

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR MACAYA Y FRANCISCO, ACCUSED-APPELLANT.

G.R. Nos. 137185-86. February 15, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

SALVADOR MACAYA y Francisco was charged with rape on 8 August 1994 in separate Complaints before the Regional Trial Court of Las Piñas City committed against Mercelinda Palacio in 1990[1] and Angelica Palacio in June 1994.[2] Angelica is the younger sister of Mercelinda.

The trial court found the accused Salvador Macaya guilty as charged. In Crim. Case No. 94-5356 he was sentenced to suffer the penalty of reclusion perpetua and to pay his victim Mercelinda Palacio P100,000.00 as indemnity plus costs. In Crim. Case No. 94-5357 he was meted the supreme penalty of death and ordered to pay his victim Angelica Palacio P100,000.00 as indemnity plus costs.[3]

Salvador Macaya, a bet collector in cockfights, met Lourdes de Vera sometime in 1987 in a pub where she was working. At that time, Lourdes was already separated from her husband Ricardo Palacio with whom she has two (2) daughters, then 3-year old Mercelinda[4] and 1-year old Angelica[5] both of whom joined her when she moved in with Salvador at 419 Saging St., CAA, Las Piñas City. Thereafter, Lourdes begot two (2) daughters with Salvador. After some time, Lourdes resumed working in the pub thus leaving Salvador behind to take care of the children whenever she was out.

The sexual ordeal of Mercelinda Palacio started in 1990 when she was only six (6) years old. It happened whenever her mother was out working. Salvador would lie on his back and place Mercelinda on top of his stomach. Then he would lick her nipples, make her hold his penis, and then insert his penis into her vagina.

Salvador also sexually molested Angelica. In June 1994 when she was only seven (7) years old, Angelica was awakened when Salvador removed her panty and inserted his forefinger into her vagina. He simulated the sexual act by making a push and pull movement in her vagina with his finger. He removed his T-shirt, pants and briefs, then covered himself with a blanket. He laid down on his back, placed Angelica on top of him and inserted his penis into her vagina until he ejaculated. Afterwards, he put his penis into her mouth and let her lick his semen which she described as "parang gatas na maalat."

When Mercelinda and Angelica finally revealed to their mother their sexual experiences with Salvador, Lourdes immediately brought her daughters to the Fort Bonifacio police station to file their Complaints.

The medico-legal examination conducted on 29 July 1994 at the Philippine National Police crime laboratory showed that Mercelinda suffered a recent injury on her genital organ, deep healed lacerations thereon at 3 o'clock and 6 o'clock positions, and her labia minora was congested.[6] The examining physician opined that the lacerations could have been caused by the forcible entry of a hard blunt object or a fully erect male organ. On the other hand, Angelica's hymen remained intact and still in a virgin state. The labia majora of her sex organ was

full, convex and coaptated while her labia minora was slightly congested,[7] which according to the physician could have been caused by a finger or penis.

In his defense, 51-year old Salvador Macaya claimed he could not have raped Mercelinda and Angelica since he treated them as his own children. He submitted that the charges were instigated by Ricardo Palacio, their natural father, because Lourdes rejected his offer of reconciliation.

Sustaining the high credibility of the young victims, the trial court found for the prosecution and convicted the accused accordingly.

Accused-appellant argues against his conviction for raping Mercelinda. He claims that the Complaint failed to mention the precise date of the commission of the crime but merely stated "sometime during the year 1990." Concerning his other conviction, he argues that the Complaint of Angelica charges him only with simple rape such that the proper penalty is not death but reclusion perpetua.

Accused-appellant deserves his conviction for both crimes. In the language of a child of tender age, Mercelinda narrated her misfortune that started way back in 1990 in the hands of the person who, instead of leading her towards a bright future as her surrogate father, submerged her in a pit of pain and humiliation -

Q: Will you please read the words found in number 15 (of her police statement).

WITNESS

x x x x T - Pag naiwan kayo sa bahay at natutulog na ano ang ginagawa ninyo ni Angelica?

S - Pinapahawakan ni Daddy Salvador sa akin ang titi niya.

Q:

Do you still remember if this statement of yours happened?

A:

Yes, sir.

Q: What other things does your Daddy Salvador ask you to do aside from holding his penis?

A: He let me stayed (sic) on top of him x x x x

Q: How about number 17, will you please read it?

WITNESS

x x x x T - Anu-ano ang mga ginagawa niya sa iyo?

S - Dinidilaan ni Daddy Salvador ang didi ko, hinahawakan iyong pipi ko at pinapahawakan iyong titi niya.

Q: All those things, Daddy Salvador did all those things to you?

A: Yes, sir x x x x

Q: Did your Daddy Salvador actually put his penis inside your pipi?

A: Konti lang po x x x x

Q: But he usually did that at night when you were already in bed?

A: Yes, sir.

Q: And you don't remember how many times? It was not only once?

A: Yes, many times x x x x

Q: Were you hurt when he tried to put his penis inside your vagina?

A: Yes, sir x x x x

Q:

You x x x x used the word "kantot," can you tell us what do you understand by the word "kantot?"

WITNESS (Witness could not answer and, at this juncture, she shed tears).

Q:

x x x x When you said "kantot," was it not that your Daddy Salvador inserted his penis into your vagina, is that what you mean by "kantot?"

A: Yes, your honor x x x x[8]

What accused-appellant subsequently did to his younger victim, who thought he was her real father, was even more obnoxious. Perhaps if only the court had a choice, it would rather not require Angelica to recount her disgraceful ordeal and spare her the agony of recalling details as vulgar as these -

Q: Now, did your father do something to you when you were sleeping on that night of June 1994?

A: Yes, sir.

Q: What did he do to you?

(Witness just whispered her answer. It could not be heard and at this juncture, she started to cry).

Q: Did you see him removing his pants?

A: Yes, sir x x x x

Q: Did he put his penis over and above you or inside your vagina?

A:

He only inserted his finger (witness demonstrating with her hand her father's forefinger in push and pull movement) x x x x

Q: Were you hurt when he was rubbing his finger on your vagina?

A: Yes, your honor x x x x

Q: You said you saw your Papa naked and you saw his penis, did you see what he did to his penis?

A: He did this (witness demonstrating an act of masturbation).

COURT: Did he insert his penis into your vagina?

A:

Yes, sir.

Q: In what manner did your Papa do it to you?

A: I>Ipinapatong niya ako sa kanya x x x x

Q:

When your Papa tried to insert his penis to your vagina, was there anything that came out from his penis?

A: Yes, sir.

Q: What was that you saw which came from the penis of your Papa?

A: Parang gatas na maalat.

Q: Why did you say that it is salty? Did you taste it?

A:

Yes, your honor x x x x he put his penis into my mouth after the substance came out x x x x[9]

In *People v. Alicante*[10] we held that an accused may be convicted on the basis alone of the uncorroborated testimony of the rape victim provided that it is clear, positive, convincing and consistent with human nature and the normal course of things. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct and attitude, especially under cross-examination. Appellate courts are bound by the findings of the trial court in this respect unless it is shown that it has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case.[11] Here, the trial court evaluated the testimonies of both young victims as clear and convincing. No reason exists to substitute a contrary conclusion.

In *People v. Campos*[12] where the victims were only ten (10) and eleven (11) years old when they testified before the trial court, this Court held that at such tender age they were still unfamiliar with and naive in the ways of the world that it was quite unbelievable that they could fabricate such a sordid story of personal defloration;[13] besides, the defense failed to impute any ill motive on the part of the victims to file serious charges of rape against the accused.[14] The same holds true in the present case. What Mercelinda and Angelica testified to was the plain and simple truth.

This Court agrees with the observation of the Office of the Solicitor General that the allegation of Mercelinda in her Complaint that sometime in 1990 accused-appellant had carnal knowledge of her sufficiently informed him of the nature of the charge against him. The date of the commission of the rape is not an essential element of the crime as it is not determinative of its commission nor has it any substantial bearing thereof, especially since the specific month the crime was perpetrated in the present case is not material to the defense, which is a mere denial that accused-appellant committed the acts imputed to him.[15] Similarly, in the recent case of *People v. Magbanua*,[16] this Court said that the allegation in the Information that the acts of sexual intercourse were committed "on (sic) the year 1991 and the days thereafter" substantially apprised accused-appellant of the crime he was charged with, since all the essential elements thereof were stated therein. Moreover, the objection to the Complaint of Mercelinda at this stage is too late.[17] Perhaps accused-appellant should have moved to quash the Complaint at any time before he entered his plea[18] if he believed that the Complaint did not conform substantially to the prescribed form. In other words, his failure to do so is deemed a waiver of such ground.[19]

However, this Court sustains accused-appellant's argument that since the Complaint of Angelica charged him only with simple rape the proper penalty is not death but reclusion perpetua. Apparently, the trial court imposed the death penalty simply because the crime against Angelica was committed when RA 7659[20] was already in effect. This is erroneous.

The qualifying circumstance that accused-appellant is the common-law husband of Lourdes was not alleged in the

Complaint. Under Art. 335 of The Revised Penal Code, the death penalty shall be imposed when rape is committed against a victim who is under eighteen (18) years of age, and the offender, among other circumstances, is the common-law spouse of the parent of the victim. But these attendant circumstances must be alleged in the Complaint or Information. Otherwise, even if the minority of the victim and the relationship of the accused and his victim are established during the trial, he cannot be punished for a graver offense than that with which he is charged.[21] He can only be convicted of simple rape the imposable penalty for which is reclusion perpetua.

The trial court ordered accused-appellant to pay each of his victims an indemnity of P100,000.00, which we find a little excessive, so we reduce the amount to P50,000.00 to be awarded to each of Mercelinda and Angelica. In addition, they are entitled to moral damages in the amount of P50,000.00 each, which is imposed in rape cases without need of showing that the victims suffered mental anguish, fright, serious anxiety and the like.[22]

WHEREFORE, the Joint Decision in Crim. Cases Nos. 94-5356 and 94-5357 is AFFIRMED with the following modifications:

(a) In Crim. Case No. 94-5356, accused-appellant SALVADOR MACAYA y Francisco is found guilty of Simple Rape and sentenced to reclusion perpetua and is ordered to pay complaining witness Mercelinda Palacio y de Vera P50,000.00 as civil indemnity and P50,000.00 as moral damages; and

(b) In Crim. Case No. 94-5357, accused-appellant SALVADOR MACAYA y Francisco is found guilty of Simple Rape and sentenced to reclusion perpetua and is ordered to pay complaining witness Angelica Palacio y de Vera P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

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

[1] Records, pp. 2-3.

[2] Id., pp. 6-7.

[3] Decision penned by Judge Florentino M. Alumbres, RTC-Br. 255, Las Piñas City; Rollo, p. 63.

[4] Born 1 November 1984 as shown in her Birth Certificate; Records, p. 15.

[5] Born 4 August 1986 as shown in her Birth Certificate; id., p. 17.

[6] Medico-Legal Report; Records, p. 19.

[7] Id., p. 18.

[8] TSN, 27 September 1995, pp. 7-10.

[9] TSN, 10 May 1995, pp. 5-8.

[10] G.R. Nos. 127026-27, 31 May 2000.

[11] People v. Bayona, G.R. Nos. 133343-44, 2 March 2000.

[12] G.R. Nos. 133373-77, 18 September 2000.

[13] People v. Ferolino, G.R. Nos. 131730-31, 5 April 2000.

- [14] People v. Pambid, G.R. No. 124453, 15 March 2000.
- [15] People v. Lacaba, G.R. No. 130591, 17 November 1999, 318 SCRA 301.
- [16] G.R. No. 128888, 3 December 1999, 319 SCRA 719.
- [17] People v. Losano, G.R. No. 127122, 20 July 1999, 310 SCRA 707.
- [18] Secs. 1 and 3 (d), Rule 117 of the Rules of Court.
- [19] Sec. 8, Rule 117 in conjunction with Secs. 6-12, Rule 110 of the Rules of Court.
- [20] Death Penalty Law that took effect on 31 December 1993.
- [21] People v. Perez, G.R. No. 122764, 24 September 1998, 296 SCRA 17.
- [22] People v. de Guzman, G.R. No. 124368, 8 June 2000.

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