

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM BOKINGKITO TERANO, DEFENDANT-APPELLANT.

G.R. No. L-43783. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of South Cotabato, finding William Bokingkito Terano guilty beyond reasonable doubt of the crime of rape and sentencing him "to RECLUSION PERPETUA to indemnify Vivian Luaña in the sum of P10 ,000.00 as compensatory, moral and exemplary damages and to pay the costs."

Records show that a complaint for rape was filed by Vivian Luaña an eight-year old minor, assisted by her mother Clodualda D. Luaña, which states:

"That at about 1:00 o'clock in the early morning of January 1, 1976 at Fatima, Silway, City of General Santos, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, by means of force and intimidation, and with the use of a deadly weapon, did then and there willfully, unlawfully and feloniously have sexual intercourse with the undersigned, a minor below twelve (12) years old, against her will and without her consent."

Upon arraignment, William Bokingkito Terano entered a plea of not guilty after which the prosecution presented its evidence as follows: In the early morning of January 1, 1976, Vivian Luaña was sleeping with her brothers and sisters in their house in Silway, General Santos City when she was awakened by herein appellant. Armed with a stainless kitchen knife, appellant warned Vivian not to shout otherwise she would be killed. Her shortpants and panties had been slashed and her private parts exposed. Thereafter, appellant tried to have sexual intercourse with Vivian who, however, moved her bowels. Appellant then laid Vivian on a mat, placed a pillow beneath her buttocks and this time succeeded in having sexual intercourse with her. He stood up, put off the kerosene lamp which had lighted the room and left the young victim whose sexual organ was bleeding profusely.

About four o'clock that morning, Vivian's mother Clodualda arrived from her elder brother's house where she had cooked food to commemorate the death anniversary of her husband. Vivian revealed to her mother the sexual assault committed against her by a man who she described as having a scar on the left face and eyebrow.

Clodualda brought Vivian to General Santos City Health Office. Dr. Jose Alvarado, after examining the victim, directed the mother to take her immediately to the Emergency Hospital. Vivian was confined in the hospital for six (6) days.

It was the finding of Dr. Alvarado that Vivian sustained "fresh bleeding and multiple lacerations of the hymen with perineal tear extending downwards." Further, Dr. Alvarado observed that Vivian is no longer a virgin and that she had been a victim of a recent sexual assault.

On January 4, 1976, about 4:30 in the morning, appellant was brought to the police station on complaint by some

residents of Silway, General Santos City, that he had molested a woman. Herein complainant was brought in and asked if she could identify the man who raped her. She answered in the affirmative and eventually pointed at appellant who was seated in a corner among many persons inside the police station, as the person who raped her.

The defense was denial and alibi. Appellant claimed that on December 31, 1975, he with a friend, named Boy, went to Davao City riding on a bus from General Santos City at one o'clock in the afternoon. Upon arrival in Davao City, they went to International Restaurant where they ordered rice, Lomi and chop suey and, thereafter, drank twenty-four bottles of beer. Thereafter, he went to a bus station and slept there until the early morning of January 1, then he went back to General Santos City, taking a bus.

The trial court disregarded the defense of alibi and appellant's denial of the voluntariness of his confession. It said: "It cannot stand against the affirmative testimonies of Vivian Luaña, a child of tender age, confirmed by her mother Clodualda Vda. de Luaña to whom she reported the incident after the startling occurrence, the medical findings of Dr. Jose Alvarado and his own confession. In fact, its trustworthiness was testified to by Cpl. Fermin Seranias, confirmed by its contents as well as by his admission in the preliminary investigation. Taken as a whole, we are convinced with moral certainty that the crime of rape was committed by the defendant against the person of Vivian Luaña. That is punishable by Reclusion Perpetua (Art. 335, Revised Penal Code)."

Further, the trial court observed that in his direct testimony "he told the Court that it was on January 1, in the afternoon, that they went to Davao City and it was on the second day of January that he returned. His meeting with Boy was rather strange. They met for the first time on December 24, 1975 at General Santos City when he was called by him. After a short conversation, they agreed to go to Davao City to spend the New Year there. He did not know the real name of Boy. That is rather unusual and is not worthy of credence."

Coming to this Court, appellant claimed that the trial court erred: (1) in admitting and considering as evidence against the accused-appellant the latter's written confession which was taken in violation of the constitutional rights of the accused and (2) in not considering in favor of the accused the latter's defense of alibi.

Appellant contends that on the eve of January 1, 1976 he was in Davao, with a friend, and such being the case it would be physically impossible for him to commit the crime of rape imputed upon him; that he returned to General Santos City sometime after the alleged incident had happened.

We are not persuaded. Even if we disregard completely appellant's written confession (Exhibit "C") on the ground that the same was taken in violation of his constitutional right (Sec. 20, Art. IV, Constitution), the testimony of complainant Vivian Luaña sufficiently sustains the allegations of the complaint. The trial court made the observation that said complainant, in spite of her tender age, withstood the long and searching cross-examination of an experienced and able defense counsel. We are quoting pertinent portions of her testimony, as follows:

"Q While you were sleeping in your house did anything happen?

A Yes.

Q What happened?

A A person went upstairs our house.

Q By the way, before you slept what were you wearing?

A I was wearing my dress.

Q Were you wearing panties?

A Yes.

Q Were you wearing also short pants?

A Yes.

Q You said that while sleeping a person came up, what happened after that person came up?

A That person took off my panties.

Q After taking off your panties what did that person do?

A He transferred me on top of a wooden trunk.

Q When he transferred you on top of that wooden trunk did you see him?

A Yes.

Q Did you see his hands?

A Yes.

A Yes.

Q Did you see anything in his hands?

ATTY. MAJADUCON:

Your Honor please, unless the prosecution has petitioned to ask leading questions, we object?

COURT:

Overruled, the witness may answer.

A A knife.

FISCAL ANISLAG:

Q While you were on top of this wooden trunk did he say anything to you?

A Yes.

Q What did he tell you?

A That if I will shout he will kill me.

Q After telling you that if you will shout he would kill you and you were already on top of that wooden trunk what did he do?

A He lifted me.

Q Where did he bring you?

A On a mat.

Q What else did he do?

A He got a pillow and placed it beneath my buttock (witness demonstrating).

Q After he placed the pillow beneath your buttock what did he do?

A He placed himself on top of me.

Q After he placed himself on top of you what did he do?

A After he inserted his penis in my private part he left.

Q Was he able to insert his penis on your private part?

ATTY. MAJADUCON:

Leading, Your Honor. We object.

COURT:

Already answered.

FISCAL ANISLAG:

Q When he inserted his penis to your private part what happened to your private part?

A It bled.

Q How long was he able to insert his penis into your private part?

ATTY. MAJADUCON:

Objection, Your Honor.

COURT:

What is the objection?

ATTY. MAJADUCON:

I withdraw my objection, Your Honor.

COURT:

Proceed, let her answer.

A He put out the light before he left.

FISCAL ANISLAG:

May we ask, Your Honor, the interpreter ask again to the witness.

(Question repeated.)

A He left.

COURT:

Q You said he put out the light before he left what light was that?

INTERPRETER:

The witness did not answer.

FISCAL ANISLAG:

Q Was it a kerosene lamp?

A Yes.

Q You said that when that person inserted his penis to your private part, your private part bled, was it lacerated or wounded?

ATTY. MAJADUCON:

Objection for being leading, Your Honor.

COURT:

Reform the question.

COURT:

Q Why was your private part bleeding?

A Because he inserted his penis inside.

Proceed.

FISCAL ANISLAG:

Q Was this kerosene lamp not put out when he arrived in the room and lifted you to the trunk.

A The light was on when he arrived.

Q Was there still light while you were on top of the trunk?

A There was still light.

Q When a pillow was placed beneath your buttock was there still light?

A There was still light.

Q Could you recognize the person who raped you?

A Yes.

Q If he is around point to him?

A That person.

INTERPRETER:

The witness points correctly to the accused." (tsn., pp. 29-34, March 9, 1975 hearing)

There is more than ample justification in the finding that the crime of rape was indeed committed by the appellant. Aside from the complainant's recital of the sexual abuse inflicted upon her, there was the impartial testimony of the doctor who conducted the physical examination. As between the positive testimony of Vivian Luaña and the denial of the appellant, the finding of the trial court is "generally viewed as correct and thus entitled to the highest respect." (People vs. Enrique Eguac , L-36082, December 29, 1977).

WHEREFORE, the decision of the lower court, dated March 24, 1976, finding appellant William Bokingkito Terano, guilty beyond reasonable doubt of the crime of rape as defined and penalized in the third paragraph of Article 335 of the Revised Penal Code, is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ. , concur.

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