

EN BANC

[G.R. No. 137288, December 11, 2001]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO ABINO Y ADVINCULA, APPELLANT.

DECISION

PANGANIBAN, J.:

Rape, particularly incestuous rape, is reprehensible and abominable. However, to convict the accused and to sentence him to death requires proof beyond reasonable doubt of the elements of the crime and the qualifying circumstances specifically alleged in the information. Conviction always rests on the strength of the evidence of the prosecution, never on the weakness or the absence of that of the defense.

The Case

For automatic review by this Court is the Decision^[1] dated January 20, 1999, promulgated by the Regional Trial Court (RTC) of Calamba, Laguna (Branch 34) in Criminal Case No. 5793-98-C, finding Danilo Abino y Advincula guilty of rape beyond reasonable doubt. We quote the decretal portion of the Decision:

"ACCORDINGLY, this Court finds accused Danilo Abino y Advincula **GUILTY** beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of **death**.

"Accused is further directed to indemnify the offended party, Daniela Abino, the sum of FIFTY THOUSAND (P50,000.00) PESOS as and for moral damages.

"With costs against the accused."^[2]

The information^[3] against appellant reads as follows:

"That on or about April 6, 1996, in the Municipality of Los Banos, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused did then and there have carnal knowledge of his daughter, the minor DANIELA ABINO y MERCADO, who was then asleep and unconscious, against her will and consent, to her damage and prejudice."

With the assistance of his counsel,^[4] appellant pleaded not guilty when arraigned on July 10, 1998.^[5] In due course, the latter was tried and convicted of qualified rape.

The Facts

Version of the Prosecution

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:^[6]

"1. Fourteen-year old Daniela Abino lived with her father, appellant Danilo Abino, at Agua Santa, an old resort located in Bambang, Los Baños, Laguna. Appellant was a member of the Los Baños task force on market security, assigned to night shift duty at the market. Daniela's mother no longer lived with them as she had another family

"2. On the evening of April 6, 1996, appellant came home drunk He took a bath and told Daniela to prepare his things for the market Daniela obeyed him and went to the second floor of their house to fix her father's things. Appellant followed Daniela clad only in his underwear with a towel wrapped around his waist. He embraced Daniela and pressed his penis against her buttocks. Daniela pulled herself away from appellant and went downstairs.

"3. When appellant went down, Daniela told him that she was no longer going with him to his office. Appellant said nothing and left for work. Daniela stayed at the first floor of their house until she decided to go to bed and went upstairs.

"4. Daniela was fast asleep in her bed when she felt somebody on top of her and kissing her. She opened her eyes and saw appellant who was naked. Daniela found herself naked too as she no longer had her panty and shorts on. When Daniela woke up and moved, appellant stood up, dressed himself and then left. Daniela felt intense pain in her vagina and cried.

"5. Daniela put on her panty and tried to sleep, but sleep escaped her and she kept on crying. The following morning, she prepared herself for school and cooked rice. Daniela, however, did not go to school that day and stayed at home.

"6. Daniela did not immediately tell anybody about what appellant did to her. She stayed with him for about seventeen months more or until September 1997. However, Daniela eventually decided to run away from home because she was afraid that appellant might molest and hurt her again.

"7. Daniela stayed in a canteen near 'Star City' in Manila. After her stint at the canteen, Daniela worked for one Mando Parr in Pasay City. She, however, left his employ. In December of 1997, Daniela found herself in Baguio City where she met a social worker who placed her in the custody of the Department of Social Welfare and Development.

"8. On December 17, 1997, Daniela was brought by one Aileen Edades of the Commission on Human Rights to the City Health Office in San Pablo

City. There she was examined by Dr. Azucena I. Bando, the Assistant City Health Officer of San Pablo City.

"9. Dr. Bando found that Daniela's sex organ bore a '3rd and 9 o'clock old healed laceration scar' and that the scar was caused by the insertion of a foreign body, specifically, 'the penis or a male organ,' into Daniela's vagina According to Dr Bando, the laceration might have been inflicted 'a year ago'."

Version of the Defense

On the other hand, the Public Attorney's Office presents appellant's version of the incident simply as follows:^[7]

"Danilo Abiño y Advincula testified that the allegation in the complaint is not true. The only reason why the complainant filed the rape charge against him is that he is a very strict father, that's the reason why the complainant is angry with him."

Ruling of the Trial Court

The court *a quo* found complainant's testimony "strong, credible and competent." It "could not fathom any justifiable reason why she at so young an age would accuse her own father and portray the latter as a beast who deflowered her if the same be not true." Finding carnal knowledge to have taken place between them, it sentenced appellant to death.

Hence, this automatic review before us.^[8]

Assignment of Errors

In his Brief, appellant faults the court *a quo* with the following alleged errors:^[9]

"The lower court erred in convicting the accused based on the incredible and inconsistent testimony of Daniela Abiño.

"The lower court gravely erred in convicting the accused despite failure of the prosecution to prove his guilt beyond reasonable doubt."

Basically, the assigned errors boil down to the sole issue of whether the prosecution evidence proves appellant's guilt beyond reasonable doubt of the crime charged.

The Court's Ruling

The appeal is meritorious.

Main Issue:

Sufficiency of Evidence

At the time of the alleged commission of the acts stated in the Information, the Revised Penal Code, as amended by Section 11 of RA 7659, specifies how rape may be committed, as follows:

"Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious;
and
3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by *reclusion perpetua*.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
2. when the victim is under the custody of the police or military authorities.
3. when the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.
4. when the victim is a religious or a child below seven (7) years old.
5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

Insofar as it is relevant to the present case, the law states that once the crime of rape is proven, the circumstance of father-daughter relationship between the victim and the offender raises the penalty to death. Such relationship, which must be both alleged in the information and proven by the evidence, does not by itself operate to convert carnal knowledge to rape. It bears emphasizing that the law requires that the elements of rape be proven first before the circumstance of relationship can be appreciated to increase the penalty.

In the present case, the Information alleges that the crime of rape was committed under paragraph number two of Article 335 of the Revised Penal Code. Hence, before appellant can be convicted thereof, two elements must concur: (1) he had carnal knowledge of complainant, Daniela; and (2) she was unconscious when it happened.

The prosecution sought to prove the element of unconsciousness through the testimony of Daniela that on the night of April 6, 1996, she was asleep. As to the element of carnal knowledge, it presented only the following circumstantial evidence:

1. On the night of April 6, 1996, Daniela woke up to find her father on top of her, but he promptly got off when she "opened her eyes."
2. Thereafter she felt pain in her vagina.
3. After seventeen months, she left home and wandered from place to place for several more months, until she met a social worker in Baguio.
4. She was then examined and found to have old healed hymenal lacerations at the 3 and the 9 o'clock positions and a yellowish white discharge, which indicated infection due to coitus several times with an infected male.^[10]

An examination of Daniela's entire testimony compels us to reverse the RTC's hasty conclusion of rape based only on its circumstantial finding of carnal knowledge between appellant and Daniela. Contrary to the court *a quo's* pronouncement, Daniela was not convincing on very material points.

Q Tell us on the night of April 6, 1996 where were you then?

A I was in our house at Agua Santa.

Q Where is this Agua Santa where you said you were then?

A In Bambang sir.

FISCAL:

Q: Los Baños, Laguna?

A Yes, sir.

Q Were you alone in your house or did you have companions at that time?

A None, sir.

Q What time did you go to sleep that night of April 6, 1996?

A I do not know the time sir.