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[G.R. No. 135877, August 22, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO NICOLAS Y OCAMPO, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

For automatic review is the decision[1] dated October 9, 1998 of the Regional Trial Court of Parañaque City, Branch 259, finding appellant Ernesto Nicolas guilty of rape. The heinous nature of the offense is underscored by the charge against him in the amended information[2] which reads as follows:

> That on or about the 21st day of October 1997, in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal intercourse with Flabiana Mendoza, a paralyzed, 53 years (sic) old, mother of complainant, and who was then unconscious and deprived of reason, against her will and consent.
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> CONTRARY TO LAW.

Upon arraignment, appellant, assisted by counsel, pleaded not guilty. Trial commenced thereafter. Four witnesses testified for the prosecution.

MA. VICTORIA PUNZALAN, a daughter of the victim Flaviana Mendoza,[3] testified that in August 1997, her mother was brought to the Philippine General Hospital for treatment. Upon being brought home in September of that same year, Flaviana's medical records[4] and actual condition showed that she was almost physically paralyzed and in a very weak state of mind and health. According to Ma. Victoria, her sisters Annaliza Urmelita[5] and Daisy Mendoza told her that their mother was raped by appellant on October 21, 1997. She added that at the time of the rape, her mother was persistently ill, and was physically and mentally incapacitated. Her mother eventually died on November 15, 1997.[6]

DAISY MENDOZA, another daughter of the victim, testified that on October 21, 1997, she was sleeping on the floor of her grandparents' house where her mother, grandparents, and nephew Lorenzo Mendoza also slept. At around 3:00 A.M., she woke up and saw appellant Ernesto Nicolas on top of her mother, Flaviana Mendoza. Both had their shorts pulled down. Appellant appeared to be doing a pumping motion, with her mother underneath him. She hurriedly went out of the house and called her brother Joel, whose house was about six meters away. When they returned, they saw Ernesto still on top of their mother. Her brother shouted at appellant to move down. Appellant then went out of the house. Thereafter, they reported the incident to the office.

Appellant was apprehended at his sister's house and brought to the Coastal Police Station where an investigation was conducted. Daisy testified that even prior to the incident, Flaviana was already mentally and physically weak. She said she accompanied her sister Annaliza Urmelita, private complainant in this case, to the office to file a complaint against appellant.[7]

JOEL MENDOZA, son of the victim, corroborated the testimony of his sisters on what transpired between 2:00-3:00 A.M. of October 21, 1997. He added that upon seeing Ernesto atop his mother, he shouted invectives at him and ordered him to stop what he was doing. Appellant got off Flaviana and pretended to be asleep. It was at this point where Joel saw that his mother also had her shorts pulled down. As he was furious, his wife stopped him from assaulting appellant and

so he went to his other sister's house, adjacent to his own, to tell her about the incident. Later, they went back to see their mother. He recalled he was wielding a wooden stick to hit appellant. He and Daisy told appellant to get out of the house. According to Joel, he remembered that Daisy slapped appellant while he hit the appellant. Appellant hurriedly left. Joel's sisters then went to the officials to report the incident and lodge a complaint against appellant.[8]

DR. LUDIVINO[9] LAGAT testified that he was the physician who conducted a physical and genital examination on the victim, Flaviana Mendoza, on October 21, 1997, a few hours after the alleged rape was committed. The victim was weak, needed assistance to move, and had difficulty answering questions. He further testified[10] that based on his examination, there could have been prior sexual intercourse without necessarily producing any genital injury on the victim.[11]

For the defense, appellant Ernesto Nicolas and his nephew Herminio Nicolas testified.

Appellant ERNESTO NICOLAS testified that Flaviana Mendoza was his first cousin and that he lived with his nephews and nieces in his brother's house, located a street away from the house of his aunt, Flaviana's mother, where Flaviana was staying. On October 21, 1997, he went to his aunt's house, looking for a place to sleep, as his house was already closed. It was there that he saw Flaviana. Upon seeing that there was no more space for him, he left. He also testified that earlier that morning Flaviana's son Joel confronted him and told him to leave the house. Thereafter, he proceeded to his brother's house next door. He was sleeping by the door when he was arrested by officials. Thereafter, he was brought to the Coastal Police Station where he was detained. He claimed he did not know the reason for his arrest. He denied having sexual intercourse with Flaviana and claimed that he had no idea why he was being accused of raping her. He admitted that he knew that Flaviana was almost paralyzed, "mentally and physically".[12]

Appellant's nephew, HERMINIO NICOLAS, testified that at around 1:00 A.M. of October 21, 1997, as he arrived from a derby, he saw Ernesto Nicolas sitting on a broken refrigerator. Appellant said that he was just going to sleep where he sat, just 10 meters away from where Flaviana was allegedly raped. At that time, the witness said he did not notice anything unusual or strange, only that the occupants of the house were still awake. At around 2:00 A.M., he saw appellant near his house, and by 3:00 A.M., he (Herminio) went inside to sleep, and saw and heard nothing beyond 3:00 A.M.[13]

In its decision dated October 9, 1998, the trial court found appellant guilty of the crime charged and rendered judgment as follows:

> WHEREFORE, PREMISES CONSIDERED, finding accused Ernesto Nicolas GUILTY beyond reasonable doubt for the crime of Rape as defined and penalized under No. 10, Art. 266-B RA 8353, this Court hereby sentences him to the maximum penalty of DEATH and to suffer the accessory penalties provided by law specifically Art. 40 of the Revised Penal Code. For the civil liability, he is further condemned to indemnify the heirs of the victim P50,000.00 in line with existing jurisprudence; P50,000.00 as moral damages and P50,000.00 as exemplary damages.
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> The Branch Clerk of Court is directed to prepare the Mittimus for the immediate transfer of accused Ernesto Nicolas from Parañaque City Jail to the Bureau of Corrections in Muntinlupa City and finally to forward all the records of this case to the Supreme Court for automatic review in accordance with Section 9 (sic) Rule 122 of the Rules of Court and Article 47 of the Revised Penal Code as amended by Section 22 of RA 7659.
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> SO ORDERED.[14]

This case is now before us on automatic review, with appellant alleging that the trial court:

I. . . . ERRED IN FINDING THE ACCUSED-APPELLANT ERNESTO NICOLAS Y OCAMPO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DEFINED AND PENALIZED UNDER RA 8353 (THE ANTI-RAPE LAW OF 1997) AMENDING ART. 335 OF THE REVISED PENAL CODE.

II. . . . GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE FAILURE ON THE PART OF THE PROSECUTION TO PRESENT THE VERY COMPLAINANT ANNALIZA ORMELITA.[15]

Considering the assigned errors, two issues are for resolution. First, whether or not it is indispensable for the prosecution to present Annaliza Urmelita, the daughter of the victim who subscribed to the complaint for rape. Second, whether or not the evidence for the prosecution suffices to prove beyond reasonable doubt that petitioner is guilty of the heinous crime of rape for which he has been sentenced to death.

On the first issue, appellant contends that Annaliza Urmelita should have been presented in order to identify her complaint during the trial. Appellant avers that her failure to do so amounts to a lack of a valid complaint, because under Section 5, Rule 110 of the 1985 Rules on Criminal Procedure,[16] such identification by complainant is jurisdictional in a prosecution for rape. Appellant also contends that Annaliza's non-presentation during trial violates the constitutional right of the accused to meet and confront his accuser.

For the appellee, however, the OSG avers that considering Flaviana's state of health, it devolved upon her children, of sufficient age and discretion, to execute the complaint on her behalf. Note that Flaviana's own parents, said to be about aged 97, [17] were already too feeble for the ordeal. Her daughter Annaliza Urmelita undertook the task and filed the affidavit-complaint sufficient to vest jurisdiction on the court. The OSG further contends that there was no need to present Annaliza

during trial since she did not witness the rape incident. It was sufficient to have presented her siblings Joel and Daisy who saw what had happened. These witnesses had in fact been confronted and cross-examined by the defense, in satisfaction of the right of the accused guaranteed under the Constitution.[18]

The contentions of the OSG are well-taken.

It is true that at the time, the 1985 Rules of Criminal Procedure required a sworn complaint of the offended party in the prosecution of rape and other private crimes. The purpose of this requirement was to serve as a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties.[19] The overriding consideration in determining compliance with the requirement is the intent and determination of the aggrieved party to seek judicial redress.[20] Once the requirement is satisfied by the proper affidavit or complaint, the prosecutorial process is then commenced, and the court could validly exercise its legally mandated jurisdiction over the rape case.

The rule is that when the offended party has executed and subscribed to a complaint, the prosecution before the court may be initiated by means of an information signed by the prosecutor alone.[21] But there is nothing in the rule that requires the complaint to still be identified in court during trial. The rule, in our view, is not vitiated by the fact that the complaint was signed by the daughter of the disabled and mentally ill victim. Otherwise the rule would be requiring the impossible, which is absurd.

Annaliza Urmelita's affidavit-complaint, we believe, is sufficient compliance with the rules. Annaliza swore to the contents of her affidavit-complaint, which was duly filed. Moreover, all of Flaviana's other children have shown their intent to proceed with the case by actively participating in the trial. These include Ma. Victoria, Joel, and Daisy, who were presented as witnesses. In our view, it is clear that the offended party's children are firm in their resolve to seek judicial redress.

In any event, we have previously ruled in the case of *People vs. Barrientos*[22] that any issue on the validity and sufficiency of the complaint should be raised in a motion to quash the information pursuant to Section 3,[23] Rule 117 of the Rules of Court.[24] As in the cited case of Barrientos, this Court considers any attack on the validity and efficacy of the affidavit-complaint at this time rather belated.

We must also note that, even if considered in the light of current provisions of law and the rules, the same ruling would be reached. Under R.A. 8353,[25] rape has been reclassified from being a private crime into a crime against persons.[26] As a result, the prosecution of the crime of rape has been effectively removed from the ambit of the requirements of Chapter Five, Title Eleven of the Revised Penal Code and Section 5, Rule 110 of the 1985 Rules of Criminal Procedure. We note further that on December 1, 2000, the Revised Rules on Criminal Procedure took effect and, following the amendments brought about by R.A. 8353, Section 5, Rule 110 thereof has correspondingly been amended.[27] Rape may now be prosecuted de oficio.[28]

As to the alleged violation of appellant's right to confrontation, we find appellant's contention without merit.

The right to confrontation has a two-fold purpose: (1) primarily, to afford the accused an opportunity to test the testimony of the witness by cross-examination; and (2) secondarily, to allow the judge to observe the deportment of the witness. [29]

In this case, Annaliza was the one who signed the complaint, considering the physical disability of her paralyzed mother. However, it was her sister Daisy and brother Joel who saw what had happened on October 21, 1997. The occurrences that constitute the crime charged were culled from their testimony. Notably, appellant had the opportunity to confront both Daisy and Joel, along with the other prosecution witnesses. Daisy and Joel were presented in court, and their testimonies were adequately tested by the defense who subjected them to cross-examination. Likewise, the judge had ample opportunity to observe their demeanor while testifying, and evaluate their testimony. The judge found their testimony candid, straightforward and credible.[30] It was not, in our view, indispensable under the circumstances of this case to present Annaliza on the witness stand.

Now, we resolve the second issue. Has appellant's guilt been proved beyond reasonable doubt?

Rape is committed by, inter alia, having carnal knowledge of a woman who is deprived of reason or otherwise unconscious.[31] The prosecution needs to prove in this case (1) the fact of sexual intercourse between the accused and the victim; and (2) the mental disability of the latter. Being "deprived of reason" means to suffer from mental abnormality, deficiency or retardation.[32]

At the trial, both the mental and the physical states of the victim were proved by testimonies of witnesses and by her clinical records presented by the prosecution. Witnesses testified that Flaviana was physically incapable of moving about on her own.[33] She had difficulty understanding what was being said to her; she did not recognize people around her, not even members of her family.[34] Appellant himself admitted[35] that Flaviana suffered from mental and physical disorders.

What remains to be proved is whether or not appellant had sexual intercourse with Flaviana Mendoza. On this point, the prosecution presented the positive testimonies of Daisy and Joel Mendoza, both children of the victim. They positively identified appellant Ernesto Nicolas, and they categorically testified under oath in open court that they saw appellant in the act of sexually abusing their invalid mother on or about 3:00 A.M. of October 21, 1997.

However, appellant denies the charge of rape, stating that he did not have sexual intercourse with Flaviana Mendoza. He presented his nephew, Herminio Nicolas, who testified that nothing unusual happened at 3:00 A.M. of October 21, 1997. Appellant then attacked the credibility of the testimony of eyewitness Daisy Mendoza, saying that it was unusual and contrary to human experience and deserved scant consideration.

We note that in giving credence to the prosecution's evidence, the trial court stated that the testimonies of prosecution witnesses, including Daisy Mendoza, were delivered in a candid and straightforward manner. The court observed them to be pained and under stress while testifying against a relative.[36] Time and again this Court has accorded great weight to factual findings of the trial court, particularly as