

EN BANC

[G.R. No. 128288, April 20, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO ONABIA ALIAS "ODOY", ACCUSED-APPELLANT.**

DECISION

BUENA, J.:

This is an automatic review of the decision dated December 12, 1996 of the Regional Trial Court, 6th Judicial Region, Branch 42, Bacolod City in Criminal Cases Nos. 95-17443, 95-17444, 95-17445 and 95-17450 for four (4) counts of Rape, the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds the accused Wilfredo Onabia alias 'Odooy' guilty beyond reasonable doubt of having committed the crime of rape against Raquel B. Eballe, a minor less than 12 years old, on four (4) counts as charged in four (4) separate informations (Crim. Case No. 95-17443; Crim. Case No. 95-17444; Crim. Case No. 95-17450; Crim. Case No. 95-17445) with the aggravating circumstances of abuse of superior strength, abuse of confidence and lack of respect on account of age and relationship, attending the commission thereof and, there being no mitigating circumstances present to effect the same, hereby sentences said accused to suffer the following penalties:

In Crim. Case No. 95-17443, the Supreme Penalty of DEATH with the accessory penalties provided for by law and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00;

In Crim. Case No. 95-17444, the penalty of Reclusion Perpetua with its accessory penalties, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00;

In Crim. Case No. 95-17450, the penalty of Reclusion Perpetua with its accessory penalties, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00; and

In Crim. Case No. 95-17445, the penalty of Reclusion Perpetua with accessory penalties prescribed by law, and to indemnify the victim Raquel B. Eballe in the sum of Php50,000.00.

No pronouncement as to costs.

SO ORDERED."^[1]

The antecedents are:

Private complainant Raquel B. Eballe, then nine (9) years old, is the stepsister of accused-appellant Wilfredo Onabia.^[2]

At about 6:30 in the evening of February 15, 1994, accused-appellant asked private complainant to go with him to the copra drier located at about two hundred (200) meters from their house.^[3] In going to the copra drier, appellant was carrying a kerosene lamp and a bolo placed in his waist.^[4] When they arrived at the copra drier, they went upstairs. Thereupon, appellant put out the lamp, embraced private complainant and forced her to lie down.^[5] Appellant told private complainant that he would kill her and the other members of her family if she would shout^[6]. Accused-appellant removed his pants and brief. Thereafter, he inserted his penis into the vagina of private complainant.^[7] Private complainant felt pain and cried. Accused-appellant told private complainant that he would kill her and her family if she would reveal the incident to her mother.^[8]

In the afternoon of August 10, 1994, only private complainant and accused-appellant were in their house as the other members of their family went to the farm^[9]. Private complainant was in her room at that time. Accused-appellant entered the room of private complainant and told her not to shout, otherwise, he would kill her and the other members of her family^[10]. Thereupon, he embraced private complainant, forced her to lie down, removed her panty and inserted his penis into her vagina^[11].

At about 9:00 P.M. of October 7, 1995, accused-appellant called private complainant who was then in her room and requested her to massage him at the sala of their house^[12]. Private complainant was hesitant to massage appellant. However, she was constrained to massage accused-appellant because she was told to do so by her mother^[13]. While private complainant and appellant were at the sala, the latter squeezed the arm of the former and told her not to shout^[14]. Thereupon, accused-appellant removed his short pants and brief and private complainant's underwear. Then, he inserted his penis into the vagina of private complainant^[15].

At about 9:00 P.M. of November 6, 1995, private complainant was in her room. Accused-appellant, who was then in the sala, called private complainant and told her to massage him^[16]. Although private complainant was hesitant to massage appellant, she was prevailed upon by her mother^[17]. While both private complainant and accused-appellant were in the sala, she was told by the latter not to shout. Thereupon, appellant forced private complainant to lie down. After removing his brief and the underwear of private complainant, accused-appellant inserted his penis into the vagina of private complainant^[18].

On November 7, 1995, private complainant reported to her brother Jessie the sexual assault perpetrated upon her by appellant^[19]. Jessie reported the same to their elder brother Bernabe. Thereupon, Bernabe and private complainant reported the incident to the barangay councilman and the police^[20]. On the following day, November 8, 1995, private complainant was subjected to medical examination by Dr. Dennis Duenas. The medical report^[21] issued by him on November 15, 1995 showed that private complainant sustained lacerations on her hymen as follows:

- OLD LACERATION AT THE HYMENAL RING 9'2'5'3' POSITION
 - INTROITUS ADMITS 1 FINGER WITH EASE
 - CERVIX *SMALL, CLOSE
- UTERUS SMALL
ADNEXIE (-)

Consequently, accused, herein appellant, Wilfredo "Odooy" Onabia was charged separately with four (4) counts of Rape, thus:

"CRIMINAL CASE NO. 95-17443

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 15th day of February, 1994, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17444

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 10th day of August, 1994, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17450

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 7th day of October, 1995, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the offended party against her will.

CRIMINAL CASE NO. 95-17445

The undersigned Provincial Prosecutor, based on the criminal complaint under oath, signed by the offended party, Raquel Eballe y Brahin, a minor, 11 years of age, accuses WILFREDO ONABIA alias "ODOY" of the crime of RAPE, committed as follows:

That on or about the 6th day of November, 1995 in the municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court; the above-named accused, by means of force and intimidation, did then and there, willfully and feloniously have carnal knowledge with the offended party against her will."^[22]

In disowning liability for the offenses charged, accused-appellant simply denied the same and argued that the charges were mere fabrications as a consequence of a quarrel he had with the private complainant's elder brother^[23]

After trial on the merits, accused-appellant Wilfredo Onabia was found guilty beyond reasonable doubt of the crimes charged and was sentenced accordingly. Hence, this case before us for review. In his brief, accused-appellant raises the following errors:

ASSIGNMENT OF ERRORS

I.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE RAPE ALLEGEDLY COMMITTED ON 15 FEBRUARY 1994 (CRIM CASE NO. 95-17443) WAS QUALIFIED WITH THE USE OF DEADLY WEAPON.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDIT TO THE TESTIMONY OF THE COMPLAINING WITNESS RAQUEL B. EBALLE.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE AND IN ORDERING HIM TO PAY MORAL DAMAGES OF Php50,000.00 FOR EACH COUNT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."^[24]

In his first assigned error, accused-appellant argues that the crime of Rape in Criminal Case No. 95-17443 was not qualified by the use of a deadly weapon. We agree.

A review of the records at hand reveal that, while accused-appellant was then carrying a bolo in his waist, as he usually does^[25] (TSN), accused-appellant never used the same to threaten private complainant^[26]. The threats made by accused-appellant was never accompanied with the use of his bolo.

The case of ***People v. Lamberte***, which was raised by the People to refute accused-appellant's first assigned error, is not applicable for in that case the rape was not qualified by the "use of a deadly weapon" but rather the commission "by two or more persons."

"The defense also calls attention to the fact that the use of a weapon was not mentioned in the Information filed by the Fiscal. The use of a `knife,' however, was alleged in the earlier complaint CLARISSA had filed before the Municipal Court of Catarman. But even in the absence of such an allegation in the Information, the nature of the offense charged is not altered for the use of force or intimidation in having carnal knowledge of a woman sufficiently constitutes the crime of rape, **and its commission by two or more persons qualifies it.**"^[27] (underscoring supplied)

While private complainant in the present case did mention the use of a "bladed weapon" in her earlier complaint,^[28] the use of the same, as we found earlier, was never established. Besides, the qualifying circumstance of "commission by two or more persons" is not available unlike in ***Lamberte***. Hence, the crime of rape in Criminal Case No. 95-17443 cannot be qualified.

Still on Criminal Case No. 95-17443, we also find the court *a quo* to have erred in appreciating the aggravating circumstances of: (1) abuse of superior strength; (2) abuse of confidence; and (3) lack of respect on account of age and relationship.

The second paragraph of Section 14, Article III of the Constitution guarantees the right of the accused to be informed of the nature and cause of the accusation against him. The rationale for this was aptly put by Mr. Justice Felix Q. Antonio in the early case of ***Matilde, Jr. v. Jabson***, thus:

"Inasmuch as `not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against them, and thus avoid all and any possible surprises which may be detrimental to their rights and interests.' The main purpose of this requirement is to enable the accused to suitably prepare his defense. He is presumed to be innocent and has, therefore, no independent knowledge of the facts that constitute the offense with which he is charged."^[29]

In the case before us, the above-mentioned aggravating circumstances were neither mentioned in the complaint nor in the information. Consequently, to appreciate the aforementioned aggravating circumstances and to convict the accused of an offense higher than that charged in the complaint or information on which he is tried would constitute an unauthorized denial of his constitutional right.^[30] Considering further that the crime is simple rape, which is punishable by a single indivisible penalty of *reclusion perpetua*,^[31] no ordinary mitigating or aggravating circumstances may affect it.^[32]

Moreover, in order to appreciate the aggravating circumstance of "abuse of superior strength,"^[33] it must be sufficiently established that the same was deliberately taken advantage of.^[34] No such proof was offered in the present case. As regards the aggravating circumstance of "abuse of confidence," it is necessary that the