

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO PARAS, ACCUSED-APPELLANT.*G.R. No. L-38119. August 30, 1983*

Ponente: GUTIERREZ, JR., J.

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This is an appeal from the decision of the Court of First Instance of Cebu finding Sergio Paras guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua. Paras was also ordered to recognize the child Troy Paul Canonigo as his natural child, to support him at the rate of P50.00 a month until he reaches the age of majority or until further orders of the court, to indemnify the offended party Jean Paul Canonigo the sum of P3,000.00 and to pay the costs.

In the information against him, Sergio Paras was charged with wilfully, unlawfully, and feloniously having carnal knowledge or sexual intercourse through intimidation, threat, and violence with Jean Grace Paul Canonigo, a girl barely thirteen (13) years old at the time. The information further alleged that the accused took advantage of nighttime to perpetrate the crime but the court rejected this as an aggravating circumstance.

The facts adduced by the prosecution to prove the accused-appellant's guilt are summarized in the People's brief as follows:

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"Jean is the adopted daughter of the spouses Antolin and Pura Canonigo who are residing at the interior of Junquera St., Cebu City (pp. 113-114, tsn). She was taken to their care when she was only one month old, and they reared her as their own child, spending for her education and all her needs (pp. 114- 115, tsn).

"Sergio Paras, the appellant, was a very close friend of Antolin Canonigo (p. 182, tsn). In the evenings he frequented their store located along Junquera Street, where he used to see Jean tending the same (pp. 60-61; 207-208, tsn), and he also went often to their house to watch television (p. 60, tsn).

"In short, the appellant saw the complainant grow up through the years and develop into young womanhood (pp. 200-201, tsn).

"In the evening of Sunday, February 25, 1968, the Canonigos were away visiting relatives in Lawaan, Cebu City (p. 18, tsn), and they did not return until 11:30 o'clock at night (p. 54, tsn). Jean was left behind with her elder brother Boy, and two maids, to tend to the store and their house (pp. 12 & 14, tsn).

"At 7:30 o'clock that evening Jean ate her supper, and at 8:30 p.m., she went to their store to relieve the two maids, Vising and Gabring, so they could eat their supper too (pp. 78-79, tsn). Jean was in their store with her brother Boy (p. 14, tsn). In less than an hour, the two maids returned, so Jean went home, as no one was left in their house. Their residence is located somewhere behind their store, around ten to fifteen meters away (pp. 14-15, & p. 18, tsn).

"When Jean reached their kitchen door (Exhibit D-3, p. 60, rec.), and as she was about to enter the same, she

heard someone calling her, thus: 'Jean, come here for a while because I have something to tell you' (p. 16, tsn.). She turned her head, and she saw the appellant who was just one step behind her, standing inside the bathroom of their adjacent neighbor, Mr. Santos (Exhibit E-2, p. 62, rec.; pp. 29-30, tsn.). Terrified, the complainant started to open the door in order to get inside their house, but immediately, the appellant held her right hand and twisted her arm behind her, at the same time, covering her mouth with the palm of his left hand (pp. 27 & 32, tsn.). Then, in said position, he pulled and dragged her several paces backward until they came to an enclosure (Exhibit D-5, p. 60, rec.) in front of the banguera of Mr. Santos (Ibid; Exhibit F-1, p. 61, rec.; pp. 32-36, & 37-38, tsn.). There, the appellant pinned the complainant against the cement wall (Exhibit F-2, p. 61, rec.) and warned her not to make any noise, otherwise, she would die (pp. 38 & 40, tsn.).

"With the complainant trembling and helpless (pp. 43-44), the appellant then raised her dress and pulled her panty down. Then he pushed her downward and forced her to lie down on the cement floor (pp. 45-46, tsn.). With his feet, the appellant pushed her panty off her feet (p. 101, tsn.), then spread her thighs with his knees, and mounted on her. His left palm was still covering her mouth so she could not shout. At this juncture, the appellant, once more threatened the complainant, telling her, thus: 'Don't move Jean or else I will kill you,' and this, the appellant subsequently repeated many more times (pp. 44-47, tsn.), as he 'jerked' on top of the complainant, 'moving his hips up and down' (until--until) (pp. 45-49, tsn.).

"The complainant felt something very hard enter her organ which caused her pain, and then, she lost consciousness (p. 50, tsn.).

"A short while thereafter, the appellant pulled the complainant and helped her to stand. The latter could not do so on her own, because her private part was still painful. Before she left, the appellant gave her panty, cautioning her with the following words: 'Don't tell anybody about this. Do not tell your parents or your brothers or else I will kill them' (p. 51, tsn.).

"Forthwith, the complainant went away — through their kitchen door, and then up the stairs. On her way, she felt some fluid oozing out of her organ. She, therefore, proceeded to the bathroom to wash herself, and there, she found that the fluid was reddish with blood (pp. 51-52, tsn.).

"Aside from her organ, the complainant felt a stinging pain on several other parts of her body, such as her right hand, her mouth, and her buttocks, which was pressed hard on gravel where she was forced to lie down (pp. 52-53, tsn.). She then went to her room and cried (p. 53, tsn.).

"The complainant did not report the incident to her family, because of her fear of what the appellant had warned her (pp. 54-55, tsn.). She kept her secret to herself — until August 5, 1968.

"On said date, complainant's mother, Mrs. Canonigo, was on her way to the bank, when Mrs. Filoteo, a close friend of hers, also residing at Junquera Street, asked her to drop by at her dress-shop as they had 'something important to talk about' (pp. 116-117, tsn.). Mrs. Filoteo then told her about some gossip which she had heard in the neighborhood regarding her daughter, Jean — to the effect that the child was apparently pregnant (pp. 118-121, tns.). Mrs. Canonigo was taken aback, but at the same time she recalled that the first and last menstrual period of Jean was sometime in January 1968, and that her second menstruation was supposed to have come on February 8, 1968, but that, she particularly remembered, it did not arrive on said date or in the succeeding months thereafter, because her youngest daughter had been asking her why Jean was no longer having her menstruation (pp. 121-122, tsn.).

"Mrs. Canonigo did not proceed to the bank anymore. She went to their store where she found her husband and informed him of what she had heard (p. 123, tsn.). He was mad. He told her to bring the child to a doctor for verification of the report (pp. 125-126, tsn.). Since Jean was still in school and Mrs. Canonigo's transaction in the bank was very important, she went first to the bank. When she returned home, the child was already there, eating ice candy (pp. 125 & 127-128, tsn.).

"Mother and daughter had a talk, and the former inquired from the latter whether or not she was pregnant. Jean was surprised, but she would not tell. She only answered by asking 'Why?' (pp. 128-129, tsn.).

"In the afternoon of the same date, August 5, 1968, Jean and her mother went to the Fornolles Clinic. While waiting for their number to be called, Mrs. Canonigo held Jean by the hand and asked her, 'Do you know what happened to you Jean, were you disgraced?' Jean asked her in return, 'what is disgraced Ma?' Her mother explained (p. 132, tsn.).

"Jean became uneasy. She stared at the door of the doctor's clinic, then looked back at her mother. Then she said, 'Come Ma let us go down' (p. 133, tsn.).

"When they reached the foot of the stairs, Mrs. Canonigo asked her again. Jean was confused. She would look towards the sky then look down, and then she would scratch her nape. And all the time, she was sweating. Finally, she said 'No, I won't.' When her mother asked her what it was, she answered, 'No I won't tell Ma because I would be killed' (pp. 133-134, tsn.). When her mother asked who would kill her she added, 'I would be killed and something one day would happen to you also' (pp. 134-135, tsn.).

"Upon the proddings and assurances of her mother, telling her not to be afraid to name the person who abused her, as they are her parents and would help and protect her, Jean bowed her head down and uttered the name, 'Sergio' (p. 135, tsn.). They called a taxi and proceeded home, because by this time, Jean was perspiring profusely (p. 137, tsn.).

"Mrs. Canonigo knew at once that Jean was referring to the appellant Sergio Paras. There was no other Sergio in their place (p. 36, tsn.). There was no other Sergio Paras who was standing by in their store, and who is also notorious for defaming women in their neighborhood. They had several maids who went home because of him (p. 138, tsn.).

"On August 12, 1968, Jean was finally examined by Dr. Fe Sison of the Southern Island Hospital who recommended an X-ray examination. She was X-rayed by Dr. Romeo Murillo of the same hospital. Said examination revealed that she was pregnant (Exhibit G, p. 133, rec. pp. 144-148, tsn.)."

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On the other hand, Sergio Paras denied that he abused the complainant. He testified that he was a neighbor and friend of Antolin Canonigo and he knew Jean Grace to be an adopted daughter of Antolin. He stated that he and Antolin were like brothers and that they used to go out together. His defense was a flat denial.

The accused-appellant raised two assignments of errors in this appeal, namely —

- a) THE LOWER COURT ERRED IN CONSIDERING AND GIVING GREAT WEIGHT THE TESTIMONY OF THE OFFENDED PARTY
- b) THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THE IMPOSSIBILITY OR POSSIBILITY THE ACT TO COMMIT THE CRIME OF RAPE

In his first assignment of error, the appellant reminds the Court that the offense charged is a grave and serious one and, therefore, the testimony of the offended girl should be considered and weighed with caution. He suggests that there probably is a party, not the complainant but another one, who has a motive to charge him with the offense knowing he is not the perpetrator. However, he leaves the suggestion hanging and does not name who is behind the charge nor does he state what is the motive. He admits that the complainant pointed to him as the perpetrator of the crime but states that this should not be taken as conclusive. The records are completely bereft of any evidence to even intimate the appellant's allegation of sinister motive. Sergio Paras admitted that he was a close friend of Jean Grace's adopting parents, almost like a brother. There can also be no question about the definiteness

of his identification as the culprit by the offended party. The trial court further observed:

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"The thesis of the defense is a complete negation of all the version given by the offended party. He vehemently denied having attacked her; he admits, however, that he was a friend of the family and used to go with Antolin Canonigo to nightclubs.

"From the foregoing conflicting evidence, and after a careful analysis of the same, the Court is constrained to accept the version of the prosecution as being more credible and consistent with the facts. Firstly, the offended party, Jean Grace Paul Canonigo, testified straightforwardly and naturally. The Court has no reason to doubt sincerity. She has been reared by a good family; and no motive on her part was proved why she imputed the evil act to the accused except from a desire to tell the truth. Besides, the Court takes judicial notice of the fact that a virtuous Filipino woman, like Jean, would not cast upon herself the dishonor of having been raped and of bearing the fruit of the evil deed, unless it be a fact. Then again, as between positive and negative testimonies the former is stronger."

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The lower court also stated in its decision — "Then again, from the observation of the Court of his manner and behaviour during his testifying in court, he was not convincing; on the contrary, he seemed hollow and insincere" — referring to the accused appellant.

The second assignment of error raises questions about the alleged impossibility of the crime based on (1) the place of its commission, (2) the way the rape was allegedly performed, and (3) the testimony of the mother.

An examination of the records shows that the complainant never mentioned a public bath or laundry wherein the attack allegedly took place. According to the girl's testimony, the accused-appellant was standing inside a bathroom behind her when he called her while she was about to go inside the house through the kitchen door. When she was about to open the door, the appellant immediately held her hand with his left hand, twisting the same and locking it behind her back, while at the same time with his right hand, grabbing her left hand and covering her mouth with its palm. (T.S.N., February 21, 1969, p. 27) Jean Grace testified that the accused-appellant pulled her away and dragged her near the place of the water-jar of Mr. Santos, their neighbor. T.S.N., February 21, 1969, pp. 32-33) The appellant's contention that the place of the commission of the crime was a public bath or laundry has therefore, no basis.

The crime was committed in a narrow place but it does not necessarily follow that the crime could not have been committed there. The evidence shows that it could accommodate or allow the commission of rape. As to the struggle that the appellant points out should have taken place and which would have necessitated the presence of bruises scratches on the person of the complainant, Jean Grace described how she was held by the accused-appellant. The detailed narration negates any successful struggle on her part to repel the attack. It is not true that she did not suffer injury. The offended party testified:

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"Q After that position or under that action of push and pull, as you said, did you recall what happened to you, what was your feeling, how did you feel?

"Witness:

"A Something entered which was very hard and as a result I felt pain.

"Fiscal Montecillo:

"Q What was entered and where was it entered?

"A In my organ - something hard.

"Q Then after that, did you feel something after that hard thing entered your organ?

"A I lost consciousness. I lost strength.

"Q Did you have any feeling of any pain after that insertion?

"A Yes, in my organ.

"Q After that, after the insertion, what happened next?

"A A while after he pulled me up in order to have me stand.

"Fiscal Montecillo:

"Q Were you able to stand with his help?

"Witness:

"A Not immediately because my private parts were still painful.

"Q Were you able to stand when you were helped by the accused?

"A Yes, he helped me in standing up.

"Q Where did you go after you stood up?

"A Not yet because he first gave to me my panty and at the same time cautioned me in these words: 'Don't tell anybody about this. Do not tell your parents or your brothers or else I will kill them.' And after he delivered to me my panty I went right away.

"Q Where did you go?

"A To our kitchen door.

"Fiscal Montecillo:

"Q Were you able to enter your house through the kitchen door?

"Witness:

"A Yes.

"Q What did you do while inside the house?

"A After entering the door of the kitchen I went up. On the way, I noticed that some fluid was dropping out. So I went to our bathroom in order to wash and there found out that the fluids which were oozing out were reddish blood.

"Q Those reddish blood came from your organ?

"A Yes.

"Q Aside from your organ, did you not suffer anything painful in any other parts of your body, aside from your organ?

"A Many parts of my body were painful like for example my right-hand, also my mouth, it seems to me that it

was held tightly even at that moment, and also my buttox (sic) and my shunk (sic) because of that gravely place where he forced me to lie.

"Fiscal Montecillo:

"Q After you wash yourself, where did you go?

"A I went upstairs to my room and cried." (T.S.N., February 21, 1969, pp. 49-53)

Other factors which would negate a fierce struggle include the fact that the complainant was a 13-year old girl who stood only 4 feet 10 inches as against the appellant who stood 5 feet 4 inches at the time of trial. Jean Grace testified that the appellant was bigger and that she was wailer at the time of the incident. The shock and fear which enveloped the 13-year old girl and the appellant's repeated threats not only on her life but also on the complainant's family while attacking her have to be considered. The girl repeatedly stated that she tried her best to repel the assault of the appellant but then he was too big. (T.S.N., February 21, 1969, p. 40). She tried to fight the appellant but he would twist her arm and as a result it gave her an "utmost pain" (T.S.N., February 21, 1969, p. 41).

The evidence on record sustains beyond reasonable doubt the findings and conclusions of the trial court that the crime was committed by the appellant.

The fact that the girl's mother learned of the complainant's pregnancy only from a third person does not destroy her credibility as a witness. Neither does it affect the rape story of the complainant. In fact this late knowledge of the parents on what happened to their adopted daughter enhances the latter's credibility about the appellant's threats on the whole family in case she divulged the attack on her. As testified by her mother, Jean revealed the appellant's attack only upon the proddings and assurances that her parents would help and protect her.

The assigned errors have no merit. The appellant's thesis that he was implicated because of a motive which he did not even elaborate is not well-taken. On the other hand, it is noted that the record does not show any evil motive at all on the part of the 13-year old complainant and her family so as to implicate him in such a heinous crime.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** except for the award of damages which is raised from P3,000.00 to P12,000.00. Costs against the appellant.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

Teehankee, (Chairman), J., took no part.

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