

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO OLMEDILLO, ACCUSED-APPELLANT.

G.R. No. L-42660. August 30, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a rape case. At about five o'clock in the afternoon of December 2, 1972, Elsie Corre, who was then fifteen years and eight months old (she was born on March 20, 1957) and a fifth grade pupil in the central school of Naga City, was walking along Jacob Street after dismissal from school. She was going to her home in Sitio Argentina, Barrio Calawag, Naga City.

Unexpectedly, a man accosted her, seized her left hand and dragged her to a vacant lot nearby. Elsie screamed and struggled to free herself from the malefactor's clutches.

He forced her to lie down on the tall grasses near a kapok tree, gagged her because she continued to shout and was able to tie her hands on her chest despite her resistance. He removed his pants and her panties, placed himself on top of her and had sexual congress with her.

After consummating the carnal intercourse, he untied her hands, removed the gag and released her but warned her that he would kill her if she revealed the incident to her parents or to other persons. Because of that threat, Elsie did not apprise her parents of the outrage when she arrived home at about six-thirty.

More than four months later, or on April 12, 1973, when Caridad Corre, Elsie's mother, noticed that Elsie's abdomen and breasts were enlarged, Caridad asked her who was responsible for her pregnancy. Elsie cried. Upon her mother's insistence, she revealed that a man, whom she knew only by face, had ravished her. She said that she could identify the man if she saw him again and that she could point to the place where the incident occurred.

On that same day, Caridad brought Elsie to the hospital for a medical examination. On the way, while they were at the intersection of Jacob and Liboton Streets, waiting for transportation, Elsie pointed to her mother the vacant lot where she was violated. At that moment, by some coincidental happenstance, a man looked out of the window of the house near the lot. Elsie saw him and immediately pointed him to her mother as the malefactor who had wronged her.

Caridad knew the man as Arsenio Olmedillo, 65, married but living apart from his wife who was in Manila, a former postal employee and a resident of the place (84 Jacob Street). He was engaged in making rubber stamps.

At the hospital, the doctor, who examined Elsie, issued a medical certificate dated April 12, 1973 wherein he stated that Elsie's breasts were engorged and hyperpigmented, that her lower abdomen was distended, with a "fundic height two fingers below navel", that her vagina admits two fingers easily, that her cervix was soft and not bleeding, that the lacerations of her hymen at the four and seven o'clock positions were healed and that there was no smear of spermatozoa in her vagina (Exh. B).

As a matter of fact, Elsie gave birth to a baby girl on September 15, 1973 or 288 days after Olmedillo allegedly had sexual intercourse with her (Exh. C).

A special counsel of the city fiscal's office investigated the case. He took the affidavits of Elsie and her mother. Elsie filed a complaint for rape dated April 18, 1973 (Exh. E). The special counsel filed on December 4, 1973 an information for rape dated October 30, 1973.

While the case was still pending in the fiscal's office, Olmedillo and the barrio captain of the Calawag district wrote a letter dated April 30, 1973, inviting Caridad Corre for a conference in the barrio captain's house regarding the rape case (Exh. D).

The barrio captain, a friend of Olmedillo, testified that Olmedillo informed him that Olmedillo wanted an amicable settlement of the rape case, that he was willing to live with Elsie because he had carnal intercourse with her and that he was ready to assume responsibility for what he had done (8-9, tsn May 13, 1974). Mrs. Corre appeared at the house of the barrio captain but was not able to talk with Olmedillo. She told the barrio captain that she was not amenable to the amicable settlement of the case.

The barrio captain repeatedly testified that it was well-known in Barrio Calawag that Olmedillo raped Elsie while she was going home from school (9-16 tsn, May 13, 1974).

Mrs. Corre testified on rebuttal that Olmedillo came to see her in her house. Her son called Sergeant Soriano who arrested Olmedillo and brought him to the Constabulary headquarters where he admitted to the investigator that he had raped Elsie (41 tsn, July 30, 1974).

After trial the lower court convicted Olmedillo of simple rape, sentenced him to reclusion perpetua and ordered him to pay an indemnity of six thousand pesos to Elsie Corre and to support the child in the amount of fifty pesos a month until she reaches the age of majority or "is otherwise emancipated" (Criminal Case No. 160).

Olmedillo appealed. He contends that the rape was not proven, that Olmedillo was not identified by Elsie as the rapist and that credence should have been given to his alibi that he was in his house finishing a rubber stamp when the rape was committed. The issue is whether Olmedillo was sufficiently identified as the rapist.

Olmedillo denied the rape. He declared that he was in his house when Elsie was raped. His neighbor corroborated his testimony.

He said that he had no more sexual urge at his age, that he could not have an erection (impotentia erigendi) and that he could not do the sexual act (impotentia coeundi). Doctor Raul M. Templonuevo, a surgeon who had practised medicine for six years, examined Olmedillo to find out whether he was sexually potent. He stimulated Olmedillo's organ with a wisp of cotton for three minutes. Olmedillo did not have any erection.

But Doctor Templonuevo did not conclude that Olmedillo was sexually impotent. He advised Olmedillo's counsel to consult a more competent physician who could evaluate the sexual potency of Olmedillo. He found that Olmedillo was suffering from pulmonary tuberculosis. The doctor conceded that tuberculous persons tend to have increased sexual desire.

Olmedillo denied that he wanted an amicable settlement of the rape case. He declared that he was accused of rape because Mrs. Corre assumed that he could support Elsie's child.

We hold that his guilt was proven beyond reasonable doubt. His alibi cannot be given any credence. His house was in close proximity to the place where the rape was perpetrated. It would be preposterous to assume that a guileless teenager like Elsie, whose intelligence quotient is admittedly low, could have fabricated the grave charge of rape, or that she and her mother would go into the trouble of having her medically examined, going to court

and advertising to the whole world that she had been raped if the charge was merely invented.

Any scintilla of doubt as to Olmedillo's guilt was dissolved by his overtures for an amicable settlement which were made through the barrio captain whose testimony confirmed the version of Elsie and her mother that she was raped by Olmedillo. His identity as the rapist was thus conclusively established by his own conduct evincing admission of guilt.

His defense of impotency was not proven. The presumption is in favor of potency (*Menciano vs. Neri San Jose*, 89 Phil. 63, 70). The trial court noted that Olmedillo did not have the appearance of a sick man. It ratiocinated that because Elsie has a weak mind "she could not have been taught by anybody to tell lies" and that "her identification of the accused as well as the simple description of how the rape was perpetrated constituted the truth".

The ocular inspection of the scene of the crime revealed that the vacant lot has an area of 2,844 square yards. It was full of cogon and talahib grass. The trial court concluded that rape could have been committed in that lot without causing any commotion.

WHEREFORE, the trial court's judgment is affirmed. Costs against the accused-appellant.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Barredo, (Chairman), J., on leave.

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