

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO LISONDRA, ACCUSED-APPELLANT.

G.R. No. L-45553. October 25, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the decision of the Court of First Instance of South Cotabato, Branch I, at General Santos City, dated January 7, 1977, convicting Wilfredo Lisondra of the crime of rape, sentencing him "to RECLUSION PERPETUA, to indemnify Janilyn Diosana and her parents, Gabriel Diosana and Lucrecia Diosana, in the sum of P12,000.00, as actual, moral and exemplary damages, and to pay the costs."

The People's brief quoted the lower court's finding of facts as follows:

"Janilyn Diosana, 8 years old, born to spouses Gabriel Diosana and Lucrecia Diosana on April 13, 1968 at Basak, Pardo, Cebu City and formerly a pupil of West Elementary School of General Santos City, is the victim.

"Wilfredo Lisondra, 23 years old, single, a parolee (having been convicted by this Court of Qualified Seduction and Consented Abduction in a final judgment dated June 10, 1974 in Criminal Cases Nos. 660 and 661 where Maria Fe Arcito, 12 years old, was the victim), is the indictee.

"At about 4:00 o'clock in the afternoon of January 26, 1976, Janilyn, with her younger brother, Danilo, and friends, Juddy and Cecilia, was gathering star apples in the backyard of Our Lady of Peace and Good Voyage Church at Dadiangas, General Santos City. Her parents were then residing at the Parish Center near the church as workers thereof. While doing so, a man about four feet and 11 inches in height, regular built, crusty hair, with brown complexion, round face, using sandals, wearing a checkered red shirt with long sleeves and a dirty maong pants, and about 25 to 26 years old, watched them and asked for a star apple. Then, with the use of a bamboo stick, he himself tried to gather star apples. When they heard the church bell ring, the children ran towards the church on its western side, where they ate the star apples, when that man came, telling them not to throw the peelings around as it was tiresome to clean. Few minutes later, Janilyn was called by her mother and was given P5.00 to buy rice at a nearby store. Before she could comply with that errand, the man called her, gave her P0.15 to buy Champion cigarettes, who obliged by going to the store at the Parish Center, tended by Marlyn Molina. It was that man who received the two sticks of cigarettes from Marlyn. The man convinced Janilyn to go with him towards the back of the church because a sister of the church will give her a dress. She went with him to the back of the church, passing thru the door at the right side of the church, entering the same, crossing it from one side to the other door, passing by the Our Lady of Peace Center at the back, then, taking the route along Nuestra Sr. de la Paz, Naranjita, Laurel, and Champaca Streets, and further walking along National Highway. She complained that they were going far and reminded him of the dress promised to be given her as well as the errand of her mother to buy rice, but was told to keep quiet. They entered the Marin Compound, followed a trail until they reached the house of Rogelia Asero, where the man asked Rogelia if they have a carabao and when answered none, they went back to the National Highway. They turned left towards Dadiangas Heights and before reaching the Elma Grape Farm, they turned left following a road of the Stanfilco. After negotiating a distance of 50 meters, he asked her to follow him as he was defecating. After

passing thru a small trail on the right, crossing the canal, and five meters from the road, they reached a 'camachile' tree. It was under that tree where he undressed her and removed her pantie, followed by his removing his pants and underwear. When both of them were already naked, she was made to lie down on the ground face up, after which he spat on her private part and inserted his penis into it as he was on top of her. She felt the pain in her vagina and after the sexual assault was consummated, blood oozed therefrom. Thereafter, her abuser stood up, put on his pants and told her to wait because he will get a tricycle. Her attacker, however, never returned; thus, she stood up, put on her dress (her underwear could not be found then) and ran home until she reached the Iglesia ni Kristo Church at Dadiangas (Exh. "C"). Meeting a woman, she asked the way towards the Catholic Church, and she was directed to pass by the plaza. In the public plaza in front of the City Jail, she felt blood oozing from her vagina. So, she looked for a piece of paper and wiped her legs. From the plaza, she crossed the road and upon reaching the Parish Center, she leaned on its wall as she was already very weak. It was at this time when her mother, Lucrecia Diosana, who has been looking for her since 4:30 in the afternoon, found her and asked her what happened. After answering her that she was abused by a man, she became unconscious. She was brought immediately to the General Santos City Doctor's Hospital in a tricycle by Salvador Gonzales, where she was attended by Dr. Venancio Yap who submitted the following findings: 'Laceration deep into vagina and cervix.' She was confined in the Doctor's Hospital from January 26 up to February 2, 1976 (Exh. "B"); see also Exh. "6" where the same doctor had the following findings: 'Blood clots coming out from vagina, lacerated wounds wall of vagina right half down to a cervix (irregular and stellate shape) and right fourchet'. (pp. 1-4, Decision)" (Brief, 3-7.)

On February 24, 1976, Wilfredo Lisondra was charged before the Court of First Instance of South Cotabato of the crime of rape in a criminal complaint signed by Janilyn Diosana, assisted by her mother Lucrecia Diosana. The complaint states:

"That sometime between 5:00 and 7:00 o'clock in the evening of January 26, 1976 at Stanfilco Banana Plantation, City of General Santos, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have sexual intercourse with the undersigned, a minor seven years of age, against her will and without her consent.

"CONTRARY TO LAW with aggravating circumstances in that the accused is a recidivist having been previously convicted by final judgment of the crime of Abduction with consent and Simple Seduction."

Upon arraignment, the accused pleaded not guilty. After trial he was convicted and sentenced as above stated. In his appeal he claims that the lower court committed the following errors:

"I

IN NOT HOLDING APPELLANT'S ACTS AFTER THE INCIDENT INDICATIVE OF HIS INNOCENCE OF THE CRIME CHARGED.

"II

IN NOT HOLDING THAT THE EVIDENCE OF THE PROSECUTION IS NOT SUFFICIENT TO ESTABLISH THE IDENTITY OF THE APPELLANT AS THE PERPETRATOR OF THE CRIME CHARGED.

"III

IN NOT HOLDING THAT THE WITNESSES WHO SAW THE MAN ON THE DAY OF THE INCIDENT ARE BIASED OR PREDISPOSED TO CONNECT APPELLANT WITH THE CRIME CHARGE, THEY HAVING BEEN INFLUENCED BY THE ACTS OF THE CHURCHMEN UNDER WHOM THEY SERVED OR ARE RELATED.

"IV

IN NOT HOLDING THAT THE TESTIMONIES OF PATROLMAN PATAYAN AS WELL AS THE OTHER PROSECUTION WITNESSES ARE INCREDIBLE."

It is claimed that the appellant's acts subsequent to the rape indicate that he did not commit it. It is claimed that barely nine days after the crime was committed in General Santos City on January 26, 1976, he, as a parolee, duly reported to his parole officer, Executive Judge Emigdio H. Lopez of the City Court of General Santos on February 6, 1976. Likewise, on February 11, 1976, he gave statements to the police of General Santos City and signed the statements before City Fiscal Franklin Gacal. And he claims to have remained in Katangawan, General Santos City, until his arrest on February 21, 1976. From the foregoing, it is argued that if he were indeed guilty of the crime, he would have fled from General Santos City and would not have reported to the judge, the police and the fiscal of said city.

The foregoing circumstances do not necessarily prove the appellant's innocence. For, while flight might be the immediate impulse of a first offender, We are dealing with an appellant who had already been convicted by final judgment of qualified seduction and consented abduction of a 12-year old girl and who was required to reside in the place stipulated in his parole. Moreover, the appellant might have thought that no one was interested in filing a case against him, or that his victim who was a child of tender years could not identify him.

The second assignment of error that the lower court erred in not holding that the evidence of the prosecution is not sufficient to establish the identity of the appellant as the perpetrator of the crime, is also untenable. For the appellant was positively identified by Janilyn as her rapist. This cannot be doubted because she was with him for about two hours, that is from 4:00 o'clock in the afternoon to around 6:00 o'clock in the evening when the horrifying incident took place. Moreover, there were witnesses who saw him with his innocent victim immediately before the commission of the rape: Primadona Terrado who was only a few meters from him while he was with Janilyn and her group in the premises of the Our Lady of Peace and Good Voyage Church; Marilyn Molina, who identified him as the man who received the two sticks of cigarettes from her; and Rogelia Asero, who saw him with Janilyn in their house in the afternoon of January 26, 1976.

The appellant also set up the defense of alibi. He claimed that since January 10, 1976, shortly after he was paroled, he lived in barrio Katangawan and had never gone to General Santos City proper. The alibi must fail not only because he was positively identified by Janilyn and her witnesses but also because Judge Pedro Samson C. Animas who knows the physical geography of General Santos City for he has stayed there since he was appointed judge many, many years ago has this to say:

"3. His defense of alibi did not conclusively show that it was impossible for him to be at the scene of the crime at the time of its commission. His Monthly Report of Parolee readily shows that his place of residence is Balite, Lagao, General Santos City, for which, this court takes judicial notice as only four kilometers from the Catholic church situated at Dadiangas, General Santos City (Exh. "7"). Granting *arguendo* that on said date, he was in Katangawan, General Santos City, said barrio is only about ten kilometers from the city where there are several means of transportation and will take only a few minutes ride (*People vs. Diaz*, 55 SCRA 114; *People vs. Baylon*, 57 SCRA 114; *People vs. Manahan*, 59 SCRA 153)."

The appellant also claims that the medical certificate - Exhibit 6 - which was issued by Dr. Venancio C. Yap states that the rape was committed by a tricycle driver and since it had not been proved that he was a tricycle driver, the identity of the rapist was not sufficiently established. Suffice it to say that the statement in Exhibit 6 to the effect that the rapist was a tricycle driver is mere hearsay and cannot prevail over the positive testimony of the witnesses identifying the appellant as the rapist.

The appellant also claims that he does not smoke and so he could not have asked Janilyn to buy cigarettes for him. It could be that the appellant did not smoke but such circumstance is not sufficient to exculpate him in the light of the positive identification made by Janilyn and her witnesses. It could also be that his asking Janilyn to buy cigarettes was part of his scheme to abuse her.

Anent the third assignment of error, it is claimed that Janilyn and her witnesses were under the influence of Father Carl Schmitz; that Janilyn's parents worked for Our Lady of Peace and Good Voyage Church; that Marilyn Molina resides at the convento; that Rogelia Asero used to see Father Joseph who invited her to testify; that Father Joseph paid the hospital expenses of Janilyn; and that Father Carl in the Parish Bulletin of February 22, 1976, announced that Janilyn's case was over for the suspect had been identified and apprehended.

We fail to see how the above facts could prejudice the appellant. It was not unnatural for Father Carl and Father Joseph to take an interest in the rape of Janilyn. She was not only a member of their flock but more than that she was the child of a couple employed by them. Since there is no iota of evidence that the two priests had induced or persuaded anyone to testify falsely in the case, the influence attributed to them is baseless.

The fourth assignment of error is merely corollary to the previous ones and need not be discussed for it can be dismissed by the rule that the credibility of witnesses is best ascertained by the trial court who saw them testify and noted their demeanor. There is nothing in the record of this case which will warrant a deviation from the rule.

WHEREFORE, finding no error in the appealed judgment, the same is hereby affirmed in toto. Costs against the appellant.

The rape of a child committed by the appellant shows his extreme perversity. Considering that he had been previously convicted of two crimes against chastity, We recommend that he should not be granted any form of executive clemency.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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