

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENDRICO GALAS, ACCUSED-APPELLANT.

G.R. Nos. 139413-15. March 20, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Endrico Galas was charged with three counts of rape upon the complaint of his 15-year old daughter Sharon under the following informations[1]:

"CRIMINAL CASE NO. 0333

That on or about the 5th day of February 1997 in the municipality of Sibunag, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the father of one Sharon Galas his fifteen (15) year old daughter, by means of force and intimidation did then and there willfully, unlawfully and feloniously did lie and have carnal knowledge of said Sharon Galas without her consent and against her will.

CONTRARY TO LAW.

CRIMINAL CASE NO. 0334

That on or about the 28th day of February 1997, in the municipality of Sibunag, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the father one Sharon Galas his fifteen (15) year old daughter, by means of force and intimidation did then and there willfully, unlawfully and feloniously did lie and have carnal knowledge of said Sharon Galas without her consent and against her will.

CONTRARY TO LAW.

CRIMINAL CASE NO. 0335

That on or about the month of July 1997, in the municipality of Sibunag, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the father of one Sharon Galas his fifteen (15) year old daughter, by means of force and intimidation did then and there willfully, unlawfully and feloniously did lie and have carnal knowledge of said Sharon Galas without her consent and against her will.

CONTRARY TO LAW."

The accused pleaded not guilty when arraigned on April 28, 1998. At the hearing on May 7, 1999, accused manifested through counsel his desire to change his plea of not guilty in the three cases to a plea of guilty only in Criminal Case No. 0334, which referred to the rape incident on February 28, 1997. His desire to change his plea was reiterated at the hearing on June 3, 1999. Re-arraigned on February 28, 1997, the accused, assisted by

counsel, entered a plea of guilty in Criminal Case No. 0334.

The prosecution presented the complainant as witness. Sharon recounted in detail the rape incident that occurred on February 5, 1997 and on February 28, 1997 in the house of her grandmother, where she was then living with her father[2] She testified that her father again had intercourse with her in July 1997 in the same house, but she could not recall the time, and that the accused would have intercourse with her anytime he likes[3] Her menstruation stopped in May 1997; the accused gave her medicol and boiled malunggay and her menstruation occurred again on July 4, 1997[4]. She was brought to the social worker and later to the police station where her statement was taken. A medical examination conducted on August 7, 1997 at Guimaras Provincial Hospital by the rural health physician confirmed loss of virginity and healed hymenal lacerations.

The accused was found guilty in Criminal Case No. 0334. Criminal Cases Nos. 0333 and 0335[5] were ordered dismissed thus:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of rape committed against his daughter and is sentenced to suffer a penalty of DEATH.

Accused is also directed to indemnify the complainant the amount of P100,000.00, broken as follows:

P70,000.00 - by way of indemnity;

P30,000.00 - as moral and exemplary damages.

Criminal Cases Nos. 0333 and 0335 are ordered DISMISSED.

SO ORDERED."

Criminal Case No. 0334 is before us on automatic review.

The accused-appellant raises the following assignment of errors in his brief:

"I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED ON THE BASIS OF AN IMPROVIDENT PLEA OF GUILTY.

II

ASSUMING ARGUENDO THAT THERE WAS NO IMPROVIDENT PLEA OF GUILTY, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY UPON THE ACCUSED-APPELLANT."[6]

Accused-appellant claims that his plea of guilt was improvidently made as he was not fully appraised of the consequences of his change of plea of not guilty to guilty. The trial court failed to inform the accused that the imposable penalty is still death despite his change of plea. Accused-appellant further claims that the prosecution failed to prove the true age of the victim.

The contention that the accused-appellant made an improvident plea of guilt is correct. The record of the proceedings upon his re-arraignment shows that when the accused entered a plea of guilty on the February 28, 1997 incident, he was informed that because of his plea "he will be punished by reclusion perpetua or death".

"COURT:

Re-arraign the accused on the February 28, 1997 incident.

INTERPRETER:

(Reading the Information before the accused in the local dialect which he understood)

Q: Did you understand what has been read to you?

ACCUSED:

A: Yes, ma'am

INTERPRETER:

Q: Do you admit what is being charged or what has been read to you. What is your plea?

ACCUSED:

A: I am admitting the charges against me. I enter a plea of guilty on the 28 February 1997 incident.

INTERPRETER (to court)

Your Honor, the accused pleads guilty.

COURT:

Atty. Calanza, have you informed your client of the effect and import of his plea?

ATTY. CALANZA:

Yes, Your Honor. In fact the accused had been arraigned on three (3) informations where he entered a plea of not guilty. After pondering on the charges against him, the accused changed his mind and told me that he will enter a plea of guilty on the 28 February 1997 incident only. We are in fact thankful to the prosecutor and the complainant because they agreed to our bargaining. The delay on the trial, Your Honor, is because of our haggling with the prosecutor and the complainant to agree on our bargaining.

COURT:

But did you inform your client on the possible penalty which shall be meted to him?

ATTY. CALANZA:

Yes, Your Honor. I told him that because of his intended plea of guilty he will be punished by reclusion perpetua or death.

COURT:

Did he understand what reclusion perpetua is and what death is?

ATTY. CALANZA:

Yes, Your Honor, I explained it to him exhaustively.

COURT:

(to the accused in the local dialect)

Q: Did you understand the information which was read to you?

A: Yes, Your Honor.

Q:

Did you understand that the information tells you that the complaint was filed against you by Sharon Galas, your daughter?

A: Yes, Your Honor.

Q:

Did you understand that the information which was read to you says that you have carnal knowledge with your daughter Sharon Galas without her consent and against her will?

A: Yes, Your Honor.

Q:

Did you also understand that you have a carnal knowledge with your daughter by means of force and intimidation as read in the information?

A: Yes, Your Honor.

Q: Do you know that because of your plea of guilty you may be meted a penalty of reclusion perpetua to death?

A: Yes, Your Honor.

Q: Did your lawyer inform you about this?

ACCUSED:

A: Yes, Your Honor.

COURT: (to accused)

Despite that you entered a plea of guilty?

ACCUSED:

Yes, Your Honor.

COURT:

Now, after having been informed of that effect and import of your plea of guilt wherein you be meted a penalty of reclusion or death, do you still insist on your plea of guilty?

ACCUSED:

Yes, Your Honor, I admit.[7]

Nowhere in the proceedings was it explained to the accused that the penalty imposable is death even if he pleads guilty. We are inclined to agree with the accused-appellant that had he been so informed, he would not have changed his plea and voluntarily accept the imposition of a death penalty. This Court has held[8] that it is mandatory for the trial court to accomplish three things to avoid an improvident plea of guilt, namely: 1) conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea; 2) require the prosecution to prove the guilt of the accused and the precise decree of his culpability and 3) inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he desires. It is not enough to inquire as to the voluntariness of the plea; the court must explain fully to the accused that once convicted, he could be meted the death penalty. Death is a single and indivisible penalty and will be imposed regardless of the presence of a mitigating circumstance.[9] The importance of the court's obligation cannot be

overemphasized for one cannot dispel the possibility that the accused may have been led to believe that due to his voluntary plea of guilt, he may be imposed the lesser penalty of reclusion perpetua and not death[10]

Moreover, the record also does not show whether the accused was asked whether or not he wished to present evidence in his behalf and that if desired, he was allowed to do so. After the presentation of the witnesses for the prosecution, namely Sharon Galas,[11] Dr. Tomas Saiton, Jr.[12] and Dra. Cynthia Amatrill[13], the prosecution presented its documentary exhibits[14], and promulgation of judgment was forthwith set for June 22, 1999.

Accordingly, we hold that the plea of guilt entered by accused-appellant on June 3, 1999 should be disregarded and set aside.

The foregoing notwithstanding, it is believed that the evidence for the prosecution adequately established the guilt of the accused-appellant beyond reasonable doubt. This Court has held that the manner by which the plea of guilt was made, whether improvidently or not, loses its legal significance where the conviction is based on the evidence proving the commission of the accused of the offense charged[15]. Complainant Sharon recounted in clear detail the rape incident that occurred on February 28, 1997, thus:

"PROSECUTOR NIELO: (to witness)

Q: On the night of February 28, 1997, can you recall where were you?

A: Yes, sir.

Q: Where were you?

A: There at our house.

Q: While you were at your house was your father also there?

A: Yes, sir.

Q: In the evening, did your father tell you anything?

A: Yes, sir.

Q: What did he tell you?

A: He told me to turn off the lamp and then he ordered me to take off my dress.

Q: Where were you when your father told you to turn off the lamp?

A: There inside our house.

Q: Was that in the room where you were sleeping or in the sala?

A: There inside our house because we were about to sleep.

Q:

When you were about to sleep and your father who were the other person in the night of February 18 in the room or the portion of the house where you were sleeping?

A: In our room only the two (2) of us and in the other room my aunt and her husband.

Q: So, there were only the two (2) of you in the night of February 28, 1997?

A: Yes, sir.

Q: What kind of lamp was that when your father told you to put off?

A: A kerosene lamp.

Q: And did you put off the lamp?

A: Yes, sir.

Q: You said he ordered you to undress. Did you undress?

A: Yes, sir.

Q: Did you not resist?

A: No, sir.

Q: Why did you not resist?

A: Even if I will resist I could not overcome him because he is big and he had a bolo.

Q: When you undressed yourself, what did your father do?

A: He (took) off his clothes.

Q: What else?

A: He straddled on me.

Q:

When you said undressed, you removed you shirt. What kind of clothes you were wearing when your father ordered you to undress?

A: T-shirt and short.

Q: And did you remove your t-shirt?

A: Yes, sir.

Q: And did you remove your short?

A: Yes, sir.

Q: How about your panty? Were you having a panty?

A: No, sir.

Q: Was your father wearing trouser when you said he removed his shirt?

A: No, he was wearing short.

Q: What did your father do with his short? Did he remove his short?

A: Yes, sir.

Q: Was your father wearing a brief?

A: Yes, sir.

Q: What did he do with his brief? Did he remove his brief?

A: Yes, sir.

Q:

After you undressed yourself as ordered by your father and when he was already naked or after he removed his shirt and brief, what did your father do?

A: He straddled on me and kissed me and then inserted his penis into my vagina.

Q: While kissing you, did he fondled your breast?

A: Yes, sir.

Q: What about your organ?

A: Yes, sir.

Q: Was he able to insert his penis inside your vagina?

A: Yes, sir.

Q: And after inserting his penis what did he do? Did he push and pull?

A: Yes, sir.

Q: And when he was making that motion, was his penis inside your vagina?

A: Yes, sir.

Q: Did you not push him?

A: I pushed him but I cannot overcome him.

Q: And then when your father inserted his penis inside your vagina were you on the bed?

A: Yes, sir.

Q: Now, after your father inserted his penis and have that push and pull motion, what did he do?

A: Something warm came off from him and then there is blood in the blanket and he turned his back.

Q: Did you say anything to him?

A: Yes, sir.

Q: What did you tell him?

A: I asked him, "Tay, why are you doing this to me?"

Q: And what did he say?

A: None."^[16]

Sharon's testimony was corroborated by the rural health physician, Dr. Saiton, who testified on his findings in the medical certificate^[17] that the victim had "hymenal laceration old healed at 12, 3, 6 and 9 o'clock position", and his assessment "physical virginity lost".

We affirm the trial court's findings that the accused-appellant's culpability was established by the evidence, particularly the clear and positive testimony of the child victim herself. Although there was admittedly no physical resistance, Sharon testified that the accused always had a bolo with him and although complainant pushed him she could not overcome the accused. The court correctly observed that this being a crime committed

by a father against his daughter, the moral ascendancy and influence of the father substitutes for violence or intimidation[18]

Anent the imposable penalty, Section 11 of R. A. No. 7659 provides that the death penalty shall be imposed if the crime of rape is committed with the following attendant circumstance:

"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."

The information in Criminal Case No. 0334 alleged that the accused-appellant was the father of Sharon and that Sharon is fifteen (15) years old. Sharon testified that she was seventeen (17) years old on June 3, 1999 when she testified in court[19] and that the accused-appellant is her father.[20] The accused-appellant admitted that he was the father of Sharon when the information was read to him upon his arraignment[21]

However, no evidence was adduced by the prosecution to prove Sharon's age at the time she was raped other than her statement in court while describing her personal circumstances, that she was seventeen (17) years old at the time she testified on June 3, 1999. Such casual testimony of the victim as to her age is not sufficient. To justify the imposition of death, proof of the victim's age is indubitable. There must be sufficient and clear evidence proving her age, even if not denied by the accused.[22] A duly certified certificate of his birth accurately showing the complainant's age or some other authentic documents such as a baptismal certificate or a school record, has been recognized as competent evidence[23]

While it may be true that the testimony of a person as to her age, although hearsay, is admissible as evidence of family tradition[24], we cannot consider Sharon's statement at the beginning of her testimony describing her personal circumstances as proof of age beyond reasonable doubt that we have considered indispensable in the criminal prosecution of cases involving the extreme penalty of death. No corroborative or supporting evidence was presented by the prosecution. Although a "certified transcription copy" of a certificate of live birth of Sharon Galas is found on page 10 of the Record of the preliminary investigation held by the 16th Municipal Circuit Trial Court of Jordan, Guimaras, this document was not presented in evidence during the trial. Accordingly, it does not form part of the record of the case[25] and not having been formally offered nor marked as an exhibit, it cannot be considered as evidence nor be given evidentiary value[26]

Accordingly, the accused-appellant may only be convicted of simple rape, which is punishable by reclusion perpetua. With respect to civil liability the court reduces the award of civil indemnity to Fifty Thousand Pesos (P50,000.00) and increases the moral damages to Fifty Thousand Pesos (P50,000.00), an award inherently concomitant to and resulting from the odiousness of rape[27]. An award of Twenty Thousand Pesos (P20,000.00) by way of exemplary damages is likewise justified to deter similar perversities as the rape of one's own daughter.

WHEREFORE, the decision under review is **AFFIRMED** with **MODIFICATION**. Accused-appellant Endrico Galas is convicted of simple rape in Criminal Case No. 0334 and sentenced to reclusion perpetua. Accused-appellant is further ordered to indemnify Sharon Galas in the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, and Twenty Thousand Pesos (P20,000.00) as exemplary damages.

SO ORDERED.

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

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- [1] Original Records, pp. 1-3.
- [2] TSN, June 3, 1999.
- [3] At p. 22.
- [4] At pp. 23-24.
- [5] Penned by Judge Merlin D. Deloria.
- [6] Appellant's Brief.
- [7] TSN, June 3, 1999, pp. 4-7.
- [8] *People vs. Dayot*, 187 SCRA 637.
- [9] Article 63, Revised Penal Code.
- [10] *People vs. Abapo*, G. R. No. 133387-423, prom. March 31, 2000.
- [11] TSN, June 18, 1998.
- [12] TSN, June 18, 1998.
- [13] TSN, August 7, 1998.
- [14] TSN, June 3, 1999 at pp. 40-42.
- [15] *People vs. Petalcorin*, 180 SCRA 685.
- [16] TSN, June 3, 1999, pp. 18-22.
- [17] Exhibit "A", p. 9, Original Records.
- [18] *People vs. Burce*, 269 SCRA 293.
- [19] TSN, June 3, 1999, p. 8.
- [20] At p. 14.
- [21] TSN, June 3, 1999, p. 6.
- [22] *People vs. Cula*, G. R. No. 133146, March 28, 2000; *People vs. Tipay*, G. R. No. 131472, March 28, 2000; *People vs. Tabanggay*, G. R. No. L-130504, June 29, 2000; *People vs. Javier*, 311 SCRA 122.
- [23] *People vs. Pecayo, Sr.*, G. R. No. 132047, prom. December 14, 2000; *People vs. Amban*, G. R. No. 134286, prom. March 1, 2000; *People vs. Rebancos*, 172 SCRA 425; *People vs. Vargas*, 257 SCRA 603.
- [24] *People vs. Silvano*, 309 SCRA 362; *People vs. Alegado*, 201 SCRA 37
- [25] Section 8, Rule 112.
- [26] Section 34, Rule 132.
- [27] *People vs. Tabanggay*, G. R. No. 130504, June 29, 2000; *People vs. Prades*, 293 SCRA 411.

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