding damages, we note that the trial court awarded moral damages in favor of the victim, but failed to award civil indemnity. We have held that the grant of moral damages is separate and distinct from the civil indemnity awarded to rape victims.[44] While the award of moral damages is discretionary on the part of the court, civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon a finding of rape.[45] Hence, in addition to the amount of P50,000.00 as moral damages, the amount of P50,000.00 as civil indemnity must likewise be awarded to the victim.

WHEREFORE, the Court AFFIRMS with MODIFICATION the decision of the Regional Trial Court, Cebu City, Branch 18, convicting accused Elmer Castillon, Ian Gonzaga, and Roy Fernandez of rape.

1) In Criminal Case No. CBU-46283, the Court sentences accused Ian Gonzaga to reclusion perpetua, with all the accessory penalties of the law; accused Elmer Castillon to an indeterminate penalty of six (6) years and (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, with all the accessory penalties of the law; and accused Roy Fernandez to an indeterminate penalty of six (6) years and (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, with all the accessory penalties of the law.

The Court further orders accused Ian Gonzaga, Roy Fernandez and Elmer Castillon to solidarily pay the victim, Grenalyn Narbasa, in the amount of fifty thousand (P50,000.00) pesos as civil indemnity and the amount of fifty thousand (P50,000.00) pesos as moral damages, for each count of rape and to pay the costs.

2) In Criminal Case No. CBU-46284, the Court sentences accused Ian Gonzaga to reclusion perpetua, with all the accessory penalties of the law; and accused Roy Fernandez to an indeterminate penalty of six (6) years and (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, with all the accessory penalties of the law.

The Court further orders accused-appellants Ian Gonzaga and Roy Fernandez to solidarily pay the victim, Grenalyn Narbasa, in the amount of fifty thousand (P50,000.00) pesos as civil indemnity and the amount of fifty thousand (P50,000.00) pesos as moral damages, for each count of rape and to pay the costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno , Kapunan, and Ynares-Santiago JJ., concur.

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[1] In Criminal Case Nos. CBU-46283 and CBU-46284, Judge Galicano C. Arriesgado, presiding.

[2] Information, Regional Trial Court Record, Crim. Case No. CBU-46283, p. 1.

[3] Information, Regional Trial Court Record, Crim. Case No. CBU-46284, p. 1.

[4] Certificate of Arraignment, Regional Trial Court Record, Crim. Case No. CBU-46283, p. 15; Certificate of

Arraignment, Regional Trial Court Record, Crim. Case No. CBU-46284, p. 19.

[5] Testimony of Grenalyn Narbasa, April 16, 1998, pp. 8-13.

[6] TSN, April 16, 1998, pp. 11-12.

[7] TSN, April 16, 1998, p. 13.

[8] TSN, April 16, 1998, pp. 15-18; TSN, April 20, 1998, pp. 2-5.

[9] TSN, April 14, 1998, p. 6.

[10] TSN, April 14, 1998, p. 9.

[11] TSN, April 22, 1998, p. 19.

[12] TSN, April 24, 1998, p. 3.

[13] TSN, May 4, 1998, p. 4.

[14] TSN, April 24, 1998, pp. 3-8.

[15] TSN, April 14, 1998, pp. 10-15.

[16] TSN, May 5, 1998, pp. 8-10.

[17] TSN, May 5, 1998, pp. 3-5.

[18] TSN, April 22, 1998, p. 5-7.

[19] TSN, April 22, 1998, pp. 3-9.

[20] TSN, April 22, 1998, pp. 10-11.

[21] 20 years old.

[22] 19 years old.

[23] 11 years old.

[24] Testimony of Rolly Fomador, TSN, May 14, 1998, pp. 13-14; Testimony of Marciso Miñoza, TSN, May 14, 1998, pp. 21-23; Testimony of Alfredo Colina, TSN, May 14, 1998, pp. 29-34.

[25] Decision, Regional Trial Court Record, Crim. Case No. CBU-46283, pp. 80-91.

[26] Notice of Appeal, Regional Trial Court Record, Crim. Case No. CBU-46283, p. 95.

[27] People v. Deleverio, 352 Phil. 382, 391 (1998).

[28] People v. Baniguid, G. R. No. 137714, September 8, 2000; People v. Bernaldez, 322 SCRA 462, 470-471 (2000).

[29] People v. Dela Peña, G. R. No. 128372, March 12, 2001.

[30] People v. Ambray, 303 SCRA 697, 704-705 (1999).

[31] People v. Jose, 307 SCRA 571, 577 (1999).

[32] People v. Freta, G. R. Nos. 134451-52, March 14, 2001.

[33] People v. Marcelo, 305 SCRA 105, 115 (1999).

[34] People v. Tagaylo, G. R. Nos. 137108-09, November 20, 2000.

[35] People v. Freta, G. R. Nos. 134451-52, March 14, 2001.

[36] People v. Osing, G. R. No. 138959, January 16, 2001; People v. Rafales, 323 SCRA 13, 26 (2000).

[37] People v. Javier, 311 SCRA 122, 133 (1999).

[38] People v. Hofileña, 334 SCRA 214, 227 (2000).

[39] People v. San Agustin, G. R. Nos. 135560-61, January 24, 2001.

[40] The law took effect on October 22, 1997, or 15 days from publication in newspapers of general circulation dated October 7, 1997.

[41] Article 266-B, Revised Penal Code, as amended by Republic Act No. 8353.

[42] Article 68 (2), Revised Penal Code.

[43] Table of Penalties, The Revised Penal Code, by Ramon C. Aquino, Chief Justice (Ret.) Supreme Court, Vol. III, 1988 ed., p. 627.

[44] People v. Malapo, 356 Phil. 75, 87 (1998); People v. Atop, 349 Phil. 825, 844 (1998).

[45] People v. Delos Santos, 315 SCRA 579, 586 (1999).

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