

EN BANC

[G.R. No. 132146, March 10, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANTE GAUFO Y DILAO, APPELLANT.

DECISION

SANDOVAL-GUTIERREZ, J.:

This is an automatic review of the Decision^[1] of the Regional Trial Court, Branch 255, Las Piñas City in Criminal Case No. 94-2210 convicting Dante Gaufo y Dilao, appellant, of statutory rape and sentencing him to suffer the penalty of death. He was likewise ordered to indemnify the victim the sum of P50,000.00 and to pay the costs.

The Information^[2] filed against appellant reads:

“That on or about the 6th day of February 1994, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one Imee Comandao y Bito, a ten (10)-year old minor female, against her will.

“Contrary to law.”

Upon being arraigned, appellant, with the assistance of his counsel *de oficio*, pleaded not guilty to the crime charged.^[3] Pre-trial proceedings having been terminated, trial on the merits ensued.

Imee Comandao, complaining witness, testified that in the afternoon of February 6, 1994, appellant, whom she called “Kuya Dante,” was drinking liquor with her father Rogelio Comandao and two others in their house located at Lily Street, San Antonio Valley 17, Talon, Las Piñas City. About 3:00 o’clock that same afternoon, she was asked by her mother to buy *chicharon* at the nearby store.^[4] She borrowed appellant’s bicycle and, together with her sister and cousin, proceeded to the store.^[5] Appellant followed them. Upon reaching the store, he invited Imee to a bicycle ride.^[6] He then instructed her sister and cousin to bring home the *chicharon*. When appellant and Imee reached a grassy vacant lot along Dama de Noche Street in the same village, they stopped and alighted from the bicycle. He told her to follow him to his house to get money.^[7] Imee refused, explaining that she had to be home as she would still wash the dishes. But he did not allow her to go.^[8] Just when she was about to leave, he struck the back of her head with a piece of wood. She fought back and shouted for help. At that instance, he boxed her belly, causing her to fall and faint.^[9] Later, when she regained consciousness, she found herself on a

woman's lap inside a tricycle on its way to a hospital. Imee felt pain all over her body, especially in her sex organ then bleeding. She observed she was not wearing her underwear anymore.^[10]

That same day, about 3:30 in the afternoon, **Nonito Dagohoy**, a resident of 22 Dama de Noche St., also in San Antonio Valley 17, was on his way home after playing basketball. He heard a young girl groaning at a grassy area near the basketball court.^[11] Immediately, he searched the place and saw a man, whom he identified as the appellant, naked and was on top of Imee who was lying on the grass. He noticed that appellant was punching her face and body.^[12] Fearing that appellant might be armed, Nonito hurriedly left the place and called the people near the area for assistance. They surrounded the grassy area and waited for appellant to come out.^[13] Nonito managed to crawl quietly through the grass and saw appellant perspiring profusely. Before appellant could put on his brief (tainted with blood) and pants, Nonito held him and called his companions. Appellant tried to fight back but they were able to subdue him.^[14] They brought him to the basketball court and tied him to a post until the police arrived. They then helped Imee who was still unconscious. Her dress was torn and her face, body and sex organ were bleeding. They immediately brought her to the hospital.^[15]

Rogelio Comandao, Imee's father, recounted that at noontime of February 6, 1994, he was at home drinking liquor when appellant arrived on his bicycle and joined him.^[16] He knows appellant who works in a *rattan* factory located in the neighborhood. His children call him "Kuya Dante."^[17] An hour after, two other visitors joined them.^[18] Around 3:00 o'clock that same afternoon, appellant suddenly left without any explanation.^[19] Later that same afternoon, Rogelio came to know that his daughter Imee was raped and was brought to the Perpetual Help Medical Center in Las Piñas.^[20] So he rushed to the hospital and saw Imee being treated. She told him that her injuries were inflicted by "Kuya Dante" (referring to appellant).^[21] Later, she was transferred to the Philippine General Hospital, Manila.^[22]

On February 7, 1994, **Dr. Ludivino J. Lagat**, Medico-Legal Officer of the National Bureau of Investigation, Manila, examined Imee. His Medico-Legal Report Living Case No. MGO-94-01^[23] states:

"PHYSICAL EXAMINATION:

x x x, semi-conscious, x x x.

"PHYSICAL INJURIES:

Abrasions, still with small amount of blood clots all reddish; 9.0 x 3.0 cms., right side, lower portion; 2.0 x 1.0 cms., right elbow, 2.0 x 1.0 cms., left elbow, 3.0 cms., shoulder, right, linear.

Contusion, 4.0 x 2.0 cms., post-auricular area, left.

Contused-abrasion, 3.0 x 2.0 cms., right orbit 3.0 x 2.0 cms., left orbit

12.0 x 6.0 cms., right cheek 10.0 x 8.0 cms., left cheek.

Contusion hematoma, left pinna.

Lacerations, 2.0 cms., left mandible, left side, 1.0 cms. left gingival 1.5 cms. gingiva-buccal area, left side.

"GENITAL EXAMINATION:

x x x, Labia majora and minora, edematous, coaptated. Fourchette, tense, congested with laceration. Vestibular mucosa, congested. Hymen, short, thin, with deep laceration at 7:00 o'clock position corresponding to the face of a watch, edges of which are sharp and congested, bleeding on slight touch. Hymenal orifice, admits a tube, 2.0 cms. in diameter. Vaginal walls, tight with abrasion at the posterior fornix. Rugosities, prominent.

"CONCLUSION:

1. The above-described physical injuries were noted on the body of the subject at the time of examination, ages of which are compatible with alleged date of infliction (Feb. 6, 1994).
2. Fresh hymenal lacerations."

Dr. Lagat, on the witness stand, identified and confirmed the above findings. He testified that Imee was still in a semi-conscious state when he examined her. The hymenal laceration at 7:00 o'clock position in her vagina could have been caused by a penetration of a "fully erect male sex organ."^[24]

SPO2 Nicolas Maamo identified the articles recovered at the scene of the crime, such as the bloodstained brief,^[25] the bicycle,^[26] the ball cap,^[27] the sunglasses^[28] – all belonging to appellant – and Imee's pair of slippers.^[29]

Appellant, 24 years old and single, vehemently denied the charge. He testified that on February 6, 1994, at past 3:00 o'clock in the afternoon, he was at Dama de Noche St., San Antonio Valley, Las Piñas City looking for Imee who earlier borrowed his bicycle. He then heard a shout somewhere at a grassy area where he used to pass by to get *rattan*. When he checked the place, he found Imee lying unconscious. Suddenly two persons punched him at his chin and face, causing him to pass out. After he regained consciousness, he carried Imee to bring her home. At this juncture, a passerby shouted, "Rapist!" Instantly, several persons arrived and mauled him. They then tied him to a post at the basketball court. Two policemen brought him to the police station. He explained that his brief has bloodstains because the persons who mauled him smeared his brief with Imee's blood.^[30]

On January 5, 1998, the trial court rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, and in the light of the foregoing, the Court finds the accused DANTE GUAFO y DILAO **guilty** beyond reasonable doubt of the crime of **statutory rape** and he is hereby sentenced to suffer the

penalty of death, to indemnify the victim and her family the sum of P50,000.00 and to pay the costs.

"SO ORDERED."

In this appeal, appellant ascribes to the trial court the following errors:

"I

THE COURT A QUO COMMITTED REVERSIBLE ERROR IN CONVICTING THE APPELLANT OF STATUTORY RAPE NOTWITHSTANDING THE WEAKNESS OF THE PROSECUTION'S CIRCUMSTANTIAL EVIDENCE; and

II

THE COURT A QUO ERRED IN IMPOSING THE DEATH PENALTY ON THE APPELLANT DESPITE THE ABSENCE OF ANY QUALIFYING OR AGGRAVATING CIRCUMSTANCE IN THE INFORMATION."^[31]

Article 335 of the Revised Penal Code, as amended by Republic Act No. 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;
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.

x x x"

The elements of rape under the above provisions are: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age or is demented.^[32]

Appellant contends that there is no eyewitness to prove the commission of rape. He argues that while Imee testified that he boxed her belly, causing her to lose consciousness, such testimony does not establish that he had carnal knowledge of her. Moreover, the circumstantial evidence presented by the prosecution is insufficient to warrant his conviction of rape.

We are not convinced.