

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. CRISANTO AUSAN Y FUENTES, ALIAS SANTOS, ACCUSED.

G.R. No. L-49728. July 15, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The accused Crisanto Ausan was indicted for rape before the Court of First Instance of Surigao del Sur for having had sexual intercourse with Elma America through force and intimidation. After arraignment and trial, a decision was rendered on October 16, 1978 convicting him as charged. The dispositive portion of the decision reads:

"In view of the foregoing considerations, the court finds the accused guilty beyond reasonable doubt of the crime of rape, and finding no modifying circumstances attending the commission of the crime, hereby sentences the said accused to the penalty of reclusion perpetua; to pay Elma America and her parents the amount of P5,000.00 as moral damages for the shame and humiliation they suffered; without subsidiary imprisonment in case of insolvency; and pay the costs.

"It appearing in the records that the accused signed the writing wherein he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, pursuant to Article 29 of the Revised Penal Code, as amended by Rep. Act 6127, the court hereby credits in the service of his sentence the full time during which he has undergone preventive imprisonment.

The counsel de oficio of the accused is Atty. Policarpio A. Viola of Mangagoy Bislig, Surigao del Sur. Considering his professional standing and the time and effort he exerted in defending the accused, the court hereby fixes the amount of Five Hundred Pesos (P500.00) as his reasonable attorney's compensation.

SO ORDERED."[1]

The version of the prosecution which was adopted by the lower court is as follows:

"The evidence of the prosecution shows that in the morning of January 4, 1977 while Elma America a ten-year old girl, was playing along the river near the Poblacion of Barobo, Surigao del Sur, she was invited by her uncle, accused Crisanto Ausan, to gather firewood at a place nearby; that Elma went with accused and upon reaching a bushy and grassy place, accused got coconut palms, placed them on the ground, unloosened Elma's pantie and told her to lie down, which the latter did; that thereafter, accused had sexual intercourse with Elma; that the latter felt pain in her vagina after the sexual abuse; that the accused then told her to keep silent about what happened to her otherwise he (accused) would kill her and her parents; that complainant then went to the river to wash her vagina and later proceeded to her house in the poblacion.

"Upon reaching her house, Elma told her mother that her vagina was bleeding but she refused to divulge to her the reason of the bleeding; that Elma, accompanied by her mother, Celerina America, and the accused, went to the rural health center of said town where Elma was examined and treated by Dr. Teresito Pama, rural health physician. Said doctor, finding that the bleeding was quite severe and that it was coming from the inside, advised Elma's mother to bring Elma to the government hospital in Patin-ay, Prosperidad, Agusan del Sur.

"Elma America was then brought in the afternoon of January 4, 1974 to the Agusan del Sur Provincial Hospital at Patin-ay, Agusan del Sur, where said patient was confined from January 4, 1977 at around 3:00 p.m. to January 7, 1977. Dr. Paz Abrajano Busa, Chief of said hospital, treated Elma for bleeding of the perinium due to lacerated wound of the perinium and vagina (See Exh. E). When the patient was brought to said hospital, she was accompanied by her mother and the accused.

January 8, 1977, the day following the release of Elma from the Agusan del Sur Provincial Hospital after she already returned to her house at Barobo, Surigao del Sur, said child confessed to her mother that she was sexually abused by the accused at about noontime of January 4, 1977. In her confession, Elma further revealed that she did not divulge the dastardly act of the accused because she was afraid of the farmer's threat that he would kill her and her parents, considering that the accused was around when she was brought to the rural health clinic at Barobo and again at the Agusan del Sur Hospital in Patin-ay, Prosperidad, Agusan del Sur.

"After receiving said information from her child, Celerina America informed Pat. Flaviano Templanza of the Barobo Police Force, and the latter subsequently apprehended said accused and placed him in the municipal jail.

"The evidence further shows that the accused is the brother-in-law of Valentin America, father of Elma America, and that prior to and during the date of the incident, the accused was living in the same house with Valentin America and her family at the poblacion of Barobo, Surigao del Sur." [2]

Appellant's attack against the appealed judgment of conviction and his plea for acquittal is predicated first, on insufficiency of evidence establishing the crime and second, on alibi.

Appellant's version is that —

"x x x at around nine o'clock in the morning of said date of January 4, 1977, he accompanied his wife to the rural health center of Barobo, Surigao del Sur, together with Celerina America, for the treatment of her colds and back pains; that after the treatment of his wife at said clinic at around ten o'clock in the same morning, they went home to the residence of Valentin America in the poblacion of Barobo where accused and his family were also living, since accused's wife is the sister of Valentin America; that upon their arrival in their house, Elma America reported to her mother that her vagina was bleeding so that he accompanied Elma America and Celerina America to the rural health clinic of Barobo for the treatment of Elma's injury; that the laceration of the genital of Elma America was caused by the latter's fall while she was playing with accused's children along the river on that morning, as a result of which her private parts hit a stone." [3]

He attributed the criminal charge to a personal grudge which Elma America's parents had against him.

Specifically, appellant raises the following assignment of errors:

- THE LOWER COURT ERRED IN CONVICTING THE ACCUSED INSPITE OF THE MATERIAL INCONSISTENCIES OF THE EVIDENCE OF THE PROSECUTION CONSISTENT WITH THE INNOCENCE OF THE ACCUSED.
- THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE EVIDENCE OF THE DEFENSE WHICH IS NOT CONTRADICTED BY THE PROSECUTION SHOWING THE IMPROBABILITY TO COMMIT THE CRIME CHARGED.

Anent the first assigned error, the so-called inconsistencies are on minor details not material to the case and do not affect credibility. Appellant places undue emphasis on the fact that the victim testified that she was raped at "noontime" [4] which according to appellant means "12:00 o'clock or past 12:00 o'clock." [5] Allegedly, such time does not coincide with the time stated in the information as "between 8:00 o'clock to 10:00 o'clock in the morning." [6]

The victim's testimony that she was raped at "noontime" is not necessarily contradictory to the time stated in the information, i.e., between 8:00 o'clock to 10:00 o'clock in the morning," or to her mother's testimony that "it was at 10:00 o'clock in the morning." [7]

Considering the tender age of the victim, her poor uninformed background and the traumatic experience she underwent, that of being physically violated, she could hardly be expected to pinpoint the exact time when she was raped. Moreover, this Court takes judicial notice of the fact that in the local interpretation, "noontime" is anytime from 9:00 A.M. to 1:00 P.M. In fact appellant should note that his own son who testified for him specifically mentioned the term "noontime" [8] and when asked to describe the position of the sun at "noontime," the interpreter calculated the description given to be "between 9:00 A.M. and 10:00 A.M. [9]— the very time mentioned in the information. At any rate, an absolute exactitude of time here is not essential to the case. As a matter of fact, the presence of minor inconsistencies in the testimony of a witness could be an indication of truth. A witness whose testimony is perfect in all aspects, without a flaw and remembering even the minutest details which jibe beautifully with one another, lays herself open to suspicion of having been coached or having memorized statements earlier rehearsed. [10]

Appellant also insists that it is highly improbable for him to have raped Elma America since he was then at Dr. Pama's clinic where he was asked by Dr. Pama to get three boxes of medicines from the latter's house to be brought to the clinic.

Such an alibi cannot be given credence in view of the clear and positive identification by the victim that appellant was the culprit. [11] Elma's testimony unwaveringly identified appellant as her rapist, thus:

"Q.

What is the reason why you are testifying in court today?

A.

I am complaining because I was raped by Crisanto.

Q.

In what place where were you raped by this Crisanto?

A.

In the grassy place in Barobo.

Q.

Can you still remember what time were you raped by Crisanto, is it morning or afternoon?

A.

Noontime.

Q.

Who brought you to that grassy or bushy place where you were raped by Crisanto?

A.

Crisanto.

xxx xxx xxx

"Q.

Did Crisanto tell you anything when he brought you to that grassy and bushy place?

A.

Yes, sir.

Q.

What did he tell you?

A.

Crisanto told me you go with me to gather firewood.

Q.

And when he told you that you immediately went with him?

A.

Yes,sir.

Q.

Were you able to reach that bushy and grassy place?

A.

Yes, sir.

Q.

What transpired when you were already in that bushy and grassy place in Barobo, Surigao del Sur?

A.

He immediately got a coco palm and laid it on the ground.

Q.

When that coconut palm was already laid on the ground by Crisanto, what happened?

A.

He unloosen my pantie and let me lie down on the ground.

Q.

When you were already laid on the ground, what did you observe of Crisanto?

A.

He sexually assault me. (TSN, pp. 17-18, Aug. 4, 1977)."[12]

Furthermore, the distance between Dr. Pama's clinic and the place where the offense was committed was relatively short to discount the possibility of the accused-appellant being present at the scene of the crime. The place where Elma was raped was only around 200 meters away from the highway[13] of Barobo. It is noted that Dr. Pama's clinic is located also in Barobo. It has been ruled that two (2) kilometers from the scene of the crime is a weak alibi.[14] It was even held by this Court in a case[15] that the defense of alibi cannot be believed where the distance of two (2) barrios is only eight (8) kilometers and can be traversed by walking in one and a half hours.

Appellant also mentions the fact that pictures marked as Exhibit B[16] taken during the ocular investigation made by Police Corporal Salvador Bernal did not show any coconut tree around the alleged place or the incident while the place where Elma was raped, as pointed to by her, was allegedly underneath the coconut trees.

As correctly observed by the Solicitor General in the People's Brief. "Obviously, Bernal's snapshots were not far-ranging enough as to show coconut trees." [17] At any rate, in his testimony, Bernal stated that he "observed coconut palms on the ground pointed by the child." The other allegations of appellant are flimsy and not worthy of discussion.[18]

As to appellant's claim that Drs. Pama and Busa never testified of their own knowledge as expert witnesses that the girl, was a victim of rape[19] it must be stated, that the two doctors could not have "known of their own knowledge" that the girl was raped. Their opinion was given after careful examination of the girl's sexual organ and after analysis of their own findings. There is need to reiterate that an expert witness is one who belongs to the profession or calling to which the subject matter of the inquiry relates and who possesses special knowledge as to the very question on which he proposes to express an opinion.[20] It was also held that it is sufficient if the Court is satisfied that he has in some way or other gained such experience in the matter as to entitle his evidence to credit[21] and this Court finds the testimonies of Drs. Pama and Busa as entitled to credit.

Dr. Pama testified thus:

"Q.

So in your opinion as a medico legal expert, what is the cause of that massive bleeding coming from the inside of the genital organ of the child?

A.

The bleeding must have come from a severed blood vessel inside the genitalia of the child. Possibly a wound or laceration.

Q.

What might be the possible cause of that severed bleeding which you said was coming from the inside due to some severe laceration?

A.

It could be due to severance of the blood vessel coming from the inside of the genitalia which could have been caused by a wound laceration or any sort that might have severed that blood vessel.

Q.

Would you say Doctor that it would have been caused for example if the child was abused or there was a forceful and continuous struggle to have a penis of a man penetrate of that organ?

A.

That could be possible. (TSN, pp. 3-4, Id.).

On cross-examination, he declared:

"Q.

Such continuous bleeding, could it be possible by the penetration of a man's penis?

A.

I think, possible.

"xxx xxx xxx

"Q.

And you said also that the continuous bleeding did not come from the laceration of the posterior aspect of the hymen, am I correct?

"A.

I would like to correct that the massive bleeding came from the inside.

Q.

Could you show by way of sketch where is this posterior aspect of the hymen?

A.

That is not necessary. Near the anus is the posterior aspect and above it is the anterior aspect. (Witness demonstrates his hand. (TSN, p. 7, Id.).

On recross examination, he declared::

"Atty. FABIOSA:

"Q.

You said Doctor Pama, that it is impossible for that bleeding to have been caused by inserting herself an object into her vagina, am I correct?

A.

It is not possible that is a force beyond her control, it is very painful.

Q.

So what you mean is that it would be impossible for a certain woman or a lady to insert in her own vagina a certain object that would suffer that severe pain?

A.

Yes, sir." (TSN, p. 9, Id.)."

Dr. Busa who subsequently examined and treated the victim, testified as follows:

"Q.

What might be the possible cause of that lacerated wound of the perenium and vagina which caused the profused bleeding of the vagina?

A.

The most possible cause of the laceration was due to the insertion of a penis.

Q. Could this not be possible by self-insertion of any blunt object with a rough surface?

A. It is not possible.

Q. Why do you say it is not possible?

A. The self-insertion cannot be possible because it will cause pain; it will not cause that much injury or extent of the wound.

Q. What is the extent of the wound?

A. The wound is around one inch deep into the vagina.

Q. You said the perinium was also lacerated. What is perinium?

A. Perinium is the portion around the vulva, of the vagina.

Q. What might be the cause of that profused bleeding of the perinium?

A. Due to laceration.

"xxx xxx xxx

Q. Considering the wound and the bleeding of the perinium and the vagina if it was caused by a penis of a man inserted to it, would you say that there was already a full or partial penetration of the penis that led to that injury?

A. Yes, because it caused even the wound. (TSN, pp. 6-7. May 12, 1977)."

On cross-examination, Dr. Busa testified:

"Q.

In this case you did not find any injury, except that laceration?

A.

In this particular case I found an injury.

Q.

You mean the laceration?

A.

Yes, sir.

Q.

And that laceration you found is outside of the vagina?

A.

From the outside to the inside.

Q.

You mean the perinium?

A.

It is found in the perinium and vagina. The vagina is the inner portion while the perinium is the outer portion.

"xxx xxx xxx

She testified on redirect examination, as follows:

Q.

You testified during the cross examination that if the blunt instrument or a finger as big as the little finger is injected on the hymen the person concerned will be at ease. What do you mean by that?

A.

It will not cause pain or injury.

Q.

If the condition of the hymen of a ten-year old child for example could be penetrated by a finger with ease, would there be a possibility that a penis of a man could get inside the vagina after laceration of the hymen?

A.

Before getting inside the vagina you have to lacerate the hymen.

Q.

So if it is a forceful penetration of a man's penis, that penis could really penetrate up to the vagina?

A.

Yes, sir.

Q.

Injuring the hymen?

A.

Yes, sir.

Q.

And was the hymen injured or lacerated?

A.

Yes, it was. (TSN, p. 13, Id.)"

As to the second assigned error that the "lower court erred in not giving weight to the evidence of the defense which is not contradicted by the prosecution showing the improbability to commit the crime charged, it is noted that appellant's version of the story was based on Alex Ausan's testimony, his own son, which was not corroborated by any of the other children mentioned by Alex i.e., brother or sister of Alex or Yotyot, the victim's brother. His story is that Elma slipped and was injured when she fell on a stone. No other evidence was presented to bolster Alex' testimony. It may be true that the victim slid and hit a stone[22] on the day she was raped, however, the defense, on cross-examination failed to elaborate on such occurrence which is very material to its cause. Thus, no questions were propounded on how she hit the stone, what part of her body hit the stone and what was the extent of her injuries. At any rate, on re-direct, the victim stated that the time when she stumbled was ahead of the time when she was raped by appellant.[23]

Finally, appellant's claim that the rape charge was due to a personal grudge against him by Elma and her parents for their failure to borrow money from his wife is far-fetched. It would be preposterous to assume that a very young naive and innocent child of ten years, is capable of fabricating the very serious charge of rape and concoct

circumstances against the appellant if indeed the latter did not rape her. Also, it is illogical to assume that for the measly sum of P1,000.00, which, allegedly, Elma's parents failed to borrow from appellant's wife, the girl and her parents will pick up the cudgels by going through the trouble of having their child examined, the rigors of a public trial, and practically expose themselves to embarrassment and humiliation just to settle a score with appellant.

What further convinced this Court is the simple, straightforward and spontaneous narration by the complainant that she was raped. The lower court made the following disquisition:

"Observing the demeanor, behavior and attitude of Elma America who is only ten years old, the court is impressed with her intelligence, sincerity and candidness. Despite her tender age, she testified with clarity, in a straight-forward manner, without hesitation, and she described the lurid details in a convincing manner.

"The complainant narrated a very logical and convincing story which could not have been concocted by her unless it is true. The court observed that Elma described the details in a coherent and spontaneous manner, thus erasing any doubts that she was coached on what to testify. Her demeanor while narrating the incident was so natural and matter-of-fact that she conveyed the feeling that she was simply stating the true facts as they occurred. The impression is that she was not concealing anything but simply telling the truth."

In the light of the above facts, the requisites of the law having been satisfied, conviction should be, as it is hereby affirmed. Complainant being below 12 years of age at the time she was violated, the crime is statutory rape under Article 335(2) of the Revised Penal Code.

WHEREFORE, the decision appealed from dated November 27, 1975 is affirmed with the modification that the indemnity to the offended party is increased to P20,000.00. Costs against appellant.

SO ORDERED. Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Pages 5-6, Decision, page 12, Rollo.

[2] Pp. 1-2, Decision, page 7, Rollo.

[3] Page 2, Decision, Page 8, Rollo.

[4] TSN, p. 17, August 4, 1977.

[5] Page 18, Appellant's Brief; page 21, Rollo.

[6] Page 25, Original Record.

[7] TSN, page 4, April 4, 1977.

[8] TSN, page 25, March 8, 1978.

[9] TSN, page 26, March 8, 1978.

[10] *People vs. Ibal*, 143 SCRA 317, 324.

[11] *People vs. Bihasa*, 132 SCRA 62; *People vs. Malabad*, 133 SCRA 392.

[12] TSN, pp. 17-18, August 4, 1977.

[13] TSN, page 2, Sept. 7, 1977.

[14] *People vs. Dereje*, 56 SCRA 554.

[15] *People vs. Marasigan*, 56 SCRA 31.

[16] Page 2, Folder of Exhibits.

[17] Page 12, People's Brief.

[18] TSN, p. 5, Sept. 17, 1977.

[19] Page 20, Appellant's Brief.

[20] Phil. Law Dictionary, p. 227 citing *People vs. Santos*, 65 O.G. 7472.

[21] Phil. Law Dictionary, p. 227 citing *Asis vs. Capital Insurance and Surety Co.*, 35671-R, January 28, 1972.

[22] TSN, p. 30, Aug. 4, 1977.

[23] TSN, p. 33, Aug. 4, 1977.

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