

EN BANC

[G.R. Nos. 132625-31, December 18, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL SANDOVAL, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

For ravishing his two (2) minor step-daughters, Noel Sandoval was charged in seven (7) separate Informations with seven (7) counts of Rape, five of which were committed against Teresa Micu, then thirteen (13) years old, and two counts of statutory rape committed against Victoria "Rhea" Micu, then only eleven (11) years old as evidenced by her Birth Certificate.^[1] The Informations were filed before the Regional Trial Court of Dagupan, Pangasinan, Branch 42, and allege as follows:

In Criminal Case No. 97-01815-D

That on or about May 5, 1995 at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant TERESA MICU y FERNANDEZ, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

In Criminal Case No. 97-01816-D

That on or about May 9, 1995 at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant TERESA MICU y FERNANDEZ, against her will and consent to the damage and prejudice of the latter.

CONTRARY TO LAW.

In Criminal Case No. 97-01817-D

That on or about April 24, 1995 at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there, wilfully, unlawfully

and feloniously have sexual intercourse with the undersigned complainant TERESA MICU y FERNANDEZ, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

In Criminal Case No. 97-01818-D

That on or about April 18, 1995 at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant TERESA MICU y FERNANDEZ, against her will and consent to the damage and prejudice of the latter.

CONTRARY TO LAW.

In Criminal Case No. 97-01819-D

That on or about May 5, 1995 at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there, wilfully, unlawfully and feloniously have sexual intercourse with the undersigned complainant TERESA MICU y FERNANDEZ, against her will and consent to the damage and prejudice of the latter.

CONTRARY TO LAW.

In Criminal Case No. 97-01820-D

That sometime in April 2, 1997 in the evening thereof, at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather, by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse in their conjugal house with VICTORIA "RHEA" F. MICU, who is under twelve (12) years old, against her will and consent, to her damage and prejudice.

CONTRARY to Art. 335, par. 3 of the Revised Penal Code, in relation to R.A. 7659.

In Criminal Case No. 97-01821-D

That sometime in April 5, 1997 in the evening thereof, at barangay Casibong, municipality of San Jacinto, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather, by means of force, threat and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse in their conjugal house with

VICTORIA "RHEA" F. MICU, who is under twelve (12) years old, against her will and consent, to her damage and prejudice.

CONTRARY to Art. 335, par. 3 of the Revised Penal Code, in relation to R.A. 7659.

Accused-appellant was arraigned on July 23, 1997 for the first five (5) counts of rape, wherein he pleaded NOT GUILTY. The following day, the Public Prosecutor filed a Motion for Leave to Amend the five (5) criminal complaints to allege the relationship of the victim and the accused. On July 31, 1997, accused-appellant was scheduled to be arraigned for the other two (2) counts of rape but he failed to appear because of lack of notice on the Provincial Warden. At this point, the Public Prosecutor called the attention of the Court to the Amended Informations he filed in the first five (5) cases, to which accused-appellant has already been arraigned and has pleaded not guilty on July 23, 1997. Counsel for the defense objected on the ground that the amendment would prejudice the right of accused-appellant.

The court *a quo* ruled that since there was no evidence yet presented, the matter of amendment should be brought at the proper time after the prosecution has presented its evidence. Thus, the resolution of the Motion to Amend Information in Criminal Cases Nos. 97-01815-D, 97-01816-D, 97-01817-D, 97-01818-D and 97-01819-D was held in abeyance. Meanwhile, on August 7, 1997, accused-appellant was arraigned and pleaded NOT GUILTY to the two (2) counts of statutory rape in Criminal Cases Nos. 97-01820-D and 97-01821-D. Thereafter, a joint trial of all the seven (7) cases was conducted. The prosecution presented five (5) witnesses, including the two (2) complainants while on the other hand, the defense presented three (3) witnesses including the accused-appellant.

On January 9, 1998, the court *a quo* rendered its decision,^[2] the dispositive portion of which reads:

WHEREFORE, premises considered, the accused NOEL SANDOVAL is found guilty beyond reasonable doubt of six (6) counts of the crime of rape in Criminal Cases Nos. 97-01815-D, 97-01816-D, 97-01817-D, 97-01819-D, 97-01820-D and 97-01821-D and is hereby sentenced to suffer the mandatory penalty of DEATH for each act of rape. In addition, he is ordered to pay P50,000.00 as moral damages for each case or a total of P300,000.00. Also for each count of rape, he is further ordered to pay P5,000.00 as exemplary damages as example for the public good or a total of P30,000.00. He is however acquitted in Criminal Case No. 97-01818-D for insufficiency of evidence.

SO ORDERED.

In view of the penalty imposed, the records were elevated to this Court for automatic review pursuant to Article 47 of the Revised Penal Code and Rule 122, Section 10 of the Rules of Court.

Accused-appellant seeks the reversal of his conviction on the following grounds:

The court *a quo* erred in convicting the accused-appellant of the crime of Rape on the person of Teresa Micu and imposing the death penalty upon him notwithstanding the fact that, at the time of the alleged commission, he was not yet married to the victims' mother.

II

The court *a quo* erred in convicting the accused-appellant of the crime of Rape over Rhea Micu, considering her lack of credibility which finds support in the medical findings of the physician who examined her.

III

The court *a quo* erred in awarding damages to the complainants notwithstanding that the latter never testified to establish the same and the only basis of such on record is the testimony of their aunt, Perlita Fernandez, who is not their legal guardian.

After a thorough scrutiny of the records of the case at bar, this Court finds that the trial court did not err in convicting accused-appellant of the crime of rape on the person of Teresa Micu. During her testimony, she clearly and convincingly established before the court *a quo* the facts and circumstances that transpired during the several occasions when accused-appellant raped her.^[3]

The rule has always been that in the matter of credibility of witnesses, factual findings of the trial court should be highly respected. The trial judge is in a better position to pass judgment on the credibility of witnesses, having had the opportunity to personally hear them, observe their deportment and manner of testifying and detect if they were telling the truth.^[4] We find no reason to depart from this rule in this particular case. It should be remembered also that courts usually give credence to the testimony of a girl who is a victim of sexual assault because, ordinarily, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice.^[5]

However, we cannot agree with the trial court's imposition of the death penalty on accused-appellant for the rape of Teresa Micu. The pertinent law in effect at the time of commission of the crimes in this case, Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659, provides:

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;

x x x x x x x x

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, guardian, relative by consanguinity or affinity within the third

civil degree, or the common law spouse of the parent of the victim. x x x.
(Underscoring ours)

The above-quoted provision states, *inter alia*, that where the victim of the crime of rape is under eighteen (18) years of age and the offender is a common-law spouse of the parent of the victim, the death penalty shall be imposed. This is one of the seven (7) modes enumerated in Section 11 of R.A. No. 7659 which are considered special circumstances specifically applicable to the crime of rape. In the subsequent cases of *People v. Ilao*^[6] and *People v. Medina*,^[7] it was ruled that the seven new attendant circumstances in Section 11 of R.A. No. 7659 "partake of the nature of qualifying circumstances and not merely aggravating circumstances," since said qualifying circumstances are punishable by the single indivisible penalty of death and not by *reclusion perpetua* to death. A qualifying circumstance increases it to a higher penalty while an aggravating circumstance affects only the period of the penalty but does not increase it to a higher degree. Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying aggravating circumstance cannot be proved as such unless alleged in the information.

A reading of the Information for the rape of Teresa Micu filed against accused-appellant reveals that he was merely charged with the crime of simple rape. The fact that accused-appellant is the common-law spouse of the victim's parent is not alleged in the Information. What was stated therein was only the minority of the victim. As we have emphasized, the elements of minority of the victim and her relationship to the offender must be both alleged.^[8] As such, the special qualifying circumstance stated in Section 11 of RA 7659 was not properly pleaded in the Information. Thus, the penalty of death prescribed in RA 7659 can not be imposed on accused-appellant. Indeed, it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process if he is charged with simple rape and be convicted of its qualified form punishable with death although the attendant circumstances qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.^[9]

The amendment sought by the prosecution of the five informations, in order to allege the relationship of accused-appellant to the victim, were clearly substantial in character as they had the effect of changing the crime charged, thereby exposing accused-appellant to a higher penalty. Such amendment can no longer be done after accused-appellant has pleaded to the Information for simple rape on July 23, 1997,^[10] without violating his constitutional rights. Rule 110, Section 14 of the Rules of Court, provides:

The information or complaint may be amended, in substance or form, without leave of court, at anytime before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done, without prejudice to the rights of the accused. x x x.

In sum, the failure of the prosecution to allege the relationship of the accused to the victim has effectively removed the crime from the ambit of Section 11 of Republic Act No. 7659, which prescribes 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