

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIPRIANO RADAM, JR., DEFENDANT-APPELLANT.

G.R. Nos. 138395-99. July 18, 2002

Ponente: PUNO, J.

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PUNO, J.:

Fourteen-year old MA. ELENA O. DE GUZMAN charged accused CIPRIANO RADAM, JR., the common-law spouse of her mother, of ravishing her five (5) times successively in a span of six (6) hours. The five Informations[1] filed against him were similarly worded, thus:

“That on or about the 12th day of June 1995, between 10:00 o’clock in the evening to 4:00 o’clock in the morning, more or less, at Brgy. Binalayan, Maripipi, Biliran Province, Philippines, and within the jurisdiction of this Honorable Court, said accused Cipriano Radam, Jr., a step-father, taking advantage of his superior strength, did then and there wilfully, unlawfully and feloniously cover the mouth of Ma. Elena O. de Guzman, a fourteen year old lass, with a handkerchief and tie her two hands together and have carnal knowledge of the complainant against her will.

All contrary to law and with aggravating circumstance that the said offense was committed in their dwelling, the latter not having given provocation for the offense.

In violation of Art. 33 of the Revised Penal Code.” (emphasis supplied)

The prosecution evidence shows that Yolanda de Guzman bore two (2) legitimate children – Reynaldo de Guzman and complainant MARIA ELENA DE GUZMAN who was born on November 23, 1980. A couple of years after the birth of Elena, Yolanda maintained a common-law relationship with accused CIPRIANO RADAM, JR. They resided in Mandaluyong City until they transferred to Maripipi, Biliran Province in 1991. On May 25, 1995, Yolanda went to Manila to seek medical treatment. She stayed in Mandaluyong City, leaving Elena and Reynaldo with the accused.

On June 12, 1995, at about 10:00 p.m., Elena woke up to find the accused on top of her, pinning her upper arms with his knees. Wasting no time, he gagged Elena’s mouth with a handkerchief and tied her hands behind her back. He took off Elena’s panty and removed his shorts and brief. He then raised Elena’s skirt and inserted his organ into hers. She felt intense pain but all she could do was cry. After satisfying his lust, the accused got up, went outside their house and lit a cigarette.

Unknown to Elena, that was only the beginning of her nightmare. After resting for a while, accused returned to Elena’s room and repeated his bestial acts four (4) more times which lasted until about 4:00 a.m. the following morning. There were times he would rub her nipples, kiss her and before consummating the coitus, utter: “Masarap ito. (This will feel good.)” Elena could not offer any resistance as her mouth was gagged, her hands were tied and she was already physically exhausted by the accused’s consecutive sexual assaults.

Accused finally had his fill after five (5) successive rounds of abuse. He left Elena and went to the farm. Elena set

her hands free by rubbing the rope tying her hands against the nails on the wall. After freeing herself, Elena sought refuge in the house of their neighbor, Inay Morit, and confided to her that she was abused by the accused. Not knowing what else to do, she returned to their house.

As she was washing the dishes that night, the accused arrived from the farm and approached her. He held her hands and told her to go to sleep. Petrified, Elena ran out of the house and hid in the house of Violy Cagado. After some time, the accused appeared drunk at the house of Violy and, with bolo in hand, threatened to kill everyone in the house. Elena hurriedly left Violy's house and spent the night in a pumpboat.

The next morning, she proceeded to the house of Lorna who advised her to stay with her for a while and hide from the accused. After two (2) days, she transferred to the house of Inay Lolita, a friend of her mother.

When accused's mother, Beatriz Radam, learned about the incident, she took Elena and made her stay in her house. On August 6, 1995, Severino Radam, brother of the accused, fetched Elena from Beatriz' house. He brought her to Mandaluyong City to visit her mother Yolanda. Severino, however, warned Elena not to tell her mother about the sexual abuses. After Severino left, Elena could no longer hold back. She tearfully recounted to her mother the details of the abuses she suffered in the hands of the accused.

Days later, Yolanda brought Elena to the National Bureau of Investigation (NBI) for medical examination.[2] DR. MAXIMO REYES, a medico-legal officer at the NBI, examined Elena and found lacerations on her genitalia. Elena was no longer a virgin.[3]

For his part, accused denied the charges. He submitted an alibi: on said date and time, he was in his mother's house in Binalayan West, Maripipi, Biliran. He spent the night there to help his siblings with their luggage as they were scheduled to depart the next day for Manila. It was only the next day when he was able to return to his house. He claimed that he could not have perpetrated the dastardly acts imputed to him as he considered Elena and Reynaldo as his own children.

Accused presented MORITA "Morit" MONDOY (a.k.a. Inay Morit) who denied that Elena confided to her about the sexual molestation. She alleged that on the night of June 13, 1995, Elena did not talk to her but to her daughter Menerisa. Elena left about half an hour later. On cross-examination, she admitted that it was the accused who requested her to testify and shouldered her transportation expenses and food allowance.[4] AMANCIO CAGADO, husband of Violy Cagado, on the other hand, claimed that Elena went to their house on June 14, 1995 and talked only with his daughter Gelen.[5]

After trial, the court a quo found the accused guilty on all five (5) counts of qualified rape and imposed on him the supreme penalty of death.[6] The dispositive portion reads:

"WHEREFORE, in view of the foregoing considerations, this Court finds the accused CIPRIANO RADAM, JR. y CASIO GUILTY beyond reasonable doubt of the crime of rape in five (5) counts under Criminal Cases Nos. N-1789 – 1793, hereby imposing upon him the maximum penalty of death for each count.

The accused shall indemnify the victim Maria Elena O. De Guzman One Hundred Fifty Thousand (P150,000.00) as moral damages.

With costs.

SO ORDERED."

On automatic appeal to this Court, appellant contends:

"I

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE LOWER COURT COMMITTED SUBSTANTIAL AND GRAVE PROCEDURAL LAPSES IN NOT TAKING INTO CONSIDERATION THE IMPROBABILITIES AND INCONSISTENCIES WHICH CAUSE SERIOUS DOUBTS ON THE VERACITY OF THE ALLEGED VICTIM'S TESTIMONY.

III

THE LOWER COURT ERRED IN BEING OVERZEALOUS IN HASTILY IMPOSING DEATH PENALTY, WITHOUT TAKING INTO CONSIDERATION THAT THE FIRST JUDGE, THE HON. BRICCIO T. AGUILOS, JR. WAS THE ONE WHO TRIED AND HEARD THE TESTIMONY OF THE PRIVATE COMPLAINANT, MA. ELENA DE GUZMAN WHICH WAS UNCORROBORATED AND THE HON. ENRIQUE C. ASIS WAS THE ONE WHO RENDERED THE DECISION AFTER HEARING ONLY THE TESTIMONIES OF THE DEFENSE WITNESSES.

IV

THE LOWER COURT ERRED IN NOT GIVING THE CHANCE FOR ACCUSED-APPELLANT, WHO IS A FARMER-FISHERMAN, TO SECURE THE SERVICES OF COMPETENT LEGAL COUNSEL, WHO IS NOT TOO BUSY TO DEFEND HIM, CONSIDERING THE GRAVITY OF THE CRIME CHARGED AGAINST HIM."

The appeal is partly meritorious. We find the appellant guilty not for qualified rape but for five (5) counts of simple rape and hold that the trial court erred in imposing the death penalty.

We shall discuss the issues in seriatim.

The first two (2) issues concern the credibility of the rape victim Elena. Appellant assails Elena's testimony and charges that her narration of how she was raped does not inspire belief. First, there is an alleged discrepancy in Elena's sworn statement where she claimed that when she woke up appellant was on top of her, pinning her hands with his knees, while in her court testimony, she declared that it was her upper arms that were pinned by appellant's knees. Second, he points out that he could not have possibly abused Elena with his knees on her upper arms. Third, he claims that Elena did not offer even the slightest resistance to his sexual advances considering that only her hands were tied, her feet were free and her brother Reynaldo was sleeping only three (3) meters away from her. Fourth, as the room was dark because the electric power in their barangay was turned off at that time, the identity of the rapist is doubtful. Fifth, it is improbable that Elena would rub the rope against the nails to free herself rather than try to wake up Reynaldo who was sleeping only three meters away from her so he could help her untie her hands. Sixth, it is unnatural for Elena not to have told her brother Reynaldo about the rape incidents. Seventh, it is surprising that she did not report the crime to the police authorities in Biliran. Eighth, Amancio Cagado and Inay Morit denied that Elena confided to them the fate she suffered in the hands of the accused. Finally, appellant speculates that Elena could have been coached by her mother Yolanda.

In finding the appellant guilty of five (5) counts of rape, the trial court correctly gave full faith and credence to the testimony of complainant Elena. Time and again, we have held that the testimony of a rape victim of tender age usually deserves full credit.[7] In attacking Elena's credibility, appellant could only raise flimsy grounds to avoid conviction. The truth is whether or not the appellant pinned Elena's hands or upper arms with his knees during the initial stage of the rape is inconsequential and does not in any way detract from her credibility. Indeed, a young, guileless rape victim cannot be expected to recall with certitude every minute detail of her brutal

experience. The important thing is to prove beyond reasonable doubt the fact of forced coitus. At the trial, Elena stressed that she was awakened when appellant went on top of her and pinned her upper arms with his knees. However, appellant clearly did not deflower her in this position. He proceeded to gag her mouth and tie her hands to facilitate the execution of his lecherous designs without much resistance. He then lowered her underwear and consummated the sexual congress with his hapless victim. Although appellant left the room to smoke after each sexual assault, Elena declared that she was too exhausted by the repeated abuses to even make the slightest move to free herself at that time or awaken her brother. Moreover, with the appellant smoking just outside their house, the chances of Elena successfully getting away or even trying to free herself were nil as appellant could have gone back to the room at any time. Neither was it improbable for the appellant to have consummated the rape without waking up Reynaldo who was sleeping only three meters away. Jurisprudence is replete with examples where rape is committed in the presence of people or near the locus criminis.[8] The fact that Elena did not confide to Reynaldo about her ordeal does not affect her credibility. It must be remembered that Elena was a 14-year old lass at the time of the consecutive sexual assaults by the appellant. Her actions and decisions cannot be reasonably compared to that of a full-grown, mature woman. In fact, after the sexual abuses she suffered, she did not report the incident to the police authorities in their barangay as she was apprehensive. She had no relatives in Maripipi, except for her brother Reynaldo, and it is common knowledge that appellant's family was influential with the police authorities in the area.[9]

All told, we find that the testimony of Elena deserves full faith and credit. First, she had no motive to falsely accuse the appellant under whose care she practically grew up and whom she considered as her substitute father. Appellant himself admitted that he had close ties with Elena and Reynaldo whom he treated as his own children. Second, as Elena's testimony of defloration is corroborated by the physical findings of penetration, there is sufficient foundation to conclude that there was carnal knowledge.[10] Finally, no decent young woman would, in her right mind, fabricate a story of rape, sully her reputation and bring disgrace to herself and her family unless she is motivated by a desire to seek justice for the indignity she suffered.[11]

On the third assigned error, appellant insists that it should have been Judge Briccio Aguilos, Jr. who should have rendered a decision on the case as he heard the testimony of private complainant Elena de Guzman and thus would be in a better position to assess her credibility. He contends that Judge Asis who penned the appealed decision heard only the testimony of the defense witnesses and thus cannot be expected to render a fair assessment of the credibility of complainant Elena.

We find no merit in his contention. It is oft held that the validity of a decision is not necessarily impaired by the fact that the ponente only took over from a colleague who had earlier presided at the trial, unless there is a showing of grave abuse of discretion in the factual findings reached by him.[12] In the cases at bar, the appellant has not shown that the factual findings of Judge Asis were unsupported by evidence or were arrived at with grave abuse of discretion. On the contrary, we uphold his conclusion that appellant successively molested Elena as amply supported by the evidence. It must also be stressed that it is not totally unheard of that the trial of a case is presided by one judge but due to his transfer, promotion, death or disability, the decision on said case is penned by a judge other than him. This has been a practice fully sanctioned by this Court.

On the fourth issue, appellant charges that the trial court did not afford him a chance to secure the services of a competent counsel who had time to devote to his defense. Appellant complained that, at the time of his trial, his lawyer, Atty. Redentor Villordon, was too busy to prepare for his defense as he was then running for Vice-Governor of Leyte and his wife also delivered a child in Cebu City. To support his contention, he cited the Orders of RTC Judge Briccio, Jr. (Exhs. "C," "D," "E") to his counsel warning him several times that his cross-examination of Elena would be deemed waived and the court would appoint a new counsel in his stead

should he again fail to attend the scheduled hearings. Appellant likewise finds fault in how his lawyer carried out his defense. He charges that his alibi that he was at his mother's house at the time of the alleged rape could have gained more credibility had his counsel presented corroborating witnesses. Appellant gripes that his counsel should have also requested for an ocular inspection of his small house to show the court the improbability that the crime was committed there. Finally, appellant charges that his chance to appeal could have been lost had not his mother entreated his counsel to file the Brief on time with this Court.

These contentions deserve scant consideration. At no point in the trial was the appellant deprived by the trial court of his right to secure his own counsel or change his counsel. Neither is there anything on the records to show that appellant was deprived of time to confer with his counsel or discuss his defense. It is jurisprudentially settled that a lawyer's acts are the acts of his client. A client is bound by his counsel's negligence. Thus, appellant cannot belatedly complain on appeal about the incompetence of his counsel as he could have easily dismissed his lawyer at the trial stage if he were unsatisfied with the handling of his defense. As appellant slept on his rights, he has no one to blame but himself.

Be that as it may, we rule that appellant can only be convicted of simple rape. Although the rape of a girl under 18 years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on appellant as a different relationship was alleged in the Information and the victim's minority was not proved by independent evidence.[13] In the cases at bar, the Informations indicting the appellant for qualified rape alleged that appellant was Elena's stepfather which, as correctly submitted by appellant's counsel, presupposes a legitimate relationship between the appellant and the victim's mother. Black defines a stepfather as the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[14] However, the evidence adduced by the prosecution shows that appellant and Elena's mother were not married when they cohabited as the latter had a prior, subsisting marriage with Elena's father. As regards the minority of Elena who was alleged in the Information to be 14 years old at the time of the rape, her testimony as to her birthdate is insufficient to prove her minority beyond reasonable doubt. The prosecution could have presented her birth certificate as independent proof of Elena's minority but it did not. The circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself. Thus, the prosecution's failure to prove these qualifying circumstances bars appellant's conviction for rape in its qualified form.[15]

Going now to the award of damages, it appears that the trial court granted only moral damages to the rape victim in the total amount of one hundred fifty thousand pesos (P150,000.00), or thirty thousand pesos (P30,000.00) for each of the five (5) counts. However, consistent with current jurisprudence, the award should be increased to fifty thousand pesos (P50,000.00) for each count of rape, or a total of two hundred fifty thousand pesos (P250,000.00) as moral damages. An award of civil indemnity in the amount of fifty thousand pesos (P50,000.00) for each count of rape is likewise mandatory and automatically awarded upon the finding of the commission of rape. Finally, the presence of the aggravating circumstance of dwelling warrants the imposition of exemplary damages against the appellant in the amount of twenty thousand pesos (P20,000.00) for each count of rape[16]

IN VIEW WHEREOF, the appealed decision is AFFIRMED, subject to the modification that the appellant CIPRIANO RADAM, JR. is found guilty only of five (5) counts of simple rape and his sentence is reduced to reclusion perpetua for each count. In addition, appellant is ordered to pay Maria Elena O. de Guzman the following amounts: two hundred fifty thousand pesos (P250,000.00) as civil indemnity, another two hundred fifty thousand pesos (P250,000.00) as moral damages and one hundred thousand pesos (P100,000.00) as exemplary damages, for all five (5) counts of simple rape. Costs against the appellant.

SO ORDERED.

Bellosillo, (Acting C.J.), Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur. Davide, Jr., C.J., on sick leave.

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- [1] Criminal Case Nos. 1789 – 1793; Rollo, pp. 7-16.
 - [2] January 30, 1997 TSN, pp. 7- 20; April 29, 1997 TSN, pp. 2-25.
 - [3] April 30, 1997 TSN, pp. 2-9.
 - [4] January 20, 1999 TSN, pp. 2-6.
 - [5] November 19, 1998 TSN, pp. 2-16.
 - [6] Decision, dated March 15, 1999; Penned by Judge Enrique C. Asis, Regional Trial Court, Branch 16, Naval, Biliran; Rollo, pp. 101-121.
 - [7] People vs. Pine, 346 SCRA 383 (2000).
 - [8] People vs. Belga, 349 SCRA 678 (2001).
 - [9] January 30, 1997 TSN, pp. 18-20.
 - [10] People vs. Segui, 346 SCRA 178 (2000).
 - [11] People vs. Vitancur, 345 SCRA 414 (2000).
 - [12] Quianao vs. People, 335 SCRA 741 (2000).
 - [13] People vs. Pagdayawon, 351 SCRA 643 (2001).
 - [14] Black’s Law Dictionary, 4th edition, p. 1584.
 - [15] People vs. Liban, 345 SCRA 453 (2000).
 - [16] People vs. Bernaldez, 322 SCRA 462 (2000); People vs. Flores, 322 SCRA 779 (2000).

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