

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. MONTANO LOPEZ @ JUN, ACCUSED-APPELLANT.

G.R. Nos. 135671-72. November 29, 2000

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Montano Lopez @ Jun was charged with raping his 16-year old niece twice in two separate Informations which read as follows:

Criminal Case No. 112749-H

That on or about the 14th day of February 1997, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with MA. CRISTINA LOPEZ Y AVENA, all against her will and consent.

Contrary to law.

(p.4, Rollo.)

Criminal Case No. 112750-H

That on or about the 27th day of February 1997, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with MA. CRISTINA LOPEZ Y AVENA, all against her will and consent.

Contrary to law.

(p. 6, Rollo.)

Upon arraignment, accused-appellant pleaded not guilty to both charges. Trial ensued and on July 9, 1998, the court a quo rendered judgment finding accused-appellant guilty of two counts of rape and imposing on him the supreme penalty of death on both counts.

The facts show that Ma. Cristina Lopez, the victim, is the niece of the accused-appellant, her father being the brother of accused-appellant. They both live in Barangka Drive, Mandaluyong City with their rooms adjacent to each other and connected by a common stairway. Accused-appellant is married but childless. Cristina and her siblings often watch television at night in their uncle's place because they do not have their own TV set at home.

On the evening of February 14, 1997, Cristina testified that she and her sister watched TV inside accused-appellant's room (tsn, February 17, 1998, p. 8). Cristina fell asleep and when she woke up in the middle of the night, she found herself naked and her sister gone (ibid.) She saw accused-appellant undress himself and put himself on top of her and thereupon succeeded in having intercourse with her (ibid., p. 9). Her uncle covered her mouth so that she could not scream (ibid., p. 10). After satisfying his lust, accused-appellant told Cristina to go home and threatened to kill her if she tells her mother about the incident (ibid., p. 13). Fearful, Cristina did as

bided.

A little more than a week later, or on February 27, 1997, Cristina and her siblings again watched TV in their uncle's room until 10 o'clock in the evening (ibid., p. 13), after which, her brother and sister went home to sleep while she went about her task of fetching water. She finished her chore at around 3 o'clock in the morning and noticed her uncle waiting for her outside his room (ibid., p. 14). With a knife in his hand, accused-appellant called her and she followed him to his room. He again had carnal knowledge with her (ibid., p. 15). Just like the previous incident, accused-appellant covered her mouth to prevent any shout for help, and also tied her hands and feet to preclude escape (ibid.).

The following day, Cristina told her mother what her uncle had done to her (ibid., p. 15). Her mother reported the incident to the police and the necessary charges were filed against accused-appellant.

Meanwhile, Cristina was found pregnant and learning of such physical condition, accused-appellant suggested to Cristina's mother to have the fetus aborted to avoid any scandal in the family (tsn, July 1, 1998, p. 13). Accused-appellant gave Cristina some medicines or drugs, through her mother, and the following month, Cristina again had her menstruation.

On January 7, 1998, accused-appellant was arrested and detained. While under detention, he wrote Cristina and her mother several letters asking for forgiveness and pleading that they drop the charges against him to preserve the peace and harmony in their family. Moved with pity, Cristina and her mother filed an affidavit of desistance withdrawing their charges against accused-appellant. Their motion to withdraw the cases against accused-appellant was, however, denied.

Accused-appellant admitted that he had sexual relations with Cristina on February 14 and 27, 1997 (TSN, July 1, 1998, p. 15). He, however, denied forcing Cristina to have sex with him, contending instead that their sexual encounters were consensual as he and Cristina had a "mutual understanding" (ibid.), i.e., they reciprocated each other's feelings. He further testified that Cristina's mother learned about their relationship when Cristina missed her monthly menstrual period (ibid., p. 6). Fearing that Cristina might be pregnant, he suggested that they abort the baby, to which Cristina's mother agreed (ibid., p. 7). He promised to help Cristina and her family financially if they would forgive him and drop the charges against him (ibid., p. 9). Accused-appellant's wife was not around when he had the sexual encounters with Cristina.

During the trial, the court a quo observed that while Cristina gave a clear and straightforward narration of how her uncle was able to have sexual intercourse with her, she, however, did not feel any disgust nor hatred towards accused-appellant (tsn, February 17, 1998, p. 19). Although aware that what her uncle had done to her was wrong (ibid., p. 23), she admitted loving him (ibid., p. 21) and that she was willing to forgive him and to withdraw the cases against him (ibid., p. 23). Finding this reaction to be unusual for a woman who had experienced a harrowing ordeal, the trial court ordered that Cristina undergo psychiatric examination. Dr. Rico Angelo Gerona of the National Center for Mental Health testified that based on his psychiatric examination, he found that Cristina is suffering from mild mental retardation, that she could easily be coerced, and that at 17 years old, Cristina had the mental age of a 9 to 10-year old child (tsn, May 20, 1998, pp. 7-9).

In this automatic review of the decision of the court a quo, accused-appellant contends that -

I

THE TRIAL COURT ERRED IN FINDING (HIM) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

II

THE TRIAL COURT ERRED IN BEING AMBIGUOUS IN DECLARING UNDER WHICH MODE OF COMMITTING RAPE, WHETHER THROUGH FORCE AND INTIMIDATION OR WHEN THE WOMAN IS DEPRIVED OF REASON, THE ACCUSED WAS CONVICTED.

(Rollo, p. 28.)

Concededly, the two Informations charging accused-appellant of raping Ma. Cristina Lopez alleged that the crime was committed "by means of force and intimidation" (Rollo, p. 4, 6). However, in the decision under review, the trial court held that:

. . .there appears to be an absence of the element of force, threat and intimidation in the rape committed on 14 February 1997 but said element are clear in the rape committed on 27 February 1997. Nevertheless, the ascendancy of the accused being an uncle of the victim can substitute for the force, threat or intimidation in both instances of rape.

(Rollo, pp. 16-17.)

Quoting *People vs. Quinones* (41 SCRA 468 [1993]), the trial court went further to say that:

This Court has, in a host of cases, invariably ruled that sexual intercourse with a woman who is deprived of reason or one who is intellectually weak to the extent that she is incapable of giving consent to the carnal intercourse constitutes rape. Here, the presence or absence of force become inconsequential. (ibid.)

Article 335 of the Revised Penal Code, provides:

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 x x x x x

The general rule is that an "accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of his constitutional right" (*People vs. Ortega*, 276 SCRA 166 [1997]). In the case at hand, the two Informations charged accused-appellant with raping Cristina by "using force or intimidation" only, but the trial court likewise held him liable for rape under Paragraph 2 of Article 335, or "when the woman is deprived of reason." In *People vs. Moreno* (294 SCRA 728 [1998]), then Justice, now Chief Justice Hilario Davide, Jr., in his separate opinion, posited the view that one may be validly convicted of rape under either the second or third paragraph of Article 335 of the Revised Penal Code, even if the information has charged him only with rape under the first circumstance, for the following reasons:

The evidence, however, established that the victim was an imbecile with the mental age of a six-year old child. The record does not disclose that appellant objected to the presentation and offer by the prosecution of evidence of such fact. Appellant's failure to object was thus a waiver of the constitutional right to be informed of the nature and cause of the accusation. It is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will. (1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 31-32 [1983 ed.]). This Court has, on more than one occasion, recognized waivers of constitutional rights, e.g., the right against unreasonable searches and seizures (*People v. Malasugui*, 63 Phil. 221 [1936]; *Viuda de Gracia v. Locsin*, 65 Phil. 689 [1938]); the right to

counsel and to remain silent (*People v. Royo*, 114 SCRA 304 [1982]); the right to be heard (*Abriol v. Homeres*, 84 Phil. 525 [1949]; *People v. Dichoso*, 96 SCRA 957 [1980]); and the right to bail (*People v. Donato*, 198 SCRA 130 [1991]).

(p. 747.)

Here, accused-appellant did not object to the psychiatric examination of Cristina as ordered by the trial court, neither did he dispute the findings of Dr. Gerona that Cristina is a mental retardate with a mental age of a 9-10 year old child. Accused-appellant himself admitted that Cristina, while not insane, is feeble-minded (tsn, July 1, 1998, p. 13). The use of force and intimidation, as alleged in the Information, was also duly proved when Cristina testified that accused-appellant tied her hands and feet when he ravaged her the second time on February 27, 1997. Accused-appellant cannot, therefore, claim that he was unaware of Cristina's mental condition and that he was deprived of his constitutional right to be informed of the nature and cause of the accusation against him.

While it may appear that Cristina did not resist accused-appellant when he first raped her on February 14, 1997, the use of force and intimidation under the circumstances was not necessary because of Cristina's mental condition which effectively deprived her of reason to ward off the bestial attacks of her uncle. Time and again we have held that if the mental age of a woman above 12 years old is that of a child below 12 years old, even if she voluntarily submits herself to the bestial desires of the accused, or even if the circumstances of force or intimidation, or of the victim being deprived of reason or otherwise rendered unconscious, are absent, the accused would still be liable for rape (*People vs. Bulaybulay*, 248 SCRA 401 [1995]); see also *People vs. Namayan*, 246 SCRA 646 [1995]; *People vs. Abendaño*, 242 SCRA 531 [1995]; *People vs. Camillo*, 236 SCRA 22 [1994]; *People vs. Pamor*, 237 SCRA 462 [1994]). Moreover, accused-appellant's asking for forgiveness and the dropping of the cases against him is an act undeniably indicative of guilt (*People vs. Dupali*, 230 SCRA 62 [1994]; *People vs. Taneo*, 284 SCRA 251 [1995]). For if he so believed that he did not commit any wrongdoing against Cristina, why ask for forgiveness?

The trial court, however, erred in imposing the death penalty on accused-appellant because both the victim's age and her relationship to the accused were not alleged in the Information. This Court has consistently held that the death penalty may be imposed only if the information alleges and the evidence later proves both the age of the victim and her relationship to the offender (*People vs. Bayya*, G.R. No. 1277845, March 10, 2000; citing *People vs. Tabion*, G.R. No. 132715, October 20, 1999; *People vs. Maglente*, G.R. Nos. 124559-66, April 30, 1999; *People vs. Alcala*, G.R. Nos. 127023-25, May 19, 1999). As explained in the earlier case of *People vs. Ramos* (296 SCRA 559 [1998]), the reason for the rule is because relationship and minority partake of the nature of special qualifying circumstances which have the effect of increasing the prescribed penalty by degrees. As the qualifying circumstances of relationship and minority were not alleged in the Information, accused-appellant cannot be convicted of qualified rape, and accordingly, the death penalty cannot be imposed on him.

The trial court awarded moral damages in the amount of P200,000.00 which we find to be excessive. Following our ruling in *People vs. Patalin, Jr.* (G.R. No. 125539, July 27, 1999), we hereby reduce the same to P50,000.00 for each count of rape.

Further, in line with latest jurisprudence, accused-appellant should pay the victim civil indemnity in the amount of P50,000.00 for each count of rape (*People vs. Lopez*, G.R. No. 129239, September 5, 2000). Considering the blood relationship between accused-appellant and the victim, accused-appellant is likewise liable for exemplary damages of P25,000.00 for each count of rape (*People vs. Romeo Arilla y Montoyo*, G.R. No. 130593, June 19, 2000).

WHEREFORE, the decision under review is hereby **AFFIRMED** except for the modification that the

accused-appellant MONTANO LOPEZ @ JUN is hereby adjudged guilty of two counts of SIMPLE RAPE and is sentenced to suffer the penalty of RECLUSION PERPETUA for each count thereof, and except for the awards of civil indemnity as well as moral and exemplary damages above-discussed.

SO ORDERED.

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

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