

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEDA DERPO, ACCUSED-APPELLANT.

G.R. Nos. L-41040 & 43908-10. December 14, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the Decision of the Court of First instance of Sorsogon[*] (now Regional Trial Court of Sorsogon) Branch I in Criminal Case Nos. 271, 272, 273 and 274 convicting Beda Derpo, appellant herein, of the crime of Rape. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing considerations, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of rape in each of the above-entitled cases under Article 335 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua in each of them and the costs. The accused is further condemned to indemnify the offended party in the sum of P5,000.00, without subsidiary imprisonment in case of insolvency. The accused is credited with the full period of his detention pending final disposition of the case." (p. 3, Brief for the Appellees, p. 7, Rollo)

Records disclose that Rhodora Hara was born on November 21, 1959 in Barrio Sta. Cruz, Casiguran, Sorsogon. When she was in her fourth grade, accused-appellant offered to shoulder the expenses of her education. Rhodora's father, being a man of limited means, reluctantly accepted the offer. On July 1, 1971, she enrolled in Casiguran High School, for which reason, Rhodora had to stay in the house of the accused located in the poblacion of Casiguran, also upon the latter's invitation.

While Rhodora was in the appellant's house, she helped in the household chores and everything seemed alright until at about midnight of July 16, 1971 when she was awakened by the kisses of appellant. Appellant left the room frustrated and with a warning not to tell anybody what happened and threatened to kill her should Rhodora disobey. Because of fear, Rhodora kept silent about the incident.

On August 22, 1971, at about midnight, appellant went to her room under the pretext that he would give a tablet to relieve the pain of a toothache Rhodora was then suffering from. However, after taking the tablet, Rhodora started to feel drowsy until she fell asleep. When she woke up, appellant was lying on top of her with his penis already inside her vagina. Rhodora tried to push the appellant away but the latter succeeded in moving his buttocks up and down until he weakened. Before he left, appellant threatened to kill Rhodora if she would report the incident to anybody.

The incident was repeated on September 30, 1971 and October 3, 1971. Finally, also at about midnight of November 27, 1971, Rhodora was again awakened by the presence of the appellant in her room. But this time, she noticed that appellant was holding a bladed instrument while performing sexual intercourse with her. Appellant threatened to kill her if she shouted or told anybody about it. However, when Rhodora moved her feet, she made a noise on the floor which awakened appellant's wife. Catching her husband in his act of infidelity, she dragged him outside the room and the two had a violent quarrel.

Rhodora escaped while appellant and his wife were quarrelling and proceeded to her home in Barrio Sta. Cruz, Casiguran, Sorsogon. She reported all the incidents to her parents, who were so enraged at the appellant for having violated their confidence. Immediately, they took Rhodora to a certain Dr. Hibo and then to Dr. Evaminda Demate of Casiguran, Sorsogon for examination. However, both doctors refused to examine Rhodora because they did not like to get involved in a big case. This prompted Rhodora's father to take Rhodora to Sorsogon, Sorsogon. Rhodora was brought at first to Dr. Arturo Perdigon of the Sorsogon Provincial Hospital, but they were not able to secure a medical certificate because the doctor went to Legaspi City. Hence, they went to the rural health center where Rhodora was examined by Dr. Reynaldo Instrella on December 2, 1971. Dr. Instrella issued a medical certificate (Exhibit "A") wherein he stated his findings as follows:

"December 2, 1971

TO WHOM IT MAY CONCERN:

"Rhodora Hara, 12 years of age, female, single and a resident of Barrio Sta. Cruz, Casiguran, Sorsogon was examined completely especially internal examination this date at 11:00 A.M. at the Sorsogon Health Center as per request of her parents.

Findings:

Head - Normal

Neck - No pertinent findings.

Abdomen - No pertinent findings.

Chest - Breast - areola and nipple - within the normal appearance

Left breast - slightly sagged than the right breast

Vaginal Region

Vulva - slight congestion in the lower inner mid-outer and surrounding portion. Opening thru the vulva is enlarged beyond the normal virgin woman.

Clitoria - still hooded and closed.

Urethra - normal findings.

Elasticity of Hymen - 1/2 cm.

Hymen - with several lacerations - both healed

and slightly fresh or partially healed.

LACERATION AT:

2:00 o'clock - healed

4:00 o'clock - slightly fresh

6:00 o'clock - slightly fresh

7:00 o'clock - healed

11:00 o'clock - healed

12:00 o'clock - partially healed

Conclusion:

Penetration is very positive and for a number of times with a recent one before this examination." (Exhibits "A", "A-1")

According to the doctor, he found the vulva of Rhodora slightly more reddish than the normal color and it could have been caused by the penetration of an object such as a penis (p. 24, tsn, Nov. 6, 1972). There was some congestion which could have happened from twenty-four to forty-eight hours before (pp. 25, Ibid.). He found

multiple lacerations of the hymen as shown in the certification. The lacerations were relatively fresh and could have occurred from seven to fourteen days before (pp. 26-27, Ibid.). There were some partially healed lacerations. There was loss of virginity but there was no sign of habitual connection (pp. 30-31, Ibid.; p. 9 Brief for the Appellee; p. 71 Rollo).

Accused was then charged with rape in four (4) separate criminal complaints in Court of First Instance of Sorsogon (now Regional Trial Court of Sorsogon). The four (4) cases were tried jointly. Thereafter, a joint judgment of conviction was rendered by the lower court, the dispositive portion of which was previously quoted hereinabove. Hence, this appeal seeking the reversal of the conviction.

In this appeal, appellant assigns the following errors, to wit:

I

THE LOWER COURT ERRED IN HAVING FAILED TO TAKE INTO CONSIDERATION THE MATERIAL FACT, ON RECORD, OF COMPLAINANT AUGUSTO HARA'S TESTIMONY NARRATED BEFORE A PREVIOUS PRESIDING JUDGE THAT DR. ARTURO PERDIGON OF THE SORSOGON PROVINCIAL HOSPITAL MEDICALLY EXAMINED RHODORA HARA WITH AN ADVERSE FINDING SO HE (AUGUSTO HARA) WENT TO ANOTHER PHYSICIAN DR. REYNALDO INSTRELLA SOME TIME LATER TO PROCURE ANOTHER 'FINDING' TO SUSTAIN 'RAPE'.

II

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS, ON THE PART OF RHODORA HARA, NO HABITUAL SEXUAL INTERCOURSE.

III

THE TRIAL COURT ERRED IN FINDING THAT RHODORA HARA AND HER PARENTS ARE SIMPLE BARRIO FOLKS WHO HAVE NO INGENUITY OF FABRICATING CHARGES UNLIKE OTHERS OF THEIR KIND IN URBAN CENTERS WHO GATHER EXPERIENCE FROM SHEER EXPOSURE, AND THAT HER PARENTS HAVE NOT INDUCED RHODORA TO FABRICATE THE CHARGES.

IV

THE TRIAL COURT ERRED IN HAVING OVERLOOKED THE FACT THAT AUGUSTO HARA SIGNED AS "COMPLAINANT" IN THREE OF THE FOUR CASES DESPITE THE FACT THAT THERE WAS NO IMPEDIMENT FOR RHODORA HARA TO HAVE SIGNED THE SAME.

V

THE LOWER COURT ERRED IN FINDING THAT THE CHARGES COULD HARDLY BE THE PRODUCT OF CONCOCTION.

VI

THE TRIAL COURT ERRED IN FINDING THAT RAPE WAS COMMITTED ON AUGUST 22, 1971, SEPTEMBER 30, 1971, OCTOBER 3, 1971 ON ACCOUNT OF RHODORA HARA'S BEING UNDER TWELVE YEARS.

VII

THE LOWER COURT ERRED IN FINDING THAT RAPE WAS COMMITTED ON NOVEMBER 27, 1971, THROUGH FORCE AND INTIMIDATION.

VIII

THE TRIAL COURT ERRED IN FINDING THAT THE HEALED LACERATIONS COULD HAVE BEEN THE (CAUSE) OF THE PREVIOUS CONNECTIONS HAD WITH THE ACCUSED.

IX

THE LOWER COURT ERRED IN FINDING THAT THE RELATIVELY FRESH LACERATIONS COULD HAVE BEEN CAUSED BY THE "INCIDENT" OF NOVEMBER 27, 1971.

X

THE LOWER COURT ERRED IN FINDING THAT RHODORA HARA WAS GIVEN A SLEEPING TABLET BY THE ACCUSED.

XI

THE TRIAL COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED WAS PROVED BEYOND REASONABLE DOUBT.

XII

THE LOWER COURT ERRED IN DENYING THE ACCUSED APPELLANT'S MOTION FOR NEW TRIAL. (Brief for the Accused-Appellant, pp. 2-4)

There is sufficient evidence on record pointing to the guilt beyond reasonable doubt of the appellant.

Both first and second assignments of error are not meritorious. One must bear in mind that the court is not required to state in its decision all the facts found in the records. It is enough that the court states the facts and law on which its decision is based (Section 1, Rule 36 of the Revised Rules of Court). Thus, the mere fact that no mention was made in its decision of the testimony of prosecution witness Augusto Hara before the former Presiding Judge, Hon. Jorge S. Imperial does not necessarily mean that said testimony was overlooked by the trial court in arriving at its decision, as alleged. Moreover, if no reference was made of said testimony, it is because such is insignificant. Augusto Hara testified as to the truth of the findings contained in the alleged medical certificate and the court considered him incompetent. We agree. The medical certificate itself is the best evidence and the proper person to testify on the contents thereof is Dr. Arturo Perdigon who issued the same. However, it is worthy to note that no attempt was exerted by the defense to introduce in evidence the alleged medical certificate, nor to present Dr. Perdigon as a witness.

With regard to the second issue, the Court believes that whether or not the victim was engaged in habitual sexual intercourse is immaterial. Rape is committed as long as the act of having sexual intercourse with a woman is attended by any of the circumstances enumerated in Article 335 of the Revised Penal Code.

The third, fourth and fifth contentions are likewise untenable. Appellant bases his arguments on the pronouncement of the court that -

"Rhodora and her parents appear to be simple barrio folks with scant education and could hardly have the ingenuity and sophistication of fabricating charges which others of their kind in urban centers who gather experience from sheer experience and contact with vicious and depraved elements in slum areas and other centers of vice might easily have done in order to fleece their intended victims or wreak vengeance upon them for any real or fancied grievance." (Decision, p. 308, Rec., CC No. 271; p. 15 Brief for the Appellee; p. 71, Rollo)

claiming that said findings are not supported by evidence. Apparently, appellant missed the point of the trial court. The residence of the parties is not the sole basis in arriving at said conclusions but likewise on the observations of the trial Judge on the demeanor and manner of the witnesses as they appeared before him. Furthermore, in evaluating the credibility of Rhodora's testimony as against that of the accused, the trial court took into consideration other factors such as: (1) the tender age of Rhodora; (2) the possible motives of Rhodora's parents to induce her to fabricate charges; (3) the scant education of Rhodora's parents; and (4) the way Rhodora narrated the details of her ordeal.

The desperate attempt of appellant to show that the charges against him are mere products of concoction likewise failed. Firstly, there is nothing in the testimony of Augusto Hara (Exhibit "2-A") which betrays "an earmark of concoction" as alleged (p. 23, Appellant's Brief). In fact, his ready admission that his daughter Rhodora was already examined by a certain Dr. Perdigon before approaching Dr. Instrella demonstrates candidness and sincerity; otherwise he would have denied the same believing that said medical certificate is adverse to his case. Thus, the observation of the trial court that, indeed Augusto Hara appears to be a simple "barrio folk" with scant education and could hardly have the ingenuity and sophistication of fabricating charges, is even strengthened. Moreover, if appellant really wanted to present in evidence said medical certificate he could have done so after the disclosure by Augusto Hara, or he could have presented Dr. Perdigon himself to testify on his findings.

Secondly, the trial court's ruling attributing the declaration of Rhodora that she was raped for the first time on July 16, 1971 as a mere slip of the tongue, is of little consequence for being immaterial to instant cases because such incident was not the subject of any charge. Still, even if we assume that Rhodora really meant that she was raped for the first time on July 16, 1971, that would not constitute an earmark of concoction.

On the sixth and seventh assigned errors, the main thrust of appellant's contention is that the rape charges against him are mere concoctions of Rhodora and her parents. However, the claim cannot stand against the findings (Exhibit "A") and testimony of Dr. Instrella that there was indeed positive indications of virginity on the part of Rhodora. Likewise, appellant failed to present any valid motive why Rhodora and his parents would implicate him of the crime charged.

Moreover, time and again, this Court has stated that no woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by a desire to have the culprit apprehended and punished (*People v. Selfaison*, 110 Phil. 839).

Thus, the claim of a concocted story by the appellant becomes a desperate but futile attempt to escape liability.

With regard to the issue of whether the acts complained of were carried out with the use of force or intimidation, the same is relevant only in Criminal Case No. 274 considering that in Criminal Case Nos. 271, 272, and 273, the acts complained of were committed when Rhodora was still below twelve (12) years of age, categorized as simple rape or rapes without the attendance of any of the qualifying circumstances mentioned in Article 335 of the Revised Penal Code, the basic element of which is the carnal knowledge of a woman below twelve (12) years of age (*People v. Gonzales*, L-33926, July 31, 1974, 58 SCRA 265). As this Court held in *People v. Sunga*, G.R. 45083, June 24, 1985, carnal knowledge of a girl under twelve (12) years old is always rape, even if the accused did not use force or intimidation and even if the victim was not deprived of reason or otherwise made unconscious, and even if she had agreed.

Just the same, in all three occasions, there is evidence that the complainant in the middle of her sleep was awakened to find appellant on top of her and engaged in sexual intercourse, thus denoting that force was employed upon the unconscious child. Also, after each act, the appellant threatened that he would kill complainant if she would tell anyone about his lascivious acts, each threat installing fear in the mind of the minor, (pp. 6-13; 16-17, *tsn*, November 29, 1972) which in the words of the lower court made her an "easy prey in his subsequent sallies" (Decision, p. 309, *Rec.*; p. 21 Brief for the Appellee; p. 71 Rollo).

While in Criminal Case No. 274, the element of force or intimidation becomes material because the incident took place on November 27, 1971 when Rhodora was already above twelve (12) years of age, the evidence on record reveals that appellant abused the complainant with threats upon the latter's life, as he held a bladed instrument (pp. 16-17, *tsn*, November 29, 1972).

Both eighth and ninth contentions cannot be sustained. There is no doubt that Rhodora was able to identify her assailant. The attempt made by the appellant to lay the blame on somebody else failed as a result of appellant's failure to give any valid motive why Rhodora and her parents would concoct charges of rape against him.

Thus, the trial court did not commit an error in concluding that "the healed lacerations could have been the cause of the previous connections had with the accused", for said lacerations logically indicate that they had been inflicted for quite sometime prior to the examination. Also, there was no error by the trial court in finding that the relatively fresh lacerations could have been caused by the incident of November 27, 1971 as substantiated by the expert testimony of Dr. Instrella.

The appellant's contention in the tenth assigned error lacks merit. The argument is designed to cover up the fact that the sleeping tablet had been given purportedly as a cure for her toothache although appellant intended the same to render the child drowsy and helpless in order to consummate his sexual desire. He was successful on both counts.

Finally, the lower court did not commit an error in denying the appellant's motion for new trial based on "newly discovered evidence" for failure to meet the following conditions, namely, (a) that the evidence was discovered after trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative, or impeaching; and (d) that the evidence is of such weight that it would probably change the judgment if admitted.

WHEREFORE, the Decision appealed from is hereby **AFFIRMED** with **MODIFICATION** that the indemnity payable by the appellant is hereby increased to P20,000.00 in line with the latest jurisprudence (*People v. Paton-og*, L-70574, November 27, 1987, 155 SCRA 675).

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Justice Feliciano S. Gonzales

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