

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PON-AN, DEFENDANT-APPELLANT.

G.R. No. L-45436. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Jose Pon-an appeals from the decision of the Court of First Instance of Antique finding him guilty of the crime of rape, defined and penalized in paragraph 3, Article 335 of the Revised Penal Code, and sentencing him to suffer RECLUSION PERPETUA, to indemnify the minor Josie Tayam and her family in the sum of Eight Thousand Pesos (P8 ,000.00), as actual and moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Prosecution evidence may be quoted from the People's brief, as follows:

"On April 6, 1975 at about 2 o'clock in the afternoon while the offended party Josie Tayam who was then only seven years of age was playing on the ground near her grandmother Julia Tatoy's house located in Guija, Bugasong, Antique, accused Jose Pon-an (hereinafter referred to as appellant) approached and requested her to buy Old Gold Cigarettes from the store of her aunt Letty. Appellant handed her 50 centavos with which to buy 25 centavos worth of cigarettes. Thereafter, offended party proceeded to her aunt Letty's store but instead bought therefrom Champion cigarettes and gave them to appellant (pp. 4-7, 25-26, t.s.n., June 9, 1976).

"Immediately after offended party had handed the cigarettes to appellant, the latter held the former by the hand and brought her to the nipa swamps which was about 100 meters from Letty's store. Upon reaching the nipa swamps, appellant kissed the offended party, took off her panty and also took off his pants. Thereafter, while both were in a squatting position appellant inserted his penis unto the vagina of the offended party who cried in pain. While offended party was crying, a white substance (most likely semen) dropped on her thigh and legs (pp. 7-11, t.s.n., June 9, 1976). Then she asked the appellant who permitted her to go to the river where she washed the white substance which dropped on her thigh and legs, and thereafter she went home upon instructions of appellant who also went home (pp. 11-13, t.s.n., June 9, 1976).

"At a lower level just before reaching their house, the offended party removed her panty, folded the same and went up their house (pp. 13-14, t.s.n., June 9, 1976). Her mother, Angelina Tayam and grandmother, Julia Tatoy were in their house at the time of her arrival thereat. She immediately informed her grandmother that appellant sexually abused her at the nipa swamps which was located near their house (pp. 14-16, t.s.n., June 9, 1976).

"Her grandmother examined her and found her panty with bloodstains and her vagina swollen. Upon the suggestion of her grandmother that same day she (offended party) was taken by her mother to town where she was subjected to an internal and external examination by a lady physician (pp. 7-18, t.s.n., June 9, 1976)

"Dr. Evelyn C. Rivero, municipal health officer of Bugasong, Antique testified that on April 6, 1975 at about 7:00 o'clock in the evening at her residence located in the town proper of Bugasong, she examined the private part of offended party in the presence of the latter's mother, Angelina Tayam. The results of said examination

are reflected in the medical certificate which reads:

'Physical findings, breast, no signs of finger marks, vulva, slight swelling, tenderness on touch, hymen, ruptured, vaginal opening is quite big for a seven year old child, no laceration, blood nor semen or any foreign body' (pp. 7-8, 11, t.s.n., Feb. 27, 1976; Exhibit A)

Dr. Rivero further testified that the slight swelling in the vulva 'could have been caused by a slight penetration of the sex organ of a male' (p. 8, t.s.n., Feb. 27, 1976), while the rupture of the offended party's hymen by a contact with a hard instrument or rough object or it could also be caused by sexual intercourse with a man (p. 9, t.s.n., Id.). She also declared that there was no bleeding whether inside or outside offended party's vagina (p. 9, t.s.n., Id.) Neither did she find any semen in offended party's vagina (pp. 8-9, 11, t.s.n., February 27, 1976).

"Dr. Rivero categorically stated that her medical findings indicate that it was possible for the offended party to have had sexual conversation with a man (pp. 11-13, t.s.n., March 25, 1977)."

On the other hand, defense evidence shows that appellant Jose Pon-an, then 46 years old, is a married man with several children including a daughter who is about the age of the victim, six-years old. He denied having sexually abused Josie Tayam and even presented his brother-in-law, Loreto Gerona, who testified that he was with the accused in the latter's house that afternoon when the alleged crime took place. Appellant admitted having asked the child to buy cigarettes for him and, for the errand, gave her P0.25. Further, he admitted having embraced and kissed the victim because he was lonely and was reminded of his daughter who is living with his sister in Guimaras.

Appellant claims that the trial court's findings is contrary to law and evidence; that it relied heavily on the testimony of the physician who examined the victim and found that there was no bleeding of her vagina; that Dr. Rivero did not positively affirm the commission of the crime of rape because while there was a rupture of the hymen the same could have been caused by a fall, bumping against a hard object or rough instrument, by a bicycle ride, horse riding or sexual contact.

Further, the defense contends that the physician did not find any semen on the child when she examined her; that the panty was not presented in court.

On the basis of the above, Judge Noli Ma. Cortes found the accused, now the appellant, guilty beyond reasonable doubt of the crime charged and sentenced him according to law. In arriving at this conclusion, Judge Cortes observed:

"The prosecution's evidence bears all the earmarks of truth that it is extremely difficult for a rational mind not to give credence to it. All the four prosecution witnesses, including the tender-aged and hapless victim of the sexual assault, testified in a clear, positive and straight-forward manner, and even the rigid cross-examination by an experienced defense counsel did not disturb the essence of their testimonies.

"Regarding the 7-year old Josie Tayam, in spite of her tender age and peasant background, she managed to tell her story with substantial clarity, and she also weathered the cross-examination by a competent counsel to her own credit.

It is difficult to believe that the harrowing experience that Josie Tayam had, and which she related with all its lurid details to her mother and grandmother shortly after it occurred, was the sole product of her own imagination. She related the same story to the lady physician who examined her barely five hours after it happened, and the examining physician, Dr. Evelyn Rivero, attested to its spontaneity when it was related to her in the nature of a case history investigation, and which she recorded with fidelity.

"Neither could it be said, without doing violence to reason, that the mother, Angelina Tayam or the

grandmother, Julia Tatoy, conjured the story of the criminal assault to serve their ulterior purposes. In the first place, there is nothing in the records and none was attempted to be shown, that the offended party's family had a score to settle with the accused, Jose Pon-an, a score of such nature as would reasonably lead them to foist upon him the devilish scheme of imputing the serious charge of rape, in order to get even with him.

"Angelina Tayam and her mother, Julia Tatoy, are but passing acquaintances of the accused in their neighboring barrios. There is not such social contact between them, nor a measure of familiarity that may possibly end in a rift or a feud, as the Tayams, having been virtually abandoned by their family provider, are persistently saddled with the problem of eking out a bare existence, and had little time and talent to embark on a false prosecution.

"In the second place, even if it were true that the Tayams had an axe to grind against the herein accused, it is equally difficult to believe that they would utilize the innocence and honor of a child -their very own - as a vehicle for the accomplishment of an act of vengeance. The crying need for revenge is a great catalyzer of the human imagination, and a thousand schemes may be contrived to satisfy it. In the case at bar, however, to believe that the mother and grandmother of the offended party conspire and chose to sacrifice the innocence and honor of their child to attain their ends is, in effect, a demolition of all our sense of rationality.

"It is also suggested by the defense that the motive in the institution of this charge for rape is extortion. Thus, the accused testified that the mother and grandmother of the offended child accused him because they want him to pay them P3 ,000.00. This was also argued in the memorandum for the defense.

"The irrationality of this contention is dramatized not by the testimony of prosecution witnesses, but by the testimony of the accused himself. It may be recalled that the accused testified that the mother and grandmother of Josie Tayam knew that he has no money nor land of his own. If this is so, it is illogical for Angelina Tayam and Julia Tatoy to have launched on an extortionary expedition, with the accused as their intended victim, knowing before hand as they did that the accused, a fish-vendor, is as destitute as themselves."

A careful scrutiny of the records confirms the correctness of the decision reached. Besides, as has been consistently ruled by this Court, the lower court is entitled to considerable discretion in determining which of the conflicting versions is to be lent credence. As stated in *People vs. Gumahin*, 21 SCRA 729, "the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal."

Further, the non-presentation of the panty worn by the offended party at the time she was sexually assaulted does not render inadequate the People's evidence. At most, the evidence is merely corroborative.

Moreover, particular attention is invited to the testimony of the minor, Josie Tayam, as follows:

"Q So, when you reached home what did you do?

A Upon reaching home, I took off my panty.

Q And after taking off that panty what did you do?

A Before reaching my house, just at the place at a lower level from my house, I took off my panty.

Q And what did you do with that panty after taking it off?

A I folded it and went up the house."

(TSN, June 9, 1976, p. 13)

and to the reaction of her grandmother, Julia Tatoy. Her testimony reads:

"Q When your granddaughter related to you the incident, what did you do?

A I examined her body because she was crying.

Q And what was the result of your examination?

A Her panty had blood stains and her sexual organ was swollen."

(TSN, March 25, 1976, p. 13)

Finally, there need not be much fuss on how the rupture of the hymen occurred. Whether the cause was due to a fall, contact with a hard object, by a bicycle, horse-riding or sexual contact, the liability of appellant for the crime of rape, in the light of other evidence, is unavoidable.

WHEREFORE, the appealed decision is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.

Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ. , concur.
Teehankee, J., (Chairman), no part.

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