PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLAUDIO DELA PEÑA Y BORDOMEO, ACCUSED-APPELLANT.

G.R. Nos. 138358-59. November 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Claudio dela Peña was charged by his daughter Mary dela Peña with two (2) counts of rape in two separate Informations which read as follows:

> Criminal Case No. 4449-96:
>
> That on or about the 25th day of February 1996, at Barangay Burol I, Municipality of Dasmariñas, Province of Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his own daughter, Mary dela Peña, and without the latter's consent and against her will, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of said Mary dela Peña, to her damage and prejudice.
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> Criminal Case No. 4450-96:
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> That on or about the 27th day of February 1996, at Barangay Burol I, Municipality of Dasmariñas, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his own daughter, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Mary dela Peña against her will and consent, to her damage and prejudice.

The said cases were filed with the Regional Trial Court of Imus, Cavite, Branch 20. At the arraignment, accused-appellant entered a plea of "not guilty." Thereafter, the cases were jointly tried.

The trial court found that on the day of the supposed rapes on February 25, 1996 and February 27, 1996, seventeen-year old Mary was living with her widower father in Dasmariñas, Cavite. Both incidents happened at around 7:00 o'clock in the evening. On each occasion, accused-appellant summoned his daughter to massage his body. Thereafter, he fondled his daughter's breasts then forced himself on her. Mary's efforts to escape from her father's evil design proved futile as the latter punched her into submission and threatened her with a knife.

Mary narrated that her ordeal in the hands of her father started as early as 1991 when they were still living in Cebu. Mary disclosed that she gave birth to her daughter, Mary Jean, when she was only thirteen years old and to her son, Elboy, when she was fifteen. Both her children were sired by her own father.

Accused-appellant denied the charges against him. He averred that since he reached fifty years old in 1984, he has been unable to have an erection. He also claimed that he lost interest in sex since his wife died in 1984.

The trial court disbelieved accused-appellant, ratiocinating thus:

> In the case at bar, the testimony of the victim was not only consistent but is convincingly impressed with truth and purity of intentions. She testified with naturalness and spontaneity and has shown no ill motive to testify falsely against her own father. It was held in the case People v. Saballe, 236 SCRA 365, that "when the testimony of the witness of rape is simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency and contradiction, the same must be given full faith and credit."[1]

The trial court thus found accused-appellant guilty of two (2) counts of rape and sentenced him to suffer the penalty of death for each count and to indemnify his victim the amount of P100,000.00 by way of moral damages.[2] In imposing the penalty of death, the trial court took into account the minority of the victim at the time of the rapes and her relationship with accused-appellant.

The death penalty having been imposed upon accused-appellant, the case is now before this Court on automatic review wherein accused-appellant assigns a lone error, thus:

> THE TRIAL COURT ERRED IN METING OUT THE DEATH PENALTY ON THE ACCUSED NOTWITHSTANDING THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE VICTIM WAS NOT ALLEGED IN THE INFORMATION.

Notably, accused-appellant is no longer disputing the factual findings of the trial court. Nevertheless, this Court has the duty to review the records of the case to ensure that the trial court did not err in convicting accused-appellant of two counts of rape and that none of the rights of accused-appellant was violated. This Court has scrutinized the testimony of complainant Mary dela Peña and has found that she testified in a frank, spontaneous and straightforward manner, unshaken even during cross-examination. On the other hand, accused-appellant raised the defense of impotence. On this score, we agree with the trial court when it ruled that:

> The defense of impotency raised by accused was not supported by any medical findings at all. His claim that since the death of his wife in 1984 he did not have any erection anymore is but a bare assertion. Impotency as a defense in rape cases must be proven with certainty to overcome the presumption in favor of potency (People v. Bahuyan, 238 SCRA 330).[3]

Accused-appellant argues that inasmuch as the minority of the victim was not specifically alleged in the Informations, he can only be convicted of simple rape and not qualified rape, minority being a qualifying circumstance.

The Solicitor General concedes that, indeed, the minority of the victim was not specifically alleged in the Informations and, consequently, the omission downgrades the crimes committed to simple rape. He claims, however, that since accused-appellant used a knife in perpetrating his evil designs on both occasions, then the aggravating circumstance of use of a deadly weapon should be appreciated in upgrading the crime to qualified rape thus justifying the imposition of the death penalty.

The contention of accused-appellant is well-taken.

The trial court convicted accused-appellant on the basis of Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, which was in force at the time of commission of the crimes. The said law provides that "[t]he death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances, i.e., when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." (Italics ours)

In People v. Feralino,[4] this Court held that the seven attendant circumstances, among which are minority and relationship, given that they alter the nature of the crime of rape and thus increase the degree of the penalty, are in

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the nature of qualifying circumstances. Plainly, these attendant circumstances added by R.A. No. 7659 are not ordinary aggravating circumstances, which merely increase the period of the penalty. These are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information.

The above rule was further clarified in the case of People v. Arillas,[5] where this Court stressed that in order for a crime to be elevated in its qualified form, the circumstance that qualifies it should be alleged in the information. If the qualifying aggravating circumstance is not alleged but proved, it shall only be considered as an aggravating circumstance since the latter may be proven even if not alleged. It follows that in such cases, the accused can not be convicted of the crime in its qualified form. It is fundamental that every element of an offense must be alleged in the complaint or information. The purpose of the rule is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. The conviction of an accused of a crime in its qualified form, where the information failed to specify the circumstance that qualified the crime, is a denial of his right to be informed of the nature of the accusation against him and, consequently, a denial of due process.

In the case at bar, the qualifying circumstance of minority should have been alleged with specificity in the information. Inasmuch as the prosecution failed to allege the concurrence of minority, accused-appellant can only be convicted of simple rape, not qualified rape. As such, the proper imposable penalty is reclusion perpetua.

The same rule applies in the case of deadly weapon. Rape with the use of a deadly weapon was introduced in Article 335 by Republic Act No. 4111 on June 20, 1964, and the rape of a minor by a relative was introduced by Republic Act No. 7659 on December 31, 1993. Both types of rape were recognized as qualified rape in People v. Tabugoca.[6]

Under Article 335 of the Revised Penal Code, simple rape is punishable by reclusion perpetua. When the rape is committed with the use of a deadly weapon, i.e., when a deadly weapon is used to make the victim submit to the will of the offender, the penalty is reclusion perpetua to death. This circumstance must however be alleged in the information because it is also in the nature of a qualifying circumstance which increases the range of the penalty to include death. Therefore, even if the same was proved, it cannot be appreciated as a qualifying circumstance. The same can only be treated as a generic aggravating circumstance, which cannot affect the penalty to be imposed, i.e., reclusion perpetua.[7]

In this case, the use of a deadly weapon was, likewise, not specifically alleged in the two Informations. There was, therefore, no basis for the trial court to convict accused-appellant of the crime of qualified rape and sentence him to suffer the death penalty.

The trial court awarded civil indemnity to the victim in the amount of P100,000.00 and also by way of moral damages. This Court ruled in People v. Nava[8] that civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.

WHEREFORE, the decision of the Regional Trial Court, Branch 20, Imus, Cavite, in Criminal Cases Nos. 4449-96 and 4450-96 is AFFIRMED, with the MODIFICATION that accused-appellant is found GUILTY of two (2) counts of simple rape and is sentenced to suffer the penalty of reclusion perpetua for each count, to indemnify his victim the amount of:

a) P50,000.00 as moral damages;

b) P50,000.00 as civil indemnity; and

c) P25,000.00 as exemplary damages for each count of rape.

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SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Decision, Records, p. 91.

[2] Penned by Judge Lucenito N. Tagle.

[3] Record, p. 93.

[4] 329 SCRA 719 [2000].

[5] 333 SCRA 765 [2000].

[6] 285 SCRA 312 [1998] as cited in People v. Mamac, 332 SCRA 547 [2000].

[7] People v. Fraga, 330 SCRA 699 [2000].

[8] 333 SCRA 749 [2000].

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