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[G.R. No. 129439, September 25, 1998]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO RAMOS Y MAGPALE, ACCUSED-APPELLANT.

D E C I S I O N

REGALADO, J.:

Consequent to the Attended provisions, of Article 47 of the Revised Penal Code and Section I(e), Rule 122 of the Rules of Court, the judgement in Criminal Case No. V-0646 is now before us for automatic review of the death penalty imposed upon accused-appellant Feliciano M. Ramos by the Regional Trial Court, Branch 50, of Villasis, Pangasinan.[1]

On October 16, 1995, one Elizabeth T. Ramos filed a criminal complaint[2] or rape against appellant in the 11th Municipal Circuit Trial Court (MCTC) of Villasis-Sto. Tomas, at Villasis, Pangasinan. It was alleged therein that appellant was able to perpetrate the felony against the minor complainant through the use of force and intimidation in its execution.

After preliminary investigation, the judge designate[3] of the MCTC found appellant probably guilty of the accusation and issued a warrant of arrest for his immediate apprehension.[4] However, before that warrant could be duly implemented, the circuit judge[5] of the said MCTC issued a subpoena to appellant granting him the oppurtunity to file his counter affidavits in answer to the complaint against him.[6] The subpoena was, however returned unserved when appellant could not be located at his given address in Barangay San Nicolas, Villasis, Pangasinan.[7]

In the absence of any controverting affidavit and testimony, an information[8] for rape was then filed on February 1, 1996 against appellant in the trial court where it was docketed as Criminal Case No. V-0646. It was likewise alleged therein that the crime was committed through appellant's employment of force and intimidation against the minor Elizabeth. In detail, the accusatory portion of the information[9] alleges --

> That during the month of April, 1995 at Barangay San Nicolas, Municipality of Villasis, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with one Elizabeth T. Ramos, a minor of 14-years old (sic) against the latter's will and consent, to the damage and prejudice of said Elizabeth T. Ramos.

Upon the filing of the information, the trial court issued a warrant for the arrest of appellant on February 27, 1996.[10] Since appellant had changed his residence Tuao, Cagayan,[11] an alias warrant of arrest[12] was issued against appellant, the same to be valid and enforceable as long as he remained at large. The case was then archieved pending his apprehension.[13]

On March 31, 1996, the Chief of police of the Villasis Municipal Police Station sent an indorsement to the trial court on the alias warrant, reporting that appellant was arrested on March 29, 1996 at Barangay Naruangan, Tuao, Cagayan. [14] When later brought before the lower court on April 19, 1996 for arraignment, appellant pleaded not guilty to the accusation against him. [15]

Collated form the testimony of complainant Elizabeth[16], 3-12; November 6, 1996, 15-24; November 18, 1996, 2-5.16 given on different days of the hearing, the prosecution established the following facts to wit:

Complainant's family was sleeping in their house at Barangay San Nicolas, Villasis, Pangasinan one night in April, 1995 when the rape complained of was committed by appellant.

On this particular night, complainant's mother and youngest sister slept inside the lone bedroom of their house while she, her brother and two other sisters slept outside of this room in an adjoining area. Sleeping together with them at that time was complainant's father, appellant in this mandatory review.

Complainant woke up when appellant carried her brother and two sisters and transferred them for where they were sleeping to another area of the house. After appellant had lain down beside complainant, he held both of her hands and proceded to undress her. Appellant also removed his own clothes and then inserted his penis into complainant's vagina. Complainant could only wail as her father forcibly committed sexual congress with her. She was warned by appellant not to report the matter to anyone or he would kill her. All these took place while complainant's sibling continued sleeping nearby.

From this night on, appellant would repeat his dastardly acts against his daugther a number of times. In fact, appellant's sexual abuse of his daugther would not have discovered had complainant not suffered an abortion of the fetus she was carrying in her womb.

Experiencing profuse vaginal bleeding, complainant went to the clinic of Dr. Feliciano U. Nario[17]on the night of September 4, 1995 for treatment. Dr. Nario, an obstetrician and gynecologist, found after examination that complainant was pregnant. Due to the heavy bleeding , complainant was transferred to the Urdaneta Sacred Heart Hospital where, after a caesarian section, complainant delivered a dead male fetus.

Appellant's counsel *de officio* earnestly tried to impeach complainant during her cross-examination by presenting her previous sworn declaration and answers inconsisitent with her testimony in court. Said statements were given by complainant during the preliminary investigation of the case on October 16, 1995.

[18]

Particularly, appellant counsel pointed out during the hearing that (1) while complainant said in open court that she was raped at nighttime, she declared in the preliminary examination that the assault took place in the daytime; [19] (2) complainant was not certain who accompanied her to the doctor on September 4, 1995, intimating at first that it was her mother and then changing her answer to the effect that it was her grandmother; [20] and (3) while complainant testified on the witness stand that her brother and sisters were with her at the time of the rape, she stated in the preliminary examination that they were at their grandparents' house at that time. [21]

The intense cross-examination of complainant that followed had to be suspended by the trial court when complainant could not be pacified and prevented from bitterly and uncontrollably crying in court. To enable her to regain her composure, the court ordered the resumption of the hearing on November 20, 1996. [22]

On the scheduled continuation of complainant's cross-examination, counsel for appellant manifested to the lower court that appellant wanted to change his earlier plea of not guilty to guilty. He accordingly moved for re-arraignment of appellant.

After the court a quo explained to appellant the consequences of such a plea to a capital offense and after the information was read and translated to him in Ilocano, a regional language which he fully understood, appellant entered a plea of guilty. On the same day, a date set by by the lower court giving appellant the chance to prove mitigating circumstances in his favor. [23]

To establish the mitigating circumstance of voluntary surrender, appellant presented the testimony of SPO4 Samuel Aban,[24] the police officer responsible for appellant's arrest at Cagayan.

Aban testified that at the time of appellant's arrest on March 29, 1995, appellant was feeding some ducks in front of his house in Tuao, Cagayan. Aban then approached appellant and showed him the warrant of arrest. Thereafter, he asked appellant if he is Feliciano Ramos. After appellant answered in the affirmative, Aban introduced himself as a police officer. Appellant, according to Aban, then "went with him." This witness added that the execution of the warrant of arrest against appellant entailed expenses of about P2,500.00.

After considering the evidence presented during the trial and the arguiments presented by appellant in his memorandum, [25] the court a quo condemned appellant to death, the penalty prescribe for the crime of rape by a father of his minor daughther under the amendatory provisions introduced by Republic Act No. 7659 to Article 335 of the Revised Penal Code. The lower court further ordered appellant to indemnify his victim in the amount of P50,000.00 and to pay her moral damages of P25,000.00 and exemplary damages in the sum of P25,000.00.

As he had heretofore done in the court below, appellant continues to assail in this automatic review the credibility of complainant by referring to the inconsisitencies between her testimony and sworn statement. We have carefully gone through the

records of this case and we find that such inconsistencies do not, and cannot in any way affect the credibility of complainant.

The inconsistencies refer only to minor matters and do not advert to the elements of the rape or to the identification of appellant indubitably proven by the testimony of complainant. The supposed conflicts pointed out have nothing to do with the proven fact that appellant had sexual intercourse with complainant through force and intimidation. The detailed narration by complainant in court of how she was sexually assaulted by appellant overshadows the minor lapses found in her sworn answers. Between her testimony in court and said extrajudicial statements, we rely on the former.

Generally, an affidavit taken ex parte is considered inferior to the testimony given in open court and does not affect the credibility of the witness. [26] Discrepancies and inconsistencies between statements in an affidavit and those made on the witness stand do not necessarily discredit a witness. [27]

The evident and realistic reason is that testimonies given during trial are much more exact and elaborate than those stated in sworn statements. Ex parte affidavits are usually incomplete and often inaccurate for varied reasons, at times becauseof partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere inisignificant details. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writting the affiant's statement, hence, omissions and misunderstanding by the writer are not infrequent. [28]

Complainant gave a candid and direct account in court of the events that unfolded one night in April, 1995. For such creditable manner of narration, complainant's testimony deserves full faith and credence from the courts. In believing the story of complainant, we are also guided by the principle that the crying of the victim during her testimony is evidence of the credibility of the rape charge, [29] a matter of judicial cognizance.

Still on the plausibility of the story presented by complainant, appellant contends that it was impossible for the rape to have happened in April, 1995 because the expert witness of the prosecution figure in the open court that complainant was seven to eight months pregnant at the time of her examination. Following this finding of the physician, appellant calculated that the rape complained of should have happened in January to February of 1995.

What is material in a rape case, however, is the occurance of the rape committed by appellant against complainant. Also, the transcript of stenographic notes reveals that the doctor was not sure of his estimate when asked by appellant's counsel to give the date of conception. His answer was based only on his physical examination of complainant. He did not get from complainant the last menstrual period she had prior to the pregnancy. [30]

Just as in other rape cases, appellant raises the argument that rape could not have happened because complainant's siblings were sleeping beside them when the alleged crime was committed. Yet, it is common judicial experience that the rapist

are not deterred from committing their odious act by the presence of people nearby. As revealed in our review of rape cases, rape can be committed in a house where there are other occupants. [31]

In a similar case involving the rape of a minor daugther by her father, [32] we rejected the contention of accused therein that it was impossible for the rape to happen inside a twenty by twelve feet bamboo house, particularly at the sala where complainant was sleeping in the middle of her six other brothers and sisters.

This Court has held that rape is not impossible even if committed in the same room while the rapist's spouse was sleeping, or in a small room where other family members also slept. [33] We have accepted the fact that it is neither impossible nor incredible for complainant's family members to be in deep slumber and not to be awakened while the sexual assault was being committed. [34]

Appellant insists that his plea of guilt made after the presentation of the People's evidence should have been taken as a mitigating circumstance by the court a quo as it was done not out of fear of conviction but rather alledgedly based on his conscience. Appellant's supposed repentance after the presentation of the evidence for the prosecution will not beget in his favor the appreciation of the mitigating circumstance of plea of guilty.

To effectively alleviate the criminal liability of an accused, a plea of guilty must be at the first opportunity, indicating repentance on the part of the accused. [35] In determining the timeliness of a plea of guilty, nothing could be more explicit than the provisions of the Revised Penal Code requiring that the offender voluntarily confess his guilt before the court prior to the presentation of the evidence for the prosecution. [36] It is well settled that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. [37]

Appellant also claims that the lower court should have considered the mitigating circumstance of voluntary surrender in his favor because he voluntarily gave himself up when the police officer showed him the warrant of arrest.

Surrender is said to be voluntary when it is done by an accused spontaneously and made in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture. [38]There is no indication in the record that appellant had, on his own volition, come forward and presented himself before the authorities, signifying his desire to spare the Government the time, effort and expense of seeking him out.

What is on record is that appellant changed his residence after the incident, preventing the service of the subpoena and the enforcement of the first warrant of arrest. And, when shown alias warrant at his new residence, appellant simply went with the arresting officer. Such passive act cannot be considered in his favor. It is axiomatic that when the accussed surrenders only after the warrant of arrest is served upon him, the surrender is not mitigating. [39] And, the fact that appellant did not resist but went peacefully with the lawman does not mean that he