

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR LEGASPI Y LIBAO, ACCUSED-APPELLANT.

G.R. Nos. 136164-65. April 20, 2001

Ponente: MELO, J.

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MELO, J.:

On February 17, 1997, accused-appellant Edgar Legaspi y Libao was charged with the crimes of rape and robbery in two separate Informations filed with Branch 170 of the Regional Trial Court National Capital Judicial Region stationed in Malabon. The Informations respectively read as follows:

Criminal Case No. 17640-MN

That on or about the 11[th] day of February, 1997, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with a bladed weapon, with lewd design and by means of force and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse with HONORATA ONG Y GUEVARRRA, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 17641-MN

That on or about the 11[th] day of February, 1997, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused while armed with bladed weapon, with intent to gain and by means of force, violation and intimidation, did, then and there, wilfully, unlawfully and feloniously take, rob and divest cash money in the amount of P500.00 to the damage and prejudice of the said HONORATA ONG Y GUEVARRRA in the aforementioned amount of P500.00.

CONTRARY TO LAW.

(Rollo, pp. 4-5.)

Since the charges were related, the prosecution's motion that the two cases be jointly tried was granted. For its part, the defense pointed out that accused-appellant had been previously treated at the National Center for Mental Health from February 28 to March 2, 1996. It moved that the arraignment of accused-appellant be deferred pending determination by the Center as to whether accused-appellant was mentally fit to stand the rigors of trial. This motion was likewise granted.

Accused-appellant was finally arraigned on November 18, 1997, following submission of the report dated September 1, 1997 of the National Center for Mental Health stating that accused-appellant could stand trial. Upon his arraignment, accused-appellant pleaded not guilty and trial thereafter ensued, with the prosecution presenting three witnesses, namely, the complainant Honorata Ong, NBI Medico-Legal officer Dr. Ronaldo Mendez, and barangay tanod Gerardo Ocampo. The defense, on the other hand, presented accused-appellant and SPO4 Salvador Ibo.

On November 6, 1998, the trial court rendered a decision, disposing:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 17640-MN, the Court finds accused Edgar Legaspi y Libao guilty beyond reasonable doubt of the crime of RAPE, and considering the presence of the aggravating circumstance of dwelling and nighttime, hereby sentences him to suffer the penalty of DEATH, and to pay Honorata Ong the sum of P50,000.00 as moral damages and P30,000.00 as exemplary damages plus cost of the suit;

2. In Criminal Case No. 17641-MN, the Court finds accused Edgar Legaspi y Libao guilty beyond reasonable doubt of the crime of ROBBERY and there being the presence of the aggravating circumstance of dwelling, hereby sentences him to suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to nine (9) years of prision mayor, as maximum and to pay Honorata Ong the sum of P500.00 plus cost of suit;

SO ORDERED.

(Rollo, p. 18.)

The supreme penalty of death having been imposed for the rape, the case is now before this Court on automatic review. As for accused-appellant's conviction for robbery, accused-appellant did not appeal therefrom, thus, as to that portion of the judgment against him, the same has become final and executory (Section 3[c], Rule 122).

The facts, as shown by the records, are as follows:

At around 2:00 in the morning of February 11, 1997, complainant Honorata Ong, who was then sleeping inside her house with her three daughters, was awakened by the sound of their door opening. She initially thought that it was her husband coming home from work. When Honorata opened her eyes, however, she saw a man armed with a knife standing by her feet. More terrifying, the man already had his pants and briefs down on his knees and he was pointing to her eldest daughter. Alarmed, Honorata told the man not to touch her daughter. The man poked his knife at her and told her to stand up and then was made to lie down on the adjacent sofa. Thereafter, the man removed Honorata's panties and had sex with her. All this time, he had his knife at Honorata's neck. Honorata noticed that the man reeked of alcohol. After slaking his lust, Honorata's assailant stood up then asked for money. Since the man still had his knife pointed at her, Honorata could do nothing but comply. She gave him the only money she had, several bills amounting to P500.00.

After threatening Honorata and her daughters with death if she reports the incident, the man left. Honorata, out of fear, could do nothing but close the door. Later that day, however, Honorata mustered enough courage to narrate her defilement to her sister-in-law and upon describing him, Honorata's sister-in-law exclaimed that she knew a person living in Manapat Street fitting the description.

That afternoon, Honorata, together with her husband, reported the incident to the barangay captain. Thereafter, the captain, along with two tanods patrolled the area and, on the next day, they managed to nab a person who fits the description given by Honorata of her assailant. When the suspect was brought to the barangay hall for confrontation, he was positively identified by Honorata as the rapist. This person, later identified as accused-appellant Edgar Legaspi y Libao, was thus detained by the police.

The next day, Honorata had herself medically examined at the NBI but no evident signs of extragenital physical injuries were found on her body.

On the other hand, all that accused-appellant could interpose as defenses were denial and alibi, stating that at the time of the alleged incident, he was at his home in Manapat Street sleeping. Accused-appellant also testified that he had been previously convicted of homicide and Roberto Eugenio, the victim therein, was a resident of the exact

same address where complainant Honorata was living. Accused-appellant hinted at the possibility that relatives of Roberto Eugenio had conspired with complainant Honorata to get rid of him.

Incidentally, Rivera Street where the alleged crime occurred is only two streets away from Manapat. Moreover, aside from Honorata's address, accused-appellant did not present proof that the relatives of Roberto Eugenio knew complainant Honorata.

Given the above circumstances, the trial court, as earlier mentioned, found accused-appellant guilty of rape aggravated by dwelling and nighttime, and of robbery aggravated by dwelling; and thereupon, imposed upon him the supreme penalty of death for the rape, and an indeterminate penalty of six months to nine years for the robbery.

Accused-appellant's plea for reversal is founded on the arguments that his guilt was not shown beyond reasonable doubt, and that complainant Honorata's testimony is replete with inconsistencies. He also insists on his alibi and alleged insanity.

We have carefully reviewed the record and we find the above contentions devoid of merit.

In support of his first, second, and third assigned errors, which accused-appellant discussed jointly, he points to the discrepancies between Honorata's testimony in open court and the entry in the police blotter. Accused-appellant harps on the fact that as described in the blotter, the alleged rapist had an "ala Babalu face" (having an attenuated chin similar to that of the late comedian Babalu) and a mole on the upper left part of his lips, while accused-appellant is not "Babalu" and his mole is located not on the left but on the right side of his face.

That the facial features of accused-appellant differ from the description of Honorata's assailant as found in the police blotter detracts not a whit from the credibility of Honorata's testimony. It must be kept in mind that Honorata positively identified accused-appellant as her rapist, not only during the investigation conducted by the police on the morning of January 15, but also during the trial. At the Malabon Police Station, Honorata identified accused-appellant thus:

T: Bakit naman po kayo nandito ngayon sa aming himpilan at nagbigay ng malaya at kusang loob na salaysay?

S: Para po ipagharap ng reklamo ang taong ito (affiant pointing/identifying person of EDGAR LEGASPI y LIBAO, @ EGAY, 29 years old, single, jobless, and residing at No. 86 Manapat Street, Barangay Tañong, Malabon, MM who is presently inside this room).

T: Ito po bang taong ito ay dati na ninyong kilala?

S: Hindi po.

T: Bakit naman po ninyo gustong ipagharap ng reklamo ang taong ito?

S: Ni rape niya ako.

(Original Record, p. 80.)

During the trial, Honorata likewise identified accused-appellant as the person who sexually violated her. She testified that she was able to recognize accused-appellant because the fluorescent lamp inside her house was lit at the time of the incident.

Q: It was dark. Why were you able to see that person?

A: Because the light inside the house is on, sir.

Q: And you saw that person?

A: Yes, sir.

(tsn, August 18, 1998, p. 3.)

Likewise, we have heretofore held that a man and a woman cannot be physically closer to each other than during the sexual act (*People vs. Fuertes*, 296 SCRA 602 [1998]). We thus have on record Honorata's positive identification of accused-appellant as her assailant. Coupled with the oft-quoted doctrine that entries in police blotters, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries since they are usually incomplete and inaccurate (*People vs. Padlan*, 290 SCRA 388 [1998]), we hold that any discrepancy in the police blotter entry and the open court testimony of Honorata does not affect her credibility.

It must also be remembered that the entry in the police blotter was made at 6:30 on the morning of February 12, 1997, only a few hours after the rape and robbery. At that time, Honorata may not have yet fully recovered from the traumatic ordeal she had gone through, resulting in an inaccurate entry in the police blotter. Besides, minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall (*People vs. Sta. Ana*, 291 SCRA 188 [1998]).

On the other hand, accused-appellant claims that if Honorata were indeed raped on the sofa of her one-room house, the creaking of the sofa and her moans would have awakened her three sleeping daughters. He asserts that, strangely, this did not happen.

That Honorata's daughters, aged 3, 6, and 9 years, did not wake up during the assault is not as incredible as accused-appellant would make it out. The failure of the three children to wake up during the commission of the rape was probably due to the fact that they were sound asleep. It is not unusual for children of tender ages to be moved from their sleeping mats and transferred to another bed without eliciting the least protest from them, much less, awakening them (*People vs. Mustacisa*, 159 SCRA 227 [1988]). It is also to be noted that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night (*People vs. Ignacio*, 233 SCRA 1 [1994]).

As to accused-appellant's submission that the absence of spermatozoa in Honorata's organ negates the commission of rape, the same rings hollow, the presence or absence of spermatozoa being immaterial in the prosecution of a rape case, as it is well-settled that it is penetration, however slight, and not ejaculation, that constitutes rape (*People vs. dela Paz, Jr.*, 299 SCRA 86 [1998]). That there was penetration is shown by Honorata's testimony, thus:

Q: When he removed your panty what did he do next?

A: He inserted his organ in mine, sir.

Q: How did you come to know it was his penis that entered your private part?

A: I felt pain, sir.

(tsn, August 18, 1998, p. 5.)

Finally, accused-appellant contends that Honorata lied when she claimed not having known accused-appellant or his family prior to the incident. Accused-appellant takes this to be indicative that Honorata plotted with the family of Roberto Eugenio to get rid of him. As proof of Honorata's alleged prevarication, accused-appellant presented the voter's registration record of a certain Roberto Eugenio, allegedly accused-appellant's victim in a homicide

case four years prior to the incident in question, indicating that Roberto's address was 27-D Rivera Street, Tañong, Malabon, Metro Manila, the exact same address of Honorata.

Accused-appellant has not presented proof that Honorata knew Roberto Eugenio or his relatives. Neither has he shown that any relative of Eugenio still resides at Honorata's address, 27-D Rivera Street. Moreover, mere residence at the same address is not proof that Honorata conspired with the relatives of Roberto Eugenio in an attempt to get rid of accused-appellant. False testimony or incriminatory machinations must be proved by evidence more substantial than a voter's registration record.

In his defense, accused-appellant raises the defense of alibi, claiming that he was asleep at his house at #86 Manapat Street, Tañong, Malabon at the time of the incident. Accused-appellant's defense of alibi must, however, be looked upon with suspicion, not only because it is inherently weak and unreliable, but also because it can be easily fabricated and concocted (*People vs. Tulop*, 289 SCRA 316 [1998]). For alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity (*People vs. Ballesteros*, 285 SCRA 438 [1998]).

In the case at bar, accused-appellant has failed to meet both requisites. Aside from his testimony that he was asleep at the time of the incident, no other witness came forward to corroborate his version. Moreover, Manapat Street is only two streets away from Rodriguez Street, the scene of the crime. Accused-appellant even admitted during the trial that this was only a five-minute walk from his residence. Counterbalanced against Honorata's conduct immediately after the incident and her positive identification of accused-appellant as her assailant, accused-appellant's defense of alibi is unavailing. In the words of the trial court:

Honorata did not know the accused before the incident. She immediately revealed the fate that befell on her to her sister-in-law. They then reported the incident to the barangay and thereafter to the police authorities; executed a sworn statement; submitted herself to a physical examination by a Medico-Legal Officer of the NBI; and subscribed and swore to a complaint for rape which would necessarily result in her exposure to the rigors of public trial. The spontaneity of these acts clearly demonstrates her sincere desire to bring the accused to justice. Moreover, no married woman in her right mind would subject herself to public scrutiny and humiliation in order to perpetuate a falsehood. Neither would she take the risk of being alienated from her husband and family had she not been violated and robbed of her money.

(RTC Decision, p. 4-5.)

In accused-appellant's last assignment of error, he claims that the court a quo erred in not ruling that he is entitled to the exempting circumstance of insanity. For insanity to be considered, Paragraph 1, Article 12 of the Revised Penal Code requires a complete deprivation of rationality in committing the act, i.e., that the accused be deprived of reason, that there be no consciousness of responsibility for his acts, or that there be complete absence of the power to discern. The defense of insanity or imbecility must be clearly proved, however, for there is a presumption that acts penalized by law are voluntary (*People vs. Medina*, 286 SCRA 44 [1998]).

To prove his insanity, accused-appellant's counsel points to his confinement at the National Center for Mental Health prior to the incident in question. Likewise, his counsel claims that when Honorata saw accused-appellant, the latter's pants and briefs were already down on his knees. He takes this to be an indicium of insanity.

Mere prior confinement does not prove that accused-appellant was deprived of reason at the time of the incident. Firstly, accused-appellant did not submit proof that he was adjudged insane by the National Center for Mental Health, only that he had been confined therein. Note also that accused-appellant had already been discharged from the Center prior to the incident. Even if accused-appellant were adjudged insane prior to the incident, his

discharge implies that he was already considered well. In fact, the psychiatric evaluation report of accused-appellant states that his disorder "runs a chronic course with periods of exacerbations and remissions." If the insanity is only occasional or intermittent in nature, the presumption of its continuance does not arise. He who relies on such insanity proved at another time must prove its existence also at the time of the commission of the offense (*People vs. Bonoan*, 64 Phil. 87). This, accused-appellant has failed to do.

Neither does having one's pants and briefs on one's knees indicate deprivation of reason. If anything else, it shows the lechery and depravity of accused-appellant. Mental depravity which results not from any disease of the mind, but from a perverted condition of the moral system, where the person is mentally sane, does not exempt one from responsibility for crimes committed under its influence (*People vs. Medina*, supra). The Court cannot, therefore, appreciate the defense of insanity brought by accused-appellant.

In sum, we find that the trial court did not err in finding Honorata's testimony to be clear, straightforward, and worthy of credence, and consequently, in finding accused-appellant guilty beyond reasonable doubt of the crime of rape.

We now come to the proper penalty. Under Article 335 (now Article 266-B) of the Revised Penal Code, "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."

According to the trial court:

The rape charge was committed in the victim's dwelling at nighttime. Dwelling and nighttime are aggravating circumstances in rape (*People vs. Padilla* 242 SCRA 629). On the other hand, the aggravating circumstance of nighttime cannot be appreciated in the robbery charge because of (sic) the notion to commit the crime was conceived only shortly when the rape was committed at darkness. However, the aggravating circumstance of dwelling is a different story and should be considered. Dwelling is aggravating in robbery with violence against or intimidation of person because this class of robbery can be committed without the necessity of trespassing the sanctity of the offended party's house. Entrance into the dwelling house of the offended party is not an element of the offense (*People vs. Cabato* 160 SCRA 98). Finally, for sexually assaulting a married woman thereby grievously wronged (sic) the institution of marriage, the imposition of exemplary damages by way of example to deter others from committing the crime is just (sic) warranted.

(RTC Decision, pp. 5-6.)

Considering the presence of the aggravating circumstances of nighttime and dwelling, the trial court imposed the supreme penalty of death on accused-appellant for the crime of rape.

However, a cursory examination of the Information filed against accused-appellant would show that the aggravating circumstances of nighttime and dwelling are not specified therein. Now, at the time the trial court rendered its decision, the non-allegation of generic aggravating circumstances in the information was immaterial, since the rule then prevailing was that generic aggravating circumstances duly proven in the course of the trial could be taken into account by the trial court in determining the proper imposable penalty even if such circumstances were not alleged in the information (*People vs. Deberto*, 205 SCRA 291 [1992]).

Nonetheless, it is to be noted that the appreciation by the trial court of the aggravating circumstances of dwelling and nighttime, despite the non-allegation thereof in the Information, resulted in the imposition of the supreme penalty of death upon accused-appellant. In *People v. Gallego* (G.R. No. 130603, August 15, 2000), We had occasion to rule, thus:

In *People v. Albert* (251 SCRA 136 1995)], we admonished courts to proceed with more care where the possible punishment is in its severest form -- death -- because the execution of such a sentence is irrevocable.

Any decision authorizing the State to take life must be as error-free as possible, hence it is the bounden duty of the Court to exercise extreme caution in reviewing the parties' evidence. Safeguards designed to reduce to a minimum, if not eliminate, the grain of human fault ought not to be ignored in a case involving the imposition of capital punishment for an erroneous conviction "will leave a lasting stain in our escutcheon of justice." The accused must thence be afforded every opportunity to present his defense on an aggravating circumstance that would spell the difference between life and death in order for the Court to properly "exercise extreme caution in reviewing the parties' evidence." This, the accused can do only if he is appraised of the aggravating circumstance raising the penalty imposable upon him to death. Such aggravating circumstance must be alleged in the information, otherwise the Court cannot appreciate it. The death sentence being irrevocable, we cannot allow the decision to take away life to hinge on the inadvertence or keenness of the accused in predicting what aggravating circumstance will be appreciated against him.

In a series of cases under the regime of Rep. Act No. 7659, the Court did not appreciate the aggravating circumstance of dwelling which would have increased the imposable penalty to death when such circumstance was not alleged in the information. In *People v. Gaspar, et al.* (318 SCRA 649 [1999]), the Court found that apart from treachery, dwelling also attended the killing of the victim. Despite this finding and the absence of any mitigating circumstance, the Court nonetheless did not appreciate dwelling and imposed the penalty of reclusion perpetua and not the greater penalty of death. Hence, in the case at bar, considering that the aggravating circumstance of dwelling was not alleged in the information, we cannot appreciate it and raise the penalty imposed upon Raul Gallego from reclusion perpetua to death.

(Italics supplied.)

The principle above-enunciated is applicable to the case at bar. Consequently, we hold that due to their non-allegation in the Information for rape filed against accused-appellant, the aggravating circumstances of nighttime and dwelling cannot be considered in raising the penalty imposable upon accused-appellant from reclusion perpetua to death.

Parenthetically, the above rule is inapplicable for the crime of robbery committed by accused-appellant, the same not involving the imposition of the death penalty. For said crime, what remains applicable is the old rule that generic aggravating circumstances if duly proven in the course of the trial could be taken into account by the trial court in determining the proper imposable penalty, even if such circumstances were not alleged in the Information. Thus, for the crime of robbery, the trial court correctly imposed an indeterminate penalty of six (6) months of arresto mayor, as minimum, to nine (9) years of prision mayor, as maximum.

It is to be noted carefully that the rule on generic aggravating circumstances has now been formalized in the Revised Rules of Criminal Procedure, which took effect on December 1, 2000. Section 8 of Rule 110 now provide that:

Sec. 8. Designation of the offense.-- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

(Italics supplied.)

Likewise, Section 9 of the same Rule provides:

Sec. 9. Cause of the accusation.-- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to

pronounce judgment.

(Italics supplied.)

Sections 8 and 9 were discussed by this Court En Banc on June 20, 2000. According to the minutes of said session:

Justice Puno then invited the attention of the Court to Sections 8 and 9 of Rule 110. He explained that the proposal requiring the allegation of qualifying circumstances in the information reflects the recent decisions of the Court, especially in heinous crimes. However, the Court concerned itself with the proposed requirement of likewise alleging aggravating circumstances in the information. Justice Panganiban raised the question of what to do with an aggravating circumstance which was not alleged but was proved and not objected to during trial. Justice Melo answered that it cannot be used to increase the penalty if it was not alleged even if proved. Justice Puno explained that the proposal strengthens the right to due process of an accused, part of which is to be shielded from surprises.

Chief Justice Davide and Justice Panganiban agreed and emphasized that the presence of aggravating circumstances can make the difference between life and death where the imposable penalty is reclusion temporal maximum to death or reclusion perpetua to death. Justice Panganiban added that the prosecutors will now be compelled to prepare well-worded informations.

To make sure that the circumstances that need to be alleged are not missed out in the information, Justice Mendoza suggested that the Court can prescribe an updated form in the Rules of Court.

(Emphasis supplied.)

Thus, the Rules now require qualifying as well as aggravating circumstances to be expressly and specifically alleged in the Complaint or Information, otherwise the same will not be considered by the court even if proved during the trial. And this principle is applicable in all criminal cases, not only in cases where the aggravating circumstance would increase the penalty to death. With this, the Court gives fair warning to prosecutors that henceforth, they must prepare well-crafted informations that allege the circumstances qualifying and aggravating the crimes charged, otherwise the same will not be considered by the court in determining the proper imposable penalty.

The Court further notes that while the trial court awarded the victim the sum of P50,000.00 as moral damages and P30,000.00 as exemplary damages, it failed to award civil indemnity to the victim. Prevailing jurisprudence holds that in rape cases, the victim should be awarded P50,000.00 as civil indemnity and another P50,000.00 as moral damages for the injury evidently suffered. Moreover, the fact that the victim was raped inside her house in the presence of her children justifies the trial court's imposition of exemplary damages.

WHEREFORE, premises considered, the decision under review finding accused-appellant EDGAR LEGASPI y LIBAO guilty beyond reasonable doubt of the crime of rape in Criminal Case No. 17640-MN is AFFIRMED with the MODIFICATION that he is sentenced to suffer the reduced penalty of reclusion perpetua and to pay Honorata Ong the sum of Fifty Thousand pesos as civil indemnity, another Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages.

No special pronouncement is made as to costs.

SO ORDERED.

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

Pardo, J., on sick leave.

De Leon, Jr., J., on leave.

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