

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO ISAAC Y BURSE, DEFENDANT-APPELLANT.

G.R. No. L-36136. March 16, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Appellant Avelino Isaac was charged with the crime of rape in a complaint filed by Zosima Antonio, 13 years old before the then Court of First Instance of Rizal, Seventh Judicial District, Caloocan City. The crime was allegedly committed as follows:

"That on or about the 15th day of July, 1970 in Caloocan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation and taking advantage of his superior strength, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with the undersigned complainant, without her consent and against her will." (Rollo, p. 3)

Upon arraignment, Isaac pleaded "NOT GUILTY".

The prosecution's evidence which, on the basis of the records, correctly states the facts of the case was summarized by the trial court as follows:

"The witnesses presented by the prosecution were: Dr. Bienvenido Muñoz of the Medico Legal Office of the NBI, Zosima Antonio, Det. Rogelio de Guia of the Caloocan City Police Department, and Tarcila dela Cruz.

"Dr. Bienvenido Muñoz after his competency and qualification were admitted by defense counsel, testified that while on duty as the medico legal officer of the NBI on July 16, 1970, he conducted a medico internal examination on the person of Zosima Antonio whom he identified in Court as the complainant in this case; that thereafter, he prepared Living Case Report No. MI-70-427 marked Exhibit A; that pursuant to his findings, the cause of the complete laceration of the hymen was due to forcible penetration thereof.

"On cross examination, defense counsel marked as Exhibit 1, Conclusion No. 1 of Exhibit A which reads as follows: 'No extra-genital physical injury noted on the subject,' and testified that he did not find any physical injury outside of the private organ of the subject; Conclusion No. 2, of Exhibit A reading 'Genital findings compatible with sexual intercourse on or about the alleged date of commission,' was marked Exhibit 2; that at the time of the examination, definitely, the offended party was no longer a virgin.

"Zosima Antonio testified that she is the same Zosima Antonio who filed the complaint (Exhibit B), and identified the signature therein as her signature. (Exhibit B-1); that on June 15, 1970 at around 7:00 p.m., she was attending their store situated in Barrio Bagongbong, Caloocan City with her 12 year old crippled and invalid sister; that on said hour and date, Avelino Isaac, who was identified in Court, and Marcelino Magtoto arrived. Marcelino Magtoto ordered some food and after eating, left. Avelino Isaac then entered the left door of the store. Surprised with Avelino Isaac's entry into the store, she stood up but was blocked and prevented from going out. The accused then grabbed and embraced her and fondled her breast. She resisted the advances of the accused and was able to free herself. The accused pursued her, embraced her anew and laid her on an improvised bed inside the store, embraced her thighs and covered her mouth; that in this position, the accused

told her not to shout otherwise, he will strangle her, that the accused removed her panty with his right hand while his left arm was covering her mouth; thereafter, the accused lifted her dress and inserted his private part into her private part and started raising up and down his buttock which lasted for two minutes; that she resisted the accused by fighting and struggling against him but the accused was nevertheless able to insert his private part into her private part. After two minutes, the accused stood up, told her not to report the incident, otherwise, he will kill her and left; that at around 7:30 p.m. or ten minutes after the accused left, her mother and grandmother arrived. She told her mother about the incident, and immediately her mother and grandmother went to the Congressional Subdivision, where the accused was living at the time; when her mother returned, she was in the company of Cesar Billones, Calixto Rivera and her father. She also saw the accused with blood on his head. Finally, she alleged, that her mother brought her home to change as her clothes were full of blood.

"On cross-examination, she testified that she came to know the accused a month before the incident; that the accused never courted her, that her sister cannot shout nor can she walk; that the July 15, 1970 incident was the only incident between her and the accused, that when the private part of the accused was inserted into her private part, she felt pain; that at the time of the incident three persons passed the store. Finally, she alleged that Calixto Billones (sic) hit with a bolo the head of the accused.

"Det. Rogelio de Guia identified the accused and testified that on July 6, 1970, he investigated the accused in connection with a rape case on complaint by Zosima Antonio; that his investigation was reduced to writing (Exhibit C) and the statement was given voluntarily and freely; that he also investigated Zosima Antonio who claimed that she was sexually abused. In the course of the investigation, Zosima Antonio's organ started to bleed; that he brought her to the Caloocan City General Hospital for treatment. Thereafter, a medico legal certificate (Exhibit D) was issued by the hospital.

"On cross-examination, he testified that the accused did not request for counsel. There was nothing substantial elicited in the cross-examination.

"The last witness was Tarcila dela Cruz who testified that Zosima Antonio is her daughter; that on July 15, 1971, upon her arrival in their store, Zosima Antonio reported to her that Avelino Isaac raped her (Zosima); that she looked for the accused and found him near the house where he was staying; that as she noticed that the accused was about to leave, she boxed him repeatedly; that the accused begged for forgiveness for what he did; that a few minutes later, her husband arrived and repeatedly slapped the accused. Finally, she alleged that when the policeman stationed in the Congressional Subdivision arrived, the latter brought the accused to Deparo, Caloocan City." (Rollo, pp. 11-15)

The accused denied the charge. He admitted that he had carnal knowledge with Zosima Antonio on the date and place stated in the complaint but insisted that the latter voluntarily submitted herself to him because they were sweethearts. Thus, by way of defense, the accused related the incidents which transpired between him and Zosima in the following manner:

"Avelino Isaac testified that he met the complaining witness Zosima Antonio on March 3, 1970; that he courted her and visited her three times a week; that on June 2, 1970, Zosima Antonio accepted his proposal and he kissed her; that on June 15, 1970, they went to see a tagalog movie the title of which he forgot; that in the moviehouse, he kissed her and Zosima Antonio never offered any resistance; that after June 15, 1970, he kept on visiting Zosima Antonio in her house; that the charge of Zosima Antonio that he raped her is a lie; that they are sweethearts; that on July 15, 1970, at around 7:30 p.m., he went to the store of Zosima Antonio to talk to her; that Zosima Antonio invited her inside the store, pulled him until they were able to lie down; that he requested Zosima Antonio to remove her panty which she did and then they made love for thirty minutes. Zosima Antonio did not resist. Neither, did she shout, push his face nor scratch him; that thereafter Zosima Antonio boiled water, prepared a glass of milk and gave it to him. After drinking the milk, they went out of the store and requested her to sit down on his lap. While in this position, Anko Antonio saw them and fired a shot. Zosima Antonio jumped from his lap and he went to the Congressional Subdivision where he was working;

upon arrival in the Congressional Subdivision, he saw some people running towards his direction and who mauled him. One of them, Calixto Rivera, hacked him with a bolo as a result of which he was brought to the Caloocan City General Hospital where his head wound was treated. After he was treated, he was whisked to the City Hall where his statement was taken; that his statement was not read by him. Finally, what he understands by rape is "nakuha ang pagkababae ng dalawang 'beses.'"

"On cross-examination, he testified, when he was brought to Asst. Fiscal Francisco Garcia, that he did not inform the Fiscal that he was not allowed to read the contents of Exhibit C, his statement. Nothing more substantial was elicited in the cross examination." (Rollo, pp. 15-16)

After due trial, the accused was found "guilty beyond reasonable doubt of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 4111" and sentenced "to suffer the penalty of RECLUSION PERPETUA and to pay the costs." (Rollo, p. 22).

The accused-appellant now assigns the following lone error:

"THE LOWER COURT ERRED IN NOT SUSTAINING THE TESTIMONY OF DEFENDANT-APPELLANT WHICH IS CORROBORATED BY EVIDENCE AS AGAINST THE UNCORROBORATED TESTIMONY OF COMPLAINANT." (Defendant-Appellant's Brief, p. 3)

The appellant reiterates his testimony that Zosima Antonio consented to having carnal knowledge with him because they were sweethearts. To substantiate his position, the appellant capitalizes on the following circumstances: (1) that Zosima's story was uncorroborated; (2) that at the time the victim was being raped, three persons passed by the store. Thus, he argues, "that if force was exerted and that sexual intercourse was involuntary, it could have been noticed by people who passed by the store, the place of the incident; (3) that Zosima did not sustain bruises negating force exerted upon her by the appellant.

We find no substantial reason to reject the findings of the trial court. The fact that Zosima's story was uncorroborated does not in any way lessen her credibility. Thus, in the earlier cases of *People v. Aragona* (138 SCRA 569) *People v. Ramos* (128 SCRA 266) and *People v. Puzon y Marcaida* (G.R. No. 60559, December 2, 1987) we categorically ruled that the accused may be convicted on the sole basis of the complainant's testimony.

In the instant case, there is no doubt from the records that Zosima was a victim of rape. Zosima was then only 13 years old and could not have concocted a story of rape against the appellant much less acted the way the appellant pictured her behavior when he was testifying on the witness stand.

It is significant to note that the appellant was 21 years old at the time of the incident. In view of the tender years of the victim, who was only 13 years old as compared to him, the appellant was able to frighten and subdue her easily. This could have been the reason why despite three persons passing by the store at the time of the incident she could not cry for help. We agree with the trial court's observation that the failure of Zosima Antonio to yell for help "x x x is explained by the fact that at the time of the incident, her mouth was covered and she was threatened that should she shout, he will strangle her." Also, the fact that she immediately told her mother about the incident upon the latter's arrival on the same night negates voluntary submission of Zosima to the appellant's sexual advances. (*People v. Tuando*, 150 SCRA 8) The indignation shown by the crowd who ran after him is likewise significant.

Anent the appellant's argument that Zosima did not sustain injuries belying the rape charge, suffice it to state that absence of injuries by itself does not negate rape. (*People v. Boado*, 103 SCRA 607; *People v. Manzano*, 118 SCRA 705; *People v. Alcantara*, 126 SCRA 425; *People v. Tuando*, *supra*).

Indeed, we have no doubt that the guilt of the accused was proven beyond reasonable doubt. As the lower court

said:

"The behavior demonstrated by Zosima Antonio as the accused would want the Court to believe is that it was Zosima Antonio who initially gave him motivation by pulling him inside the store where they made love for thirty minutes until requested her to remove her panty which she did. To believe the version of the accused is to believe a fantastic story. It is not normal for a woman to take the initial step. It is hard to believe, preposterous and impossible that Zosima Antonio, a girl of thirteen springs would be so sexually hungry as to pull the accused inside the store to ultimately realize sexual fulfillment. The fact that there was no extra-genital physical injury on the person of Zosima Antonio cannot serve well the defense of the accused. What is material is whether force and intimidation was exerted. To this, the Court has found in the affirmative. Moreover, the revelation of Zosima Antonio about her fate and the consequent public trial is proof of force and intimidation exerted. The persuasive weight of this circumstance is such as to negative the importance of the absence of extra-genital physical injuries on her person that indicated forcible sexual intercourse. Moreover, the temporary medical certificate (Exhibit D), shows that abrasions and contusions were found on her body when she was brought to the hospital. (Rollo, pp. 21-22).

The records show that the appellant executed an extra-judicial confession admitting his guilt. Initially, the appellant questioned the admissibility of his extra-judicial confession by alleging that the statement was not read by him. The trial court, however, did not give much consideration to this claim. The trial court correctly stated:

"x x x such claim is insufficient to warrant this Court to exclude such evidence against the accused on the ground that it is involuntary. The presumption of regularity in the performance of official functions by public officers is not overcome by such a self-serving claim. Moreover, there is no hint in the claim of the accused that the police officers exerted force upon his person in extracting the confession. Neither is there evidence to even hint that the accused was intimidated with bodily harm should he refuse to sign. Finally, when he was brought to the Inquest Fiscal, he did not interpose such a claim. For him to allege ignorance of the contents of the statement for the first time in this proceedings does not inspire belief upon his credibility." (Rollo, p. 20)

It is significant to note, however, that on appeal, the appellant did not raise this as an issue. The extra-judicial confession was taken in 1970 before the effectivity of the 1973 Constitution. At any rate, in view of the overwhelming evidence pointing to the guilt of the appellant, the exclusion of the appellant's extra-judicial confession would not matter at all.

WHEREFORE, the appeal is hereby DISMISSED. The trial court's decision is AFFIRMED with the modification that the appellant is ordered to pay an indemnity in the amount of P25,000.00.[**]

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

[**] People v. Tuando, 150 SCRA 8.

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