

EN BANC

[G.R. No. 149785, April 28, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HENRY JUSAYAN Y SUGUI, APPELLANT.

DECISION

QUISUMBING, J.:

Conviction for statutory rape does not always warrant the imposition of the capital punishment. Absent any qualifying circumstance, as in this case, the proper penalty is *reclusion perpetua*.

For automatic review is the decision^[1] dated April 16, 2001, of the Regional Trial Court (RTC) of Dinalupihan, Bataan, Branch 5, in Criminal Case No. DH-963-99, convicting appellant Henry Jusayan of the crime of rape, sentencing him to death, and ordering him to indemnify the private complainant in the amount of P50,000.

The information against Henry Jusayan y Sugui alleged:

That on or about November 9, 1999, at Brgy. Kataasan, Dinalupihan, Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, through force and intimidation, did then and there willfully, unlawfully and feloniously pull out and drag the offended party, RIESSA MYRE G. CARBUNGCO, a ten (10) year old minor girl into an isolated area of the cemetery compound and with lewd design and carnal knowledge sexually abuse[d] and had sexual intercourse with the victim and likewise choke[d] her throat and bang[ed] her head on a hard object causing physical injuries on the said victim, against the will and consent of the latter, to her damage and prejudice.

CONTRARY TO LAW.^[2]

When arraigned, appellant entered a plea of not guilty, and thereafter trial ensued.^[3]

Prosecution evidence consists of the testimonies of the victim Riessa Myre Carbungco and the examining physician, Dr. Ferdinand B. Bautista.

Ten-year old Riessa Myre G. Carbungco testified in court that on November 9, 1999 at about 7 a.m., she boarded a pedicab going to the Seventh Day Adventist School. Appellant Henry Jusayan was the pedicab driver. As the pedicab sped off, Riessa sensed that they were going on a different route so she complained to appellant, who told her they would just briefly drop by the cemetery to get a candle.^[4]

Upon reaching the deserted cemetery located at Brgy. Kataasan, the appellant

dragged Riessa from the pedicab. She tried to bolt from appellant's strong hold. Incensed by Riessa's resistance, appellant banged her head at a nearby crypt and choked her neck. Riessa begged *repeatedly* for appellant to stop. But her cries were useless, as she was forced to submit to appellant's lust.

Appellant hurriedly undressed Riessa. Riessa groaned in pain as he thrust his organ into hers. She feared that appellant might kill her. Her stomach began to tighten and she felt the urge to defecate. Upon telling him about it, appellant released her and ordered her to get dressed. He then strode off towards his pedicab. Riessa scampered after him to retrieve her belongings. Running alongside the moving vehicle, Riessa begged appellant to bring her home because she dreaded being alone in the cemetery. He was apathetic. At that split second, a passerby, Reynaldo Rentoza who saw Riessa scurrying along, yelled at appellant: "*Hoy, yung bata humahabol! Pasakayin mo!*" (Hey, the child is running after you! Give her a ride!) Rentoza was then waiting for his companions. They were going to construct a perimeter fence around the graves of the Ortequera family.^[5] Rattled, appellant let Riessa hop in, but he dropped her off later at the DJ restaurant. Before he left, he warned her not to squeal about what happened.^[6]

On arriving home, Riessa related her ordeal to her mother. At the Jose Payumo Memorial Hospital, Riessa was medically examined. Policemen were also summoned to the hospital to investigate the incident. Later that day, Riessa's mother formalized her complaint at the police station.^[7]

Reynaldo Rentoza executed his affidavit attesting that he saw appellant with Riessa on board a pedicab.^[8] He stated in his sworn statement that he saw appellant and Riessa twice that morning, first, when the two were entering the cemetery and next, when appellant was leaving the cemetery in his pedicab, while Riessa was running after the cab with nothing on except her "*sando*" or undershirt as she carried in her hand her skirt and shoes.^[9]

Dr. Ferdinand Bautista, a physician who examined Riessa at the Jose Payumo Memorial Hospital, testified that he found swelling and blood clot formations on the right, left, and back portion of Riessa's head. He said there was hematoma or blood clot formation on the anterior neck, concussion on her left and right eye, abrasion on the right knee and left thigh, and bleeding on both sides of her nose.^[10] Based on his physical examination of the victim, Dr. Bautista said that he found her labia majora and minora area reddish, slightly swollen, and tender. The doctor further stated that her hymen had fresh minimal laceration at 4:00 o'clock position, and she was found positive for spermatozoa.^[11]

Appellant Henry Jusayan y Sugui, through counsel Danilo M. Sampang from the Public Attorney's Office of Dinalupihan, Bataan, objected to the formal offer of evidence of the prosecution for being hearsay and incompetent as evidence.^[12] Before appellant could testify in his defense, Atty. Sampang filed before the trial court an urgent motion^[13] for the mental and psychiatric examination of appellant. Atty. Sampang averred that appellant was not a competent witness because he was feeble-minded and had displayed difficulty in comprehending the questions propounded on him. The motion was denied by order^[14] of the trial court on September 6, 2000, it appearing to the court that appellant was of sound mental

state.

In a manifestation^[15] dated September 7, 2000, Atty. Sampang submitted the case for resolution. The defense waived its right to present evidence on the ground that the prosecution had not proved appellant's guilt beyond reasonable doubt.^[16] In view of appellant's manifestation, the trial court issued an order submitting the case for resolution on November 6, 2000.^[17]

On April 16, 2001, the trial court rendered its decision, finding appellant Henry Jusayan guilty of the crime of rape, and sentenced him to death. Its decretal portion reads:

WHEREFORE, this court finds the accused HENRY JUSAYAN y SUGUI "GUILTY" beyond reasonable doubt of RAPE in this case, and hereby sentences him to suffer a penalty of DEATH and to indemnify the victim, RIESSA MYRE G. CARBUNGCO, a ten (10) year old minor girl, with the sum of FIFTY THOUSAND (P50,000.00) PESOS.

SO DECIDED.^[18]

In his Brief before us now, appellant seeks the reversal of the decision based on the following assigned error:

THE TRIAL COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON THE ACCUSED-APPELLANT.^[19]

Simply stated, the issues are: (1) whether or not appellant, through his former counsel validly waived his right to present evidence for the defense; (2) whether or not the prosecution has proven appellant's guilt with moral certainty; and (3) whether or not the death penalty was validly imposed.

On the first issue, appellant contends that the trial court erred in relying on the mere manifestation of his former counsel that he was waiving his right to present evidence inasmuch as such waiver deprived the appellant of the opportunity to substantiate his plea of not guilty. He says that he was precipitately sentenced to death without taking into consideration his possible defenses. He states that the trial court judge should have made searching questions to appellant to determine whether his waiver was done voluntarily, knowingly, intelligently and with sufficient awareness of the relevant circumstances and likely consequences.^[20]

The manifestation containing the waiver of appellant's presentation of evidence of the defense, filed by counsel, Atty. Danilo M. Sampang of the Public Attorney's Office of Dinalupihan, reads:

MANIFESTATION

ACCUSED, in the above-entitled case to this Honorable Court respectfully manifests that:

1. The accused is due to testify in his own behalf on December 6, 2000, a.m. after the prosecution rested its case;

2. Under the evidence adduced, identified, established and incorporated into the records of the case, it is reasonably believed, however, that the prosecution had fallen short of its constitutional duty to establish the guilt beyond reasonable doubt of herein accused;
3. Thus, the accused, who leaves his fate as to the issue of his guilt or innocence, has decided to forego presenting himself as witness in his own behalf, and respectfully submits this case for decision relying on the evidence identified and incorporated in the records of the case.

WHEREFORE, it is most respectfully prayed of this Honorable Court that the above-entitled case considered (sic) be submitted for decision.

Dinalupihan, Bataan, September 7, 2000.

PUBLIC
ATTORNEY'S
OFFICE
Department of
Justice
Counsel for the
accused

By:

DANILO M. SAMPANG
District Public
Attorney^[21]

The constitutional right of the accused to be heard on his defense is inviolate. No court of justice under our system of government has the power to deprive him of that right.^[22] In the case at bar, however, although there is nothing in the records to show that the trial court advised appellant on the repercussions of his waiver to present evidence in his own defense, this lapse did not work to effectively vacate the findings of guilt made by the trial court because appellant's guilt for the crime of statutory rape has been proven beyond reasonable doubt. Thus, in *People v. Nuñez*,^[23] the Court upheld the conviction of the accused despite procedural defects, *i.e.*, a plea of guilt improvidently made, inasmuch as the conviction was supported by adequate evidence on record.

In the case at bar, the elements of statutory rape were adequately established not only by the victim's straightforward testimony but likewise by the findings of the examining physician presented by the prosecution.

As provided for in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape.^[24] The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape.^[25]