

EN BANC

[G.R. No. 135516, September 20, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NEIL DUMAGUING, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

Before us on automatic review is the judgment dated July 17, 1998 rendered by the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Case no. 1053-95 entitled People of the Philippines vs. Neil Dumaguing finding the accused guilty of qualified rape.

On September 28, 1995 an information for qualified rape was filed against the accused-appellant which reads as follows:

"INFORMATION

The undersigned OIC Provincial Prosecutor upon sworn complaint originally filed before the 2nd Municipal Circuit Trial Court of Capas-Bamban-Concepcion, Capas, Tarlac, by the offended party Kelen M. Dumaguing, accuses Neil Dumaguing y Quessada of Brgy. Murcia, Concepcion, Tarlac, of the crime of rape, committed as follows:

That on or about May 7, 1995 at around 1:30 o'clock in the afternoon in Brgy. Murcia, Municipality of Concepcion, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused Neil Dumaguing y Quessada who is the father of the complaining witness, did then and there willfully, unlawfully and feloniously and by means of force and intimidation have carnal knowledge with her (sic) ten year old daughter Kelen M Dumaguing, in their house without her consent.

Contrary to law."^[1]

The accused initially pleaded "not guilty" to the crime charged but later changed his plea to "guilty", then "not guilty", and finally pleaded "guilty".

The evidence presented by the prosecution consists of the testimony of the victim, Kelyn, and her mother, Kelyn's birth certificate to establish that she was below eighteen years old when she was raped by the accused and that the accused is her father, and the medical report to corroborate Kelyn's testimony that she was raped.

On November 27, 1995 the victim Kelyn^[2] Dumaguing testified in court that she was born on October 24, 1983 and that the accused Neil Dumaguing is her father. Her mother Corazon Dumaguing works in Mabalacat, Pampanga, and comes home

only once a week. Kelyn stated in court that on May 7, 1995 after having lunch with her brothers her father asked her three brothers to go out of the house and once alone with her, dragged her at knifepoint to the bedroom. He made her sit on the headboard of the wooden bed and inserted his penis to her vagina. She started to scream for help when she started bleeding. Her mother's brother, Mario Manalo, who lives very near their house heard her screams and tried to gain access to the house to see what was going on but the doors were locked so he forcibly opened a window. Her Uncle Mario asked the accused what happened, the latter stated that Kelyn fell from the bed. Upon seeing her bleeding Uncle Mario took her to his house and later, some relatives of Kelyn's mother, rushed Kelyn to the hospital.^[3]

The mother of the victim, Corazon Dumaguing, testified as to the age of the victim and her filiation with the accused. She testified that on May 7, 1995, while she was at work in Mabalacat, her brother and her sister-in-law came to tell her that her husband raped Kelyn and that she was confined at the Tarlac Provincial Hospital. She immediately went to see her daughter at the hospital and found that she was unconscious. Mrs. Dumaguing testified mainly on what her brother and her sons told her about the incident. She was also told that her barriomate Mr. Dante Carreon reported the incident to the barangay captain who then reported the matter to the police detachment in Concepcion, Tarlac.^[4]

Kelyn's birth certificate^[5] states that she was born on October 28, 1983 and that the name of her father is Neil Dumaguing and that of her mother is Corazon Manalo. Her parents were married on June 18, 1979. The Medico-Legal Certificate^[6] issued by the Tarlac Provincial Hospital states that Kelyn was brought for treatment on May 7, 1995 at about 2:50 P.M. The medical report states the following findings:

"Genitalia:

External Exam: (-) pubic hair, labia majora and minora not gaping, post fourchette V-shaped, (+) deep fresh laceration along post fourchette (1cm.) with very active bleeding noted.

Speculum: cervix closed (+) deep laceration about 1 cm situated between cervico-vaginal area 5:00 position and extended through the lateral vaginal wall about 2cm. (+) active bleeding sites seen.

Internal Exam: vaginal introritus admits one finger with ease. Cervix closed, firm. Uterus small (-) adrenal mass/ tenderness (+) profuse vaginal bleeding.

Urinalysis:

Pus cells 3-4 hpf HGB 105 gl.

RBC 1-2 hfp Hematocrit .35

E cells- ____ Blood type AB"

Upon presentation of the above mentioned evidence the prosecution rested its case. The accused manifested in court that he did not wish to present any evidence in his behalf and that he has decided to plead "guilty" to the crime charged.

On the basis of the evidence presented by the prosecution the trial court rendered judgment as follows:

"Considering the prosecution's evidence which was not controverted by the defense, and on the basis of the accused's plea of guilty to the crime charged, the court herein finds the accused guilty of rape of his own daughter who is only ten years old at the time the crime was committed. The mitigating circumstances of intoxication and voluntary surrender cannot be considered by the court in view of the absence of any evidence to establish the same as mitigating circumstances."

"Wherefore, premises considered, judgment is hereby rendered finding the accused, Neil Dumaguing, guilty beyond reasonable doubt of the crime of rape as defined and penalized under Section 11 of R.A. no. 7659 amending Art. 335 of the Revised Penal Code, committed with the attendant circumstance of being the father of the victim who is below 18 years of age, and hereby sentences the accused to suffer the penalty of death.

Accused is likewise ordered to indemnify the offended party, Kelen Dumaguing, the amount of P50,000.00 by way of moral damages.

SO ORDERED."^[7]

The Public Attorney's Office filed appellant's brief with this Court in behalf of the accused with the lone assignment of error that the trial court erred in not appreciating the mitigating circumstances of voluntary surrender and drunkenness. The counsel for the appellant noted the absence of a statement of findings of facts in the decision of the trial court.

The Solicitor-General filed brief for the appellee praying for the affirmance of the judgment of conviction and for the increase in the award for civil indemnity to P75,000.00. The appellee points out that death is a single and indivisible penalty and the attendance of any mitigating circumstance will not alter the imposable penalty.

The counsel for the appellant filed Reply brief asking for the Court's sympathy and blames the inefficacy of the public educational system in teaching the accused to be morally upright. The public attorney states that the accused is poor and unemployed which gave him much idle time and in time transformed him into a "devil's workshop".

We affirm the judgment of conviction.

We note accused-appellant's vacillation in entering his plea, but we are nevertheless satisfied from a review of the record of the case pertaining to it that the accused, assisted by counsel, was given more than ample time by the trial court to re-think his expressed desire to change his plea from "not guilty" to "guilty". The trial court informed the accused of the legal consequences of a plea of guilt and made searching inquiries whether the accused's admission of guilt was voluntarily and intelligently made pursuant to Sec. 3, Rule 116 of the Revised Rules on Criminal Procedure. The accused stood firm on his decision to enter a plea of "guilty" and stated that he is willing to face the death penalty for raping his own daughter.^[8] The trial court summarized the proceedings before it and the four instances when the accused changed his plea:

"It is to be recalled that the accused, when originally arraigned on October 23, 1995, entered a plea of "not guilty" to the same information. However, in the hearing of August 19, 1996 when the defense was to cross-examine the private complainant, the accused, through his then counsel Atty. Godofredo Sabado, Jr., signified his intention to vacate his plea of "not guilty" and instead enter a plea of "guilty". After the court exhaustively advised the accused to carefully contemplate on his intended plea of guilty and to consider the nature of the crime with which he is charged which is a heinous crime punishable by death, the accused was re-arraigned where he entered a plea of "guilty." Set for promulgation of judgment in the setting on September 6, 1996, the court then again reminded the accused of the consequences of his plea of guilty, while citing at the same time the decision of the Supreme Court that the accused, despite his plea of guilty, may still present evidence in his behalf as the court's decision will not rest solely on such plea but has to consider the evidence presented by the prosecution vis-a vis the evidence which the accused may present in order to determine the precise degree of culpability of the accused. To this pronouncement of the court, the accused's counsel manifested that they are withdrawing the accused's plea of guilty and will instead enter anew a plea of "not guilty". Granting the said manifestation, the court then set the case for continuation of the hearing of the case. After a series of settings and resettings, the prosecution was able to present as witness the mother of the private complainant. Thereafter the prosecution rested its case and formally offered the testimonies of the witnesses as well as its documentary exhibits.

When the case was set for initial reception of defense evidence, the hearing went through another series of settings and resettings until finally, on July 10, 1998, the accused through his counsel, Atty. Magdalena Balderrama, manifested that the accused is willing again to change his plea of "not guilty" to that of "guilty". Similar to the previous occasion when the accused changed his plea, the court reminded the accused to study the consequences of his plea as the crime with which he is charged is a heinous crime punishable by death. The case was reset in order for the accused to contemplate again on his intended plea of guilty and that he will give his final decision the next setting."^[9]

At the last scheduled hearing, the trial court cautioned the accused that the imposable penalty is death and that neither his plea of guilt nor any mitigating circumstance, like drunkenness and voluntary surrender, that he may wish to establish will not lower the penalty to reclusion perpetua. The trial court cites in its decision the following transcript of stenographic notes:

Court: The court will repeat for the last time; if you know by admitting the crime of rape, the penalty I will impose is death not life imprisonment.

Accused: Opo, opo, uulitin ko po, alam ko po. Magaan po sa kalooban kong tanggapan and parusang kamatayan.

Court: Hindi ka ba binayaran, tinakot para umamin?

Accused:Wala pong nanakot at walang nagbayad sa akin.

Court: Sinasabihan ka ng husgado kahit umamin ka pa sa pagkakasala gaya ng sinabi mo, and sintensiyang maibibigay ng husgado ayon sa Batas, ay parusang kamatayan pa rin, hindi puwedeng bumaba ang sentensiya sa panghabang buhay. Ito ang sintensiya sa rape, kasi ang biktima ay sarili mong anak. Ito ang itinuturing ng batas na karumaldumal na krimen kasi ito ay panggagahasa ng sarili mong anak, ang parusa na ipinapataw na batas ay kamatayan o death penalty. Talagang tinatanggap mo ang parusang kamatayan?

Accused:Opo, alam ko po, Madam.

Court: Uulitin ko, alam mo ba na ang magiging hatol sa iyo ay kamatayan?

Accused:Opo, alam ko po.

Court: Paulit-ulit kong sinasabi sa iyo na ang magiging hatol sa ilalim ng batas dito sa karumaldumal na krimen na panggagahasa sa sariling anak ay kamatayan at hindi naman puwedeng babaan ang parusa. Ang sinasabi mo na ikaw ay lasing o na ikaw ay nag-surrender sa may kapangyarihan ay hindi maaaring maging dahilan para babaan ang parusa, ang parusang kamatayan ay hindi puwedeng babaan. Alain mo ba iyon? Kamatayan at tanging kamatayan lamang ang magiging parusa mo. Alam mo ba iyon? Nakahanda ka bang maparusahan ng kamatayan?

Accused:Opo, Madam. Opo, Madam. Hindi na po mababago ang pasya ko.

Court: Talagang bukal sa kalooban mo ang pag-amin sa krimen kahit parusa ay kamatayan?

Accused:Hindi na po magbabago.^[10]

We find that the admission of guilt by the accused which was also used by the trial court as a basis for his conviction was intelligently and voluntarily made.

Even if the plea of guilt is not taken into account We are convinced from our own examination of the evidence that the prosecution has established the guilt of the accused beyond reasonable doubt.

We find that the evidence presented by the prosecution satisfies the quantum of proof required in criminal prosecutions for incestuous rape. Kelyn's birth certificate, her own testimony and that of her mother established that Kelyn was twelve years old at the time she was raped by her own father. The medical report that Kelyn was found to have active vaginal bleeding an deep fresh laceration when she was examined a few hours after the commission of the crime corroborates her testimony that she was raped. Kelyn's narration of the incident is credible and free from