

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVADOR ORILLOSA Y DELA CRUZ, APPELLANT.

G.R. Nos. 148716-18. July 07, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

On automatic review is the decision of the Regional Trial Court of Malolos, Bulacan, Branch 21,[1] finding appellant Salvador Orillosa y dela Cruz guilty of acts of lasciviousness in Criminal Case No. 2700-M-99, sentencing him to suffer the penalty of two (2) years, four (4) months and one (1) day to three (3) years of prision correccional in its medium period, and two counts of rape in Criminal Cases Nos. 2701-M-99 and 2702-M-99, for which he was meted the supreme penalty of death for each count.

Appellant was charged with three counts of Rape committed against his daughter, Andrelyn Orillosa, in three separate Informations, the accusatory portions of which read:

Criminal Case No. 2700-M-99 -

That sometime in the year of 1993, in the municipality of Guiguinto, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force and intimidation, with lewd designs have carnal knowledge of his own daughter, Andrelyn Orillosa, 9 years old, against her will and without her consent.

Contrary to law.

Criminal Case No. 2701-M-99 –

That on or about the 27[th] day of July, 1999, in the municipality of Guiguinto, Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, Andrelyn Orillosa, 16 years old, against her will and consent.

Contrary to law.

Criminal Case No. 2702-M- 99 –

That sometime in the month of December 1997, in the municipality of Guiguinto, Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously, by means of force and intimidation, with lewd designs, have carnal knowledge of his own daughter, Andrelyn Orillosa, 16 years old, against her will and without her consent.

Contrary to law.

Appellant pleaded not guilty to the charges, after which the three criminal cases were jointly tried.

Sometime in December 1997, at around 10:00 in the morning, while Andrelyn Orillosa was on the ground floor of

their house, her father, appellant Salvador Orillosa, called her upstairs. Appellant closed the door of the room and mashed his daughter's breasts. He whispered to her not to tell anybody. Appellant then ordered Andrelyn to lie down on the floor, then he removed her t-shirt and pulled down her short pants. He mounted the victim and tried to force his penis into her daughter's genitalia. Despite his efforts, appellant failed to fully penetrate the organ of Andrelyn. When appellant stood up, Andrelyn saw his penis dripping with a whitish substance. Andrelyn could do nothing but to whimper in protest. After her ordeal, she ran away from home and sought refuge in the house of a relative. Before long, her mother fetched her and brought her back home. She told her mother about her harrowing experience, but the latter chided her instead for making up stories.

On July 27, 1999, Andrelyn slept in the upper room of the house. Earlier that day, her parents had a quarrel, which caused her mother to leave. At 2:00 in the morning, appellant entered Andrelyn's room and carried her to the ground floor. There, he took off her clothing, and laid her on the floor. He then straddled her, and kissed her repeatedly on the neck. After undressing himself, he forced his penis into her vagina, but only a portion thereof penetrated Andrelyn's organ. His lust satiated, appellant dressed up and left for work. Andrelyn ran upstairs crying because of physical and emotional anguish. Her Kuya Leandre saw her and asked why she was crying. She did not tell him what happened for fear that her father might vent his anger on her Kuya.

Sometime in August 1999, Andrelyn told her Lola Iging about her father's sexual assaults, but the latter did not believe her and even rebuked her for causing embarrassment to her father. With no one to turn to, she personally reported the matter to the barangay captain who accompanied her to the police where she gave a written statement.

On direct examination, Andrelyn also revealed that in 1993, appellant first molested her when he inserted his finger in her vagina.[2]

On September 23, 1999, Dr. Ivan Richard Viray, medico-legal officer of the PNP-Bulacan Crime Laboratory, examined the victim Andrelyn Orillosa. He noted the presence of deep-healed lacerations at 3, 5, 7, and 9 o'clock positions which, according to the victim, were inflicted by appellant since she was in Grade III.[3]

The defense presented Mary Ann Orillosa, the victim's younger sister, who testified that in 1993, when the alleged first rape incident occurred, she was 8 years old and was living with her parents in Ilang-ilang, Guiguinto, Bulacan. Her sister, Andrelyn, was then 9 years old. She was always in the house after classes and during lunch breaks, and she could not recall any single moment when appellant and Andrelyn were left alone in the house. Her father worked from 10:00 in the morning to 8:00 in the evening everyday, including Saturdays and Sundays.

Mary Ann further stated that on July 27, 1999, at around 7:00 in the evening, when the alleged third rape incident happened, appellant and the other members of the family were in the house, except for Andrelyn who ran away from home. She surmised that Andrelyn might have been prompted to file the instant complaint because of her father's cruelty to her sister. She explained that appellant frequently whipped and spanked Andrelyn, especially when she did not remit the proceeds of the jueteng collection to appellant, who moonlighted as a collector of the illegal numbers game. According to her, she was forced to sign the complaint by the Barangay Captain on the pretext that if she did Andrelyn would become an actress. Moreover, the said Barangay Captain coerced her into admitting that she too was the victim of her father's lechery. She belied the charge that her father raped Andrelyn. The truth of the matter, she claimed, is that she saw Andrelyn having sex with five boys and was apparently taking pleasure in the experience.

Mary Anne further testified that during the whole month of December 1997, when the alleged second rape incident happened, Andrelyn worked as a babysitter in Plaridel, Bulacan. She could recall only one instance when Andrelyn went back to their house in Guiguinto. Andrelyn stayed in the house for a short time in the morning but

went back to work shortly thereafter. During Andrelyn's short visit in December, their mother and younger siblings were in the house while appellant was working in Marilao.

On the witness stand, Leijani Orillosa also testified that together with her sisters, Andrelyn and Mary Anne, they were brought by the Barangay Captain to the Barangay Hall. Before the Barangay officials, Andrelyn wanted her to admit that they too were molested by their father, but she adamantly refused to accede to Andrelyn's wishes. According to her, the Barangay Captain coaxed her and Mary Anne into signing a document by promising them that if they did, their sister Andrelyn would become an actress. The Barangay Captain coerced her into signing the document by holding her hand and forcing her to affix her signature. She asserted that her father could not have raped Andrelyn because she would always leave the house and was out for days on end. She opined that Andrelyn filed the instant complaint because she could no longer take the beatings from her father.

On January 24, 2001, the trial court rendered a decision finding appellant guilty of the crimes of acts of lasciviousness and of two counts of rape, the decretal portion of which reads:

WHEREFORE, this Court hereby resolves and finds the accused Salvador Orillosa GUILTY beyond reasonable doubt, in Criminal Case No. 2700-M-99 with the crime of Acts of Lasciviousness for which he is hereby sentenced to suffer the penalty of Two (2) years Four (4) months and One (1) day to Three (3) years of prision correccional medium; and in both Criminal Cases Nos. 2701-M-99 and 2702-M-99 with the crime of rape (with qualifying circumstance) for which, he is hereby sentenced to suffer the supreme penalty of Death on two counts.

Additionally, the offended party is to be indemnified in the sum of P3,000.00 in Criminal Case No. 2700-M-99 and P75,000.00 each in Criminal Cases Nos. 2701-M-99 and 2702-M-99. She is likewise awarded moral damages in the amount of P5,000.00 in the first case and another P100,000.00 each of the two other cases.

With costs against the accused.

SO ORDERED.[4]

Hence, this automatic review, pursuant to Article 47 of the Revised Penal Code, as amended. In his Appellant's Brief, appellant raises the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE GROUND OF THE CRIME OF ACTS OF LASCIVIOUSNESS.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE AND IN IMPOSING THE DEATH PENALTY.[5]

In support of the first assigned error, appellant argues that the rape allegedly committed in 1993 was not mentioned during the direct examination or in the cross-examination of Andrelyn and was only brought out on re-direct examination. In fact, the narration of the alleged crime of rape was insufficient so much so that the trial court reduced the charge to acts of lasciviousness. Moreover, the prosecutor put words in the mouth of the witness when he premised his question as: "Did you not say in 1993, your father merely inserted his finger on the private organ?"

Appellant's claim that the prosecution failed to prove its charge of acts of lasciviousness upon the victim is belied by the following exchange on direct examination of Andrelyn:[6]

Fiscal Gammad:

Q. Andrelyn, please tell us the truth in this statement, more particularly on the second page, did you really give this statement?

A. Yes, ma'am.

Q. Awhile ago, I asked you if in December of 1997 was the first time that you were molested by anyone including by your father and you said "yes". It appears then here that in 1993 aside from fingering, your father inserted his "titi" to your private organ, will you please explain that?

A. In 1993, that was the first time that he molested me by fingering me then followed by incident in 1997 and then in 1999, ma'am.

Q. For clarification, are you saying that in 1993 while you were in Grade III, your father merely fingered you and never inserted penis into your organ?

A. No, ma'am, he merely fingered me.

Contrary to appellant's assertion, Andrelyn reiterated on cross-examination that she was sexually molested by appellant by inserting his finger into her genitalia, thus:[7]

Fiscal:

If according to you, the penis of your father did not fully penetrate your private organ on July 27, 1999, do you know of any reason why the findings of the medico legal officer on you was that you suffered healed laceration and you were not in a virgin state anymore?

A. In 1993, he did that to me.

Fiscal:

Did you not say in 1993, your father merely inserted his finger on your private organ?

A. Yes. Sir.

As clearly shown by the foregoing, Andrelyn, on direct as well as on cross-examination, categorically and candidly narrated how she was "fingered" by appellant, which testimony suffices to satisfy the immutable quantum of proof required in criminal cases.

As correctly pointed out by the Solicitor General, the defense failed to object when the prosecution elicited further evidence on the acts of lasciviousness. For its neglect, the defense is deemed to have effectively waived on appeal its right to object thereto.

Appellant assails his conviction on two counts of rape principally on the theory that the trial court did not ask him to testify in his defense. Thus, he is now seeking the remand of the case to the trial court for further proceedings.

This is not a novel question. In *People v. Resano*, we rejected a similar plea by stating that:[8]

The revenge theory could be better developed and explained by the appellant himself. But he did not take the witness stand to personally refute the charge and accusation against him. He, of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him (Rule 15, Sec. 1, Par. (d), Rules of Court). But where the prosecution has already established a prima facie case, more so when the offense charged is grave and sufficient enough to send accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said prima facie case and so as to shift the burden of producing further evidence to the prosecution, the party

making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such situation, it may be necessary for the accused to have a complete destruction of the prosecution's prima facie case, that he take the stand since no hardship will in any way be imposed upon him (U.S. vs. Chan Toco, 12 Phil. 262). If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardly indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves. (U.S. vs. Tria, 17 Phil. 303)

Be that as it may, the conviction rests not on the failure by appellant to put up a respectable defense, but on the credible and straightforward testimony of the private complainant. Her testimony, given in a spontaneous and candid manner, withstood the searing cross-examination by the defense and carried no earmarks of fabrication. We sense no cogent reason or circumstance of note to nullify the truth of her assertions. Oft repeated is the truism that being a woman of tender age, shy and ignorant of the sophistication of city life, by no stretch of imagination can we believe that considering her innate modesty, humility and purity as a young Filipina, Andrelyn would have allowed herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery. Verily, it takes an extreme sense of moral depravity for a daughter to accuse her very own father of a heinous crime, such as rape, and expose him to the perils attendant to a criminal conviction if only to exact revenge on her father who allegedly maltreated her. As earlier held by the Court, a true Filipina would not go around in public unravelling facts and circumstances of her defloration for no reason, if such were not true.[9] We find that there exists no convincing reason to disturb the trial court's assessment of the witnesses' credibility.

On the matter of force or intimidation, we have ruled that in incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of appellant, who is private complainant's father, would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[10] The instant case is no exception. Appellant took advantage of his overpowering moral and physical ascendancy to unleash his lechery upon his daughter.

In the recent case of *People v. Servano*, [11] we held:

We have to bear in mind that in incestuous rape, the minor victim is at a great disadvantage because the assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary unlike where the accused is not an ascendant or blood relative of the victim. Thus, the failure of the victim to explicitly verbalize, as in this case, the use of force, threat, or intimidation by the accused should not adversely affect the case of the prosecution as long as there is adequate proof that sexual intercourse did take place.

This principle was reiterated in *People v. Cea*, [12] where, although the information alleged that the appellant was armed with a knife, the private complainant never testified that he was so armed when he sexually abused her. In any case, this Court sustained the finding of force or intimidation on the ground that it may be replaced by moral ascendancy in cases of incestuous rape.

On the imposable penalty, we agree with appellant that the court a quo erroneously imposed the death penalty in Criminal Cases Nos. 2701-M-99 and 2702-M-99. In a plethora of cases, we have invariably ruled that in incestuous rape, it is essential that the relationship and minority be conjointly alleged in the information and duly proved. In the cases at bar, although the victim's relationship with appellant is unquestioned, the minority of the victim has not been proved with moral certitude. The Informations in Crim. Cases Nos. 2701-M-99 and 2702-M-99 allege that the victim was 16 years old at the time of the rape incidents, yet the prosecution failed to present the birth certificate of the complainant or any other similar independent evidence to prove the same.[13] The case of *People v. Javier* succinctly explains the necessity of such proof in this wise:[14]

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.

We are thus constrained to hold appellant liable only for simple rape, and to reduce the penalty to the lower indivisible penalty of reclusion perpetua.

The civil indemnity to be awarded to the offended party should likewise be modified. Accordingly, the victim is entitled to P50,000.00 as indemnity ex delicto, P50,000.00 as moral damages for each count of rape[15] without need for proof of the basis thereof, and P25,000.00 as exemplary damages to deter other fathers with perverse proclivities for aberrant sexual behavior from sexually abusing their own daughters.[16]

With respect to Criminal Case No. 2700-M-99, we are in full agreement with the court a quo in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge was not established.

The alternative circumstance of relationship under Article 15 of the Revised Penal Code should be appreciated against appellant. In crimes of chastity such as acts of lasciviousness, relationship is considered as aggravating. Inasmuch as it was expressly alleged in the information and duly proven during trial that the offended party is the daughter of appellant, relationship, therefore, aggravated the crime of acts of lasciviousness.

Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punished by prision correccional. Applying the Indeterminate Sentence Law and appreciating relationship as an aggravating circumstance, appellant could be sentenced to suffer an indeterminate prison term of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum,[17] and to pay the victim P30,000.00 as moral damages.[18]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 21, finding appellant Salvador Orillosa y de la Cruz guilty of two counts of rape in Criminal Cases Nos. 2701-M-99 and 2702-M-99 is AFFIRMED with the MODIFICATION that in each case the penalty is reduced to reclusion perpetua, with all the accessory penalties thereto. In addition, appellant is ordered to pay in each case the victim, Andrelyn Orillosa, P50,000.00 as civil indemnity ex delicto; P50,000.00 as moral damages; and P25,000.00 as exemplary damages.

As to Criminal Case No. 2700-M-99, the judgment of conviction for acts of lasciviousness is AFFIRMED with MODIFICATION. As modified, appellant is sentenced to an indeterminate imprisonment penalty ranging from six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum, and to pay the victim P30,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Decision penned by Judge Cesar M. Solis.

[2] TSN, 7 February 2000, p. 13.

[3] TSN, 7 June 2000, p. 13.

[4] Rollo, p. 34.

[5] Rollo, pp. 112 and 115.

[6] TSN, 7 February 2000, p. 13.

[7] TSN, 14 February 2000, p. 5.

[8] G.R. No. L-57738, 23 October 1984, 132 SCRA 711.

[9] *People v. Felipe*, G.R. No. L-40432, 19 July 1982, 115 SCRA 88; *People v. Sambangan*, G.R. No. L-44412, 25 November 1983, 125 SCRA 726.

[10] *People v. Sagaral*, G.R. Nos. 112714-15, 7 February 1989, 267 SCRA 671; *People v. Escobar*, G.R. Nos. 122980-81, 6 November 1997, 281 SCRA 498; *People v. Tan, Jr.*, G.R. Nos. 103134-40, 20 November 1996, 264 SCRA 425; *People v. Servano*, G.R. Nos. 143002-03, 17 July 2003.

[11] G.R. Nos. 143002-03, 17 July 2003.

[12] G.R. Nos. 146462-63, 14 January 2004; see also: *People v. Valdez*, G.R. Nos. 133194-95 and 141539, 29 January 2004.

[13] *People v. Gavino*, G.R. No. 142749, 18 March 2003.

[14] G.R. No. 126096, 26 July 1999, 311 SCRA 122.

[15] *People v. Senen Prades*, G.R. No. 127569, 30 July 1998, 293 SCRA 411; *People v. Viajedor*, G.R. No. 148138, 11 April 2003.

[16] *People v. Lao*, G.R. No. 117092, 6 October 1995, 249 SCRA 137; *People v. Sangil, Sr.*, G.R. No. 113689, 31 July 1997, 276 SCRA 532.

[17] *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, 3 April 2001.

[18] *People v. Lilo*, G.R. Nos. 140736-39, 4 February 2003.

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