

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO FRANCO Y LONTOC, ACCUSED-APPELLANT.

G.R. No. L-40183. June 29, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of Rizal finding the accused Ricardo Franco y Lontoc guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, with all the accessories provided by law; to indemnify the offended party, Leonora Franco in the sum of P20,000.00, as moral damages and to further pay the sum of P10,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency; and to pay the costs.

The offended party, Leonora Franco, is the daughter of appellant Ricardo Franco and Rosario Osorio Franco. She was born on October 21, 1960 and was twelve (12) years, ten (10) months and twenty-two (22) days old on October 13, 1973.

About 6:00 in the morning of October 13, 1973, Leonora was sent by her mother to the field to bring food to her father, the herein appellant Ricardo. Upon reaching the place, appellant asked her if she brought with her the "Pilipino Express" and when she answered in the negative, appellant sent her back to the house to get it. Leonora returned with the newspaper at about 9:00 that same morning.

When Leonora was inside the hut, the appellant closed the door and the windows and told her to lie down on the "papag" inside the hut. She did what she was told. Thereafter, Ricardo told her to get up again and forced her to take off her panty. Embracing Leonora, Ricardo ordered her to lie down again on the "papag," embraced her once more, kissed her on the lips, and fondled and sucked her breast. Spreading Leonora's legs, Ricardo went on top of her and thereafter, was able to perform the sexual act on his daughter, who was then crying. A little later, appellant pulled out his private part from which a white mucous-like substance came out and spilled on Leonora's thighs and skirt which appellant wiped off with a piece of blanket. He then told Leonora to get up and put on her panty and sent her home with a warning against telling anyone what happened.

On October 24, 1973, Leonora's mother asked her again to bring food to her father in the field. She tried to beg-off with all sorts of excuses until her mother got angry, scolded her and inquired why she did not want to do what she was told. It was then that Leonora told her Mother all about what her father did to her.

Leonora's mother consulted her relatives, Rufino Osorio and Leoncio Pagkalinawan, following which she brought Leonora to the National Bureau of Investigation where she was medically examined by Dr. Tomas Refe.

On October 30, 1973, the matter was brought to the attention of the Rizal Command of the Philippine Constabulary where Leonora's statement was taken. The matter eventually reached the Office of the Provincial Fiscal of Rizal where Leonora signed a criminal complaint for rape against the accused.

Dr. Refe testified that Leonora's genitalia showed a recently healed laceration, at the 9:00 position; that the

hymenal laceration was an indication that a blunt instrument like a male penis penetrated it; that Leonora could have had vulvar coitus with a man and that the age of the laceration was entirely compatible with the date Leonora said she was sexually abused.

The defense is alibi. Appellant testified that at about 9:00 in the morning of October 13, 1973 he went to the house of Braulia Fortunato which is only around 200 meters from his hut to play mahjong with Manuel Franco and Mrs. Maura Perez. They played up to 12:00 noon. Before he left his hut, he had his breakfast which was brought to him by his son Francisco Franco. Teofilo Ramos was there also and together with Francisco they mixed the chemicals for spraying the ricefield and pulled out weeds. The hut where appellant lived is only few meters from the road going to the Food Terminal where many people went to; and, there are several neighboring houses around.

When appellant returned to his hut at noon, Teofilo Ramos was still there and they had lunch together.

Further, Ricardo Franco claims that this case was filed against him because of his strictness with his children against whom he did not spare the rod whenever they erred.

The testimony of the appellant was substantially corroborated by Braulia Fortunato with whom he played mahjong that morning of October 13, 1973, and Teofilo Ramos who testified that upon arrival at the field, he got the sprayer and then mixed the chemicals inside the hut where the faucet is located. Thereafter, he went outside the hut and sprayed the fields. The ricefields is about two hectares. He did not leave the place the whole morning and at no time did he see the complainant, Leonora Franco. The accused left his hut at about 8:00 in the morning to play mahjong. When he returned for lunch his wife and son were already there. Nothing unusual took place on October 13, 1973.

The Fiscal presented the 16 year old son of appellant, Francisco Franco, as rebuttal witness. Francisco denied that he was with his father at the latter's ricefield in the morning of October 13, 1973; that he was at the time in Barrio Hagonoy, helping in the household chores and doing his homework; that he did not bring his father's breakfast that morning and that it was his sister Leonora who did.

The decision convicting appellant of the crime of rape was premised on the People's evidence, the trial court accepting the version of the complainant rather than that offered by the defense. Appellant vehemently denied having abused his daughter and claimed that at the time and date in question he was playing mahjong at the house of a neighbor which was about 200 meters away from his hut. Further, appellant claimed that no evidence had been introduced to show force and/or intimidation. The lower court, however, was convinced that the sexual act was accompanied by intimidation. Hereunder is its observation:

"Here lies the dilemma of Leonora. She could not have guessed the motives of her father. Leonora was passive, for her young mind could not have grasped at all that the man who fathered her, from whose flesh and blood she came, would have the callousness to take advantage of her. And, at this juncture it is well to remember that a father exercises such strong moral and physical influence and control over his daughter that the force or violence, threat or intimidation upon her need not be of such nature and degree as would be required in other cases (*People vs. Rinion*, CA, 61 OG 4422, cited in Revised Edition, Reyes, the Revised Penal Code). It is not necessary that there be signs from Leonora that she put up a resistance, for a sexual act between father and daughter is so revolting that it would be hard to believe that she would have submitted thereto if her will to resist had not been overpowered (*People vs. Alinea*, C.A. 45 OG Supp. 5, 1950). The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other (*People vs. Savellano*, *supra*)."

In the case of *People vs. Olden*, 47 SCRA 45, Chief Justice Makalintal gave the view that "Appellants point out

that even assuming that they had sexual intercourse with Edwina Maranga there is no evidence that they employed force or intimidation. It is true that she could have shown greater physical resistance to their advances than she actually did. Another woman would probably have tried to fight them off, even to the jeopardy of life or limb. But not all women are of the same mettle. What is clear and indisputable here is that Edwina was far from being a willing victim; and if her protestations lacked vigor and vehemence it was obviously because of the fact that some of the men who took turns with her were armed with guns and others with bolos which they displayed to cow her into submission. If there was no appreciable force employed, there was definitely intimidation." It is a doctrine well settled by the courts that in order to consider the existence of the crime of rape it is not necessary that the force and/or intimidation employed in accomplishing it to be so great or of such character; it is only necessary that the force and intimidation used by the culprit be sufficient to consummate the purpose which he had in mind. In the case at bar, considering the age of Leonora and the fear she had of her father, the herein appellant, because of his admitted cruelty to his children, there was sufficient evidence of intimidation. The fact that she was crying at the time she was abused negates consent and strongly indicates submission due to fear of a tormenting father.

The conviction of the accused was predicated on the testimony of Leonora as well as that of the attending physician Dr. Refe. Appellant's claim that complainant had no sexual intercourse with a man is belied by the testimony of the medico-legal officer that the labia of complainant's organ was penetrated. On the contrary, complainant's version that she was raped by her own father finds confirmation in the examination of her private parts by Dr. Refe.

Finally, the defense of alibi cannot be sustained in the face of clear and positive identification of the accused by the complainant and the denial by his own son Francisco that he was in the ricefield of his father in the morning of October 13, 1973. This Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstances of weight and influence, which has been overlooked or the significance of which has been misinterpreted (*People vs. Mahinay*, 80 SCRA 273). The findings and conclusions of the trial court on the credibility of witnesses are entitled to great respect and weight.

WHEREFORE, the decision of the trial court, dated November 15, 1974, finding appellant guilty beyond reasonable doubt of the crime of rape as defined and penalized in Article 335 of the Revised Penal Code, is hereby AFFIRMED. With costs against appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Vasquez, and Gutierrez, Jr., JJ., concur.

Melencio-Herrera, J., on leave.

Plana, J., concurs with deep regret that this court can imposed on the appellant no more than reclusion perpetua. One who has dishonored his own flesh and blood does not deserve to live.

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