

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO GONZALES Y OPENA, ACCUSED-APPELLANT.

G.R. Nos. 139445-46. June 20, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

These cases are here on automatic review of the decision^[1] of the Regional Trial Court, Branch 170, Malabon, Metro Manila, finding accused-appellant Rodrigo Gonzales guilty of two counts of rape and sentencing him to suffer the penalty of death for each count, to pay complainant the amounts of P150,000.00 as civil indemnity, P100,000.00 as moral damages, and P70,000.00 as exemplary damages, and to acknowledge and support the child born of complainant Remelie Tria.

Except for the dates of the commission of the rapes, the two informations against accused-appellant alike read:

That on or about [date],^[2] in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of Remelie Tria y Simeon, a minor of 16 years old, with lewd design, and exercising ascendancy over said Remelie Tria y Simeon and by means of force, violence and intimidation, wilfully, unlawfully and feloniously did, then and there, have sexual intercourse with Remelie Tria y Simeon against her will and without her consent.^[3]

Accused-appellant pleaded not guilty to the charges. Thereupon the two cases were consolidated and jointly tried.

The prosecution presented evidence showing the following:

Complainant Remelie Tria is the daughter of Teresita Simeon, while accused-appellant Rodrigo Gonzales is Teresita Simeon's common-law husband. On January 7, 1995, at around 2:00 in the morning, while complainant Remelie Tria was alone sleeping on the second floor of their house in Sitio 6, Barangay Catmon, Malabon, she felt someone touching her private parts. When she opened her eyes to find out who it was, she saw accused-appellant, her mother's common-law husband. Remelie sat up and threatened to report accused-appellant to her mother if he did not stop molesting her. This angered accused-appellant who boxed complainant and continued making advances on her. Complainant resisted but she was pinned down on the bed and accused-appellant succeeded in ravishing her. Because of the threat that accused-appellant would kill her and her mother if she reported the matter to anyone, complainant kept the incident to herself.^[4]

More than two years later, on November 1, 1997, at around 1:30 in the morning, while complainant was sleeping inside her room, she was awakened by the sound of an object falling on the floor. When she tried to see what it was, she found that accused-appellant was in the room. The latter held her hands, undressed her, and forced himself on her. Accused-appellant warned Remelie not to report the incident to anyone or he would leave her mother and her siblings with no one to support them.^[5]

Later, Remelie decided to tell her mother of accused-appellant's sexual molestation. As a result, her mother drove accused-appellant from their house and reported the matter to their barangay officials. Somehow, however,

accused-appellant was able to return to their household.[6]

On November 25, 1997, complainant watched on television about Bantay Bata, the program for abused children of the Department of Social Welfare and Development. She went to the DSWD and made a complaint against accused-appellant. A DSWD social worker took her to the police station where complainant executed a complaint-affidavit against accused-appellant. A few days later, members of the Malabon police arrested accused-appellant.[7]

On November 27, 1997, Dr. Bernadette Madrid, head of the Child Protection Unit of the Philippine General Hospital, examined complainant. Her findings, contained in a report, are as follows:

FINDINGS

Well nourished, well developed, ambulant, cooperative,

Head & Neck, Chest, Lungs, Abdomen: Normal

Extremities: Normal

GENITAL EXAMINATION:

Hymen:

Estrogenized with a hymenal opening of 12 mm.

Healed laceration at 5 o'clock position and deep notch at 8 o'clock position.

IMPRESSION:

Findings of the genital examination is consistent with penetration.[8]

Dr. Madrid reiterated in court her findings. She stated, however, that she could not tell when the genital lacerations were inflicted.[9]

On August 6, 1998, or about nine months after the second rape, complainant gave birth to a baby boy.[10]

Accused-appellant denied having raped complainant. He claimed that in the early morning of January 7, 1995 and November 1, 1997, he was at the dumpsite in Catmon, Malabon scavenging for garbage with several individuals whose names he allegedly did not know.[11] He admitted, however, that the Catmon garbage dumpsite is only about a kilometer away from his house and that the distance could be traversed in 15 minutes by foot. Accused-appellant claimed that complainant could possibly have harbored resentment against him because he reported her to her mother for going to the house of her boyfriend for which reason complainant's mother scolded her.[12]

On July 16, 1999, the trial court rendered its decision finding accused-appellant guilty of two counts of rape. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 18899-MN, the Court finds accused Rodrigo Gonzales y Opena guilty beyond reasonable doubt of the crime of RAPE penalized under Art. 335 of the Revised Penal Code as amended by R.A. 7659 and hereby sentences him to suffer the penalty of DEATH; to pay Remelie Tria the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P35,000.00 as exemplary damages plus the cost of the suit;

2. In Criminal Case No. 18900-MN, the Court finds accused Rodrigo Gonzalez y Opena guilty beyond reasonable doubt of the crime of RAPE (Republic Act No. 8353) and hereby sentences him to suffer the penalty of DEATH; to pay Remelie Tria the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P35,000.00 as exemplary damages plus the cost of the suit.

Further, accused Rodrigo Gonzales y Opena is hereby ordered to acknowledge the filiation of [the] victim's offspring and to give support, the amount of which shall be determined after due notice and hearing.[13]

Hence, this appeal. Accused-appellant contends tha —

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY SINCE THE CORRECT RELATIONSHIP OF THE ACCUSED WITH THE COMPLAINANT WAS NOT PROPERLY ALLEGED IN THE INFORMATIONS.[14]

In his reply-brief, accused-appellant alleged another ground for the modification of the penalty imposed on him, to wit: that the prosecution has allegedly failed to sufficiently prove that complainant was less than 18 years of age at the time of the commission of the alleged rapes.[15]

Considering that these cases are before the Court on automatic review, we will first consider whether the evidence is sufficient to support the trial court's finding that accused-appellant is guilty of the two counts of rape. Only if we find the evidence to be sufficient will we consider accused-appellant's contention relative to the imposition on him of the death penalty for each count of rape.

In reviewing convictions for rape, this Court has been guided by the following principles: (1) that an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (2) that in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) that the evidence for the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence of the defense.[16]

The Court has carefully gone over the records of these cases and finds nothing to justify a reversal of the trial court's findings. The prosecution was able to prove all the elements of rape committed through force or intimidation. In a clear, straightforward, and unaffected manner, complainant Remelie narrated in the trial court how her surrogate father twice succeeded in raping her through force and intimidation, let alone because of his moral ascendancy over her. Her testimony was corroborated by the results of the medical examination conducted by Dr. Madrid.

Accused-appellant relies solely for his defense on denial and alibi. However, alibi cannot prevail over complainant's positive identification of accused-appellant.[17] Moreover, for alibi to prosper, it must be shown that it was impossible for the accused to have been present at the scene of the crime at the time of its commission.[18] In these cases, accused-appellant himself admitted that the garbage dumpsite where he allegedly was at the time of the commission of the rapes is only a kilometer away from his house and it would take only 15 minutes to negotiate the distance by foot. Thus, even if he was in that place at the time material to these cases, it was not impossible for him to go home and commit the crimes, and then be back at the dumpsite. It is noteworthy that although accused-appellant said he was with other people at the dumpsite, he did not present any of them to support his alibi.

As for accused-appellant's contention that the charges brought against him were trumped up, the trial court correctly gave no weight to the same. As the trial court noted:

The Court does not believe that Remelie would fabricate a story of defloration against her own stepfather, allow her private parts to be examined, (Exh."A" and "A-3"), and make public her painful and humiliating experiences which are better kept in secret or forgotten just to get even with the accused for telling her mother about her

coming to the house of her boyfriend . . . [were it not for] her desire to obtain justice for the grievous wrongs committed against her.[19]

Coming now to the penalty to be imposed on accused-appellant, we find that the trial court erred in sentencing him to suffer the death penalty. Under §11 of Republic Act No. 7659, the death penalty is imposed in rape cases where "the victim is under eighteen (18) years of age and the offender is . . . the common-law spouse of the parent of the victim." Being in the nature of special qualifying circumstances, the minority of the victim and her relationship to the offender must be both alleged and proved with certainty.[20]

In the cases at bar, although the informations against accused-appellant alleged that he is the "stepfather of Remedios Tria y Simeon, a minor of 16 years old," the evidence shows that complainant's mother, Teresita Simeon, was not married to accused-appellant.[21] Accused-appellant confirmed this when he stated that complainant Remelie is Teresita Simeon's child by another man.[22]

In *People v. Manggasin*,[23] the informations alleged that the accused was the victim's stepfather but the evidence showed that he was in fact merely the common-law spouse of the complainant's mother. This Court held that the death penalty could not be imposed since the accused was not in fact the complainant's stepfather. Indeed, a stepfather has been defined as the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[24] For the foregoing reason, the death penalty imposed on accused-appellant should be reduced to reclusion perpetua.

Neither is there sufficient evidence to prove complainant's minority. Although the presentation of the birth certificate or other corroborative evidence is not indispensable to prove the victim's age for purposes of imposing the death penalty, this becomes necessary when the complainant's age at the time of the commission of the rape is alleged to be between 15 to 17 years old. At these ages, it is not easy to determine by mere physical appearance the age of complainant.[25] Thus, in *People v. Javier*,[26] where the prosecution presented only the testimony of the victim to prove her minority (also allegedly 16 years old), we said:

In the case at hand, the complaints stated that the rape victim is 16 years old However, it is significant to note that the prosecution failed to present the birth certificate of the complainant. Although the victim's age was not contested by the defense, proof of age of the victim is particularly necessary in this case considering that the victim's age which was then 16 years old is just two years less than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an iota of doubt that the victim is indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld.[27]

Indeed, not only did the prosecution in these cases fail to present other evidence than complainant's testimony to prove her age, the uniform allegation in the two informations that she was 16 years old cannot be given credence considering that the dates of commission of the two rapes (January 7, 1995 and November 1, 1997) are two years apart. If, as complainant said, she was born on June 4, 1982,[28] she would be 12 years old on January 7, 1995 and 15 years old on November 1, 1997. In either case, she would not be 16 years old as alleged in the informations. The variance between complainant's testimony and the allegations in the informations puts in serious doubt the actual age of complainant at the time she was raped.

Accordingly, in each of the two cases under review, the death penalty should be reduced to reclusion perpetua.

The trial court correctly ordered accused-appellant to acknowledge and support complainant's child. A person guilty of rape, seduction, or abduction shall be sentenced to indemnify the offended woman, acknowledge the offspring, unless the law should prevent him from so doing, and in every case support the offspring.[29] No impediment exists to prevent the Court from requiring accused-appellant to acknowledge complainant's child as his natural child since he is not married to complainant's mother. Considering that the complainant gave birth within a period 9.3 months (the average period of pregnancy)[30] from the date complainant was raped on November 1, 1997, accused-appellant should be ordered to pay support to complainant's child.

In view of the reduction of the penalties for both counts of rape, the amount of P75,000.00 in each case as civil indemnity should correspondingly be reduced to P50,000.00 each, in line with current case law.[31] On the other hand, the award of P50,000.00 as moral damages for each count of rape is affirmed.[32] The trial court also correctly awarded exemplary damages to complainant since, as held in *People v. Villanueva*.[33], the rape of the child of accused-appellant's common-law spouse is attended by the generic aggravating circumstance of abuse of confidence. This is applicable in these cases, there being the relation of trust and confidence between complainant and accused-appellant who, as in *Villanueva*, was regarded by the latter as her father.[34] In accordance with the ruling in that case, the amount of the award should be reduced to P20,000.00.[35]

WHEREFORE, the decision of the Regional Trial Court, Branch 170, Malabon, Metro Manila is MODIFIED and accused-appellant is sentenced in each of the criminal cases herein to suffer the penalty of reclusion perpetua and to pay to complainant the amount of P50,000.00 as indemnity and the further sum of P20,000.00 exemplary damages. In all other respects, the appealed decision is AFFIRMED.

SO ORDERED.

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

[1] Per Judge Benjamin T. Antonio.

[2] January 7, 1995 for Criminal Case No. 18899; November 1, 1997 for Criminal Case No. 18990.

[3] Rollo, pp. 4 and 5.

[4] TSN, pp. 4, 7-8, 10-11, Jan. 12, 1999.

[5] *Id.*, pp. 4-11.

[6] *Id.*, pp. 5, 8.

[7] *Id.*, pp. 5-7.

[8] Exh. A; Records, p. 36 (emphasis added).

[9] TSN, p. 2, July 20, 1998.

[10] TSN, p. 7, Jan. 12, 1999.

[11] TSN, pp. 2-3, May 18, 1999.

[12] *Id.*, pp. 3-5.

[13] Rollo, pp. 16-17.

[14] Appellant's Brief, p. 1; Rollo, p. 35.

[15] Reply Brief, pp. 1-6; id., 82-87.

[16] *People v. Sanchez*, 250 SCRA 14 (1995); *People v.. Monfero*, 308 SCRA 396 (1999).

[17] *People v. Alipayo*, 324 SCRA 447 (2000); *People v.. Suzano*, 310 SCRA 728 (1999).

[18] *People v. Tolentino*, G.R. No. 139834, Feb. 14, 2001; *People v. Torio*, 318 SCRA 315 (1999); *People v. Padilla*, 301 SCRA 265 (1999).

[19] Decision, p. 6; Rollo, p. 15.

[20] *People v. Maglente*, 306 SCRA 546 (1999); *People v.. Acala*, 307 SCRA 330 (1999); *People v.. Panique*, 316 SCRA 757 (1999).

[21] TSN (*Remelie Tria*), p. 3, Jan. 12, 1999.

[22] TSN (*Rodrigo Gonzales*), pp. 3-4, May 18, 1999.

[23] 306 SCRA 228 (1999).

[24] *People v. Tolentino*, supra; *People v.. Torio*, supra; *People v. Villaranza*, G.R. No. 131848-50, Sept. 5, 2000.

[25] *People v. Tipay*, G.R. No. 134272, March 28, 2000.

[26] 311 SCRA 122 (1999); See.also *People v. Tipan*, G.R. No. 131472, March 28, 2001 and *People v. Cula*, G.R. No. 133146, March 28, 2001.

[27] *People v. Javier*, supra at 140-141.

[28] TSN (*Remelie Tria*), p. 5, Jan. 12, 1999.

[29] Revised Penal Code, Art. 345.

[30] *People v. Malapo*, 294 SCRA 579 (1998).

[31] E.g., *People v. Baniguid*, G.R. No. 137714, Sept. 5, 2000.

[32] *People v. Dichoson*, G.R. No. 118986-99, Feb. 19, 2001; *People v.. Arlee*, 323 SCRA 201 (2000).

[33] G.R. No. 135330, Aug. 31, 2000.

[34] TSN, p. 4, May 18, 1999.

[35] The presence of aggravating circumstance of abuse of confidence would have no effect on the penalty imposable on accused-appellant since reclusion perpetua is an indivisible penalty (Revised Penal Code, Art. 63).

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