

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVENAL ELIZAGA, DEFENDANT-APPELLANT.

*G.R. No. L-38272. October 26, 1976*

Ponente: ANTONIO, J.

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### ANTONIO, J.:

Appeal from the judgment of the Misamis Occidental Court of First Instance in Criminal Case No. 172, convicting accused-appellant Jovenal Elizaga of the crime of Rape, imposing upon him the penalty of reclusion perpetua, with the accessories of the law, and ordering him to indemnify the offended party in the sum of P10,000.00, to acknowledge the offspring, to support said offspring in the amount of P100.00 a month, and to pay the costs.

The present action was prosecuted upon complaint filed by the offended party, Jocelyn Sabayle, with the City Court of Oroquieta. After the accused had submitted himself to the second stage of the preliminary investigation, the case was remanded to the Court of First Instance of Misamis Occidental for trial on the merits, where the City Fiscal filed an Information for Rape against the accused, alleging:

"That on or about the middle of the month of March, 1972, in the barrio of Upper Loboc, Oroquieta City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of the complainant Jocelyn V. Sabayle, with grave abuse of confidence, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the complainant against the latter's will by means of force and intimidation with the use of a hunting knife which he aimed at the neck of the complainant."

The evidence for the prosecution reveals the following facts: Sometime in mid-March, 1972 about 8:00 o'clock in the morning, complainant Jocelyn Sabayle, then 14 years old and in the third year of high school, was on her way to her morning classes at the Misamis Occidental High School. She took her usual route to school, along which route stood the house of appellant Jovenal Elizaga, her uncle by affinity (he was married to the younger sister of complainant's mother). As she was passing in front of the house of appellant, it began to rain heavily. She took shelter in appellant's house and, seeing him, kissed his hand, as was the custom in the locality. The latter invited her to proceed to the sala upstairs where she read her books while waiting for the rain to subside. While she was reading her note-book, the appellant all of a sudden pulled her hands, forced her to stand up and with the sharp blade of a hunting knife, about eight (8) inches long, pointed at her throat, he dragged her into the bedroom. Inside the room, appellant locked the door and pushed complainant against the wall, in the process hurriedly removing his trousers and drawers. Threatening the horrified girl with the knife, appellant pulled down her panties and pushed her backwards on the bed, mounted her and forced his penis into her vagina, whereupon complainant felt severe pain. While performing the foregoing actions, accused continued to press the knife at complainant's throat. After satisfying his lust, the appellant stood up while complainant lay face down on the bed, crying bitterly. According to the complainant, she was paralyzed with fear at the threat made by appellant and because of the superior physical strength of appellant who was big and heavy while she was small and slight, for which reason he succeeded in abusing her sexually. Appellant, with the knife again pressed at complainant's throat, warned her not

to report the incident to her father and mother, otherwise he would kill her and her parents. He told her to put on her clothes and allowed her to leave. She did not attend her classes anymore but went home. Because she was afraid that the accused would carry cut his throat, complainant did not say a word of what transpired to her parents, and it was only some six (6) months later that, at the intervention of her sister, Carolyn, she revealed the whole thing. It turned out that Carolyn, whose attention had been called by complainant's teacher, had observed some bodily changes in the young girl, leading her to suspect that the latter was pregnant. It was only after having been reassured that the police authorities would protect them that Jocelyn narrated the story to her sister, who later informed their parents. Jocelyn was examined by Dr. Emerico Conol, who testified that she was six months pregnant as a result of a sexual intercourse that must have taken place sometime in March, 1972. On December 25, 1972, complainant gave birth to a baby boy.

On the other hand, it is the theory of appellant, a sixty-year old farmer and a former teacher, that he and Jocelyn were having an affair, that their sexual intercourse was the result of their illicit relationship. According to appellant, he was seduced by the complainant in the following manner: Sometime in January, 1972, between 12:00 o'clock and 1:00 o'clock noon, while he was at his house reading the Bible and memorizing the daily prayer of St. Matthew, Jocelyn Sabayle arrived and greeted him: "Good noon, Papa Benal", then asked him if she may primp herself before the mirror in the sala. After grooming herself, she sat beside the appellant. Because he ignored her, she stood up, pushed away the Bible which he was religiously reading and unceremoniously sat on his lap. Thinking that she was acting like a child, appellant tried to push her away but she refused to stand up. Instead, she took hold of appellant's right hand, placed it around her neck, then loosened her blouse and commanded him to fondle her nipples, then afterwards asked him to press her nipple because she was thrilled. In the meantime, complainant was demonstrating a push and pull movement of her lap and holding his two fingers, she inserted them in her vagina and moaned as if she was electrocuted, until a pus-like substance was exuded. All of these occurred in the middle of the sala. Afterwards, Jocelyn stood up, fixed herself before the mirror, then asked him for money. He gave her fifty centavos and she left for school.

At about past 6:00 o'clock in the evening of the same day, Jocelyn allegedly returned and, upon finding him in the living room listening to the news report over the radio, she locked the door and commanded him to close the windows and the door leading to the kitchen. After obeying her com-mand, he found that she had already gone into his bedroom. He followed her there and, at her signal, he closed the shutters of the bedroom windows. At that time, complainant was already lying face up on the bed. Because he was al-ready being tempted, appellant reprimanded Jocelyn and asked her why she should prefer him when he was her uncle, to which she retorted that they had no blood relationship what-soever because he was merely her uncle by affinity. Unable to control himself, he tried to have sexual intercourse with her but, as the opening of her vagina was very small, he was unable to penetrate it and thus contented himself by ejaculating at the opening of the vagina.

Afterwards, according to appellant, there were frequent sexual intercourses between them, all with complainant's consent, wherein Jocelyn allegedly even complained because his penis could not penetrate her vagina because of the tightness of the opening. He allegedly gave her two razor blades to be used by her in widening the opening of her vagina.

In evaluating her credibility, it is important to note the following observations of the trial court, thus:

"Jocelyn Sabayle was, at the date of her alleged raping, just 14 years old, barely in her teens, a wisp of a girl, frail and thin. At the time of the trial she was only 100 lbs. in weight, in height four (4) feet and 9 inches. At the commission of the crime she must have been smaller and lighter in weight. To the mind of the Court and from its observation, the complainant-victim seemed a demure and innocent schoolgirl. Her testimony, even after the public was excluded, was given in a low, shamed voice hardly audible, was punctuated by tears, and

as a matter of fact the hearing had to be suspended for some time to allow the complainant to recover from her discomfiture. The Court is convinced that this was no play-acting, but that what she was relating was truly repugnant, horrifying and distasteful to recall. \* \* \* Her demeanor, her candor, her evident sincerity while she told of the evil that befell her that rainy morning convinces the Court of the truthfulness of her charge. On the other hand, the accused Jovenal Elizaga, who is an old man 60 years of age, strikes this Court as too brazen in his allegations, too bold in making up the details of his defense. \* \* \*

The court a quo had the fullest opportunity to observe the demeanor of these witnesses in the course of their direct testimonies and cross-examination. It is a settled rule that where the issue is one of credibility of witnesses, Appellate Courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[1] We find that in the case at bar, the trial court has not overlooked any fact of substance or value which might affect the result of the case.

On the other hand, We find appellant's narration unworthy of credence. It is highly incredible for a fourteen-year old girl, in the third year of high school, admittedly a virgin and without any previous record of aberrant sexual behavior, to have, without any reason whatsoever, seduced a sixty-year old man by literally forcing herself upon him and compelling him to perform lascivious acts on her person, in the manner of a nymphomaniac. It is equally contrary to reason and human experience for complainant, a decent young Filipina, to have done such purported immoral acts brazenly in broad daylight in the middle of the Sala of a house in which she is not too familiar. Indeed, appellant is married to the aunt of complainant and he has ten children, four of whom are grown-up daughters, and no explanation has been made why he could have evoked such unnatural action on the part of the girl. The law, in the absence of proof to the contrary, presumes persons to be sane and normal, subject to be moved by substantially the same motives. Thus, the law presumes every person to be mentally competent and to take ordinary care of his concerns. We cannot assume, in the absence of any credible and competent evidence, that complainant is a sexually perverted woman, or one of extremely loose morals. On the contrary, the trial court found in complainant, who testified with candor and sincerity, the artlessness, simplicity and innocence of a young Filipina. We find, in the light of these facts, the testimony of appellant to be so manifestly against reason and common sense, and to be so incompatible with every reasonable probability, that it is unworthy of belief.

Appellant further claims that Jocelyn's silence, her failure to shout for help during the sexual act and to relate the incident to her friends at school or her parents show that she fully consented to the sexual act. Jocelyn did not cry for help because she feared for her life. As to her failure to tell her friends her shocking experience, this is understandable because no normal and decent girl would readily broadcast the fact that she was sexually abused. The circumstance that she did not complain to her parents shortly after the consummation of the crime does not affect her credibility, it appearing that she was in mortal fear of the threats of appellant that he will kill her and her parents if she reported the matter. We have previously stated that experience has shown that victims are usually reluctant to divulge the identity of their assailants except to the proper authorities or until they feel safe enough from probable harm.[2] Moreover, considering the reasonableness of complainant's narration and absent any improper motive, as in the case at bar, her testimony must be worthy of full faith and credit.[3]

To Our mind, appellant has failed to present sufficient evidence to substantiate his defense that he and Jocelyn were having an affair and that all sexual intercourses between them were with the consent of the latter.

Appellant makes much of the fact that the garments, including the torn panties, worn by the complainant at the time of the commission of the offense were not exhibited in court. While it is true that such exhibits would have been material to the prosecution of the offender, nevertheless, where, as in this case, trial was had many months

after the offense was committed, the non-exhibition of said items is understandable, as the same may no longer be available. Moreover, testimonies of witnesses, if credible and positive, are sufficient to convict.[4]

Likewise, it is alleged that the testimony of complainant Jocelyn Sabayle contains inconsistencies which defeat her charge. We have examined the records of said testimony and found that said inconsistencies refer to minor matters, having the effect of rendering the same more believable and of precluding the possibility of coaching and rehearsal.[5]

While We affirm the judgment of conviction, it is noted, however, that appellant was ordered by the court a quo to indemnify the offended party in the amount of P10,000.00. Inasmuch as indemnity for the crime of rape has been raised to P12,000.00, appellant is hereby ordered to indemnify the offended party in such amount.[6] The appellant is declared as the parent of the spurious child and the order for the payment of support is affirmed.[7]

WHEREFORE, with the foregoing modification, the judgment appealed from is hereby affirmed, with costs.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

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[1] People v. Cristobal, 1 SCRA 151; People v. Sarmiento, 8 SCRA 263; People v. Jaravata, 20 SCRA 1011; People v. Ablaza, 30 SCRA 173; People v. Espejo, 36 SCRA 400.

[2] People v. Sanchez, L-13335, November 29, 1960.

[3] People v. Gonzales, 76 Phil. 473.

[4] People v. Argana, 10 SCRA 311.

[5] People v. Bollena, 3 SCRA 792.

[6] People v. Amit, 32 SCRA 95; People v. Amiscua, 37 SCRA 813; People v. Otto, 49 SCRA 306; People v. Gonzales, 58 SCRA 265; People v. Abay, 70 SCRA 521.

[7] See Reyes, et al. v. Zuzuvutegui, et al., 102 Phil. 346; Edades v. Edades, et al., 99 Phil. 675; Paulino v. Paulino, 3 SCRA 730; Nable v. Nable, 18 SCRA 1104, 1108; and Galeon v. Galeon, 49 SCRA 516, in which this Court consistently held that illegitimate children, other than natural, should be acknowledged in the same manner as natural children, said acknowledgment being essential to their enjoyment of the rights to be supported by and to inherit from their putative parents.

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