

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISMAEL P. BORBON, JR., ACCUSED-APPELLANT,

Ponente: BARRIOS, J.

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BARRIOS, J.:

The appellant Ismael P. Borbon, Jr. (or hereafter Ismael) had a family that included his wife Loreta Umali (or Loreta) and their legitimate daughter Maricel U. Borbon (or Maricel) and a home where his family lived at East Rembo, Makati City. He had good jobs as bookkeeper, accountant and a directorship in a public market, and investments in a taxi cab unit and a market stall.

He also had mistresses.

Ismael has since lost all of these, and languishes in jail after having been charged on May 31, 2002 by Maricel assisted by Loreta with Rape as defined and penalized under Article 335 of the Revised Penal Code in relation to R. A. 7610, committed as follows:

That in September 1996 at their residence at 171-L-1 22nd Avenue, East Rembo, Makati City, Philippines, and with the jurisdiction of this Honorable Court, the said accused Ismael Borbon, Jr. with lewd design and by means of threat and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of his minor daughter, Maricel Borbon, 17 years old, to her damage and prejudice.

CONTRARY TO LAW. (Information, p. 2, record)

of which he was convicted in the judgment which disposed:

WHEREFORE, premises considered the Court finds accused ISMAEL BORBON, JR. guilty beyond reasonable doubt for the crime of rape under Art. 335 of the Revised Penal Code in relation to R. A. 7610 in Criminal Case No. 02-1442 and is hereby sentenced to suffer the penalty of Death.

Accused is also ordered to pay complainant the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as moral damages and ONE HUNDRED THOUSAND PESOS (P100,000.00) as exemplary damages and to pay the costs. (p. 194, record)

On automatic appeal, Ismael submitted the lone assignment of error that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. (p. 48, rollo)

After his plea of Not Guilty and the pre-trial conference that did not result in admissions that may be used against an accused, trial ensued where the prosecution presented as witnesses the complainant Maricel U. Borbon, her mother Loreta Umali Borbon, her uncle Nestor Umali, and Dr. Ma. Salome Fernandez of the NBI who identified her Living Case No. MG-01-979 dated December 11, 2001 (Exh. "H", p. 134, record). Evidence submitted for the defense was the lone testimony of the appellant Ismael P. Borbon, Jr.

Maricel narrated several rapes committed on her by Ismael. Of the rape charged, she testified that when their own house was under repair they moved to her paternal grandmother's nearby house where they shared rooms. Her sister Marniza was with their grandmother in the lower level, while Maricel was billeted with their younger brother Marvin in one of the two rooms in the upper level, and Ismael was in that other room by himself and their stocked items.

In the middle of the night of September 1996 when her mother was still abroad working in Taiwan, her father Ismael woke her up and told her to transfer to his room. She complied because she was scared. Inside the room he then told her to lie down on the floor, but she refused and tried to go out but Ismael held her on the shoulders and pushed her to the floor facing down. She was crying so Ismael closed the door, told her not make to any noise, and when she was about to get up her pushed her down again and removed her shorts. She told him not to do it, but Ismael was then touching every part of her body, mostly her breasts.

Ismael hit her with his fist and succeeded in taking off her pants and baring the lower part of her body. He then went on top of her trying to force his penis into her private part. She struggled but she was not able to extricate herself because she felt weak and could not move. She felt the penis of the accused go inside her vagina causing her great pain.

After this Ismael stood up, wiped his stray semen, and warned her not to tell anybody or else he will kill her. She left the room crying. She could not tell anyone about it and she could not even pray, but she asked God why it happened. She felt devastated and this made her cautious and nervous.

It took Maricel sometime before she told her younger sister Marniza about it, and she also told Maricel of her own experience. She was shocked when she learned that their father had also molested Marniza but she told her that her case is different because she was raped. She was 17 years old then and Marniza was 13. They agreed to look for someone who could help them so she talked to her maternal uncle Nestor Umali when she had that chance during her cousin's birthday celebration on November 9, 1996. But nothing came out of it.

That was the first but not the last rape committed on her by her father. She was raped again by Ismael on June 6, 1999 between 6:00 to 7:00 in the evening. She was sleeping in her bedroom and was awakened because Ismael went on top of her. He hit her on the stomach, and she did not know what happened but all of a sudden her pants and shorts were gone and Ismael was trying to insert his penis into her private part. Ismael succeeded. She could not remember how many times he entered her but he kept on pumping and hitting her while he was doing it. After the rape she was again threatened by Ismael.

She was so scared but she did not try to seek help from the Iglesia Ni Cristo where she had been delisted as a member because after the first rape she lost her faith in God and "hindi na po ko sumamba".

She was again raped by Ismael in July of 1999 in their house and in the same room. Her mother by then was back in the country but she could not tell it to her because of the threats of Ismael. She knew that it would break her mother's heart and she was afraid too that her mother might not believe it just like her uncle Nestor Umali who did not do anything.

The last rape occurred in December 1999, the exact date of which she could not recall. At the time Ismael was nearly fully recuperated from thyroidectomy. This happened in her room between 6:00 to 7:00 o'clock in the evening, the usual time when the other members of the family go to church. She was in her room sleeping, feeling bad because her mother would not buy her anything for Christmas. Ismael walked inside her room and grabbed her. She tried to stop him from removing her clothes and underwear but he hit her on the stomach with his fists while he was on top of her. Ismael was able to rape her and all she could feel was pain but cannot remember how

long the accused was inside her. She was 21 years old then.

Maricel said that Ismael attempted to rape her again in July 2000 but he did not succeed. That was the last because she threatened to tell her mother about it, and she ran away. Soon she attempted suicide.

She told an in-law about what has been happening to her and she was advised to tell her mother. But first she confronted Ismael in November 2001 and recorded this on cassette tape (Exh. "E"). She let her sister listen to the recording and it was Marniza who agreed to tell the matter to their mother.

The following day, her mother told Maricel that she believed her, and it was the most wonderful thing that happened to her. They went to church to seek advice and they were referred to Atty. Carpio who told them to see NBI Chief Reynaldo Wycoco. Together with her mother Loretta and younger sister Marniza, Maricel went to the NBI to file her complaint and where she was subjected to the pertinent examination by medico-legal Dra. Ma. Salome Fernandez of the NBI who submitted her Living Case No. MG-01-979 dated December 11, 2001 (Exh. "H", p. 134, record) containing her findings that:

GENITAL EXAMINATION:

Pubic hair, coarse, abundant, Labia majora and minora, gaping. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, attenuated. Hymenal orifice measures 2.5 cm. in diameter. Vaginal walls, lax. Rugosities, shallow.

CONCLUSIONS:

1) There is no evident sign of extragenital physical injury noted on the body of the subject at the time of examination. 2) Hymen, attenuated and its orifice is wide as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing genital injury.

REMARKS: - Pregnancy test result: Negative (See attached result). (Exh "H", p. 220, record)

She added that from the appearance of the rugosities, hymen and fourchette, Maricel has experienced several sexual intercourses.

During this dark period, many other dire things happened to their family. Earlier and before the first rape, Ismael had severely maltreated Maricel in public and she reported this to the barangay authorities and he was reprimanded and warned against committing child abuse. Maricel dropped out of school and in 2000 worked as a GRO just after her attempted suicide for which she was hospitalized for a week. Her younger sister Marniza charged Ismael of Acts of Lasciviousness. The spouses Ismael and Loretta had a big fight and she stabbed him with a knife hitting Ismael on the arm and stomach, and Ismael left his family in May or June 2001 and resided in one place or another but he would come back as he pleased and would strike the house with hard objects if was not allowed entry. Then Ismael lost his jobs and investments.

The testimony of Maricel was corroborated in part by her mother Loretta Umali Borbon and her uncle Nestor Umali. Loretta said that she was working in Taiwan from December 12, 1995 to December 28, 1997. She has had problems and fights with Ismael because of his womanizing and at one time she stabbed him. Ismael left the family in June 2001 and had been disposing of family properties without sharing the proceeds. It was from Marniza on December 8, 2001 that she learned for the first time what Ismael had been doing to their daughters, and that was when she took action. She denied that she had an arrangement with Ismael for the early and satisfactory dismissal of the cases filed against him. Nestor Umali said that he had been working abroad for some time and during one of his vacations Maricel told him about the vile thing that her father wanted to do to her. He was in a quandary what to do, and in the end was not able to do anything about it.

As his defense, Ismael set up denial and asserted that the charge was fabricated by his family to get back at him

for his philandering, wasting away of their properties and failing to support them.

Ismael testified that he used to work as a bookkeeper and accountant, and was also a member of the Board of Directors of the Comembo Public Market and owned a taxi unit and a market stall. His family lived with him in their own house. However from October 1995 to November 1996 his wife Loreta stayed in Taiwan to work. In June of 1996 they had to transfer to his mother's house because their house was undergoing repairs and they stayed there up to August 1996.

He remembered that there was an instance probably during the last week of 1996 when he badly beat up Maricel because she was not helping them transfer their belongings. During this incident, Maricel ran to the street and went inside a nearby store where he followed and pulled her out. Maricel filed a complaint against him before the Barangay Captain who scolded, warned and advised Ismael against child abuse.

His wife Loreta had previously filed a concubinage case against him, but he does not know what happened to the said case. He left his family on June 10, 2001 because during their quarrel at the Comembo Market in Makati his wife stabbed him on his arm and left side of his stomach.

He was staying in Bicol prior to his arrest, but first he transferred to Pateros then in Pembo, Makati. Maricel often visited him in his boarding house and in the office to ask money and to check on his situation. He testified that the conversation recorded by Maricel on tape (Exh. "E") happened in their house and prior to his decision to leave his family. The topic was his decision for them to stop schooling because Maricel was becoming mischievous while Marvin's grades were failing. According to him her statement "ayaw kong maulit yung nangyari sakin baka gawin mo rin sa kanya" was made in reference to his decision for Maricel to stop schooling. He admitted that he pleaded Guilty to the charge of Acts of Lasciviousness filed by Marniza, but this was in consultation with Loreta who agreed that the said case be ended fast because it was taking its toll on the studies of Marniza and also in consideration of the promise for the withdrawal of the rape case.

It was on November 23, 2002 when a case was filed against him by Maricel and the reason why he was falsely accused of raping her is because after he left his family, their lives became miserable. He sold their taxi and their stall in the market without sharing with his family a centavo of the proceeds.

To sustain a conviction for the crime of rape as charged, it is necessary for the prosecution to allege and prove the following basic elements: (1) sexual congress; (2) with a woman; (3) by force and without consent, and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen [18] years of age at the time of the rape; and (5) the offender is a parent [whether legitimate, illegitimate or adopted] of the victim (People vs. Ocomen, G. R. No. 135049, May 28, 2002). The charge against Ismael by his daughter Maricel has been overtaken by the passage into law last June 24, 2006 of Republic Act No. 9346 prohibiting the imposition of the death penalty. And so the said additional elements affecting age and relationship are thus now inapplicable and irrelevant, and are hereafter mentioned only incidental to the said basic elements.

It is well-settled that while an absolute guarantee of guilt is not demanded by law to convict a person of a crime, there must at least be moral certainty that each element essential to constitute the offense and the identity of the person who committed the same are established by the prosecution. In this the prosecution succeeded.

In rape cases, it has been held repeatedly to the point of being doctrinal, an accused may be convicted on the sole testimony of the victim if such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. A credible witness and a credible testimony are the two essential elements in determining the weight of a particular testimony (People vs. Limio, G. R. Nos. 148804, May 27, 2004). In the present case, the complainant Maricel testified of how her father Ismael one night in September 1996 ordered her

to his room and against her pleas and struggles undressed and ravished her, inserting forcefully his penis into her vagina and causing her great pain. Then after ejaculating and finishing with her, Ismael warned her against tattling. She was then 17 years old, and she testified that her father raped and threatened her some more until she was 21 years old.

The trial court found her testimony convincing. It is a hornbook doctrine that findings of fact of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying. It is not a function of this Court to analyze and weigh evidence by the parties all over again (*Giambattista vs. King Const. & Dev't. Corp.*, G. R. No. 141715, Oct. 12, 2005). We accord the trial court's findings with respect and finality not only because of the said doctrine, but also because its findings are borne by the extant evidence.

The first and main defense of Ismael is denial. But the positive testimony of Maricel which reflected in her straightforward recollection of the repeated vile things done to her by her father cannot be rebutted by Ismael's mere denial. The rule is that an unsubstantiated defense of denial cannot prevail over a positive and categorical testimony of a minor victim (*People vs. Cayabyab*, G. R. No. 167147, Aug. 3, 2005). Denial and alibi, has been characterized as the weakest of defenses in criminal cases (*People vs. Bulan*, G. R. No. 143404, June 8, 2005). It is a self-serving negative evidence and cannot prevail over the spontaneous, positive and credible testimony of Maricel who pointed to and identified to Ismael as her rapist and detailed how he did these and tried to conceal his guilt.

Ismael attempts to assail her damning charge by claiming that it was belatedly filed and falsely made because of the hatred that his wife and their children bore him for abandoning them for another woman. This cannot help him.

The mere fact that a long time passed before Maricel caused the rapes to be told her mother and report to the authorities the felonies committed through the years, does not negate the veracity of the charge or charges for that matter. The jurisprudence is that the failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims (*People vs. Julian*, G. R. Nos. 113692-93, April 4, 1997). More so when their defiler is their own father.

Then it should be considered too that Maricel early on had already confided to her maternal uncle, but nothing whatsoever was done about it. When their mother in a tiff left Ismael, Maricel was poised to tell her, but then the separation was brief and they reconciled. Because of the vileness of the secret she carried, the feeling of the futility of it all, and the threats that Ismael had been making, it is but to be expected that Maricel would be timid and delayed in revealing her anguish and pain.

Nor can credence be given to the nonsensical defense claim that the charges were concocted by his angry family. It is hard to believe that because of his admitted philandering his wife and their daughter will drag the name of their family in a scandal and charge the accused with raping the daughter. There was nothing novel or traumatic about his womanizing which has been going on for years, and in fact his wife had stabbed him for it and they have separated. This violent separation only shows that his angry family has recourses other than a false accusation of rape which would also devastate them. It is hard to believe that a mother and her daughter would concoct for the child to detailedly describe in public the embarrassing steps comprising the elements of the felony of Rape if their

motive was not for justice to prevail and to punish the lecherous man who defiled his own legitimate daughter. Also, jurisprudence holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him (People vs. Simon, G. R. No. 130531, May 27, 2004).

The prosecution having proved beyond reasonable the guilt of Ismael and he having failed to present a creditable defense, his conviction of the felony charged must be sustained. But this must be modified as to the penalty meted by reason of the supervening Republic Act No. 9346, and as to the damages awarded because of the ruling in People vs. Ortizuela (G. R. No. 135675, June 23, 2004).

WHEREFORE, judgment is rendered AFFIRMING the appealed Decision with the MODIFICATIONS hereby imposing instead against Ismael P. Borbon, Jr. the reduced penalty of reclusion perpetua and ordering him to pay Maricel U. Borbon as civil indemnity the sum of P75,000.00, as moral damages the sum of P75,000.00, and as exemplary damages the sum of P25,000.00.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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