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EN BANC

[G.R. No. 130784, October 13, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO LOTEYRO AGUINALDO, ACCUSED-APPELLANT.

D E C I S I O N

PUNO, J.:

This is an automatic review of the Decision imposing the **death penalty on Rodrigo Loteyro Aguinaldo** for committing the crime of **rape**.[1]

The Information against appellant Aguinaldo reads:

> "That on or about the 24th day of June, 1995, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with the use of force, violence and intimidation, to wit: by then and there pointing a pointed object at the side of one Jeannette Aguinaldo y Yap and threatening to kill her, have carnal knowledge of said Jeannette Aguinaldo y Yap, a minor, 17 years of age, without her consent and against her will.
>
> CONTRARY TO LAW."

Appellant, who is complainant's father, waived his right to a pre-trial and pleaded not guilty to the crime charged.[2] The trial court initially subpoenaed the complainant Jeannette[3] on October 8, 1996 as the prosecution's first witness.[4] She failed to appear and the case was reset to November 20, 1996.[5]

On November 20, 1996, Jeannette appeared and answered questions relating to her personal circumstances, i.e., she is a 17-year-old resident of 2541 Sulu St., Blumentritt, Sta. Cruz, Manila; she is called Net; she graduated from high school and appellant is her father. She claimed that at 10:00 p.m. of June 24, 1995, something happened while she was sleeping at home. Asked what happened, Jeannette hedged. The trial judge encouraged her to answer but she kept silent. She was on the verge of tears. The trial judge inquired if she wanted the appellant to leave the courtroom. She agreed.

After the appellant left the courtroom, Jeannette was again queried why she woke from her sleep that night. Still, Jeannette stayed as silent as a sphinx. This prompted the defense counsel *de oficio*[6] to move for the dismissal of the case. The trial judge asked Jeannette if she wanted the case dismissed and if she would like to pardon the appellant. Failing to elicit a response from her, the trial judge ordered the prosecutor to talk to Jeannette. The prosecutor then asked Jeannette if she executed a statement to the police[7] and Jeannette responded positively. She acknowledged her signature on the statement and affirmed its truthfulness. The prosecution then adapted her sworn statement as her direct testimony. Her sworn

statement narrated how she was forced to have sexual intercourse with the appellant.

On cross-examination, Jeannette claimed that her parents had long been separated. She, her elder brother and younger sister stayed with their father. On the night she was allegedly raped, she slept with her father in a room upstairs while her brother slept downstairs. Her sister was not around at that time. She confided to Tita Nelia, a family friend, that her father raped her. However, she could not tell when she revealed the incident to Tita Nelia. She admitted that she did not immediately undergo any physical examination after the incident.[8]

On redirect examination on November 27, 1996, the prosecutor asked Jeannette what woke her up on the night she was allegedly raped. She did not answer but merely muttered, "I'm afraid. . ." She alleged it was only on February 24, 1996 that she divulged the incident to her tatay-tatayan, a neighbor, because appellant again mauled her. She stated that she understood the term "ginahasa" in her sworn statement to be the Tagalog word for "rape." When asked what appellant did that prompted her to execute a sworn statement using the term "ginahasa," she did not again respond.

On recross-examination, Jeannette admitted that she was mad at her father for mauling her. However, she denied she filed the rape charge because of her maltreatment.[9]

The prosecution was obviously disappointed with the timid testimony of Jeannette. At the trial on December 3, 1996, it manifested that Jeannette was willing to narrate the details on how she was raped. In the interest of justice, the trial court allowed the prosecution to recall Jeannette as a witness. She declared that she woke up when she felt appellant lying down beside her. He placed a blanket over her but in the process, held her breast and touched her private part. She asked him why he did that and he explained that he was just "putting blanket" over her. He then turned off the light and they continued to sleep. She woke up for the second time when she felt someone was licking her face. She thought it was her dog but found out that it was appellant doing it. She asked, "Bakit po, Pa?" Appellant told her to keep quiet, mounted her and held her shoulder as she pushed him away. He mashed her breast and threatened to kill her. Then he "penetrated" her with his organ. She was wearing a T-shirt and shorts when she slept but when he started raping her, she found that appellant had removed her shorts. She said she felt pain as appellant raped her. Her efforts to resist proved futile. His lust sated, appellant slept while she cried until the morning. Appellant was drunk that night.[10]

On February 25, 1996, Senior Inspector Eliseo I. Canares, Jr. of the Western Police District Command requested the NBI Medico-Legal Officer to conduct a physical examination on Jeannette.[11] In his report for Living Case No. MG-96-308,[12] NBI Medico-Legal Officer Valentin T. Bernales made the following findings:

> "EXTRAGENITAL PHYSICAL INJURIES:
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> > Contusions, light blue: nipple, right, upper-outer quadrant, 3.0 x 2.5 cm.; leg, right, upper third, anterior aspect, 4.0 x 4.0 cm.

Abrasions, healing, with black scab formation; linear; back, scapular and supra-scapular areas, both sides, multiple, sizes ranging from 2.0 cm. to 4.0 cm; arm, left, middle third, postero-lateral aspect, multiple, whitish, sizes ranging from 4.0 cm to 7.0 cm; with tenderness' thigh, right, middle third, anterior aspect, linear, 3.0 cm.

GENITAL EXAMINATION:

Pubic hair, short, fine and scanty. Labia majora, gaping and minora, coaptated. Fourchette, tense. Vestibule, pinkish. Hymen, short, thick and intact. Hymenal orifice, admits a tube of 1.0 cm. in diameter with marked resistance. Vagina walls, and rugosities cannot be reached by an examining finger.

CONCLUSIONS:

1. The above described physical injuries were noted on the body of the subject at the time of examination.

2. Hymen, intact."

Dr. Bernales opined that there was **no penetration** of the **complainant's hymen** as it was intact and that **complainant was physically a virgin**. He explained that the complainant's hymen could not admit a tube with 1.0 cm. diameter, which implied that the opening was "too small for a complete previous penetration."

With respect to the **extragenital physical injuries sustained** by the complainant, Dr. Bernales declared that these could have been produced by direct contact of the skin with a hard object. The injuries could also be produced by a rough surface and **these would have been inflicted "a week or two before" the examination on February 25, 1996**.[13]

The defense interposed denial. Appellant, a commercial artist and barangay official in-charge of twenty five (25) tanods, branded as a lie his daughter's accusation. He admitted he was in their house at 10:00 p.m. of June 24, 1995. He said if he had no drinking session, he would sleep before 9:00 p.m., wake up at 12:00 midnight to check on the attendance and the equipment of the barangay tanods on duty and would be back home before sunrise. He denied he was drunk that fateful night because he did not have money except for the "allowance for the house."

On cross-examination, appellant stated that he lived in his house with his three children. His house had two stories with two bedrooms upstairs. As he was renting out one of the rooms, he and his son slept downstairs while his daughters slept in the vacant room. In the evening of June 24, 1995, his son slept on the sofa while he slept on the floor downstairs. He admitted beating up Jeannette because of "her attitude" of going out in the morning and coming home only at night. She would also go out at night without any permission but their neighbors would always tell on her.

On redirect examination, appellant charged that Jeannette had a "split personality" - one time she would be sweet to him and her siblings and then, for no reason at all, she would be mad at all of them. He claimed that he could not understand her

although he knew that she was intelligent (matalino siyang masyado). Jeannette stopped schooling in 1995 because she spent her enrollment money.

Appellant's eldest child, Boy (Roy) Aguinaldo testified in his favor. He stated he slept between 11:00 and 12:00 midnight on June 24, 1995 at the ground floor of their house with his father and a friend. According to him, his sister Jeannette "is a very good person but once in a while she is irritable" (may sumpong). He opined that she could file an unfounded rape case against their father because his sister is a "100% liar."[14]

On August 7, 1997, the **trial court**[15] rendered a **3-page Decision** finding **appellant guilty** beyond reasonable doubt of the crime of rape and **sentencing him to death**. Holding that a broken hymen is not an essential element in rape, it concluded that the complainant's testimony was "strong enough to overcome the presumption of innocence of the accused and establish his guilt." It held further that it was "unthinkable and unnatural" for the complainant to "invent" a story and charge her own father with rape. The trial court convicted appellant of the crime under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which imposes the death penalty on an accused who is the parent of a complainant below eighteen years of age. It disposed of Criminal Case No. 96-147936 as follows:

> "WHEREFORE, this Court finds the accused guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code as amended by Section 11 of R. A. No. 7659, and he is sentenced to suffer the severe penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs. On the civil liability of the accused, he is further sentenced to pay the complainant moral, nominal and exemplary damages in respective sums of P50,000.00, P100,000.00 and P30,000.00.
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> SO ORDERED."

Before this Court, appellant contends:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE UNCORROBORATED, DOUBTFUL, UNRELIABLE AND CONTRADICTORY STATEMENTS OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE TESTIMONIAL EVIDENCE RENDERED BY DR. VALENTIN BERNALES, NBI MEDICO-LEGAL OFFICER, FAVORABLE TO THE ACCUSED-APPELLANT."

To start with, the trial court wrongly imposed on appellant the death penalty considering the nature of the crime charged in the **information**. The information charged the appellant with the crime of **simple rape**. **It did not qualify that appellant is the father of the complainant or that complainant is the daughter of appellant**. This qualification is very material in determining the nature of the crime for which the accused should be held liable and the corresponding penalty under the law. Thus, in **People *v.* Ilao**,[16] a rape case

where the **relationship** between the minor complainant and the accused was not **alleged** in the information, this Court ruled:

> "Adopting our pronouncements in *People v. Ramos,* we perforce have to rule that appellant can only be convicted of simple statutory rape and cannot be held liable for qualified rape for want of the allegation of relationship in the present information. Even if relationship was duly proved during the trial, still such proof cannot be considered to convict appellant of qualified rape and to consequently impose on him the death penalty since he would thereby be denied his constitutional and statutory right to be informed of the nature and the cause of accusation against him.
>
> To emphasize such substantial and procedural irregularity in simple terms of dialectics, to charge appellant with rape in one of its simple forms and then try and convict him of rape in one of its qualified forms would be a prosecution which leads to a trial and conviction without a valid accusation.
>
> We repeat, therefore, that the attendant circumstances introduced by Republic Act No. 7659 must be specifically pleaded in an information for rape in order that the same may correctly qualify the crime and to justify the penalty prescribed by the law. If it is the prosecution's goal to have appellant adjudged guilty of raping his minor daughter, such conviction is not possible under the wordings of the information herein. With the failure of the information to state the qualifying circumstance of relationship between appellant and Jonalyn, the death penalty cannot be imposed upon appellant, just as in People *v.* Ramos."

For this reason alone, the trial court should not have imposed the death penalty on the appellant. **But this is not all the error of the trial court.** In reviewing rape cases, this Court has always been guided by three principles: *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Third*, the disposition of rape cases are governed by the following guidelines: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. [17]

Prescinding from these principles, we acquit the appellant. As correctly pointed out by appellant's counsel, the complainant's conduct on the witness stand did not evince truthfulness.[18] Instead of being straightforward, she hesitated, and even refused, not only once but twice, to give testimony on the alleged rape. The records show that she failed to appear in court the first time the case was set for hearing. On the re-scheduled hearing where she was presented as the first witness, she balked, flatly refused to answer the questions propounded by the prosecutor as well as the questions of the trial court on the alleged sexual assault by the appellant.