

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCIANO DOMEN, ACCUSED-APPELLANT.

G.R. Nos. L-47675-76. January 31, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Sick, sick, sick. This aptly describes the moral and legal perversion of a man who rapes his own daughter. Marciano Domen, an ex-convict (qualified theft), whose appeal is before Us fits the description.

In the Court of First Instance of Misamis Occidental, Branch III, Marciano Domen was accused of rape in Criminal Cases Nos. 399 and 400. Except for the dates (February 15 and March 31, 1977) the informations are identical, to wit:

"That on or about at Barangay Zamora, municipality of Aloran, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, then and there wilfully, unlawfully and feloniously, taking advantage of nighttime to facilitate the commission of his crime, did lie and have carnal knowledge of his own 16-year old daughter, Eleanor D. Domen, against the latter's will.

"CONTRARY TO LAW, with aggravating circumstances of relationship, said accused being the legitimate father of said victim and, nighttime taken advantage of by said accused to facilitate the commission of herein crime."

Marciano Domen was 43 years old in 1977 and his occupation was farming. Married to Maria Domen, a public school teacher, the spouses have four children - all girls, namely: Eleanor, 16 years old; Florita, 14; Nenita, 7; and Esterlita, 5.

The appellant's brief does not have a statement of facts. The People's brief has a statement of facts but because it is so sketchy We prefer the comprehensive narration of the trial court which reads as follows:

"[I]n the evening of February 14, 1977, there was a coronation dance of Project Compassion at Barangay Zamora, Aloran, Misamis Occidental, where the Domen family live. Eleanor Domen, being a teenager, wanted to attend the dance. She went home to Aloran from the Southern Capital Colleges at Oroquieta City where she was studying, that afternoon of February 14, 1977, as it was Valentine's Day and because she wanted to ask money from her parents. She requested permission from her father, accused Marciano Domen, to attend the dance, since her three (3) younger sisters were previously permitted, but her father refused. So, Eleanor went inside their room to sleep. However, the accused also went inside the room and laid down beside her. At this, Eleanor got angry, because she became suspicious of the intentions of her father. Consequently, she stood up and went outside of the room to the sala. Her father called for her to go back inside the room, on the pretext that he would like to talk to her, but she refused. Just then, her grand aunt, Fructosa Roque, arrived calling for her to go with her to the dance. At first, the accused refused to give Eleanor permission, but he later on relented. And so, Eleanor attended the coronation dance with her grand aunt and three (3) sisters. At about 11:00 o'clock in the evening, Eleanor and her grand aunt went home, together with her three (3) sisters:

Esterlita, Florita and Nena. Her grand aunt proceeded to her own house. That evening, Eleanor, her three (3) sisters, and their father, as well as their grandfather were the only persons in the house, as their mother, Maria Domen, was at her station at Sinampongan, Aloran, Misamis Occidental, she being a public school teacher there. Eleanor Domen and her three (3) sisters slept inside their room, with Eleanor and Esterlita sleeping on the bed, while Florita and Nena were on the floor (Exhibit "F"). The accused slept at the sala. Eleanor was able to fall asleep only at about 2:00 o'clock in the early morning of February 15, 1977. However, while she was sleeping, Eleanor felt a weight on top of her body, and when she woke up to find out what it was, she saw her father, accused Marciano Domen, dressed only in undershirt, removing her pantie down to her legs. Her father then hugged her, and so she asked her father what it was, but her father told her to keep quiet, warning her not to talk, otherwise only her tongue will not be hurt. Since her pantie was not completely removed, her father then pulled her legs apart and in the process her pantie was completely removed out of her legs. Then her father had sexual intercourse with her by holding her with his left hand and guiding his penis, with his right hand, inside her vagina, making push and pull motions. Eleanor resisted, telling her father not to do it, but in spite of her efforts to extricate herself, her father succeeded in having sexual intercourse with her, since he was very strong. She wanted to shout, but she could not do so as her father was covering her mouth with his left hand. Because of the protestations of Eleanor and the sounds made by the elbows of the accused on the bed, Florita who was on the floor, awoke, and then asked her father what it was. But her father admonished her to keep silent. At this, the accused went down the bed and laid beside Florita on the floor. Later on, he went out of the room. Eleanor noticed that Esterlita was no longer with her on the bed, as she must have been transferred somewhere by her father. The next day, the accused warned Florita not to report to her mother, otherwise he will hurt her. Eleanor did not immediately report to her mother what her father did to her, as she was afraid her father will maltreat her.

"Then, again, at about 11:00 o'clock in the evening of March 31, 1977, the accused again raped Eleanor. At this time, Eleanor and her two (2) sisters: Esterlita and Nena were sleeping inside their room, side by side, on the floor, with Eleanor at the center. Their mother, Maria Domen, and their sister, Florita, were at Sinampongan, Aloran, to attend to the graduation ceremonies there. The rape came about when Eleanor, who was sleeping, noticed that her father, dressed only in undershirt, was on top of her. She noticed that she was no longer at the center of her two (2) sisters, as Esterlita and Nena were removed, by her father, from her sides. At this position, her father held her body around her shoulder. Eleanor did not shout since her father covered her mouth with his left hand and because she was warned, by her father, not to do so, otherwise he will hurt her. The accused then made push and pull movements and inserted his penis into Eleanor's vagina, by guiding it with his right hand. Eleanor struggled, by pushing her father off from her, to prevent him from inserting his penis into her vagina, but her father succeeded and was able to ejaculate afterwards. Eleanor did not tell her sisters the next morning what happened to her, as they were still small. She did not also tell Florita and her mother when she met them, when they came home from Sinampongan, as she was ashamed to her mother and was afraid of her father. However, on April 11, 1977, when her mother scolded her for losing a pattern of a dress, Eleanor finally gathered enough courage to reveal to her mother what her father did to her on February 15, 1977 and on March 31, 1977. Her mother was shocked. She asked Eleanor why she did not tell her immediately and Eleanor explained that she was afraid to tell because her father warned her not to do so, otherwise he will hurt her. Eleanor and her mother immediately went to Atty. Saringumba of Aloran for advice, and they were instructed to go to Fiscal Siton at Oroquieta City. Maria Domen did not confront her husband as she was afraid of him, he being a violent man. Fiscal Siton referred them to the PC Provincial Commander at Oroquieta City, to whom they wrote a letter-complaint against the accused on April 12, 1977, for the rape of Eleanor on February 15, 1977 and March 31, 1977 (Exhibit "B"). Their statements were taken by the PC on the same day. They later on filed a complaint for rape against the accused on April 29, 1977 (Exhibits "C" and "D"). Sometime later, Eleanor, Florita and their mother, as well as the accused had a confrontation at the office of the Provincial Fiscal, and there, the accused asked for the forgiveness of his wife and Eleanor as well as of Florita, requesting them that they drop the cases against him, promising that he will go away from them. But they refused to forgive the accused. On April 12, 1977, Eleanor was physically

examined by Dr. Amador M. Mejos, Resident Physician of the Misamis Occidental Provincial Hospital, and she was found to have an old hymenal laceration at 6:00 o'clock and was negative for spermatozoa (Exhibits "A" and "5")."

The trial court, needless to say, convicted Marciano Domen and pronounced the following sentences:

"1. In Criminal Case No. 399, this Court finds the accused, Marciano Domen, guilty beyond reasonable doubt of the crime of Rape as charged in the information and as defined and penalized under Article 335 of the Revised Penal Code and in accordance therewith, the said accused is hereby sentenced to suffer reclusion perpetua, with all the accessory penalties provided for by law; to indemnify his daughter, Eleanor Domen, the amount of P10,000.00 in moral damages, and to pay the costs.

"2. In Criminal Case No. 400, this Court finds the accused, Marciano Domen guilty beyond reasonable doubt of the crime of Rape as charged in the information and as defined and penalized under Article 335 of the Revised Penal Code and in accordance therewith, the said accused is hereby sentenced to suffer reclusion perpetua, with all the accessory penalties provided for by law; to indemnify his daughter, Eleanor Domen, the amount of P10,000.00 in moral damages, and to pay the costs."

In almost all criminal cases appealed to this Court, the only issue is the credibility of witnesses. So it is in this appeal.

The appellant makes the following assignment of errors, namely:

"(1) THAT THE TRIAL COURT ERRED IN NOT APPRECIATING THE FACT THAT DEFENDANT APPELLANT WAS NOT DISTINCTLY IDENTIFIED DURING THE COMMISSION OF THE OFFENSE THOUGH DURING THE TRIAL HE WAS PROPERLY IDENTIFIED;

"(2) THAT THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION IN WHOLE AS EVIDENCE IS NOT CREDIBLE, RELIABLE AND BELIEVABLE;

"(3) AND IN CONSEQUENTIAL RESULT THE EVIDENCE FOR THE PROSECUTION DID NOT OVERCOME AND QUELL THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE HEREIN DEFENDANT APPELLANT."

With respect to the first error, the appellant makes much of the following testimony of Eleanor and Florita Domen:

Eleanor on cross-examination:

"ATTY. DULALAS:

In short, you cannot recognized any part of his body at that time, because it was dark?

A - There was.

Q - What was it?

A - He was the one (witness pointing)

Q - You said that you did not see any part of his body, why do you say that you saw him?

A - Because of the structure or nature of his body.

Q - Please answer the question, I will repeat. You did not see any part of his body because that was dark?

A -

I have not seen any part of his body but I know that he was the one because he was on top of me already.

Q -

What was the means of an identifying feature that you recognized him that he was the one, when according to you you did not see any part of his body because it was dark?

A - There was no other person in the house except the family. (pages 24-25 tsn-Suan)

Q - On March 31, 1977, when you were allegedly raped, that was also very dark?

A - Yes, sir.

Q - It was completely dark because there was no lamp lighted?

A - Yes, sir, there was no moon at that night.

Q - Even in the close distance you can not recognize the face of a person on March 31, 1977?

A - I cannot because it was very dark.

Q -

The same is true on February 14, 1977, when you were allegedly raped, it was very dark and you cannot recognize the face of the person, even how close his face to you?

A - Yes, sir. (pages 58-59 tsn-Suan)." (Brief, pp. 3-4.)

Florita:

"Court:

But you cannot see that because it was dark you cannot even see both of them, is that correct?

A - Yes, sir.

C -

In other words you have not seen your father holding the mouth of your sister since it was dark, neither have you seen your father having sexual intercourse with your sister because it was dark?

A - Yes, sir. I have not seen them. (page 45, tsn-Quiron)." (Brief, p. 5)

The first assignment of error is not well-taken.

It is true that when the rapes were committed the room where it took place was dark and it was not possible to see the features of the accused as admitted by both Eleanor and Florita. However, they were in fact able to identify the culprit as their father. If they had sought to identify a stranger under the circumstances there would be a basis to reject their testimony. But certainly it is easy to identify a member of one's family even without using the sense of sight. The senses of hearing and smell are equally reliable when identifying a familiar person. In the case of Eleanor she identified her father not only by his voice but also by his structure. Florita made the same identification because of his voice.

The second assignment of error attacks the credibility of Maria Domen, wife of the appellant, and Eleanor. It claims that the rape charges were a scheme to drive away the appellant from the conjugal abode because while Maria is a salaried school teacher the husband is a mere farmer and an ex-convict prone to violence.

It is true that according to Maria she was losing her love for her husband even before the rapes. But this admission does not necessarily support the claim that the rape charges were a scheme to get rid of him. In fact, Maria had an ambivalent attitude towards her husband as revealed by her answer to the following question:

"ATTY. DULALAS:

Q

Did you not testify that you begin not to like your husband when he was a parolee meaning when he went home from service of sentence?

A

Sometimes I would like to stay with him, sometimes not." (TSN, p. 62, Quiron, Mar. 15, 1978.)

On the whole, however, Maria was the typical Filipino wife who is forbearing and forgiving as shown by the following:

"COURT:

How is your sexual relations with your husband?

A Saturday and Sunday.

C Why?

A Because the school is very far, I leave Monday to Friday.

C Where are you from Monday to Friday?

A At Sinampongan.

C What are you doing there?

A I am assigned there to teach.

C Is your sexual relations with your husband every Saturday and Sunday satisfactory?

A Yes, sir." (TSN, p. 53, Quiron, Mar. 15, 1978.)

.....

"ATTY. DULALAS:

Q

In answer to the question of the Honorable Court, you said that your sexual relationship with your husband is satisfactory. When you mean satisfactory you are contended with your husband?

A Yes, sir.

Q

And you have this relationship started since you were married up to the time when he was not yet in the Provincial Jail confined?

A Yes, sir.

Q You loved your husband?

A Yes, sir.

Q He also loved you?

A He loves me but sometimes he got mad at me."

"COURT:

How about your husband, is he satisfied with his sexual relationship with you?

A I don't know, for myself I am satisfied.

C But did he complain about your sexual relations?

A No, sir." (TSN, pp. 58-59, Quiron, Mar. 15, 1978.)

As to Eleanor, she had this to say about her father:

"Q

Marciano Domen also testified that you and your mother Maria Domen since 1973 had been planning that your mother and your father be separated because according to him he was just a mere farmer. What can you say about that?

A

That is not true because since they married he was already a farmer." (TSN, pp. 79-80, Quiron, Mar. 15, 1978.)

In rape cases, there are only two possible defenses: denial of copulation or admission of the fact of copulation but with the legal consent of the partner. In this case, the appellant has chosen the first. He claims that on February 14 and 15, 1977, he could not have raped Eleanor as alleged because she was not in the family home but in Oroquieta City where she was studying. He denied the rape on March 31, 1977, by claiming that his wife was with him "during the time and date." More particularly, he said:

"Q Where do you used to sleep in your house in the evening?

A In the sala.

Q To be specific, on March 31, 1977, who was with you sleeping in the sala of your house?

A Maria Donggay, Esterlita Domen and Nena Domen.

Q Did you have any sexual intercourse with your wife Maria Domen on March 31, 1977?

"FISCAL MAGNO:

Objection, leading your Honor.

"COURT:

Reform.

Q

Since you were sleeping together with your wife on the evening of March 31, 1977, what routinary activity did you do to your wife?

"FISCAL:

Objection, vague.

"COURT:

Witness may answer.

A Naturally, we have a sexual intercourse.

C With the presence of your daughters Nena and Esterlita?

A Yes, sir, because they were yet small children and the fact that they were asleep that very night.

C How many times in the evening of March 31, 1977?

A Only two times." (TSN, pp. 72-73, Suan, Mar. 10, 1978.)

The appellant's testimony was uncorroborated. His claim that Eleanor was away in February 14-15, 1977, could have been easy to corroborate but it was not. His claim that he copulated twice with his wife on March 31, 1977, could also have been corroborated but instead Maria Domen testified that on that date she was in her official station with Florita. (TSN, p. 56, Quiron, Mar. 15, 1978.)

Upon the other hand, although a conviction for rape can be had on the sole testimony of the victim, there is corroboration of Eleanor's testimony. Florita testified on the first rape. Maria Domen said that the appellant asked for forgiveness and the dismissal of the cases which the latter did not rebut.

Finally, the appellant claims that there were no signs of force on Eleanor such as physical injuries and hematoma. Suffice it to say that the absence of external signs does not negate a finding that forcible sexual intercourse did in fact happen. In the instant case an added factor is the fact that the medical examination of Eleanor took place long after she was violated on April 12, 1977.

The third assignment of error which is but a consequence of the preceding assignments need not be discussed.

In resume, We find no error to have been committed by the trial court.

WHEREFORE, the sentences imposed on the appellant are hereby affirmed in toto with costs against him.

SO ORDERED.

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

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