

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL TAROCAN, ACCUSED-APPELLANT.

Ponente: REYES, JR., J., J.

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REYES, JR., J., J.:

Before Us is an appeal from the Judgment of the Regional Trial Court of Makati City, Branch 140, dated August 12, 2004, in Criminal Cases Nos. 01-1461 and 01-2050 (Rollo, pp. 18-22; 48-52; Records, pp. 224-228), entitled “People of the Philippines vs. Michael Tarocan, Accused,” the dispositive portion of which reads as follows:

“WHEREFORE, premises considered, judgment is hereby rendered in Criminal Case Nos. 01-1461 and 01-2050 finding accused MICHAEL TAROCAN GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE. He is hereby sentenced to suffer the penalty of reclusion perpetua for each count of rape, and to pay ERLINDA AGUINALDO y JALWAGUE the amount of ONE HUNDRED FIFTY THOUSAND PESOS (PHP150,000.00) for moral damages and FIFTY THOUSAND PESOS (PHP50,000.00) for exemplary damages for each count of rape.

SO ORDERED.”

The facts are as follows:

Accused-appellant stands charged in two (2) separate Informations for the alleged rape of a minor named Erlinda Aguinaldo. The accusatory portions of the said Informations state:

Criminal Case No. 01-1461

That on or about the 16th day of June, 2001, in the City of Makati, Metro Manila, Philippines, a place 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 of the complainant ERLINDA AGUINALDO y JALWAGUE, 13 years old, against her will and consent.

CONTRARY TO LAW.

Makati City, June 27, 2001.” (Records, p. 1)

Criminal Case No. 01-2050

That on or and sometime during the month of May, 2001, in the City of Makati, Metro Manila, Philippines, a place 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 of the complainant ERLINDA AGUINALDO y JALWAGUE, 13 years old, against her will and consent.

CONTRARY TO LAW.

Makati City, August 31, 2001.” (Records, p. 31)

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged. Thereafter, trial ensued.

As culled from the findings of facts by the trial court, the following transpired during the trial:

“Erlinda Aguinaldo, minor complainant, testified she is 14 years old (Exhibit 'A', Birth Certificate; Birth date, Exhibit 'A-1'). Her mother, Evelyn works in General Pio del Pilar Elementary School at Facundo St., Brgy. Pio del Pilar, Makati City. Accused, whom she identified in open court as having repeatedly raped her, also worked as painter in the said school.

Sometime in May, 2001, she was with her mother in school. While her mother was cleaning the comfort rooms and she (her mother) asked her to water the plants in room 206. Around 9:00 in the morning, she went to room 206 and while she was watering the plants Michael Tarocan, herein accused, asked her name but she did not reply. After two days, her mother again brought her to the school and she asked her to sweep the floor and water the plants. While she was working, Michael Tarocan covered her mouth and pulled her towards a vacant room. She was so afraid she could not resist. Michael removed her maong pants and panty and forced his penis into her vagina. She could not shout because she was afraid that her mother would know this incident and she might drive her out of their home. Michael threatened her that if she tells her mother about the incident she will kill her. She was only 13 years old then. Michael raped her about 7 times at the average of 2 times a week. She could not resist because her left leg is weaker than the right leg for she had polio when she was 3 months old, and her left hand is also weak. He raped her on the floor. The last time he raped her was on June 16, 2001. On June 16, 2001, her mother was working with the other workers scrapping bamboo ('nagkakayas ng kawayan'). She told her mother she was going to urinate and then went to see a small fish pond near the Science room. Michael approached her and pulled her into a vacant room. He undressed her and inserted his penis into her vagina. She was crying all the time. After the sexual intercourse, Michael slept and she left the room and went downstairs. She met the lady guard who told her that her mother was looking for her. She replied she came from the comfort room. She told the principal that Michael raped her. The principal informed her mother of the rape.

Evelyn Aguinaldo, mother of complainant, testified she is the mother of minor complainant Erlinda and she works as janitress in Makati Elementary School. On several occasions, she would take her daughter Erlinda to school in the summer of 2001. Sometimes Erlinda would beg off but she would force her to come with her to school to assist her in her work. Her hips were painful and she would force Erlinda to go with her even if she (Erlinda) dared her to kill her just so she would not go to the school with her. She noticed she would wipe alcohol on her body. When the principal told her Erlinda was raped, she cried in anger.

On July 2, 2003, parties stipulated on the existence of the Medico Legal Report conducted by Dr. Voltaire Nulod and the Investigation Report conducted by P01 Celia S. Domingo. In view of the stipulation, the testimonies of these witnesses were dispensed with.

The defense presented a lone witness, Michael Tarocan, herein accused. His testimony is summarized as follows:

He worked as painter in Pio del Pilar Elementary School where he stayed for a month starting the 2nd week of May before the election. He met Erlinda Aguinaldo in the 2nd floor of the school building where he was painting the ceiling and she was loitering there. Three (3) of the workers were painting the ceiling. He saw her again the following week when he was watching TV with the other workers, including Erlinda's father. While he was lying down, Erlinda came to him and caressed his head. He elbowed her because her father was inside the room, drunk and he might have some thoughts on him and Erlinda, so she left him. He saw her again while he was bathing in the bathroom together with one of the guards and Erlinda suddenly entered the bathroom, so they told her to leave. Erlinda left but he told the guard to tell Erlinda's mother about the peeping incident. It was not the first time Erlinda came to see him while he was bathing. There was also a time when he was sleeping at around 12:00 noon in one of the rooms in the 2nd floor along the hallway when he was awakened by a noise. He saw Erlinda going through the teacher's cabinet. He told her to stop what she was doing because he might be blamed if anything from the teacher's cabinet would be missing.

On June 16, 200(1), he was outside the school waiting for a buyer of the left over paints, cement, bamboos and sand. He was selling these items because he had not been receiving his salary for 2 weeks. When he sold the sand and cement, Evelyn, Erlinda's mother, was angered and they had a quarrel over the sale he made on said properties which she said do not belong to him. He just ignored her.

On June 18, 200(1) at around 10:00 in the morning, he was arrested by the police on account of the complaint for rape filed by Erlinda against him." (Rollo, pp. 19-20)

After trial, the court a quo rendered the assailed Judgment on August 12, 2004 (Rollo, pp. 18-22; 48-52; Records, pp. 224-228) finding herein accused-appellant guilty beyond reasonable doubt, and sentencing him to suffer the penalty of reclusion perpetua for each count of rape.

Hence, the instant appeal raising herein the lone assigned error, to wit: "whether or not the trial court erred in convicting the accused-appellant when the latter's guilt was not proven beyond reasonable doubt" (Rollo, p. 5).

The instant appeal is devoid of merit.

The issue raised herein primarily deals with the credibility of the prosecution witnesses and the appreciation of facts by the trial court.

Settled is the rule that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal (People v. Abella, 339 SCRA 129 [2000]). This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood (People v. Bulan, 459 SCRA 550 [2005]), such as the angry flush of an insistent assertion, the sudden pallor of a discovered lie, the tremulous matter of a reluctant answer, or the forthright tone of a ready reply; of the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien (People v. Bertulfo, 381 SCRA 762 [2002]).

This opportunity however is not equally available to appellate courts (People v. Caraang, 418 SCRA 321 [2003]). Thus, the findings of the trial court on credibility of witnesses and their testimonies must stand unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered will alter the results of the case (People v. Suarez, 456 SCRA 333 [2005]).

By the very nature of the crime of rape, conviction or acquittal depends entirely on the credibility of the complainant's testimony (People v. Andales, 422 SCRA 253 [2004]). In the instant case, the victim, Erlinda Aguinaldo described how, with force and intimidation, accused-appellant succeeded in having carnal knowledge of her. She testified in a spontaneous and straightforward manner, and there was nothing in her testimony that detracts from her claim that she was indeed raped by accused-appellant.

Accused-appellant contends that the trial court erred in convicting him of the crimes charged because it is highly incredible that he raped Erlinda in a public place, i.e, within the school premises, especially since there were several persons present at that place when the alleged incidents took place. We cannot sustain such contention.

Jurisprudence has it that lust is no respecter of time or place (People v. Sambrano, 398 SCRA 106 [2003]; People v. Estomaca, 373 SCRA 197 [2002]). The Supreme Court has already taken judicial notice, and it can be considered of public knowledge, that the scene of the crime of rape is not always or necessarily isolated or secluded (People v. Daganio, 374 SCRA 365 [2002]; People v. Nicolas, 387 SCRA 638 [2002]). In fact, the presence of people nearby does not always deter rapists from committing their odious act (People v. Almanzor, 384 SCRA 311 [2002]).

In a long line of cases, the Supreme Court has convicted the accused even if rape was committed in the most unlikely places. Thus, in *People v. Besmonte* [397 SCRA 513 (2003)], where the crime was committed against the victim who allegedly sleeps side by side with twelve (12) other persons in the same house, the Supreme Court said:

The presence of people nearby is no guarantee that rape will not be committed, for lust is no respecter of time and place. Rape has been committed in places where people congregate, like parks or school premises and even in a house where there are other occupants. There is no rule that a woman can only be raped in seclusion. It has been committed in a room adjacent to where other members of the family stay or in a room, which the victim shared with others. We have more than once observed that rape could take place in the same room where other members of the family were sleeping. In the instant cases, other members of the family were sleeping in the middle of the night. It is of judicial notice that it is at this time when children are in deep slumber and could not be easily awakened. The fact that Melanie's siblings were not awakened at the times she was ravished is not improbable. Hence, appellant's thesis that it was impossible for them to have committed the rape in the presence of private complainant's siblings who were sleeping next to her deserves scant consideration." (397 SCRA 513;522-523 [2003])(Underscoring ours)

Following the above-quoted case, the Supreme Court has ruled in a series of other cases that rape can be committed and consummated in parks or school premises (*People v. Sanchez*, 375 SCRA 355 [2002]), in the same room where other members of the family are sleeping with the victim (*People v. Cristobal*, 379 SCRA 221 [2002]), inside cramped quarters (*People v. Bertulfo*, 381 SCRA 762 [2002]), or in places which to many would appear unlikely or high risk venues for its commission (*People v. Yonto*, 392 SCRA 468 [2002]). In committing rape, it is not necessary for the place to be ideal or the weather fine for rapists bear no respect for locale and time when they carry out their evil deed (*People v. Rodriguez*, 376 SCRA 408 [2002]).

Here, the rape incidents took place within the premises of General Pio Del Pilar Elementary School I during the summer break of 2001. It is undeniable that a school's population during summer break is comparably less than its population on a normal on-going semester. In fact, even during a regular semester, it is not expected that every nook and cranny of the school premises will be occupied. While there may be persons in the school grounds, none may be inside the comfort rooms; while there may be janitors sweeping the floors of the gymnasium, but none may be cleaning the classrooms. In other words, while it may be difficult for a perpetrator to commit the crime of rape in a public place such as a school, it nevertheless is not impossible.

In the instant case, the presence of other persons inside the school did not deter accused-appellant from ravishing Erlinda's innocence and virginity. We believe that accused-appellant took advantage of the fact that there were only a few persons within the school premises, and this is evident from the locations of the rooms where he raped Erlinda. Erlinda was first raped in an inconspicuous room located immediately beneath the stairs (TSN, January 8, 2002, pp. 8-9). And on the second incident, she was pulled by accused-appellant inside a vacant room at the end of the hallway of the second floor (TSN, January 8, 2002, pp. 17-18).

The above circumstances convince Us that it was not impossible for accused-appellant to have committed rape against herein offended party, and We are compelled to apply the above-cited jurisprudence that lust is indeed no respecter of time and place, and rape can be committed even in public places such as a school (*People v. Besmonte*, 397 SCRA 513 [2003]).

Accused-appellant also argues that the failure of Erlinda to exert any effort to evade nor avoid him despite her accusations of rape puts her credibility to serious doubt and thus, the findings of the trial court erroneous. We are not persuaded.

Time and again, the Supreme Court has ruled that resistance is not an element of rape and the absence thereof is

not tantamount to consent (*People v. Capareda*, 429 SCRA 301 [2004]). The failure of the victim to offer tenacious resistance does not make her submission to the criminal acts of the accused voluntary (*People v. Bautista*, 430 SCRA 469 [2004]; *People v. Alberio*, 433 SCRA 469 [2004]).

Moreover, physical resistance need not be proved in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety (*People v. Llanto*, 395 SCRA 473 [2003]). And the presence of fear, in lieu of force or violence, addressed to the mind of the victim of rape cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime (*People v. Bascugin*, 429 SCRA 140 [2004]). All that is necessary is that the force, intimidation, threat or fear overpowers the mind of the victim and it prevents her from offering resistance (*People v. Oga*, 431 SCRA 354 [2004]).

In the case before Us, Erlinda testified that she was not able to shout for help because she was afraid of accused-appellant (TSN, January 8, 2002, p. 11). She also said that while being raped, accused-appellant covered her mouth (TSN, January 8, 2002, p. 27). Erlinda further stated that accused-appellant threatened to kill her if she tells her mother about the incident (TSN, January 8, 2002, p. 17). Although she actually bit accused-appellant's hand (TSN, March 12, 2002, p. 12), she was however not able to strongly resist the latter's sexual advances because her left thigh and hand were weak considering that she acquired polio when she was about three (3) months old (TSN, January, 30, 2002, p. 3).

Thus, contrary to accused-appellant's contention, We are convinced that Erlinda exerted tenacious resistance against the criminal acts of the former. It cannot be said therefore that the sexual intercourse that transpired between Erlinda and accused-appellant was voluntary and through the former's insinuations. Furthermore, the threats given by accused-appellant on Erlinda's safety were sufficient to overpower her mind such that she submitted to the former's sexual advances although they were against her will and consent.

We do note that despite the fact that she was already raped in May 2001, Erlinda still went to the same school in June of the same year. This however does not put the credibility of her accusations of rape in question. Erlinda explained that after the rape incident, she did not anymore like to go with her mother to school but she was forced to accompany her because her mother's companion at work was not on duty (TSN, April 18, 2002, p. 6).

While it is true that the normal reaction of a rape victim is to take flight at the first opportunity so as to avoid her tormentor, and thus avoid risking a second rape, it is also true that nobody can tell how a victim of sexual aggression is supposed to act or behave after her ordeal (*People v. Buada*, 391 SCRA 251 [2002]). It is an accepted doctrine that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience (*People v. Gonzales*, 433 SCRA 102 [2004]).

To further bolster his arguments, accused-appellant capitalizes on the medico-legal findings that there were no external signs of trauma found on Erlinda's body. He likewise contends that it was possible that the healed lacerations in Erlinda's hymen were not caused by him but by the latter's sexual relations with other men since her morality was already questionable for having been rumored to be pregnant at such a tender age of 13.

The medico-legal report issued by the PNP Crime Laboratory stated that no external signs of trauma were found upon examination of Erlinda (Records, pp. 7, 39, 131). However, We are not convinced that this report or the tenor thereof belies the rape charges against accused-appellant.

It has been held that the absence of any external sign of physical injury does not necessarily negate the occurrence of rape, proof of injury not being an essential element of the crime (*People v. Limos*, 420 SCRA 182 [2004];

People v. Estado, Jr., 422 SCRA 198 [2004]). The absence of any hematoma or marks on the victim's body does not mean that she consented to the sexual act (People v. Ylanan, 387 SCRA 590 [2002]).

In this case, while no external signs of trauma were found on Erlinda's body, the medico-legal findings however show that her hymen had shallow healed lacerations. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration (People v. Aquino, 381 SCRA 273 [2002]). These circumstances indeed corroborate the credible testimonies of prosecution witnesses.

We also find it appropriate to stress that a medical certificate is not even indispensable to prove the commission of rape (People v. Quezada, 375 SCRA 248 [2002]) as it is merely corroborative in character (People v. Velasquez, 377 SCRA 214 [2002]). Erlinda's account of the rape incidents was straightforward and unshaken during cross-examination and must therefore be given full faith and credit. As a rule, even in the absence of a medical examination report, the detailed, categorical and positive declarations of the victim alone may be sufficient to convict an accused who presented nothing but bare denials (People v. Aquinde, 410 SCRA 162 [2003]). Thus, the presence of the medico-legal report did not favor accused-appellant's position but it rather strengthens the instant case against him.

Finally, We are not swayed by accused-appellant's last-ditch effort to reverse the trial court's findings by attacking on Erlinda's character. A victim's moral character is immaterial in rape prosecutions, there being absolutely no nexus between it and the odious deed committed (People v. Agsaoay, Jr., 430 SCRA 450 [2004]). For it has also been said that even if the victim is a woman of loose morals, she could still be the victim of rape (People v. Baluya, 380 SCRA 532 [2002]).

In view of all the foregoing discussion, We find no cogent reason to disturb the findings of the trial court. We believe that the trial court committed no error in finding that the guilt of accused-appellant in the two (2) counts of rape charged against him has been proved beyond reasonable doubt.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED, and the Judgment of the Regional Trial Court of Makati City, Branch 140, dated August 12, 2004 in Criminal Cases Nos. 01-1461 and 01-2050 is hereby AFFIRMED.

SO ORDERED.

Reyes, (Chairman) and Lanzanas, JJ., concur.

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