

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARDO HERMOSADA, ACCUSED-APPELLANT.

G.R. No. L-41806. August 19, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

Accused-appellant Bernardo Hermosada seeks a reversal of his conviction for the crime of rape on a lone assignment of error, to wit:

"THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE, NOTWITHSTANDING THE DOUBTFUL, INAPPROPRIATE AND UNREALISTIC TESTIMONY OF THE OFFENDED GIRL ON THE MANNER SAID CRIME WAS COMMITTED AGAINST HER." [1]

A complaint for rape against accused-appellant was filed on January 12, 1973 with the Municipal Court of Maramag by the offended party, Visitacion Romeo.[2] After a preliminary investigation was conducted, the Provincial Fiscal filed the following information before the then Court of First Instance of Bukidnon on March 9, 1973:

"that on or about the 15th day of December , 1972, in the afternoon, at barrio Kiharong, municipality of Maramag, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and with intent to rape VISITACION ROMEO, a twelve [12] year old child, by means of force and intimidation, did then and there wilfully, unlawfully and criminally wrestle with the offended party, throw her to the ground and pin her on the ground, remove her drawers, placed himself on top of her and have sexual intercourse with her against her will.

"Contrary to and in violation of Article 335 of the Revised Penal Code." [3]

The accused having pleaded not guilty upon arraignment, the case proceeded to trial.

The prosecution presented three [3] witnesses, namely: Municipal Judge Loreto Tumamos, before whom the criminal complaint was filed and subscribed to; Visitacion Romeo, the offended party, and Dr. Adoracion de la Cerna, supervising resident physician of the Bukidnon Hospital, who undertook a physical and internal examination of the victim. The defense, on the other hand, presented the accused himself, who denied the commission of the crime and offered an alibi as a defense, and two other witnesses, Gorgonio Canoy and Bonifacio Balindes, who corroborated the accused's alibi.

On August 20, 1974, the trial court rendered a decision, finding the accused guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the, penalty of life imprisonment to indemnify his victim in the sum or P6,000.00 as moral damages for injuries to her feelings, and to pay the costs.

Accused Hermosada forthwith filed a notice of appeal. Hence, this review.

At the time of the commission of the crime, the victim, Visitacion Romeo, was 12 years old and a grade V student

at the Kisanday Elementary School. She walked the three-kilometer distance between her house and school, in the morning with her seven-year-old sister, Hermelina, who was then in Grade One, and alone, in the late afternoon, as her sister would go home at noon. It was while she was on her way home from school in the late afternoon of December 15, 1972 that she was allegedly raped by the accused-appellant, then 62 years old, a widower and a carpenter by profession. Visitacion knew the accused-appellant, as he had been hired by her father three months before to construct their house and he would eat his meals with her family. Her testimony as to the manner the crime was committed is as follows:

DIRECT EXAMINATION:

Fiscal Ching:

xxx xxx xxx

Q

On your way to Kiharong, was there any incident that occurred?

A

There was sir.

Q

Please tell the court what was that incident?

A

I was called by Bernardo Hermosada who was far and I was in the road so I went near him and he held my hand.

Q

You said you were called by Bernardo Hermosada, how did he call you?

A

He said: 'Bi, come here'.

Q

Why did he call you 'Bi' when your name is Visitacion?

A

Because my nickname is Baby.

xxx xxx xxx

Q

When Bernardo Hermorsada called you by saying, 'Bi, come here how far was he from you?

A

About fifty [50] meters.

Q

When you went near Bernardo Hermosada you said he held you, what part of the body did he hold?

A

My right hand sir.

Q

After he held your right hand, what did he say if any?

A

Then he pushed me to the ground.

Q

My question is: What did Bernardo Hermosada say when he held your hand?

A

He did not say anything sir.

Q

After he held your hand, what else did he do to you?

A

He removed my panty.

Q

And what was your position when he was removing your panty?

A

He was holding me and he said: 'If you will refuse I will kill you.'

Q

Were you standing up or lying on the ground when Bernardo Hermosada was removing your panty?

A

I was lying down.

Q

Why were you lying down at that time?

A

Because he pushed me.

Q

When you were pushed by Bernardo Hermosada to the ground, what part of your body hit the ground?

A

My knees. I have even a wound at my knee.

Q

And when you said he removed your panty and Bernardo Hermosada said that if you will refuse he will kill you, why, what did he want from you?

A

He will have carnal knowledge with me.

Q

After he said that, what else happened?

A

He kissed me.

Q

What part of your body did he kiss?

A

My face.

Q

What was his position when he was kissing you?

A

I was lying down.

Q

The position of Bernardo Hermosada is what I was asking you?

A

He was also lying down.

Q

On top you or on your side?

A

On top of me sir.

Q

After he kissed you, what else did Bernardo Hermosada do?

A

No more.

xxx xxx xxx

Q

In what place were you raped?

A

In the corn field.

Q

How far was the corn field from your house?

A

I do not know sir.

Q

Before the accused committed the crime of rape on you who had sexual intercourse with you, what did he do?

COURT:

Q

You said that he pushed you to the ground, removed your panty and then kissed you, what else happened if any after that?

A

He inserted his penis to mine.

Q

What mine are you talking about?

A

To my vagina.

Proceed.

FISCAL CHING: [Continuing]

Q

Now, when he inserted his penis to your vagina, what then did he do?

A

No more.

Q

What did you feel when Bernardo Hermosada inserted his penis to your vagina?

A

I felt pain.

Q

Can you tell the Honorable court how long was his penis your vagina?

A

For a short time.

Q

After having inserted his penis in your vagina what else happened?

A

No more sir.

Q

Where did you go?

A

To our house.

Q

When you reached your house what happened there?

A

I reported to my mother.

Q

By the way, before the incident on December 15, 1972, did you know already Bernardo Hermosada?

A

Yes, sir.

Q

Why?

A

Because he is our carpenter.

Q

On December 15, 1972, did you know where he was staying?

A

Yes sir.

Q.

Where was he staying?

A

In our house.

Q

What did you report to your mother when you reached home that afternoon?

A

That Bernardo Hermosada had sexual intercourse with me.

Q

And what did your mother do?

A

She cried.

Q

How about your father, where was he at the time when you reported to your mother?

A

He was not in our house because we had two houses.

Q

Where is this other house located?

A

At Pig-awakan.

Q

After you reported your being raped to your mother and she cried, what else did your mother do?

A

Bernardo Hermosada was scolded by my mother the following day.

Q

Now, after that, what else transpired?

A

No more sir.

Q

Did you report your being raped to the authorities

A

Yes sir.

Q

How many days after you were raped?

A

One week after.

Q

Where did you report?

A

To the PC headquarters of Malaybalay.

Q

With whom did you report the incident?

A

Sgt. Gomez sir.

Q

Who was your companion in going to the PC Headquarters in Malaybalay to report?

A

My father.

Q

Who else?

A

Boy Eroja.

Q

Were you examined by a doctor?

A

Yes sir.

Q

In what place were you examined?

A

At the Bukidnon Hospital.

Q

Was it woman doctor or male doctor who examined you?

A

A woman doctor.

Q

What part of your body was examined by that woman doctor?

A

My private parts."[4]

CROSS EXAMINATION:

xxx xxx xxx

ATTY. DAMASCO: [continuing]

Q

The accused was on the road also when he called you?

A

No sir.

Q

Where was the accused then at that time when he called you while you were in the road?

A

He was at the corn field.

COURT:

Q

Alright, since, he was about 50 meters from you when he called you, why did you go near him?

A

I thought he had some purpose with me.

Proceed.

xxx xxx xxx

Q

Now, before December 15, 1972 do you know already what is sexual intercourse?

A

No sir.

Q

When the accused inserted his penis inside your vagina, did you know if he has committed sexual intercourse on you?

A

Yes, sir.

Q

And you said that the accused just inserted his penis inside your vagina and he did not do anything more, is that correct?

A

Yes sir.

COURT:

Q

After he had inserted his penis inside your vagina he kept still?

A

He moved sir.

Q

How did he move?

A

He did not move.

Q

For how long did he not move as his penis was inside your vagina?

A

I do not know sir.

Q

Why?

A

I just do not know how long.

Q

Did he not execute an up and down action of his body?

A

He made the push and putt motion.

Proceed.

ATTY. DAMASCO:

Q

Now, you said that the accused made a push and pull motion, what did you notice in your vagina?

A

It was painful.

COURT:

Q

Why did you not resist when he inserted his penis inside your vagina?

A

Because he threatened me.

Q

Was he armed at that time or not?

A

I do not know sir.

Proceed.

ATTY. DAMASCO:

Q

You said that the accused was making a push and pull movement, his penis was all the time inside your vagina, is that right?

A

Yes, sir.

Q

You did not feel his penis going out and inside your vagina?

A

I do not know sir.

COURT:

Q

How do you know that it was his penis that was inserted inside your vagina and not his finger for example?

A

I only know it.

Q

When you met the accused after he called you at a distance of 50 meters away, did you find him naked or clothed?

A

He had his clothes on sir.

Q

If he had his clothes on, how was he able to insert his penis when that penis was inside his clothes?

A

He removed his pants.

Q

As he was removing his trousers did he not release you from his hold?

A

He did not release me sir.

Q

What kind of trousers was he wearing, long or short?

A

It was a short pants sir.

Proceed.

DAMASCO: [continuing]

Q

When the accused placed himself on top of you he was still wearing his pants?

A

No more sir.

Q

He had still underwear?

A

No more also sir.

COURT:

Q

After he had removed his short pants what did you see in his person?

A

I saw his penis, sir.

Q

What was the position of his penis when you saw it?

A

It was small.

Q

Yes, but was it standing or not?

A

No sir.

Proceed.

ATTY. DAMASCO: [continuing]

Q

Aside from seeing the penis of the accused, what else did you see on his body?

A

No more.

Q

And what was your position at that time when the accused was on top of you?

A

I was lying down.

COURT:

Q

You know already that he was going to rape you when he landed on top of you, why did you not struggle to prevent his penis from entering your vagina?

A

Because he threatened to kill me.

Q

On the first attempt that he made, was he able to insert his penis right away inside your vagina?

A

Not yet sir.

Q

Why?

A

Because I struggled trying to be released.

Q

Because he is stronger, what did he do?

A

He kept on threatening to kill me.

Q

Besides threatening you, what else did he do to your person?

A

He held me well.

Q

How did he hold you? What was your position on the ground when he held you as you said?

A

I was lying down on the ground sir.

Q

What was your position. Could you show the court?

A

My arms at my side with my legs placed close together.

Q

Did he do anything to your legs which were closed at first?

A

He tried to separate my legs sir.

Q

Why? Could you not try to tell that to the court on your own volition?

Proceed.

ATTY. DAMASCO: [continuing]

Q

You said that the accused was trying to separate your legs, he was not able to separate you legs, is that right?

A

He was able because he folded my legs apart.

Q

When your legs were separated what did he do?

A

He had sexual intercourse with me.

COURT:

Q

How about your hands, went they free?

A

I pinched him.

Q

On what part of his body?

A

At his side.

Q

Why did you pinched his side?

A

I only pinched it.

Q

Instead of pushing him away from you, you only pinched him on his side?

A

I wanted to push him but he continued on threatening me.

Q

Did you not try to scratch his face instead of pinching him?

A

No sir.

Proceed.

ATTY. DAMASCO: [continuing]

Q

When you were pinching the accused on his side, where were the hands of the accused placed?

A

At my shoulders.

COURT:

Q

How did he hold you with his hands on your shoulders?

A

He held my shoulders with his two hands bringing me near him.

Proceed.

ATTY. DAMASCO: [continuing]

Q

And what was the position of the legs of the accused?

A

I could not see his legs.

Q

And you said after the accused had committed sexual intercourse he left you?

A

Yes sir.

Q

And you immediately also got up and went home?

A

Yes sir.

x x x x[5]

The certificate prepared by Dr. de la Cerna on the medical examination conducted on the victim on December 20, 1972 reads as follows:

"P.E.

-Ambulatory, coherent, conscious, fairly nourished.

-Healing contused abrasion knee right.

I.E.

-Hymen - no laceration

-Labia Minora with erythema and contusion right side."[6]

Elaborating on this report at the witness stand, Dr. de la Cerna testified that the contusion and abrasion on the knee of Visitacion could have been caused by the forceful application of a blunt instrument and/or contact with a rough object like the ground. She likewise stated that the reddening and swelling of the external genitalia could have been caused by the forceful application of a blunt instrument like a man's private part.[7]

The defense contends that the testimony of the offended party that the accused-appellant was lying on top of her and nothing more happened or he was executing a push and pull movement but his penis was unmoving inside her vagina or his penis was not in an erect or standing position, is a clear indication that rape was not committed or of guess-work or even an open declaration of innocence or lack of knowledge of a young girl, like the victim in this case, of the manner sexual intercourse is being performed.

We do not agree with this assessment. As earlier noted, the victim was twelve years old at the time of the commission of the crime, and thirteen, when she testified in court. Naturally; she cannot be expected to be well-versed in topics such as sex and sexual intercourse. Nonetheless, the trial court which had the full opportunity to study and observe her demeanor at close range accorded full credence to her testimony, thus:

"x x x The Court cannot find any reason to doubt the credibility of said offended party who delivered her testimony in a straightforward manner despite her tender years." [8]

We have thoroughly read and in fact reproduced the pertinent portions of Visitacion's testimony and, like the trial judge, are convinced of its veracity. Visitacion Romeo was able to narrate with simplicity and sufficient clarity the manner by which the crime against her chastity was committed. Had she been more vivid and eloquent in her description, We would have suspected her story to be a mere fabrication. As it is, her recital of the details of the event under consideration dovetails with the findings of Dr. de la Cerna. Thus, her testimony that her knees hit the ground when the accused-appellant pushed her is corroborated by the report of Dr. de la Cerna that at the time of the examination, she had a healing contused abrasion on the right knee. As accused-appellant was holding her by the right hand, it was natural that her weight would fall on her right knee. Her statement that accused-appellant was executing a push and pull movement, but his penis was unmoving inside her vagina is explained by the fact that there was no complete penetration; hence, no laceration of the hymen, but merely erythema or reddening and contusion on the right side of the labia minora, which Dr. de la Cerna stated could have been caused by a blunt instrument like a man's private part.

Incomplete penetration, however, does not mean that rape was not committed. For rape to be consummated, proof of entrance of the male organ within the labia of the pudendum is sufficient.[9] By the positive testimony of Visitacion, corroborated by the medical findings of Dr. de la Cerna, there can be no doubt that there was such penetration, however slight.

Accused-appellant, likewise, tries to discredit the victim's story by focusing on the behavior of her parents after they learned of her sad experience. He contends that the victim's parents were indifferent and unconcerned about the alleged crime and practically did nothing to avenge the same.

We do not find it to be so. When Visitacion reported the incident to her mother immediately upon reaching home, the latter cried. After the accused-appellant arrived at about 9:00 o'clock that evening, Visitacion's mother did not do anything because her husband, Pedro Romeo, was in their other house in Pig-awakan about two kilometers away.[10] Taking into consideration the psychological make-up of married Filipinas, particularly those residing in the barrios at that time [1972], this reaction is hardly unusual. Basically submissive and deferential to the husband's judgment, a Filipina married woman would not take any drastic action as might have been needed in the case at bar without first consulting her husband. Thus, as later events would prove, when her husband arrived from Pig-awakan the following morning, he berated the accused-appellant after learning what the latter did so that

said accused-appellant did not eat his supper with them the following evening.[11] Thereafter, Pedro Romeo reported the incident to the PC headquarters at Malaybalay and brought Visitacion to the hospital for medical examination. The actuations of Visitacion's parents are certainly no indication of unconcern or indifference. On the contrary, they are more in keeping with the Filipino tradition of requiring a "family consensus to be arrived at first before a family dishonor can be made public by reporting to the authorities." [12]

Finding no cogent reason to disturb the findings of the trial court, conviction of the accused-appellant must be sustained.

WHEREFORE, the decision appealed from is here-by affirmed.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Brief for the Appellant, p. 40, Rollo.

[2] Exh. A-Pros., p. 2, Original Records.

[3] p. 13, Original Records.

[4] TSN, pp. 8-16, November 19, 1973.

[5] TSN, pp.18-25, November 19, 1973.

[6] Exhibit B-pros., p. 8, Original Record.

[7] TSN, pp. 39-40, February 20, 1974.

[8] Decision, p. 9, Rollo.

[9] People v. Velasco, 73 SCRA 574 and the cases cited therein; People v. Franco, 114 SCRA 737; People v. Bautista, 102 SCRA 483; and People v. Aballe, 132 SCRA 641.

[10] Decision, p. 6, Rollo.

[11] Decision, p. 6, Rollo.

[12] People v. Marzan, 128 SCRA 203.

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