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EN BANC

[G.R. Nos. 138358-59, November 19, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLAUDIO DELA PEÑA Y BORDOMEO, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Accused-appellant Claudio dela Peña was charged by his daughter Mary dela Peña with two (2) counts of rape in two separate Informations which read as follows:

> Criminal Case No. 4449-96:
>
> That on or about the 25th day of February 1996, at Barangay Burol I, Municipality of Dasmariñas, Province of Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his own daughter, Mary dela Peña, and without the latter's consent and against her will, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of said Mary dela Peña, to her damage and prejudice.
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> Criminal Case No. 4450-96:
>
> That on or about the 27th day of February 1996, at Barangay Burol I, Municipality of Dasmariñas, Province of Cavite, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his own daughter, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge of one Mary dela Peña against her will and consent, to her damage and prejudice.

The said cases were filed with the Regional Trial Court of Imus, Cavite, Branch 20. At the arraignment, accused-appellant entered a plea of "not guilty." Thereafter, the cases were jointly tried.

The trial court found that on the day of the supposed rapes on February 25, 1996 and February 27, 1996, seventeen-year old Mary was living with her widower father in Dasmariñas, Cavite. Both incidents happened at around 7:00 o'clock in the evening. On each occasion, accused-appellant summoned his daughter to massage his body. Thereafter, he fondled his daughter's breasts then forced himself on her. Mary's efforts to escape from her father's evil design proved futile as the latter punched her into submission and threatened her with a knife.

Mary narrated that her ordeal in the hands of her father started as early as 1991

when they were still living in Cebu. Mary disclosed that she gave birth to her daughter, Mary Jean, when she was only thirteen years old and to her son, Elboy, when she was fifteen. Both her children were sired by her own father.

Accused-appellant denied the charges against him. He averred that since he reached fifty years old in 1984, he has been unable to have an erection. He also claimed that he lost interest in sex since his wife died in 1984.

The trial court disbelieved accused-appellant, ratiocinating thus:

> In the case at bar, the testimony of the victim was not only consistent but is convincingly impressed with truth and purity of intentions. She testified with naturalness and spontaneity and has shown no ill motive to testify falsely against her own father. It was held in the case *People v. Saballe, 236 SCRA 365*, that "when the testimony of the witness of rape is simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency and contradiction, the same must be given full faith and credit."[1]

The trial court thus found accused-appellant guilty of two (2) counts of rape and sentenced him to suffer the penalty of death for each count and to indemnify his victim the amount of P100,000.00 by way of moral damages.[2] In imposing the penalty of death, the trial court took into account the minority of the victim at the time of the rapes and her relationship with accused-appellant.

The death penalty having been imposed upon accused-appellant, the case is now before this Court on automatic review wherein accused-appellant assigns a lone error, thus:

> THE TRIAL COURT ERRED IN METING OUT THE DEATH PENALTY ON THE ACCUSED NOTWITHSTANDING THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE VICTIM WAS NOT ALLEGED IN THE INFORMATION.

Notably, accused-appellant is no longer disputing the factual findings of the trial court. Nevertheless, this Court has the duty to review the records of the case to ensure that the trial court did not err in convicting accused-appellant of two counts of rape and that none of the rights of accused-appellant was violated. This Court has scrutinized the testimony of complainant Mary dela Peña and has found that she testified in a frank, spontaneous and straightforward manner, unshaken even during cross-examination. On the other hand, accused-appellant raised the defense of impotence. On this score, we agree with the trial court when it ruled that:

> The defense of impotency raised by accused was not supported by any medical findings at all. His claim that since the death of his wife in 1984 he did not have any erection anymore is but a bare assertion. Impotency as a defense in rape cases must be proven with certainty to overcome the presumption in favor of potency (*People v. Bahuyan, 238 SCRA 330*). [3]

Accused-appellant argues that inasmuch as the minority of the victim was not specifically alleged in the Informations, he can only be convicted of simple rape and not qualified rape, minority being a qualifying circumstance.