

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO BALAHO, ACCUSED-APPELLANT.

Ponente: COSICO, J.

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COSICO, J.:

Pedro Balaho was indicted before the Regional Trial Court, Branch 38, of Cabarroguis, Quirino for the crime of rape as defined and penalized under paragraph 3, Article 335 of the Revised Penal Code, as amended by Section 11 of RA No. 7659 as alleged in the following information which states:

“That at midnight of July 27, 1997 in Barangay Balligue, Municipality of Maddela, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with prurient desire, did then and there willfully, unlawfully, and feloniously have carnal knowledge with SHIRLEY A. ALINDAYU, a 10-year old minor, against the will and consent of the latter.

CONTRARY TO LAW.”[1]

Balaho pleaded not guilty to the said charge. During trial, accused-appellant Balaho denied the said charge and put into question the credibility of the alleged child-victim. Nonetheless, in discrediting accused-appellant’s defense of denial, the trial court found Shirley Alindayu (“Shirley”) a credible witness and adjudged accused-appellant guilty of the crime charged. The pertinent portion of the said Decision[2] reads as follows:

“WHEREFORE, premises considered, the Court finds accused Pedro Balaho guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335, No. 3, of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 and hereby sentences him to suffer the penalty of reclusion perpetua and to pay complainant Shirley Alindayu the amount of Fifty Thousand Pesos (P50,000.00) as and by way of moral indemnification.

IT IS SO ORDERED.” [Decision dated April 10, 2001, p.7]

This case before the Court is Balaho’s appeal from the judgment of conviction.

The Facts

As synthesized by the trial court, the prosecution and defense presented two different versions of the events that transpired on the night of July 27, 1997 in the house of Mateo Dulnuan at Maddela, Quirino, to wit:[3]

“The evidence of the prosecution, in part, consisting of the testimonies of complainant Shirley Alindayu, Theresa B. Alindayu, Dr. Emerson Dumlao and SPO4 Andres Cardenas, shows private complainant, who was born on May 29, 1987 x x x was one of the six boarders of Mateo Dulnuan in the latter’s two-storey house in Nagtim-og, Balligui, Maddela, Quirino. On the evening of July 27, 1997, Shirley was sleeping on the second floor at the above-mentioned address with her younger brother and two cousins whose ages ranged from seven (7) to eight (8) years old and accused Pedro Balaho. All of them slept in one common area, so that, in relation to each other, the three (3) boys, Freddie, Samuel and Lando were near each other while accused was on the rear foot of said boys and Shirley about three (3) to four (4) meters away from his brother. At around midnight of said date, July 27, [1997] Shirley was jolted from slumber when she felt pain in her vagina. She turned to

discover that Pedro Balaho inserted his sex organ into her private part. Thereafter, accused made the usual pelvic thrusts (pumping motion). The victim did not notice when accused removed the blanket she was then using nor the garterized knee-length shorts and panty she was wearing. During the time that victim was being violated, she could only cry silently as she did not want accused to notice her being awake. She likewise did not attempt to rouse her brother and cousins from their sleep as she was cowed by the fear of being boxed by her attacker.

After spewing his wild oats into his minor victim, accused put on his pants, went downstairs and after a while went up again and slept. The complainant put on her shorts which she wore when she slept the night before and went to the ground floor where her [cousin] Jenny Bulan was sleeping. Shirley did not reveal her harrowing ordeal to Mateo Dulnuan nor to her [cousin] Jenny because she was afraid that accused might kill all of them.

The next day, the victim went to school and even played with her classmates. She did not report her horrifying experience to anyone. Afraid that she will again be molested by the accused, instead of returning back to Mateo's house after school, she proceeded to her other boarding house.

Complainant's mother, Theresa B. Alindayu, testified that she did not notice anything unusual from her daughter whenever the latter went home to their house but observed that the child appeared frightened.

The sexual abuse complainant underwent could not be contained in secrecy forever. On August 10, 1997, Shirley divulged to her mother the fate that befallen her. The mother then brought Shirley to the Maddela Police Station and both of them lodged their complaint against the accused. On August 11, 1997, Shirley was examined by Dr. Emerson Dumlao who reduced his findings into a medico-legal report x x x

x x x

During his testimony in Court, Dr. Dumlao explained that the laceration found on Shirley's hymen may have been possibly caused by riding on a bicycle, jumping too high, blood clotting during menstruation or the forceful entry of the penis to the genitals. The said expert witness was not sure whether the laceration in Shirley's hymen was caused by penile penetration but clarifies that it is highly possible that sexual intercourse could result to physiological changes in the hymen.

After said examination, Shirley with her mother executed their respective sworn statement x x x before the Maddela Police Station. During her direct examination, the victim denied the signature x x x appearing in the sworn statement x x x Consequently, the prosecution presented SPO4 Andres C. Cardenas who testified that using the vernacular, he investigated the victim and took her statement which he typed in English. He declared that in his presence, Shirley affixed her signature in the sworn statement x x x

x x x

The accused denied the commission of rape and argued that the same was impossible. According to him, Mateo Dulnuan is his uncle and that he has been staying in the latter's house since 1994. He knew Shirley who started to live with them in the same house on June 5, 1997. The house had eleven (11) occupants with the boys including the accused sleeping upstairs while the female boarders occupy the ground floor and Mateo's family in the kitchen downstairs. These occupants were all present on the night of the alleged incident. With their sleeping arrangement, accused contended that it would be impossible to have committed the rape as he slept on the second floor with the victim's relatives while Shirley was downstairs. Besides, since he was tired, having worked the whole day at his uncle's farm, he slept ahead of Shirley and that when he got up in the morning, all the female boarders downstairs were not yet awake.

Accused declared that he did not have any misunderstanding with Shirley nor with the latter's family.

Mateo Dulnuan, uncle of the accused testified that the victim who had been staying in his house for more or less six (6) months prior to July 27, 1997 is his niece while the accused is his nephew. He corroborated accused's testimony on the sleeping arrangement of all his boarders and his family. The room upstairs has an

area 5 x 4 meters while the ground floor is 10 x 12 feet in size. Working as a driver, he would go out at 6:00 a.m. and would return at 5:00 p.m. He claimed that he didn't know any untoward incident that happened in his house on July 27, 1997." [April 10, 2000 Decision pp. 1-3]

Subsequently, accused-appellant submitted his Memorandum[4] before the trial court attacking the credibility of Shirley. Thereafter, the trial court rendered its decision.

Ruling of the Regional Trial Court

As earlier adverted to, the trial court discredited the defense of denial of accused-appellant and held that the testimony of the victim is entitled to full faith and credit. In finding accused-appellant guilty of the criminal charge, the trial court made the following ratiocinations[5]:

"It is true that the sworn statement given by Shirley before the police investigator was made the basis for the execution by said offended party of a criminal complaint for rape against the accused, but it must be pointed out that it is the filing of the criminal complaint that signals the start of the prosecutory proceeding and not of the sworn statement. x x x

Further, SPO4 Cardenas who took down the separate sworn written statements in "question and answer form" of the offended party and her mother categorically declared the signing by Shirley of her sworn statement.

x x x

Accused next asserts in his memorandum that the gynelogic examination negates the liability of the accused that there was rape as Dr. Dumlao was not sure whether the hymenal laceration on Shirley was caused by forceful insertion of a penis.

In his testimony, Dr. Dumlao never ruled out the possibility that the broken hymen of Shirley was caused among others, by penile penetration. x x xThe absence of a categorical declaration that the laceration on victim's hymen was caused by penile invasion does not necessarily disprove sexual abuse. x x x

x x x

It is the Court's finding that the rape was consummated even before Shirley was awakened. According to her, she was awakened at the time when she felt pain in her vagina because accused's penis had penetrated her. x x x

x x x

Complainant may not have offered resistance nor shouted for help but it does not mean that Shirley voluntarily submitted to the lust of accused. Intimidation in rape cases is not calibrated nor governed by hard and fast rules. Since it is addressed to the mind of the victim and is therefore subjective, it must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is enough that the intimidation produced fear – fear that if the victim did not yield to the bestial demands of the accused, something far worse would happen to her at the moment. x x x

x x x

Moreover, the victim, being below 12 years of age, the consent, or lack of it, by the girl to have carnal embrace is irrelevant x x x

Lastly, it is accused's argument that he could not have raped Shirley on July 27, 1997 since all the 11 occupants were in the house sleeping in groups and the rooms were not so spacious but only 4x5 meters wide without anyone of them having known the incident.

The contention has no merit. There have been cases showing that fear of discovery or the possible appearance of other people does not necessarily deter the commission of rape. x x x

The very implausibility of the commission of the rape is itself a strong evidence of its truthfulness. Had the

charge been merely concocted, Shirley would have made it more acceptable by inventing a more believable circumstances not encumbered by the presence of all the occupants in the house when the rape was committed. The fact that she did not choose to do so suggests that she related the events as they really happened without omission or embellishment even if they might appear to be improbable.”[Decision, pp. 3-7]

Hence the instant appeal.

With the recent ruling of the Supreme Court in the case of *People vs. Mateo* promulgated on July 7, 2004 in G.R. Nos. 147678-87 which modified the pertinent provisions of law insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, the instant action was transferred to this Court via a Resolution[6] of the Supreme Court dated September 6, 2004.

The Present Appeal

Accused-appellant ascribes the following errors allegedly committed by the trial court, to wit:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED FOR THE CRIME OF RAPE DESPITE THE WEAK, IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

THE TRIAL COURT DID NOT GIVE DUE CREDENCE TO THE PHYSICAL IMPOSSIBILITY OF COMMITTING THE CRIME OF RAPE.

In his Brief[7], accused-appellant submits that from the evidence adduced by him, it is apparent that no rape happened on July 27, 1997 at the house of Mateo Dulnuan. Mateo Dulnuan testified that he had no knowledge of any untoward incident which happened on that very night. Dr. Emerson Dumlao, the doctor who medically examined the victim testified that the laceration in the latter’s vagina might have been caused by riding a bicycle, jumping too high and he was not sure whether it was caused by the forceful insertion of a penis.

Moreover, the testimony of the victim herself is too incredible to be believed. If Shirley Alindayu had in fact been raped, her cousins who were living at that very same house and sleeping with her in the same room should have known of the rape incident and should have testified as to the veracity of the incident but not one of them was presented. Likewise, her testimony as to the circumstances attending the rape is too unbelievable to be given credence. In this case, the victim testified that she had just felt pain when the penis of the accused was inserted without having noticed that her “pant”, panty and blanket were removed. Moreso, she did not let the accused notice that she was already awake. At best, her testimony is a concoction of falsity.

It is also very impossible for the accused to have raped the victim considering that there were eleven (11) persons in the house who were sleeping in groups and the room where the alleged rape was committed is not spacious but only 4x5 meters wide.

On the other hand, the Solicitor General posits[8] that accused-appellant’s arguments are bereft of merit. In the first place, the owner of the house, Mateo Dulnuan, did not categorically deny or discount the possibility that there was an untoward incident on July 27, 1997. He merely testified that he was not aware and that he was not sure if something unusual happened on that night. In addition, many cases attest to the unfortunate fact that rape can be committed even in places where people congregate: in parks, along the roadside, within school premises and even inside a house where there are occupants and even in the same room where there are other members of the family who are sleeping.

The fact that Shirley disclaimed her signature on her affidavit is of no moment. She testified and pointed to appellant as her rapist. The rule is that when a woman claims that she was raped, she says in effect all that is

necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused can be convicted on the basis thereof.

Admittedly, the medico-legal expert did not state that laceration of the victim's hymen was caused by a forceful insertion of a penis. However, he clarified that sexual intercourse was highly possible to have caused the physiological changes in her hymen.

This Court's Ruling

We affirm accused-appellant's conviction.

The rule is well settled that where the conviction of the accused hinges on the credibility of the witnesses, a litany of cases echoes the rule that great respect on the findings of the trial court on the credibility of the said witnesses and their testimonies is accorded.[9] For the trial judge has the opportunity to observe the behavior and demeanor of the witness in court.[10] Her evaluation or assessment of the credibility of a witness and of the testimony acquires greater significance in rape cases because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is the victim's testimony.[11] It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[12] Verily, after a careful scrutiny of the evidence on hand, we find no circumstance that would warrant a deviation from the general rule.

Accused-appellant's appeal is mainly anchored on the fact of the incredibility of the testimony of the victim, which according to him, is tainted not only with inconsistencies and improbabilities but also not in accord with the physical and testimonial evidence. Among other matters, the accused-appellant laid stress to the incident when the victim denounced her signature in her sworn statement[13] as proof that the imputation against him is false.

This position however is not well-taken.

The conviction of accused-appellant did not rest alone on the victim's sworn statement but on the testimony of the victim herself in court along with the other evidence presented by the prosecution. In any case, the prosecution presented SPO4 Andres Cardenas, Jr. who testified that he saw the victim affix her signature on the said sworn statement.[14] On the other hand, the alleged inconsistencies of the victim's testimony are more imagined than real. As the records show, the victim testified in a firm, positive and straightforward manner when she identified accused-appellant as the man who raped her on the night of July 27, 1997:

Q- At midnight of July 27, 1997 my child can you still recall where were you?

A- Yes, sir.

Q- Tell the court where were you that time?

A- I was at the house of Mateo Dunuan at Nagtim-ug, Balligi, Maddela, Quirino sir.

Q- Were you able to sleep that night?

A- Yes, sir.

Q- The whole night?

A- No, sir.

Q- Why? Tell it to the court why you were not able to sleep that night of July 27, 1997?

A- Because I felt that my vagina is painful and the penis of Pedro Balaho is inside my vagina, sir.

Q- When you felt Pedro Balaho who inserted his penis at your vagina and you felt pain, is this Pedro Balaho inside the court room?

A- He is inside sir.

Q- Please stand up and point at him?

A- The witness is pointing to a man seated (sic) at the back and when asked his name he answered Pedro Balaho.

Q- Right after Pedro Balaho inserted his penis to your vagina what did he do next?

A- He was pumping sir. xxx" [TSN, September 8, 1998, p. 5]

The victim was only 11 years old when she took the witness stand and it is worthy to note that at the time the said testimony was taken, the court not only excused the public from the courtroom but likewise excluded the other witnesses, including the victim's mother from hearing Shirley's testimony. Considering the victim's age, we therefore find it hard to believe that she could have spun such a tale unless she is telling the truth. Moreover, the fact that the victim took weeks before she ever divulged the rape incident to her mother and was seen going about her usual activities should not be taken against her. It must be stressed that the human mind works unpredictably, and no standard form of behavior can be expected of people under stressful situations.[15] And in our society, it is culturally instinctive for young and decent Filipinas to protect their honor and obtain justice for the wicked acts committed on them.[16] Thus, it is difficult to believe that rape victims would fabricate a tale of defloration, allow the embarrassing examination of their private parts, reveal the shame to the small rural town where they grew up and permit themselves to be subjected to a humiliating public trial if they had not in fact been really ravished.[17] When the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the public humiliation to which they would be exposed by court trial if their accusations were not true.[18]

Significantly, what makes the testimony of the victim more worthy of belief is the fact that there is absence of motive on Shirley's part or that of her family to impute such a serious charge against accused-appellant. This fact was even admitted by accused-appellant himself.[19] Hence, it has been ruled that a categorical and positive identification of an accused, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over the accused's defense of denial, which at best, is only a negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.[20] Indeed, without any showing that the prosecution witnesses have been impelled by any improper motive, their testimonies are entitled to full faith and credit.[21]

On another note, accused-appellant argues that the claim of the victim is contrary to the medical findings of Dr. Emerson Dumlao who testified that the laceration may have been caused by activities such as riding a bicycle, jumping too high and menstrual clotting. However, even if we take accused-appellant's contention that the medical findings are contrary to the victim's claim, it must be borne in mind that in rape cases, what is most important is the credible testimony of the victim.[22] A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape.[23] The court may convict the accused based solely on the victim's credible, natural, and convincing testimony.[24]

Nonetheless, it must be pointed out that the testimony of Dr. Emerson Dumlao did not altogether exclude the possibility that the laceration found on Shirley's genitalia might have been caused by penile penetration.[25] On the contrary, we find that the doctor's finding that the victim had a "healed hymenal laceration"[26] in her genitalia further corroborates Shirley's claim that she had in fact been raped and that she points to accused-appellant as her rapist.

Meanwhile, on the matter of accused-appellant's argument that the rape could not have been committed considering the cramped space and the fact that there were other people sleeping in the same room, in *People v.*

Agsaoay, Jr.[27] the Supreme Court had the occasion to observe thus:

“It is not strange for appellant to have committed rape in a small room. In the many rape cases that have reached this Court, we observed that rape is not always committed in seclusion. We never cease to be appalled at the extreme depravity of the rapists who are not deterred from committing their odious act even in unlikely places such as a cramped room where other family members also slept. Rape may take only a short time to consummate, given the anxiety and high risk of being caught, especially when committed near sleeping persons oblivious to the goings-on.”

Indeed, lust is no respecter of time and place.[28] In this regard, we must also emphasize that no inference could be made in the act of the prosecution in failing to present Shirley’s cousins and brother as its witnesses. Verily, we agree with the trial court that the discretion on the matter of whom to present as his witness lies solely on the part of the prosecutor who is handling the case. In fact, if accused-appellant is confident that Shirley’s cousins and brother would corroborate his defense, then he should have presented them himself as his very own witnesses. He should not rely on the prosecution to present witnesses to assist him in his defense.

That having been said, we again lay stress that as long as a witness’ testimony is straightforward, candid and unflawed by inconsistencies or contradictions in its material points, and her demeanor is consistent with one who has been victimized to thus bolster credibility with the verity born out of human nature and experience, credibility can be accorded to the rape victim.[29]

The Proper Penalty

Accused-appellant is charged with violation of paragraph 3 of Article 335, as amended[30], which provides:

“Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

x x x

3. When the woman is under twelve years of age or is demented.”

Where the victim raped is below 12 years of age, the only subject of inquiry is whether “carnal knowledge” took place.[31] Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape.[32] In this case, the fact of carnal knowledge is proven when the victim testifies that she felt pain during the commission of the rape.[33] In view of the foregoing, we entertain no doubt of accused-appellant’s culpability. We are sufficiently convinced that the prosecution has satisfactorily proven accused-appellant’s guilt beyond reasonable doubt of the crime charged. Such being the case, the court correctly imposed the penalty of reclusion perpetua for absent any circumstance that would qualify the rape under the instances enumerated under Sec. 11 of R.A. No. 7659, the proper imposable penalty is reclusion perpetua.

Accused-Appellant’s Civil Liability

Consistent with prevailing jurisprudence, the victim is entitled to the amount of P50,000.00 as civil indemnity and another P50,000.00 as moral damages.[34] The decision of the trial court shall thus be modified. Civil indemnity is in the nature of actual and compensatory damages, and is obligatory upon conviction for rape.[35] As to moral damages, it is automatically awarded to rape victims without the necessity of proof, for it is assumed that she suffered moral injuries entitling her to such award.[36] Such award is separate and distinct from civil indemnity.[37]

Moreover, during the trial the prosecution was able to establish the age of the victim via a Certification from the Office of the Civil Registrar of Madella, Quirino.[38] The document clearly states that Shirley was born on May 29, 1987; the victim was thus 10 years and 2 months old when accused-appellant raped her on July 27, 1997.

Minority being considered an aggravating circumstance, the victim is entitled to the award of exemplary damages in the amount of P25,000 in order to deter other individuals with aberrant sexual behavior.[39]

WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 38, of Maddela, Quirino in Criminal Case No. 38-010 finding accused-appellant Pedro Balaho GUILTY beyond reasonable doubt of the crime of rape under Article 335, paragraph 3 of the Revised Penal Code is AFFIRMED with MODIFICATION in that, accused-appellant is ordered to pay Shirley Alindayu P50,000 as civil indemnity; P50,000 as moral damages; and P25,000 as exemplary damages.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Records at 2.

[2] Id. at 206-212

[3] Id. at 206-208.

[4] Id. at 197-250.

[5] Id. at 209-212.

[6] Rollo at 116.

[7] Rollo at 61-69.

[8] Id. at 81-108.

[9] People v. Macapal, Jr., 463 SCRA 387, 400[2005]

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Records at 6-7.

[14] TSN, November 24, 1998 at 4.

[15] People v. Bautista, 430 SCRA 469, 486 [2004].

[16] People v. Antonio, 430 SCRA 619, 626 [2004].

[17] Id. at 626-627.

[18] Id. at 627.

[19] TSN, August 25, 1999 at 6.

[20] People v. Suarez, 456 SCRA 333, 349 [2005].

[21] Jose v. People, 436 SCRA 294, 306 [2004]

[22] People v. Boromeo, 430 SCRA 533, 541 [2004].

[23] Ibid.

[24] Ibid.

[25] TSN, August 6, 1998 at 5-6 and 9.

[26] Id. at 5.

[27] 430 SCRA 450,464[2004].

[28] Id. at 465.

[29] People v. Macapal, Jr., 463 SCRA 387, 397-398 [2005].

[30] As amended by Section 11 of Republic Act No.7659

[31] People v. Boromeo, supra. at 546

[32] Ibid.

[33] Id. at 542; TSN, September 8, 1998, p. 5

[34] People v. Suarez, supra at 352.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Records at 11.

[39] People v. Boromeo, supra. at 553.

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