

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELO ESUELA, ACCUSED-APPELLANT.

G.R. Nos. 138720-21. March 19, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before us for automatic review is the joint decision, dated 14 April 1999, of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 in Criminal Cases No. RTC ‘97-168 and RTC ‘97-169, finding accused-appellant Marcelo Esuela guilty beyond reasonable doubt of two (2) counts of rape committed against his stepdaughter Maricel A. Hilboy and sentencing him to suffer the penalty of death for each count.

These criminal cases stemmed from two separate informations filed against accused-appellant Marcelo Esuela for the acts of rape committed sometime in 1995 and 1996 when Maricel A. Hilboy was 13 years old. The informations for both cases are as follows:

Crim. Case No. RTC ‘97-168:

x x x

That on or about 12:00 o’clock midnight sometime in the year 1995 at Barangay Tamban, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused willfully, unlawfully and feloniously, with grave abuse of confidence, being the stepfather of Maricel A. Hilboy, with lewd designs and by means of force and intimidation have sexual intercourse with the said private complainant, a 13-year old minor, against her will and without her consent as evidenced by a medical certificate marked as Annex “A” hereof, to the damage and prejudice of said Maricel A. Hilboy.

ACTS CONTRARY TO LAW.

Naga City, for Calabanga, Camarines Sur, January 22, 1997.

Crim. Case No. RTC’97-169:

x x x

That on or about 12:00 o’clock midnight of December 14, 1996 at Zone 6, Barangay Tamban, Municipality of Tinambac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused willfully, unlawfully and feloniously, with grave abuse of confidence, being the stepfather of Maricel A. Hilboy, with lewd designs and by means of force and intimidation have sexual intercourse with the said private complainant, a 13 year old minor, against her will and without her consent as evidenced by a medical certificate marked as “Annex A” hereof, to the damage and prejudice of said Maricel A. Hilboy.

ACTS CONTRARY TO LAW.

Naga City, Philippines, January 22, 1997.[1]

On April 4, 1997, accused-appellant Marcelo Esuela, duly assisted by counsel de oficio, entered a plea of not

guilty in both cases. Thereafter, joint trial ensued.

Testifying for the prosecution, Maricel A. Hilboy, then 14 years old, declared that she was born on January 5, 1983.[2] Accused-appellant Marcelo Esuela was her stepfather[3] being the common-law husband of her mother, Concepcion Abadesa.

Maricel recalled that on December 14, 1996 at around 12:00 o'clock midnight, she was sleeping inside their house when she was awakened and found out that she was already naked.[4] Accused-appellant Esuela was already on top of her, inserting his penis into her vagina. She felt pain but she could not shout because Esuela's hand was covering her mouth.[5] Before dismounting, accused-appellant warned her not to tell her mother about what happened; otherwise, he would inflict physical injuries upon her. Thereafter, accused-appellant Esuela left her, and she just kept on crying.[6] She also testified that her stepbrothers and stepsisters were sleeping near her but they were not awakened while the rape was taking place.[7] Her mother was sleeping on the other part of the house.[8] She did not report the incident to her mother because of accused-appellant's warning.[9]

Maricel also testified that the incident in 1996 was the second time that she was raped by accused-appellant. The first incident happened in 1995. She could not remember all the details of the first rape incident that transpired in 1995 but she could remember that accused-appellant kept on kissing her and that he inserted his penis into her vagina.[10] She reported the incident to her mother but she could not remember what the response of her mother was.[11] Eventually, she told her teacher, Gemma Olarve, of what transpired.[12]

Dr. Goito Froyalde, the Municipal Health Officer of Tinambac, Camarines Sur, testified that he conducted an internal and physical examination on Maricel A. Hilboy on December 17, 1996.[13] His examination revealed lacerations in Maricel's vagina at 12:00 o'clock and 6:00 o'clock positions, which could be caused by penetration of a penis.[14] He concluded that the patient was no longer a virgin.[15]

Gemalil Buenaobra, a Social Worker from DSWD Center for Girls in Pangpang, Sorsogon, Sorsogon, testified that Maricel was her client at DSWD. Maricel's problem was the alleged rape incident, as well as the maltreatment that she suffered from the hands of her stepfather. Maricel told her that the perpetrator of the crime was accused-appellant.[16] In the course of the individual counseling sessions with Maricel, she also found out that it was very difficult for the latter to relate her feelings. She asked Maricel to write a letter and draw in order to elicit some information from the latter and she discovered that Maricel was frustrated because of her family and her hatred for her stepfather.[17] The rape incident was a traumatic experience for Maricel and it affected her behavior, making it difficult for her to get along with others.[18]

Concepcion Abadesa, mother of Maricel, testified that her daughter was born on January 5, 1983.[19] Maricel's father was Vicente Hilboy but they separated. She and accused-appellant lived together in 1986 and they had four (4) children, three of whom are alive.[20] It was Maricel's teacher, Gemma Olarve, who told her that Maricel was abused by accused-appellant.[21] She confronted her daughter and the latter admitted that she was raped by accused-appellant. She quarreled with accused-appellant, after which she went to report the incident to their barangay captain, Socorro Cabral. [22]

In the presence of Cabral, accused-appellant at first denied but eventually admitted that he raped Maricel. Accused-appellant promised that the incident would not be repeated.[23] Concepcion further testified that she consulted her mother about the matter and at first, they thought of having the incident recorded in the police blotter. However, they changed their minds because nobody would take care of the three (3) children since she was jobless and accused-appellant was the only breadwinner of the family.[24]

For the defense, Natividad Esuela, mother of accused-appellant, testified that her son and Concepcion lived

together as husband and wife but separated in 1994 because they quarreled. Accused-appellant started living with her in their house at Zone 6, Tamban, Tinambac, Camarines Sur which was quite far from the house of Concepcion. Her son was working as a porter and he would usually go out early in the morning and return home at three o'clock in the afternoon.[25]

Accused-appellant Marcelo Esuela denied the accusations against him.[26] He testified that at midnight of December 14, 1996, he was sleeping in the house of his parents at Zone 6, Tamban, Tinambac, Camarines Sur. With him were his mother, two (2) small sisters and brother Cris.[27] He further testified that he and Concepcion were live-in partners but they parted ways in 1994 because of misunderstanding about money and the meddling of his in-laws in their lives.[28] He declared that Maricel was not living with them during his cohabitation with Concepcion but with his in-laws whose house was about 200 meters from their house.[29]

On 14 April 1999, the trial court rendered its decision, the dispositive portion of which read:

WHEREFORE, in view of the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt in both cases, accused Marcelo Esuela, is found guilty of the offense of rape. Applying the above-quoted law, the rape cases having been committed in the year 1995 and December 14, 1996, accused Marcelo Esuela is hereby sentenced to suffer the following penalties:

- In Crim. Case No. RTC '97-168, he is hereby sentenced the penalty of death and to indemnify the private complainant Maricel Hilboy the amount of P75,000.00;

- In Crim. Case No. RTC '97-169, he is hereby sentenced the penalty of death and to indemnify the private complainant Maricel Hilboy the amount of P75,000.00. The indemnification of P50,000.00 has been increased by the Supreme Court in People vs. Victor, G.R. No. 127903; July 9, 1998 to P75,000.00;

- He is further ordered to pay the cost.

SO ORDERED.[30]

The decision is now before this court for its automatic review.

Accused-appellant raised this lone assignment of error before the Court:

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ALLEGE IN THE TWO (2) INFORMATION THAT ACCUSED-APPELLANT IS THE COMMON-LAW SPOUSE OF THE VICTIM'S MOTHER.[31]

Clearly, accused-appellant does not question the decision of the trial court insofar as his guilt is concerned. Nevertheless, this Court still painstakingly reviewed the records of the cases to determine whether the guilt of accused-appellant has been proved beyond reasonable doubt. Unfortunately for accused-appellant, the Court could not find any reason to reverse his conviction.

It is apparent that the trial court arrived at its finding after a careful assessment of the evidence presented, foremost of which was the testimony of the victim in open court. As a rule, we do not disturb the findings by the trial court on the credibility of witnesses since the trial court is in a better position to pass upon the credibility of witnesses. The trial judge was able to personally evaluate the witness's manner of testifying, and from there reach a studied opinion as to her credibility.[32]

Maricel categorically testified:

x x x

Q

You said that something happened to you. Now, I call your attention whether you recall where were you? On December 14, 1996?

A

Yes, sir.

Q

Where were you?

A

I was inside the house sir.

Q

What were you doing at around 12:00 midnight?

A

I was sleeping sir.

PROS. CU:

Q

Were you awakened?

ATTY. TAYER:

Objection your Honor. Leading.

COURT:

Sustained. Reform.

PROS. CU:

Q

What happened if anything while you were sleeping?

A

Yes, sir.

ATTY. TAYER:

We would like to strike out the answer because it was not responsive to the question.

COURT:

Strike that out.

(The question was repeated to the witness by the interpreter.)

WITNESS:

A

I was awakened to find out that I was already naked without my panty and my dress.

Q

So when you were awakened noticing that your panty was already been undressed, what if anything transpired next?

A

He was already on top of me sir.

Q

You said that somebody was on top of you, who was that person if you recognize him?

ATTY. TAYER:

I think that the question is not proper your Honor. The translation is not someone but he.

Witness:

A

Marcelo Esuela.

PROS. CU:

Kindly point at Marcelo Esuela if he is around?

INTERPRETER:

The witness is pointing at a person who when asked his named answered Marcelo Esuela.

ATTY. TAYER:

We would like to manifest your Honor that as I observe the witness cannot pinpoint straight or directly to the accused. She cannot face the accused.

COURT:

Proceed.

PROS. CU:

Q

So you recognized the person who was on top of you to be Marcelo Esuela the accused here. So what if anything transpired after that?

A

He inserted his penis inside my vagina sir.

Q

What if anything did you feel when he inserted his penis to your vagina?

A

It was painful sir.

Q

Where if at all was his hands placed while he inserted his penis into your private organ?

A

He was covering my mouth sir so that I could not shout.

Q

Maricel Hilboy, while Marcelo Esuela had already inserted his penis to your private organ, what if anything did he do next?

ATTY. TAYER:

We would like to manifest your Honor that the witness can hardly answer the question.

COURT:

Make it of record.

WITNESS:

A

He was kissing my lips sir.

PROS. CU:

Q

So for how long do you think had he inserted his penis into your organ?

A

I could no longer remember sir.

Q

So what transpired next when he was kissing you Maricel Hilboy?

ATTY. TAYER:

Objection, your Honor. The witness already say (sic) that nothing already happen (sic).

COURT:

There was no testimony on that. She said she could not recall how long the penis of the alleged accused was inside her vagina, but not what happened next. There was no question on that. The witness may answer.

A

He was holding my hands sir so that I could not move.

Q

What transpired next after that?

A

He warned me that I should not tell my mother because he will cause some physical injuries on me (babadolan).

COURT:

Agreed on the translation of babadolan?

ATTY. TAYER:

May we request that the word "babadolan" be placed.

PROS. CU:

Q

So, what if anything did you feel when you were warned that when you report (sic) the incident you will be harmed by Marcelo Esuela?

A

I got scared.

Q

So what transpired after that when he warned you not to reveal the incident to anybody?

WITNESS:

A

After that sir he dismount (sic) on top of me and left me.

PROS. CU:

Q

Where did Marcelo Esuela go after he dismounted from on top of you?

A

He went to the place where he was sleeping.

Q

So what happened to you after he went to the place where he resumed to sleep?

A

I kept on crying sir.

Q

Did you report this incident to your mother?

A

No, sir.

Q

Why did you not report it to your mother?

A

Because sir of what he warned me. He threatened me that he is going to hurt me if I report the incident to my mother.[33]

xxx

As regards the first rape incident, Maricel declared:

PROS. CU:

Q

Tell us about that incident Marcel Hilboy, that incident that happened in 1995.

A

What happened to me in 1995 is the same of what happened in 1996.

Q

That is right Maricel Hilboy, but we wish to know what exactly happened to you?

ATTY. TAYER:

At this juncture, we would like to manifest. The witness had difficulty in answering the question. The question had to be explained by the Honorable Court as well as the prosecutor.

WITNESS:

A

I was raped sir in 1995 but I could no longer remember some of the incidents.

PROS. CU:

Q

You said some of the incidents you have already forgotten. Which or what part of that incident which you have still a recollection?

ATTY. TAYER:

Since the witness is still thinking, I would like to manifest that the answer she had given a while ago it took time before she can answer the question.

WITNESS:

A

I could remember sir that he kept on kissing me.

PROS. CU:

Q

What else did he do? What else do you remember aside from being kissed by Marcelo Esuela?

A

I also remember that he inserted his penis into my vagina.

Q

Please identify the person who inserted his penis into your vagina and which you said he was repeatedly kissing you?

A

Marcelo Esuela.[34]

The testimony of Maricel was candid and straightforward, interrupted only by her tears as she recalled her unpleasant experience at the hands of accused-appellant. As such, it must be given full faith and credit by this Court.

On the matter of the victim's age, this Court ruled that the testimony of the mother is admissible as she is in the best position to know when she delivered her child.[35] Further, the trial court observed that Maricel could not have been more than 18 years old when she testified.[36] Hence, the age of Maricel at the time of the incident was sufficiently established.

As stated earlier, accused-appellant only assails the imposition of the death penalty on him. He alleged that in the two (2) informations, he was considered as the stepfather of the victim but the records would show that he and Concepcion, mother of the victim, only lived as husband and wife without the benefit of marriage. Hence, accused-appellant prays that decision of the trial court be reversed and set aside and that a new one be rendered imposing upon him the penalty of reclusion perpetua.[37]

Indeed, accused-appellant is correct in assailing the death penalty imposed upon him by the trial court and even the Solicitor General subscribes to this view.[38] The informations in Criminal Cases Nos. RTC-88 '97-168 and RTC '97-169 alleged that accused-appellant was the stepfather of Maricel. In *People vs. Dimapilis*,[39] this Court declared:

The death penalty is imposed when the "victim is under eighteen years of age and the offender is x x x the common law spouse of the parent of the victim. The victim is the daughter of appellants' common-law spouse. Ordinarily, the case would have thus meant the imposition of the mandatory death penalty. Quite fortunately

for appellant, however, he would be spared this extreme punishment. The relationship between appellant and his victim - the victim is the daughter of appellant's common-law spouse by the latter's previous relationship with another man - is a qualifying circumstance that has not been properly alleged in the information which erroneously referred to the victim as being, instead, the "step-daughter" of appellant. A step-daughter is a daughter of one's spouse by a previous marriage or the daughter of one of the spouses by a former marriage. This Court has successively ruled that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659 the attendance of any which mandates the single indivisible penalty of death, instead of the standard penalty of reclusion perpetua to death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances. Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying aggravating cannot be proved as such unless alleged in the information although it may be proved as a generic aggravating circumstance if so included among those enumerated in the Code. Obviously, the technical flaw committed by the prosecution in this instance is a matter that cannot be ignored, and it constrains the Court to reduce the penalty of death imposed by the trial court to that of reclusion perpetua.[40]

Accordingly, accused-appellant must be sentenced to the lesser penalty of reclusion perpetua.

As regards the civil indemnity, this Court has ruled that if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be increased to the amount of P75,000.00. However, since the death penalty is not imposable due to the reasons heretofore set forth, the victim is entitled only to P50,000.00 as indemnity for each count of rape.[41] In addition, the trial court should have ordered accused-appellant to pay the offended party moral damages. Moral damages are awarded to victims of rape cases involving young girls between thirteen and nineteen years of age, taking into account the immeasurable havoc wrought on their youthful feminine psyche.[42] An additional award of P50,000.00 by way of moral damages is thus awarded in favor of the victim who suffers that injury.

WHEREFORE, the joint decision of RTC 5[th] Judicial Region, Branch 63, Calabanga, Camarines Sur in Criminal Case Nos. RTC '97-168 and RTC '97-169 finding accused Marcelo Esuela guilty beyond reasonable doubt of two counts of rape is AFFIRMED with MODIFICATION that the sentence is reduced in each case from Death to Reclusion Perpetua. The civil indemnity of P150,000.00 awarded by the trial court for the two counts of rape is reduced to P100,000.00. In addition, an amount of P100,000.00 for moral damages for the two counts of rape is hereby awarded to the victim.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Gutierrez, and Carpio, JJ., concur.
Puno, and Vitug, JJ., on official leave.

[1] Rollo, pp. 26-27.

[2] TSN, 17 September 1997, at 3.

[3] Id., at 4.

[4] Id., at 5-6.

[5] Id., at 6-7.

[6] Id., at 8-9.

- [7] TSN, 24 September 1997, at 13.
- [8] Id., at 5.
- [9] TSN, 17 September 1997, at 9.
- [10] Id., at 14.
- [11] Id., at 16.
- [12] TSN, 24 September 1997, at 19.
- [13] TSN, 13 August 1997, at. 3-4.
- [14] Id., at 5, 8.
- [15] Id., at 7.
- [16] TSN, 17 October 1997, at 6-7.
- [17] Id., at 8-9.
- [18] Id., at 19.
- [19] TSN, 22 October 1997, at 4.
- [20] Id., at 4.
- [21] Id., at 5.
- [22] Id., at 6.
- [23] Id., at 7.
- [24] Id., at 9.
- [25] TSN, 17 April 1998, at 2-4.
- [26] TSN, 01 December 1998, at 3.
- [27] Id., at 2-4.
- [28] Id., at 5.
- [29] Id., at 6.
- [30] Rollo, p. 55.
- [31] Id., at 69.
- [32] People vs. Adajio, 343 SCRA 316 (2000).
- [33] TSN, 17 September 1997, at. 5-9.
- [34] Id., at 14.
- [35] People vs. Boras, 348 SCRA 638 (2000).
- [36] Rollo, p. 51.
- [37] Rollo, p. 75.

[38] Rollo, p. 119.

[39] 300 SCRA 279 (1998).

[40] Id., at 308-309.

[41] People vs. Poñado, 311 SCRA 529 (1999).

[42] People vs. Sagun, 303 SCRA 382 (1999).

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