

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME ACILAR Y BEATINGO, DEFENDANT-APPELLANT.

G.R. No. L-40351. July 16, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an appeal from the decision of the then Court of First Instance of Manila in Criminal Case No. 14254, finding accused Jaime Acilar y Beatingo guilty beyond reasonable doubt of the crime of rape and sentencing him "to suffer the penalty of reclusion perpetua, to pay P5,000.00 by way of moral damages to the offended party and to pay the costs."

Conviction was based primarily on the testimony of complainant, Melanie Pama, 11 years of age, and that of her 33-year old, widowed mother Imelda Pama y Padrones, although two other witnesses were presented by the prosecution, namely: Dr. Angelo Singian, Acting Chief Medico-Legal of the Manila Police Department and Patrolman Nilo Natural of the same office.

According to Imelda Pama, sometime between the hours of 3:00 and 4:00 o'clock in the afternoon of June 3, 1973, accused went to the house of Congressman Chiongbian at 937 Capitan Ticong St., Malate, Manila, where she was working as a househelp. Accused, who did occasional carpentry jobs for the Chiongbian, asked for medicine for his sick wife who served as the household laundry-woman. She led accused to a room on the second floor of the house and pointed to a box of medicines. After getting the same, she and accused went downstairs. Accused stayed on, seating himself by the round table with her and the cook. They conversed for a while. Then, the telephone, located some three meters from the round table, rang. Imelda picked it up and received the call of the mayordoma, who was then in a hospital watching over the paralytic mother of the congressman. The conversation lasted for about 10 to 15 minutes, after which she went back to the round table. Accused was no longer there. About a minute later, the cook told her to get dressed for church. She went upstairs to her room, and upon opening the door, she saw accused on top of her daughter. The pants and underwear of the accused were lowered to his knees. Melanie, on the other hand, was naked. She immediately went towards the accused, choked and pulled him away, scratching his nape in the process. On cross examination, she stated that she did not notice the motion of the accused while on top of her daughter,[1] but on rebuttal, said that she saw his pull and push movement.[2] She brought the accused downstairs and turned over to the security guard. The police were called and the accused, Imelda, Melanie and the security guard were taken to the police precinct for investigation. Imelda gave her statement to the police,[3] which contained materially the same narration of facts as her testimony in Court.

Complainant Melanie Pama was born on October 7, 1961.[4] She testified that at around 4:00 o'clock in the afternoon of June 3, 1973, she was asleep in a room in the second floor of the Chiongbian residence. She was awakened by the accused who placed himself on top of her, removed her shorts and panties, kissed and raped her. Then her mother came and dragged accused downstairs. The police were called and they were brought to the precinct.

In her statement to the police,[5] she said that "mga anim na beses na ho ako niya (referring to accused) nagalaw," the first of which was in March 1972.

On June 6, 1973, at about 12:30 a.m., a physical examination of complainant Melanie was conducted by Dr. Angelo Singian, acting chief of the Medico Legal Department of the MPD. Based on his interview and examination of complainant, Dr. Singian issued a Medical Certificate (Exh. G., Original Records, p. 11) stating, to wit:

"Subject is a virgin with no signs of intercourse on June 3, 1973."

Dr. Singian, who had examined over a thousand victims of rape, abduction and seduction, testified on direct examination that "subject was a virgin with no signs of injury in the genitalia, that is, including the hymen of the vagina and the vulva." [6] When asked by the court to elaborate, he explained that "there was no injury in the labia menora or labia mejora nor in the hymen and vaginal tissues." [7] From these observations, he opined that complainant was not raped. [8]

On further examination by the Fiscal, he stated that if penetration were done slowly and up to the labia majora only, it was possible that there would be no injury to the labia majora. However, in the absence of any injury to complainant's genitalia, he said that he could not positively declare whether or not there was penetration extending only up to the labia majora. [9]

Patrolman Nilo Natural, police investigator, testified that he took the statement of the accused [10] and those of mother and daughter, Imelda and Melanie Pama. [11] He declared that he advised accused of his constitutional rights before taking down his statement; that the questions were propounded in Tagalog, as requested by the accused, to which the latter likewise responded in Tagalog. He further stated that accused read Exhibit D before signing the same and that accused was brought before Asst. Fiscal Abundio Cate of Manila on June 4, 1973 before whom accused swore to the truth of his statement.

In his sworn statement, it was stated that before 4:00 o'clock in the afternoon of June 3, 1973, he went to the servants' room in the second floor of the Chiongbian residence to get some medicine for his wife. Inside, he saw Melanie in bed, asleep. He went near her, held her nipple and private parts. Melanie woke up, but did not complain. Encouraged, he removed her panty, unzipped his trousers and brought out his penis. He went on top of her, inserted his organ into hers and minutes later reached his orgasm. Suddenly, Imelda Pama entered the room and seeing him still on top of Melanie, grabbed him by the collar of his shirt. She brought him down, turned him over to the security guard and called the police.

Accused, in his statement, likewise admitted having had previous sexual relations with Melanie for six times.

However, taking the witness stand on his own behalf, accused denied having had carnal knowledge of complainant. He stated that at around 3:30 o'clock of June 3, 1973, he went to the house of Congressman Chiongbian to get some medicine for his wife. He passed by Melanie in the kitchen in going to the sala where he found Imelda, the cook and the mayordoma conversing with each other. He stayed with them for about five minutes, then went upstairs when he heard Melanie calling him. He went inside the room of the sick old woman where Melanie was, leaving the door about two feet ajar. Melanie asked him to do something for her but she did not tell him what it was about. When he approached her, she embraced him right in front of the paralytic woman with failing eyesight. He rebuked her, asking her to leave him lest her mother saw them. Just as he feared, Imelda came into the room and saw Melanie embracing him. Imelda immediately grabbed him by the collar, uttering, "Loko ka, gusto mong pagsamantalahan ang anak ko!" He retorted that it was her daughter who needed reprimanding. She dragged him downstairs and turned him over to the security guard.

Accused further denied the contents of his sworn statement (Exh. D), claiming, "they only made it." He likewise denied having been informed by the investigating officer of his constitutional rights, and alleged having received from the arresting police blows on the stomach and nape as well as slaps on both ears upon his arrest at the Chiongbian residence and later on at the police precinct; that fearing he would again be subjected to such maltreatment, he signed the statement prepared by Pat. Natural, although the latter had only asked him questions regarding his personal circumstances.

When brought before Asst. Fiscal Cate to attest to his statement, he was not able to complain about the mauling as the "moment I raised my hand, I was suddenly pulled by my escort and said that it was fi-nished." [12] He told his wife to complain about the mauling, but the latter did not comply and nothing happened as her visits became less frequent. [13]

On cross-examination, accused stated that at least six times prior to the incident at bar, Melanie had embraced him, and at times even touched his buttocks and grasped his testicles. On these occasions, he brushed her hands away and admonished her.

In the course of the cross-examination, the Fiscal moved for the ocular inspection of the penis of the accused, to determine from its size whether or not accused could have effected penetration without causing injury to Melanie's genitalia. Over the vehement objection of the defense counsel, the trial court granted the motion. Thus, after the prosecution had presented its rebuttal witnesses, an ocular inspection of the accused's organ was made in the chambers of the judge. In its flaccid state, accused's penis measured 2 1/2 inches in length and 1 inch in diameter. (tsn., Nov. 27, 1975, p. 96) The size thereof on erection was not ascertained due to its inability to erect under the circumstances.

After the ocular inspection, a redirect examination of the accused was conducted. He testified that he got married in 1958 and that after the first sexual intercourse with his wife, who was then 16 years old, the organ of the latter bled.

This Court has consistently held that "when a woman testifies that she has been raped, she says all that need be said to signify that this crime has been committed." (U.S. v. Ramos, 1 Phil. 81; People v. Francisco Royeras, 56 SCRA 666; People v. Dayo and Tingson, 58 Phil. 420). In the case before Us, Melanie, the eleven-year-old complainant, categorically declared in open court that accused raped her. Thus,

"FISCAL : When you were in your room at the second floor of your house, was there anything, unusual that transpired?

MELANIE : Yes, sir. When I was sleeping, Jaime Acilar woke me up. Then he raped me." (tsn, Nov. 14, 1973, p. 46)

However, when asked to narrate the details of the alleged rape, complaining witness declared:

"Q : Inform this Court how the accused raped you.

A : He placed himself on top of me.

Q : What did he do when he placed himself on top of you?

A : He raped me.

Q : Why do you say he raped you?

A : "Ni-rape" niya ako.

ATTY. HORMILLO:

At this juncture, may we place into the record that despite her age, she has been repeatedly using the word "rape".

COURT :

WITNESS: He forced me.

Q : How?

A : He forced me and told me not to shout.

FISCAL : How did he force you? Please narrate in detail.

A : He undressed me and placed himself on top of me. He removed my panty. Then he placed himself on top of me, Then he kissed me.

Q : What else, if anything?

A : Nothing more."[14]

From the foregoing, it is evident that in employing the term "rape", Melanie did not fully comprehend its meaning. She had difficulty explaining how the alleged rape was committed and it was only after the Fiscal had read to her Question No. 8 and the corresponding Answer, set forth in Exhibit "C", that Melanie, as if on cue, was able to relate the details of the alleged rape, as follows:

"Q : I will read to you Question No. 8 of your statement. (Counsel reading the document.) After reading to you Question No. 8 and the Answer, please try to recall what the accused did to you on that particular date and time while you were inside your room.

A : A man entered my room and I saw that it was Jaime Acilar.

Q : What happened?

A : He undressed me and unzipped the zipper of his pants. He placed himself on top of me. Then he raped me.

Q : What do you mean when you said he raped you?

A : He placed himself on top of me and inserted his penis into mine.

Q : After the accused placed his organ into yours, what did he do?

A : He kissed me.

Q : How long more or less did he place himself and his organ inside yours?

A : For more than an hour.

Q : Are you Sure of that?

A : Yes, sir."[15]

We have reasons to doubt the veracity of this portion of her testimony. A girl, particularly one of tender age, who experiences sexual communication with a man for the first time, with or without her consent, would not Likely forget the manner of its consummation. Such experience is of the most extraordinary character for a girl of complainant's age that it would certainly leave an indelible mark in her memory, sustaining and unobscured, during the 5-month period intervening between the alleged rape and Melanie's testimony in court. The girl would

be able, without need of a reminder, albeit hesitatingly, to relate the details of her first sexual act if it were the truth; for in the realm of her experiences, there is little chance that she could on her own invent or draw from her imagination the details there-of, if it did not really happen.

To our mind, the testimony of Melanie that accused "undressed me and placed himself on top of me. He removed my panty. Then he placed himself on top of me. Then he kissed me. Nothing more." bespeaks more of the truth than her later statements. These details were given candidly without prodding from the Fiscal, unlike her narration that accused "inserted his penis into mine," which the Fiscal was able to elicit with much difficulty. Besides, Melanie herself admitted having been coached by her mother with respect to what she was to tell the investigating officer:

"ATTY. HORMILLO:

You said that you were investigated by the police officers on June 3, 1973. Before you went to the police precinct on that particular date and time, did you have any conversation with your mother who was your companion then?

WITNESS: Yes, sir.

Q : And did she tell you anything about what you are to tell the police officers who would investigate you then?

A : Yes, sir."[16]

Furthermore, the first portion of her testimony is more in harmony with the clinical observations and findings of Dr. Angelo Singian that Melanie did not engage in sexual intercourse on the day in question. Due weight and consideration must be given Dr. Singian's expert opinion as physical evidence of this sort is of the highest order in rape cases, speaking more eloquently than a hundred witnesses.[17]

While it may be true, as observed by the lower court, citing the case of *People v. Pascaran*,[18] that "Opinion evidence cannot prevail over clear testimony of the complaining witness in rape cases," said doctrine does not apply to the case at bar, where there is no clear, satisfactory and convincing proof of the slightest penetration of accused's sex organ into that of complainant's. If it were true that accused was able to insert, his organ into complainant's vagina, remaining in such position for more than an hour, as claimed by Melanie, dilation of her genitals would have been readily perceived by the expert eye of Dr. Singian. And such condition of her genitalia would have been more evident if we take into account her statement in Exhibit C that "anim na beses na ho ako niya nagalaw." That Dr. Singian found nothing to indicate that this was the case, renders the testimony of complainant highly suspect.

Neither would the testimony of complainant's mother, Imelda Pama, suffice to show the commission of consummated rape. During the redirect examination, the Fiscal asked her:

"FISCAL MACARAEG:

Now, when you entered the room, you stated that you noticed accused on top of your daughter who was still naked. Now, will you please describe to this Honorable Court the motion of accused if you noticed before you pulled him?

ATTY. HORMILLO:

If your honor, please, the witness only said that the accused was on top of her daughter.

COURT : Precisely that is being asked. She may answer.

WITNESS: No, sir. I did not notice." (p. 42, tsn, October 17, 1973)

On rebuttal, she testified, to wit:

"Q : The accused testified that when you saw them your daughter was only embracing the accused. What can you say about that?

A : No, sir.

Q : Will you please tell us the truth?

A : My daughter was sleeping in the room of my grandmother when he entered the room my daughter was already sleeping there.

ATTY. HORMILLO:

Objection. I will move to strike out the answer of the witness it not being responsive to the question.

COURT: The testimony may remain.

Q : Did you see the accused inside the room?

A : Yes, Your Honor.

Q : Are you sure about that?

A : No, I did not see him.

Q : So, when you saw the accused for the first time inside the room what was he doing?

A : He was with my daughter.

Q : What do you mean by that?

A : He was on top of my daughter.

Q : What was he doing on top of your daughter?

A : He was having a sexual intercourse with my daughter (Itot).

Q : How do you know that he was having sexual intercourse with your daughter? Did you see his genitals?

A : No, I did not see, your Honor.

Q : When the accused got off atop your daughter were you able to notice the genitals of the accused?

A : No, because I was confused and I pulled him.

Q : Was he wearing his pants on?

A : I am not sure because I was already confused.

Q : What about your daughter was she having her panty on?

A : She was pantyless.

Q : You did not see any panty there?

A : I did not return to the room anymore, because I pulled him downstairs.

Q : After you pulled the accused away you were able to see the genitals of your daughter?

A : I did not notice anymore because I was already confused then. I just pulled him downstairs.

Q : So, you were able to notice the push and pull movement of the accused?

A : Yes, Your Honor.

Q : About how many times more or less?

A : I cannot remember, your Honor." (pp. 90-92, tsn, Nov. 27, 1974)

The question, "So you were able to notice the push and pull movement of the accused?" is easily categorized as a leading question, which, as a general rule, is not permissible on direct examination.[19] More, the question itself pre-supposes that accused was doing the "push and pull movement", a fact which had not been previously established for nowhere in the entire testimony of the victim, did she declare such fact. Be that as it may, We take a dim view of the affirmative answer given thereto by the witness since it casts an intuitive doubt as to what the witness actually saw. Said doubt is further enhanced when We consider the observation made by defense counsel, Atty. Hormillo, prior to the presentation of Imelda Pama as rebuttal witness, to wit:

"ATTY. HORMILLO:

Before we proceed with the presentation of this rebuttal witness, may we make it of record that this witness was talking to the Fiscal for a very long time, your Honor, considering that she is under oath. The fiscal and the witness had been conferring for quite a long time. I have been calling the attention of the Fiscal not to make any conversation with her.

FISCAL:

May I know Your Honor if it is prohibited and under any rule?

ATTY. HORMILLO:

We do not know whether the witness is being coached or not. In fairness to the accused . . ." (p. 89, tsn, November 27, 1974).

Exercising utmost objectivity and caution in evaluating the evidence at hand in order to dispel completely the interplay of pity and compassion for complainant by reason of her age, We find that although there might have been an intent on the part of the accused to lie with complainant, complete execution of the crime intended did not take place due to Imelda's timely arrival at the scene.

WHEREFORE, the judgment appealed from is modified in the sense that accused is hereby con-victed of attempted rape and is, accordingly, sentenced to an indeterminate penalty of 2 years, 4 months and 1 day as minimum to 10 years as maxi-mum; and to indemnify complainant in the amount of P4,000.00 by way of moral damages. No costs. SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Cuevas, JJ., concur.

Makasiar, (Chairman), concurs, but sworn confession of appellant should not be considered against him for it was obtained in violation of Sec. 20, Art. IV of the 1973 Constitution.

[1] p. 43, tsn, October 17, 1973

[2] p. 92, tsn, November 27, 1974

[3] Exhibit A, p. 109, Original Records

- [4] Exh. B, Original Records, p. 32
- [5] Exh. C, p. 110, Original Records
- [6] tsn, Oct. 15, 1974, p. 68
- [7] p. 69, *ibid.*
- [8] p. 70, *ibid.*
- [9] p. 71, *ibid.*
- [10] Exhibit D, Original Record, p. 111
- [11] Exhs. A and C, pp. 109 and 110, Original Records, respectively.
- [12] p. 14, tsn., November 19, 1974
- [13] tsn, p. 13, *ibid.*
- [14] pp. 47-48, *ibid.*
- [15] p. 48, *ibid.*
- [16] p. 51, tsn., Nov. 14, 1973
- [17] *People v. Alexander Sacabin*, 57 SCRA 707
- [18] CA-G.R. No. 25877-R, Dec. 2, 1959
- [19] Section 5, Rule 132 of the Rules of Court.

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