

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS TITO LAVADOR, ACCUSED-APPELLANT.*G.R. Nos. 139112-13. February 20, 2002*

Ponente: BELLOSILLO, J.

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JESUS TITO LAVADOR spent twenty-five (25) years in the national penitentiary serving sentence for murder. As time would tell, those years of confinement were not enough to reform him. His subsequent reunion with his family and his eventual return to society only provided him with venue and prey for his abominable sexual inclinations.

After his release from prison on 5 August 1995, accused-appellant Jesus Tito Lavador went home to Danao City where he discovered that during his incarceration his wife Adelia Juntilla Lavador was already cohabiting with another man. But he promptly forgave her for her infidelity and so she agreed to come back to him. His return from his long confinement also reunited him with his daughter Noniluna Lavador Calvo, twenty-six (26) years old, already a widow and mother of three (3). Noniluna last saw her father when she was barely one (1) to two (2) years old, just before he was sent to jail. With his return the whole family resumed life together and reestablished their residence in Masaba, Danao City. But less than a year from their reunion, the shady side of Jesus surfaced. He made his own flesh and blood a hapless victim of his lechery.

Noniluna was left in their house with her sons Abner, eight (8), and Jonathan, five (5), on 15 May 1996. Her mother and her two (2)-year old daughter Grace left for the Poblacion with Jesus. At about 9:00 o'clock in the evening, Noniluna went to bed with her children but was awakened shortly when she felt her father lying beside her. He shut off the only light illuminating the interior of the house. He embraced her. He ignored her pleas not to do anything wrong to her. She reminded him that she was his daughter.

But Jesus threatened to kill her and her children if she made any noise. As he had with him a foot-long "flamingco"[1] which Noniluna saw earlier, she did not resist his advances. He undressed her and placed himself on top of her. Again Noniluna pleaded to him "not to do it to her"[2] because she was his daughter and then burst into tears. Jesus inserted his penis into her vagina and made a push-and-pull motion. Noniluna was frightened when he penetrated her. Still fearful of his threats, Noniluna did not report her father's sexual assault to anyone the following morning.

Noniluna was able to gather enough courage only on 24 June 1996 to recount the incident to Tarciscio Delante, a social worker at the DSWD, Danao City, who then brought her to the Regional Office of the NBI to report the matter and for physical examination.[3] There she executed an affidavit narrating what happened to her in the hands of her father. She was also issued a medical certificate[4] by her examining physician, Dr. Tomas P. Refe (later explained by Dr. Gil C. Makato in view of the demise of Dr. Refe), which showed that she suffered no extragenital injuries; neither was there any evidence of physical injury on the hymenal orifice considering it was already 3.0 cms. in diameter and reduced to carunculae myrtiformis due to delivery of babies.[5]

But Jesus's sexual aggression was not confined to the immediate member of his own family. Cristelyn Juntilla Villena, a daughter of his wife's sister Lydia Juntilla Villena, also divulged to her parents that she went through the same ordeal that Noniluna had experienced. According to Cristelyn, she was only twelve (12) years old when she was raped by Jesus on 9 February 1996. As she narrated, it was about 6:00 o'clock in the morning when Jesus went to their house and asked her to accompany him to Barangay Liboron, Danao City, to gather vegetables. Her mother, encouraged by the prospect of Cristelyn bringing home some vegetables for her family, consented. So Cristelyn left with Jesus on foot for Liboron about two (2) hours later. Jesus had with him a foot-long knife when they left.

When they reached Barangay Santican on the way to Liboron, Jesus unexpectedly pulled Cristelyn and threatened to kill her if she shouted. He carried her towards the bushes in a secluded area and laid her on the ground. He ordered her to remove her pants. As she refused to comply, Jesus removed her pants and panties instead. Cristelyn could only cry and plead to him, "Don't, Manoy." But Jesus paid no heed.[6] With his right hand pointing his knife at Cristelyn, Jesus undressed himself with his left hand, took off his pants and underwear, which allowed Cristelyn to see his private organ. She kept crying as she pleaded again to him to desist. He made the push-and-pull motion and then inserted his penis into her vagina. Cristelyn felt his penis touch her vagina which partially penetrated her.[7] The sexual assault took about fifteen (15) minutes, after which he stood up and told Cristelyn to get dressed. The two (2) proceeded to Liboron and gathered vegetables, and then returned to Masaba at around 4:00 o'clock in the afternoon.

Cristelyn did not immediately report the incident to her parents because of the threat of Jesus to kill all members of her family if she revealed what he did to her. It was only in May of the same year when he made another attempt to abuse her that she divulged the sexual assault to her parents. When her mother Lydia Villena heard that Noniluna had also been abused by her own father, the accused, and intended to file a complaint, she had Cristelyn medically examined together with her cousin Noniluna. A medical certificate was also issued showing Cristelyn's hymenal orifice to be "1.5 cms. in diameter, distensible, small as to preclude complete penetration of an average sized penis in erection without producing laceration." [8]

Noniluna filed a complaint for rape against Jesus on 31 July 1996 while Cristelyn filed a complaint for rape assisted by her mother on 2 August 1996. The cases were docketed under Crim. Cases Nos. DNO-1592 and DNO-1596.

The defense raised by accused-appellant Jesus Lavador was one of denial and alibi. According to him, the cases for rape filed against him by his own daughter Noniluna Calvo and by his niece Cristelyn J. Villena were mere fabrications.[9]

Jesus contended that on 15 May 1996 at about 9:00 o'clock in the evening when he allegedly abused his daughter at their residence in Masaba, he was in the house of his sister Belarmina Lavador at Lapu-lapu St., Danao City, where he and his wife had been staying as early as 12 May 1996. He also indicated that even before the alleged incident, his daughter resented him because he always chastised her for coming home late in the evening whenever she went out to look for work. He suggested that Noniluna was prompted to make untruthful and unfounded allegations against him because she and her mother wanted him imprisoned so that the paramour of his wife could live with them again.

On 31 March 1999 the trial court rendered a Decision[10] finding accused-appellant Jesus Tito Lavador guilty of rape in both cases and sentenced him to reclusion perpetua in Crim. Case No. DNO-1592 and the penalty of death in Crim. Case No. DNO-1596. He was also ordered to pay the private complainants P50,000.00 each for moral damages.[11]

By reason of the death penalty imposed in Crim. Case No. DNO-1596, this case is now before us on automatic review.

Accused-appellant assails the Decision of the court a quo alleging that it erred in convicting him based on the inconsistent, contradictory and irreconcilable statements of the witnesses against him. He also claims that assuming arguendo that he is guilty in Crim. Case No. DNO-1596, the court a quo erred in sentencing him to death.[12]

In an effort to discredit the complaining witnesses, accused-appellant claims that there are grave inconsistencies in their testimonies. He posits that there is an inconsistency in Noniluna's testimony as to what really occurred. Moreover, he asserts that it is impossible for him to have committed the sexual assault after the victim herself testified that her children were beside her at that time.[13] As for the victim Cristelyn, accused-appellant claims that Cristelyn seemed confused and could not describe in an intelligible, understandable manner how she was actually undressed during the alleged rape incident.[14] Aside from that, Cristelyn purportedly testified in an obscure manner as to the act of rape itself.

To dispute Noniluna's story of sexual assault, accused-appellant capitalizes on what he wants us to believe as the witness' erratic testimony. We quote her testimony -

Q:

Let's go to the evening of May 15, 1996 [when] you claimed that you were sexually molested by your father. Now, when for the first time did you realize that your father was in your house at that time?

A:

On May 15, sir.

COURT (to the witness): At what time?

A:

At 9:00 o'clock in the evening, your Honor.

Q:

You said you were sleeping already at that time?

A:

Yes, your Honor, I already slept, but I noticed him that he was already on my side [sic] x x x x

Q:

Now, you said that your father was holding a flamingco, did you see your father where your father get [sic] that flamingco?

A:

Yes, sir, he got that flamingco on the wall.

Q:

You mean to say that your father left you for a while and got that flamingco from the wall of your house, then went back to you?

A:

When my father approached us, sir, he was already holding the butcher's knife.[15]

Accused-appellant claims that Noniluna first testified that she noticed him only when the latter was already by her side but later she said that she saw her father approaching her with a butcher's knife. The argument is untenable. A review of the testimony leads us to conclude that Noniluna simply meant that at the time she noticed accused-appellant beside her, he was already holding the knife. As the Solicitor General correctly noted, it is but logical for Noniluna to assume that before he was able to lie beside her he must have approached her first.[16]

Consistent with his very literal interpretation of the entire testimony, accused-appellant insists that Noniluna said that she saw him get the said weapon from where it was hanging on their wall.[17] It is obvious that the victim had presumed the butcher's knife to be that which they own and kept in the house and, as one would thoroughly be familiar with one's home, particularly the location of the most commonly used kitchen implements, it was natural for her to point out that her father had taken the knife from the wall to answer the defense counsel's query.

Nor can we accept the argument that the rape was impossible due to the presence of Noniluna's sons by her side. This Court has repeatedly declared that lust is no respecter of time and place[18] and rape can be committed even in places where people congregate: in parks, along the roadside, within the school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping.[19] Also contrary to accused-appellant's assertion,[20] the complainant testified that her children noticed him during the commission of the crime but they did not do anything because they were afraid of their grandfather. Such fear is understandable and expected. Not only was the culprit a close relative who took care of them whenever their mother was not around and thus wielded authority over them, he was also known to have served time in prison. The sight of him armed with a butcher's knife and of their mother in tears is enough to frighten any child into silence. Thus, we cannot expect the children, because of their tender age, to be of any help to their mother and the lack of reaction from them is not at all unusual. Besides, at eight (8) and five (5), it is quite possible that they did not understand what was going on.

Accused-appellant also maintains that Cristelyn stated on direct examination that she was first laid down on the ground before she was stripped of her pants by accused-appellant when she refused to remove them herself. But during her cross-examination, she gave a contrary statement and told the court that her pants were gradually removed even while she was still being carried by accused-appellant. Then, when her cross-examination was continued at a later date, she supposedly reverted to her original declaration that her pants were removed only after she was pushed to the ground.

A close scrutiny of the entire testimony of Cristelyn, however, reveals that the contradictions are more apparent than real. Cristelyn never contradicted her statements made on direct examination. They were the questions of the defense counsel during cross-examination that were obviously propounded to confuse Cristelyn rather than to enlighten the court that elicited the seemingly conflicting details of how she was undressed. It is true that during cross-examination Cristelyn stated that the accused had begun removing her pants by pulling them down while he was still carrying her. But she also related to the court that she resisted his hold in order to extricate herself from his clutches[21] and, upon further inquiry by the defense counsel, she clarified that it was only after she was already placed on the ground that her pants were completely removed.[22]

We do not find any obscurity in Cristelyn's testimony on the act of the rape itself. Accused-appellant points out that Cristelyn first stated on cross-examination that she felt sad when he got on top of her and started doing the push-and-pull motions but also subsequently claimed she did not feel pain. How this can be a source of confusion is beyond us, for what the victim clearly conveyed when she said she felt sad was that she felt emotional pain when accused-appellant, her uncle, "did it to (her)."[23] When questioned why she knew that his penis failed to fully penetrate into her vagina even as he inserted it, she answered that she did not feel pain.[24] What the witness meant then, and we can find no other interpretation, was that she did not feel any physical pain. The statement of Cristelyn that she felt sad is not inconsistent with her subsequent declaration that she did not feel pain.

Assuming that there were inconsistencies in the witnesses' testimonies, these are trivial and do not adversely affect their credibility. Minor lapses in the memory of rape victims can be expected even as it is an understandable human frailty not to be able to recount with facility all the details of a dreadful and harrowing experience.[25] In fact, minor inconsistencies strengthen rather than impair their credibility[26] as these demonstrate that the testimonies have not been contrived or rehearsed.[27]

Although we are convinced of the culpability of accused-appellant in Crim. Cases Nos. DNO-1592 and DNO-1596 for the rape of his daughter and his niece, we hold that the imposition by the trial court of the death penalty in Crim. Case No. DNO-1596 was not correct. Under Sec. 11 of RA 7659,[28] the death penalty shall be imposed for the crime of rape if 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. The special circumstances of minority of the victim and relationship to the accused are in the nature of qualifying circumstances. These must be jointly alleged in the information in order to afford the accused his right to be informed of the nature and cause of the accusation against him.[29] Otherwise the accused can only be convicted of the crime in its simple form. We note that the Information in Crim. Case No. DNO-1596 failed to allege the attendant circumstance of relationship between Cristelyn and accused-appellant. Because of such omission, accused-appellant can only be convicted of simple rape and sentenced to reclusion perpetua.

With regard to the award of damages, under the prevailing jurisprudence, a rape victim is entitled to a civil indemnity of P50,000.00 if the death penalty is not decreed.[30] This is in addition to the award of moral damages of P50,000.00 without the need of pleading or proof as the basis thereof.[31]

WHEREFORE, the Court holds thus -

(a) In G.R. No. 139112 (Crim. Case No. DNO-1592) accused-appellant JESUS TITO LAVADOR is found guilty of raping his own daughter Noniluna Lavador Calvo and sentenced to reclusion perpetua. He is ordered to pay her civil indemnity of P50,000.00 in addition to moral damages of P50,000.00.

(b) In G.R. No. 139113 (Crim. Case No. DNO-1596) accused-appellant JESUS TITO LAVADOR is found guilty of raping his twelve (12)-year old niece Cristelyn J. Villena but his death sentence is REDUCED to reclusion perpetua as the Information against him did not specifically allege his relationship to his victim. He is ordered to pay her civil indemnity of P50,000.00 and moral damages of P50,000.00.

Costs against accused-appellant.

SO ORDERED.

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

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- [1] A butcher's knife; also spelled "plamingco" in the Decision, p. 5; Rollo, p. 86.
- [2] TSN, 24 March 1998, p. 10.
- [3] Id., p. 13.
- [4] Medical Report, Living Case No. 96-MI-15 marked as Exh. "A-Retaking," explained by Dr. Gil C. Makato, a medico-legal officer of the NBI, Region VII, in view of the death of Dr. Tomas P. Refe; TSN, 5 January 1998, p. 5.
- [5] TSN, 5 January 1998, pp. 9-11.
- [6] TSN, 7 November 1996, p. 11.
- [7] TSN, 16 October 1996, p. 7.
- [8] Medical Report signed by Dr. Tomas P. Refe, Living Case No. 96-MI-16 marked Exh. "A;" Records, p. 5.
- [9] TSN, 20 May 1998, p. 19.
- [10] Decision penned by Judge Esperidion C. Rivala, RTC-Br. 25, Danao City.
- [11] Id., p. 9; Rollo, p. 23.
- [12] Appellant's Brief, p. 1; Rollo, p. 51.
- [13] Id., p. 17; id., p. 67.
- [14] Id., p. 11; id., p. 61.
- [15] TSN, 24 March 1998, pp. 20-22.
- [16] Appellee's Brief, p. 18; Rollo, p. 115.
- [17] Appellant's Brief, p. 17; id., p. 67.
- [18] *People v. Alitagtag*, G.R. Nos. 124449-51, 29 June 1999, 309 SCRA 325; *People v. Gementiza*, G.R. No. 123151, 29 January 1998, 285 SCRA 478; *People v. San Juan*, G.R. No. 105556, 4 April 1997, 270 SCRA 693.
- [19] *People v. Lusa*, G.R. No. 122246, 27 March 1998, 288 SCRA 296.
- [20] Appellant's Brief, p. 18; Rollo, p. 68.
- [21] TSN, 16 October 1996, pp. 29-30.
- [22] Ibid.
- [23] TSN, 7 November 1996, pp. 12, 14.
- [24] Id., p. 15.
- [25] *People v. Villaraza*, G.R. Nos. 131848-50, 5 September 2000, 339 SCRA 666.
- [26] *People v. Nogar*, G.R. No. 133946, 27 September 2000, 341 SCRA 206, citing *People v. Carullo*, G.R. No. 82351, 24 April 1998, 289 SCRA 481; *People v. Gaorana*, G.R. Nos. 109138-39, 27 April 1998, 289 SCRA 652.
- [27] *People v. Alfeche*, G.R. No. 124213, 17 August 1998, 294 SCRA 352; *People v. Cabigting*, G.R. No. 131806, 20 October 2000, 344 SCRA 86, citing *People v. Bernaldez*, G.R. No. 109780, 17 August 1998, 294

SCRA 317.

[28] This case occurred after R.A. No. 7659 took effect on December 31, 1993 but prior to the effectivity of R.A. No. 8353, or the Anti-Rape Law of 1997.

[29] *People v. Nava, Jr.*, G.R. Nos. 130509-12, 19 June 2000, 333 SCRA 749; *People v. Arillas*, G.R. No. 130593, 19 June 2000, 333 SCRA 765.

[30] *People v. Silvano*, G.R. No. 127356, 29 June 1999, 309 SCRA 362; *People v. Cula*, G.R. No. 133146, 28 March 2000, 329 SCRA 101, citing *People v. Victor*, G.R. No. 127903, 9 July 1998, 292 SCRA 186.

[31] *People v. Prades*, G.R. No. 127569, 20 July 1998, 293 SCRA 411.

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