

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUSTAQUIO LAMPITAO, DEFENDANT-APPELLANT.

G.R. No. L-33305. June 28, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Eustaquio Lampitao appeals from the decision of the Court of First Instance of Cebu sentencing him, for the crime of rape, committed against his own 10-year old daughter, to reclusion perpetua, and ordering him to indemnify the offended party in the sum of Ten Thousand (P10,000.00) Pesos.[1]

From the facts as established by the evidence of the prosecution, there can absolutely be no doubt as to appellant's guilt of the crime charged. Thus, as stated in the People's Brief, and quoting therefrom, the facts are as follows:

"The victim, 10-year old Araceli Lampitao, when she took the witness stand and was made to identify the appellant said, 'He is my papa' (p. 42, t.s.n., June 6, 1968). With the child-like innocence, simplicity, and candor peculiar to her youth, she related the circumstances of this dastardly crime of rape, committed by a 52-year old father against his own flesh and blood, as follows:

"On October 28, 1967, at about 11:00 o'clock in the evening, while Araceli was playing in the public plaza of Consolacion, Cebu, her 'papa' called her. On the belief that he wanted her for an errand, she immediately responded, but when she was near him, he held her hands and brought her to a bamboo grove beside the municipal building (p. 10, rec.; pp. 42 and 55, t.s.n., June 6, 1968). Upon reaching the place, the appellant removed his pants and underwear with one hand, while he was holding her with the other (p. 51, t.s.n., *ibid*). Then he removed her panty (p. 54, t.s.n., *ibid*) and let her lie down (p. 10, rec.). Holding her with both hands (pp. 51, 54 & 55, t.s.n., *ibid*), her father mounted on her (p. 42, t.s.n., *ibid*), and inserted his penis inside her vagina. Asked how she felt, Araceli said, 'As if I almost died' (p. 43, t.s.n., *ibid*).

"She tried to resist by tearing his clothes. She also attempted to shout, but appellant covered her mouth with a handkerchief, and touched her breasts as he was having carnal knowledge of her. (p. 43, t.s.n., *ibid*).

"After the appellant was through, he put on his pants and trousers (p. 44, t.s.n., *ibid*), then covered her vagina with her panty (p. 42, t.s.n., *ibid*). Before he left, he told her 'not to tell anyone' (p. 44, t.s.n., *ibid*).

"The girl also left the place and went back to the town plaza where mother was watching their shooting gallery (p. 10, rec.; p. 44, t.s.n., *ibid*). Blood was dripping from her vagina (*ibid*).

"Francisca Quindao, the child's mother, testified that she saw the blood oozing from Araceli's private part down to her feet. She kept on asking her what happened, but she did not answer. Then the elder sister arrived and also asked Araceli what happened to her, but still, she refused to answer. The mother noticed that the child became pale, and she also fainted. It was then that they brought her to the Southern Islands Hospital of Cebu, and there, the child told her mother that she was raped by her father (pp. 57-58, t.s.n., June 6, 1968).

"Araceli Lampitao affirmed that it was only after she was brought to the hospital that she told the truth to her mother. When asked for an explanation, she readily answered that it was because she was afraid her father

would spank her (p. 45, t.s.n., *ibid*)."[2]

The bloodied panty which the victim wore on the night of the incident was presented in court (Exh. E), a mute but eloquent testimony of her harrowing experience. In no other manner could the panty have become blood-stained except by it getting in contact with the wounded sexual organ of the victim. The wounds or injuries found on said organ could, likewise, have been caused in no other way than the insertion of a hard object into the vagina which injured seriously and extensively the private parts of the young rape victim. Said victim, in the innocent and unaffected candor of a young girl, could not but inspire complete belief and full credence in her testimony, pointing to her own father as the author of a most despicable act such as that of a father forcibly deflowering his own daughter.

The contusion on the thighs of the victim, added to the bloody injuries in her hymen, persuasively present a clear picture of rape having been committed on the young girl. The culprit can be no other than whom she pointed to as such--her own father. A daughter would not single out her own father as the author of her disgrace except upon the compulsion of speaking the truth, and a deep sense of grievance.

The clumsy attempt of appellant to explain the injuries and bleeding as mentioned earlier by attributing them to one Sanico Llaban who allegedly pinched the private parts of the victim and inserted his finger in the vagina, induced obviously by the finding that no sperm was found by the examining physician which is not incompatible with rape[3] all the more strengthens the truth of the herein accusation against appellant. If appellant knew of this pinching of her own daughter's sex organ by someone who inserted his finger therein, why did he not forthwith bring his daughter for medical treatment, instead of the mother doing this on noticing blood dripping from her daughter's panty. And why did he not take proper action against the man who caused the injuries, as none is ever hinted at or intimated by the evidence? The fact is that the above imputation made by appellant against Sanico Llaban was denied by the latter on rebuttal. The medical finding would, likewise, not support appellant's testimony on how the victim came to sustain the hymenal lacerations and injuries on the thighs.

By the foregoing facts, it becomes all too easy to believe the truth of appellant's confession, and that his claim of having made it because of force employed against him, a pure fabrication. The Municipal Mayor before whom he signed and swore to his confession[4] affirmed that appellant executed his confession with all willingness and voluntariness. The Chief of Police also testified that in the confrontation between appellant and his daughter, Araceli, the former admitted having raped the latter,[5] and corroborated the Mayor's testimony as to how appellant voluntarily gave his statement confessing to his guilt (Exh. C).

The trial judge's observation with the benefit of his personal observation of how the witnesses testified, that: "Full credence is given to the victim's testimony. The carnal knowledge was clearly, positively and convincingly proved. And this is confirmed by the circumstantial evidence presented to bolster the claim of the prosecution--the bloodied panty, the bleeding of the victim right after the incident, as testified to by the mother, corroborated by other witnesses, the momentary fear of the child to tell on her father, and finally the medical testimony of the doctor that the victim's hymen was lacerated in four points--all these circumstantial evidences strengthen the victim's testimony to prove the crime of rape beyond the preadventure of doubt" merits unqualified acceptance by this Court.

For all the overwhelming evidence stocked up against appellant, his pretension of innocence is simply unbelievable and futile. His last ditch effort to free himself from the clutches of the law, by asserting violation of his right as an accused for not having been given preliminary investigation cannot but fail, it appearing that he made an express waiver thereof, after being informed of his right to assistance by counsel, but did not ask to be given one. Moreover, the waiver was repeated when he pleaded not guilty on being arraigned, which is done

always with assistance of counsel, and more than that, when he went on with the trial, invoking the alleged right to preliminary investigation only after he has presented his evidence.

With respect to the damages awarded against appellant, his argument disputing their legality and propriety is well answered by the state counsels who cite explicit provisions of the New Civil Code[6] justifying said award (pp. 14-16, People's Brief) which need not be here restated.

WHEREFORE, the judgment appealed from, being in accordance with law and the evidence, the same is hereby affirmed, with costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] p. 7, Rollo.

[2] pp. 2-4, Appellee's Brief, p. 108, Rollo.

[3] People vs. Lood, 117 SCRA 467; People vs. Bautista, 102 SCRA 483; People vs. Bawit, 102 SCRA 797; People vs. Ytac, 95 SCRA 644; People vs. Conchada, 88 SCRA 683.

[4] Exhibit C, p. 55, Record on Appeal.

[5] p. 20, t.s.n., May 8, 1968.

[6] Articles 21, 2204, 2217, 2219, and 2230.

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