

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FAUSTO FUCIO Y MORENO, APPELLANT.*G.R. Nos. 151186-95. February 13, 2004*

Ponente: DAVIDE JR., CJ.

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This is an automatic review of the Decision[1] dated 21 September 2001 of the Regional Trial Court of Labo, Camarines Norte, Branch 64, convicting appellant Fausto Fucio of nine counts of rape committed against his 10-year-old godchild Janet B. Floranza, who had been staying with his family since she was 3 years old, and imposing upon him the death penalty for each count of rape.

Ten informations[2] for rape were filed against Fausto on 28 June 1996, which were docketed as Criminal Cases Nos. 96-0096 to 96-0105, inclusive. While the informations in Criminal Cases Nos. 96-0096 and 96-0097 specified the dates when the rapes were allegedly committed, those in Criminal Cases Nos. 96-0098 to 96-0105 merely mentioned the month and year. Amended informations[3] were thereafter filed specifying the week of the month when the alleged rapes were perpetrated. Except for the dates of the commission of the rapes, the informations typically read as follows:

That on or about the first week of December 1995 in the early morning at the house of the accused at Barangay Tigbinan, Labo, Camarines Norte, the above-named accused in whose custody and care Janet B. Floranza was entrusted being the godfather and with overbearing power unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with Janet B. Floranza, a girl below 12 years old against the will of the latter to her damage and prejudice.[4]

After Fausto pleaded not guilty to each of the ten charges of rape at his arraignment, trial ensued.

As culled from the testimonies of Janet B. Floranza; Dr. Marcelito B. Abas, the doctor who examined Janet; Philip Osea, Janet's brother-in-law; and Salvador Tugano, the barangay captain of the place where Janet resided, the prosecution established the following version:

Fausto is the godfather of Janet and the father-in-law of Janet's sister Jocelyn. After their father died, Jocelyn entrusted Janet, then 3 years old, to the care and custody of Fausto. Janet lived with the family of Fausto at their house located at Barangay Tigbinan, Labo, Camarines Norte.[5] It was when she was already 10 years old, specifically from September to December 1995, that she had horrible experience in the hands of Fausto. Thus:

(1) On 23 September 1995, at around 3:00 p.m., Janet and Fausto's 10-year-old daughter were taking a bath at the river in Guisican, Labo, Camarines Norte. Fausto followed them and directed his daughter to get clothes at home. Janet attempted to go after her companion, but Fausto stopped her. He pulled Janet to a grassy area, pushed her to the ground, and removed her underwear. After removing his own black shorts, he kissed Janet on the different parts of her body and forced his sexual organ into hers, which bled as a result thereof. He prevented Janet from shouting by covering her mouth and at the same time threatening to kill her. Fausto broke off the sexual assault when he sensed the return of his daughter. He warned the helpless Janet not to tell the incident to anybody, or he

would kill her and her sister.[6]

(2) At around 4:00 a.m. of the first week of October 1995, Fausto entered the room where Janet and his child were sleeping. He grabbed Janet by the waist, removed her t-shirt, and raised her skirt up to her waistline. He then removed her panty, went on top of her, and inserted his penis into Janet's sexual organ. Fausto warned her not to shout lest he would kill her. He also warned her not to tell anyone what happened.[7]

(3) One early morning on the second week of October 1995, Janet was awakened by the kisses of Fausto. He removed Janet's panty, raised her dress, took hold of his penis, and inserted it into her sexual organ. Her entire body racked with pain, but he continued with the sexual molestation. Having satisfied his lust, Fausto once more threatened to kill her if she would report the incident to her sister.[8]

(4) One early morning of the last week of October 1995, Janet was fixing her bed when Fausto told her not to finish her chore. Janet answered that she would still cook. Fausto, nonetheless, pulled her into the bed. Janet's pleas for her "tatay" to have pity on her and to stop molesting her remained unheeded as Fausto unrelentingly kissed her. He then inserted his penis into her sexual organ. Fausto, thereafter, nonchalantly reminded Janet not to tell her sister or anybody what transpired.[9]

(5) At around 4:00 a.m., during the first week of November 1995, Janet was awakened when Fausto held her hand and covered her mouth. He raised her skirt and removed her panty. After removing his own shorts, he put out his penis and penetrated the sexual organ of Janet. She was hurt, but Fausto was not remiss in threatening her with death should she disclose the sexual abuses.[10]

(6) One early morning on the last week of November 1995, Janet was awakened when Fausto kissed her face. She was about to shout, but Fausto was quicker in threatening to kill her should she do so. With his victim cowed into silence, Fausto removed Janet's panty and his shorts. He went on top of Janet and put his penis into her sexual organ. The penetration did not last long because Fausto's twelve-year-old son woke up.[11]

(7) One morning during the first week of December 1995, Janet was awakened when Fausto covered her mouth. Afraid that Fausto might hurt her, Janet removed her panty upon his instruction. Thereafter, Fausto unzipped his shorts, put out his penis, went on top of Janet, and inserted his sexual organ into hers. Fausto threatened Janet not to tell his wife, who was then cooking in the kitchen.[12]

(8) On 20 or 21 December 1995, at 4:00 a.m., Fausto held the hands of Janet, removed Janet's panty and his shorts, and placed his male organ inside Janet's private part. Again, the lechery ended with the threat of killing her and her sister.[13]

(9) On the early morning of 31 December 1995, Janet was awakened by Fausto's kisses on her face. Fausto then removed Janet's pants, took hold of his penis, and inserted it into Janet's genitalia. He again threatened to kill her if she would shout or report the incident to anybody.[14]

On 27 February 1996, Janet ran away from the Fucios and sought refuge in the house of Barangay Captain Salvador Tugano.[15] The latter, however, dutifully turned her over the following day to her sister Emma and the latter's husband, Philip Osea.[16] Janet explained to Emma that she ran away from the Fucios because she could no longer endure the lasciviousness of his godfather. She had kept quiet about her sexual ordeal because Fausto had menacingly threatened to kill her and her sister should she tell anybody of his dastardly deeds.[17] Appalled, Philip reported the matter to the military. When military men brought Fausto to Philip's house, Janet pointed to him as the person who raped her. Philip and Emma thereafter brought Janet to the Camarines Norte Provincial Hospital for physical examination.[18] Upon examination, Dr. Abas found old healed lacerations at 5, 6, and 7 o'clock positions on Janet's hymen, which could have been caused by an erect penis.[19]

The defense, for its part, presented Fausto as its lone witness. He interposed denial and alibi. He claimed that it was physically impossible for him to be in two places at the same time on the dates he allegedly raped Janet. He was already in Bulacan looking for a job on 20 September 1995.[20] Subsequently, from 24 September 1995 until 21 December 1995, he worked as a carpenter in Bulacan or at ASDEC Builders Corporation in Tandang Sora, Quezon City. It was only on 21 or 22 December 1995 that he went back to Labo, Camarines Norte.[21] As regards the rape allegedly committed by him in the early morning of 31 December 1995, Fausto maintained that he could not have done so because his family was also in the house.[22]

After assessing the evidence before it, the trial court lent credence and weight to the prosecution's version of the controversy and dismissed the alibi and denial put up by the defense for being unsubstantiated. Thus, the trial court convicted Fausto of nine out of the ten counts of rape and acquitted him in Criminal Case No. 96-0097. The dispositive portion reads:

WHEREFORE, viewed from the foregoing, judgment is hereby rendered finding accused FAUSTO FUCIO Y MORENO GUILTY beyond reasonable doubt of the crime of NINE (9) counts of RAPE as proved and not as charged and defined and penalized under par. 3 Art. 335 of the Revised Penal Code in relation to Section 11 of Republic Act No. 7659 (Death Penalty Law) and accordingly, sentencing him to suffer the supreme penalty of DEATH in each Nine (9) separate crime of rape committed on September 23, 1995, first week of October 1995, second week of October 1995, last week of October 1995, first week of November 1995, last week of November 1995, first week of December 1995, between December 20 and 21, 1995, December 31, 1995, respectively, and to pay the victim in the amount of P75,000.00 each for separate crime of rape [sic] or for a total amount of P675,000.00 as moral damages pursuant to Article 2219 (3) in relation to Art. 2217 of the New Civil Code; P30,000.00 for each separate nine (9) crime of rape [sic] or a total of P270,000.00 as civil indemnity and P30,000.00 each for nine (9) separate crimes of rape [sic] or a total of P270,000.00 as exemplary damages, and to pay the costs.[23]

Before us, Fausto asserts that the trial court erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt. He insists that he has proved his alibi and denial considering that he was in Quezon City when the alleged rapes took place in Camarines Norte. Moreover, he challenges the credibility of Janet by claiming that she filed the rape charges because he had slapped her for stealing the proceeds of his sari-sari store.

Fausto further asserts that assuming *arguendo* that he is guilty, the trial court erred in imposing the death penalty, as the informations did not allege any special qualifying circumstance that would justify that penalty. Moreover, the trial court failed to state the specific factual bases for convicting him.

For its part, the Office of the Solicitor General (OSG) seeks the affirmance of the judgment of conviction but agrees with Fausto that the death penalty should not have been imposed. It opines that the informations indeed are bereft of any allegation of a special qualifying circumstance that would qualify the rape charges. It, therefore, recommended the reduction of Fausto's sentence to reclusion perpetua for each count of rape. It also further recommended that the trial court's awards of P30,000 as civil indemnity be increased to P50,000; the amount of P75,000 as moral damages be decreased to P50,000; and the amount of P30,000 as exemplary damages be reduced to P20,000 for each of the nine counts of rape in accordance with current jurisprudence.[24]

It is doctrinally settled that the factual findings on the credibility of witnesses are accorded great weight and respect and will not be disturbed on appeal.[25] This is so because the trial court has the advantage of observing the witnesses while they are on the witness stand. The rule admits of exceptions, as where there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of facts.[26] None, however, exists in the case at bar.

A thorough review of the records convinces us that the trial court did not err in convicting Fausto of the nine counts of rape. The fact of statutory rapes, i.e., the carnal knowledge of a woman under twelve years of age, has been indubitably established and corroborated by the medical findings of Dr. Abas.[27] The records glaringly speak of Janet's candid, straightforward, and sincere testimony thereon. The veracity of her story of defloration and her credibility as a witness have been unassailed. They are even bolstered by her honesty in admitting that Fausto was not able to succeed in raping her on 24 September 1995 as alleged in the information docketed as Criminal Case No. 96-0097.

The story of defloration is all the more believable in these cases, as it came from the lips of a 10-year-old girl who is unfamiliar with the ways of the world. It is settled that no woman, especially one who is of tender age, would concoct such a sordid story of defloration, allow an examination of her private parts, permit herself to be subjected to a public trial, and disgrace herself with the narrative details of how she was raped, if she was not in fact raped.[28]

However, Fausto insists that Janet's testimony should be received with utmost caution as she has an axe to grind, so to speak, against him. He slapped her, one time, for stealing money in their sari-sari store.[29] But such reason is too flimsy as to embolden a 10-year-old girl to file ten criminal charges of rape against a man whom she had looked up to as a father and respectfully called "tatay." [30]

More importantly, Fausto's testimony on Janet's motive is not credible. During cross-examination, he admitted that he did not know how much money was in the container where Janet got the money and that his view was obstructed by Janet's back. Upon further questioning, he declared that Janet stole P40.[31] If he did not know the contents of the container and did not see the actual stealing, he could not have known the amount allegedly taken by Janet. This plainly shows that Fausto merely spun a doubtful web of a tale so as to ascribe to her ill-will. With this settled, we find no other evidence consisting of any dubious reason or improper motive why Janet would testify falsely against Fausto or falsely implicate him in a heinous crime. Janet's testimony, as we have already stated, is worthy of full faith and credit.[32]

On Fausto's defenses of alibi and denial, we find that his testimony thereon reeks with inconsistencies. First, he claimed that he was working as a carpenter in Bulacan on the dates of the alleged rapes. But when asked in what company he was working as a carpenter, he answered that he worked at ASDEC Builders Corporation in Tandang Sora Avenue, Quezon City, from 24 September 1995 until 21 December 1995.[33] Second, Fausto maintained that when his wife came from Bulacan, she told him that there was work waiting for him in Bulacan. But it was only on 15 November 1995 that his wife went to Bulacan, whereas he was already there earlier on 20 September 1995.[34] Third, Fausto said that his specific job in the construction of the two-storey building was to place the scaffoldings before concreting, but he admitted that the building was already almost finished when he first reported for work at the construction site.[35]

At bottom, Fausto's defenses of alibi and denial appear entirely doubtful. They are untrustworthy, not only for being uncorroborated and unsubstantiated, but also for his lack of candor and straightforwardness when he testified thereon. He was always consulting notes on the witness stand.[36] Contrast his testimony with that of Janet, and we affirm the rule that as between a positive and categorical testimony which has the ring of truth on one hand, and bare denial and alibi on the other, the former is generally held to prevail.[37] In sum, Fausto's defenses of denial and alibi, being unsubstantiated by clear and convincing evidence, deserve no weight in law and cannot be given evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[38]

We are not convinced of Fausto's contention that he could not have committed the rape on 31 December 1995

because his family was at home.[39] We have too often observed, so as to become sadly mundane, that rape is no respecter of time or place.[40] It is not necessary that the place where the rape is committed be isolated.[41] There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side.[42]

Finally, Fausto argues that the trial court's decision did not state the specific factual bases for its verdict of guilt but merely made sweeping generalizations. This argument is devoid of any merit. While the discussion of the trial court in support of the guilt of Fausto admittedly appears brief, there was no sweeping generalization. In fact, the trial court took pains in quoting the relevant portions of the testimony of Janet which proved the charges of rape, and then compared them with Fausto's defense.

What we noticed, however, is the trial court's lack of factual and jurisprudential bases in imposing the death penalty. The trial court merely concluded that it found him guilty of nine counts of rape "as proved and not as charged under paragraph 3 of Article 335 of the Revised Penal Code in relation to Section 11 of Republic Act No. 7659."

We have consistently held that the circumstances which raise the penalty in rape cases to death are in the nature of qualifying circumstances which need to be alleged in the information and proved with certainty; otherwise, the accused cannot be convicted of qualified rape and sentenced to death penalty.[43]

As Fausto and the OSG have pointed out, the informations did not specify a qualifying circumstance to warrant the imposition of death penalty. Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, imposes the death penalty "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." True, the minority of Janet was clearly pleaded in the informations, and supported by her birth certificate indicating that she was born on 30 March 1985.[44] However, the relationship of Fausto to Janet was merely averred as the godfather in whose care and custody Janet was entrusted. This relationship is not one of those relationships mentioned in the law; neither would it constitute the qualifying circumstance of guardian-ward relationship.

Fausto is, therefore, guilty of nine counts of simple rape only, and the penalty for each count is reclusion perpetua.

As regards the amount of damages awarded by the trial court, the same should be modified to conform to current case law. The civil indemnity should be increased from P30,000 to P50,000 for each of the nine counts of rape. However, the award of moral damages should be decreased from P75,000 to P50,000 for each count, since the higher amount is awarded only if the rape is qualified by any of the circumstances that warrant the imposition of the death penalty.[45] The award of exemplary damages is deleted considering the absence of any aggravating circumstance in the commission of the crime.[46] All in all, Fausto should be held liable for P450,000 as civil indemnity and another P450,000 as moral damages.

WHEREFORE, the decision dated 21 September 2001 of the Regional Trial Court of Labo, Camarines Norte, Branch 64, convicting Fausto Fucio of the crime of rape in Criminal Case No. 96-0096 and Criminal Cases Nos. 96-0098 to 96-0105, inclusive, is hereby **AFFIRMED** with the **MODIFICATION** that he is held guilty beyond reasonable doubt of nine counts of simple rape only and sentenced to suffer the penalty of reclusion perpetua for each count. He is also ordered, for each count of rape, to pay the victim, Janet B. Floranza, civil indemnity in the amount of P50,000, or a total of P450,000, and moral damages in the amount of P50,000, or a total of P450,000.

Costs de officio.

SO ORDERED.

Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio, Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Per Judge Amaro M. Meteoro. Original Record (OR), 319-337; Rollo, 34-52.

[2] Rollo, 7, 8, 9, 11, 13, 15, 17, 19, 21 and 23.

[3] Id., 10, 12, 14, 16, 18, 20, 22 and 24.

[4] Id., 20.

[5] TSN, 16 April 1997, 4-5.

[6] TSN, 16 April 1997, 6-11.

[7] Id., 13-17.

[8] Id., 18-22.

[9] Id., 22-26.

[10] TSN, 28 July 1997, 3-7.

[11] Id., 8-12.

[12] Id., 13-17.

[13] Id., 17-19.

[14] Id., 20-23.

[15] TSN, 28 July 1997, 4-5; TSN, 8 November 1999, 13.

[16] TSN, 8 September 1998, 6-7; TSN, 9 November 1998, 5-9.

[17] TSN, 16 April 1997, 6-23; TSN, 28 July 1997, 3-23; TSN, 8 September 1998, 8-9.

[18] TSN, 8 September 1998, 9-10.

[19] TSN, 16 February 1998, 8-11.

[20] TSN, 9 November 1999, 5, 15, 17.

[21] Id., 3; TSN, 7 February 2000, 5.

[22] TSN, 8 November 1999, 11.

[23] OR, 336-337; Rollo, 51-52.

[24] Rollo, 23-32.

[25] *People v. Gutierrez*, G.R. No. 132772, 31 August 2000, 339 SCRA 452, 461.

[26] *People v. Quejada*, G.R. Nos. 97309-10, 3 June 1993, 223 SCRA 77, 86.

[27] *People v. Rebato*, G.R. No. 139552, 24 May 2001, 358 SCRA 230; *People v. De los Santos*, G.R. No. 137968, 6 November 2001, 368 SCRA 475.

- [28] *People v. Gagto*, G.R. No. 113345, 9 February 1996, 253 SCRA 455, 468; *People v. Fernandez*, G.R. No. 137647, 1 February 2001, 351 SCRA 80, 90.
- [29] TSN, 8 November 1999, 11-12; TSN, 7 February 2000, 5, 9.
- [30] TSN, 16 April 1997, 24.
- [31] TSN, 7 February 2000, 7-8.
- [32] *People v. Ferrer*, G.R. Nos. 116516-20, 7 September 1998, 295 SCRA 190, 200.
- [33] TSN, 8 November 1999, 6.
- [34] *Id.*, 17.
- [35] TSN, 8 November 1999, 22.
- [36] *Id.*, 6, 15.
- [37] *People v. Ugang*, G.R. No. 144036, 7 May 2002, 381 SCRA 775, 785.
- [38] *People v. Gallarde*, G.R. No. 133025, 17 February 2000, 325 SCRA 835, 853; *People v. Baño*, G.R. No. 148710, 15 January 2004.
- [39] TSN, 8 November 1999, 8.
- [40] *People v. Manahan*, G.R. No. 138924, 5 August 2003.
- [41] *People v. De los Reyes*, G.R. No. 85771, 19 November 1991, 203 SCRA 707; *People v. Geraban*, G.R. No. 137048, 24 May 2001, 358 SCRA 213, 223.
- [42] *People v. Manahan*, *supra* note 40, citing *People v. Alitagtag*, 368 Phil 637 (1999); *People v. Alcartado*, G.R. Nos. 132379-82, 29 June 2000, 334 SCRA 701; *People v. Villanueva*, G.R. No. 135330, 31 August 2000, 339 SCRA 482; and *People v. Lomerio*, 383 Phil 434 (2000).
- [43] *People v. De la Cuesta*, 363 Phil. 425 (1999); *People v. Decena*, 388 Phil. 419 (2000); *People v. Remudo*, G.R. No. 127905, 30 August 2001, 364 SCRA 61, 73-74.
- [44] Exhibit “B.”
- [45] *People v. Raffles*, 379 Phil. 980 (2000).
- [46] Article 2230, Civil Code.

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