

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DENNIS MALIWAT Y MACAPAGAL, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Angeles City, Branch 59, dated November 22, 1996, finding the accused-appellant Dennis Maliwat y Macapagal guilty beyond reasonable doubt of the crime of rape, the dispositive portion of which reads:

“WHEREFORE, the foregoing considered and after finding the accused Dennis Maliwat GUILTY beyond reasonable doubt of the crime of Rape committed against the minor child Kristine Joy Calimlim, said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is also hereby ordered to indemnify his victim the sum of P50,000.00.

SO ORDERED.”

The antecedent facts are as follows:

Accused-appellant Dennis Maliwat y Macapagal (“appellant”) was charged with rape under the following Criminal Complaint[2]:

“That on or about the 23rd day of November 1994, at a vacant lot near the El Retiro Cemetery, in Barangay Dau, Municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, DENNIS MALIWAT y MACAPAGAL, by means of force and intimidation, did then and there wilfully, unlawfully, feloniously and maliciously succeed in having carnal knowledge with the undersigned seven (7) year old complainant.

Contrary to law. “

During the arraignment, appellant entered a plea of not guilty.[3] After the pre-trial was terminated, trial on the merits ensued. The prosecution presented the testimonies of private complainant Kristine Joy Calimlim, Senior Agent Narciso Pena, Jr. and Annaliza Yambao.

The prosecution established that on November 23, 1994, at about 2:00 o’clock in the afternoon, seven (7)-year old Kristine Joy Calimlim was sent to buy cortal at a nearby drug store near the market of Dau, Mabalacat, Pampanga. She was accompanied by Nene, her playmate. On their way home, a man on a bike, whom she identified later as the appellant, asked Kristine Joy where Pamintuan Village was. When she answered in the negative, appellant asked her where Dau Central was. She pointed the direction towards Dau Central. Appellant then asked Kristine Joy to accompany him, leaving Nene behind. She was made to sit on the bike’s frame. Appellant told Kristine Joy that they would just go to his friend. However, they did not go to his friend’s house. Instead, they proceeded to a school in Mabalacat, passed by the El Retiro Church, crossed a creek, took a rest at a ruined house and afterwards went straight towards a grassy area. Appellant let go off his bike and they both answered the call of nature. At that point in time, appellant took off his shorts and made Kristine Joy swallow his

penis and after which he pulled down Kristine Joy's shorts and panty. She was told not to make any noise or else he will kill her. Appellant laid her down, inserted his penis into her vagina. As she cried in pain, appellant boxed her chest. Kristine Joy's private part was bleeding. After appellant was through and already rested, appellant told her to wear her panty and shorts. Then, she was brought to a basketball court at Del Pilar, Mabalacat, Pampanga.[4]

At the basketball court, Kristine Joy could barely walk. She was assisted by her playmates, which noticed blood on her buttocks. The authorities arrived and she was brought to the Polymedic Hospital in Dau, where she narrated her ordeals to the authorities. Dr. Orlando L. Feliciano conducted the medical examination on Kristine Joy and found lacerated hymen at 3, 6, 9 and 12 O'clock, with a bleeding vagina.[5]

During the reception of defense evidence, appellant through counsel manifested that he is no longer presenting any evidence in his favor and he is just submitting the case for decision. However, appellant questioned the authority of Presiding Judge Eliezer R. De Los Santos to decide the case considering that it was Judge Eli G.C. Natividad who totally heard and tried the case.[6]

After trial, appellant was convicted of the crime of rape. Hence, this appeal. Appellant imputes to the trial court the following assignment of errors:

-I-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE WHEN IT CONVICTED AN ACCUSED WHO WAS NOT IDENTIFIED BEYOND REASONABLE DOUBT.

-II-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE WHEN IT EXERCISED JUDICIAL NOTICE OF ANOTHER CASE INVOLVING THE ACCUSED BUT IGNORED THE EVIDENCE ON RECORD.

-III-

THE COURT A QUO DEPARTED FROM THE NORMAL COURSE OF JUDICIAL PROCEDURE AND ABUSED ITS DISCRETION WHEN IT SANCTIONED CONSTITUTIONALLY INFIRM INVESTIGATION AND IDENTIFICATION PROCEDURES.

We find the appeal unmeritorious.

The crux of the present controversy lies on whether the prosecution was able to sufficiently establish beyond reasonable doubt the identity of appellant Dennis Maliwat as the same person who raped Kristine Joy in that fateful afternoon of November 23, 1994.

Appellant contends that the prosecution failed to positively identify him as the perpetrator of the crime. Considering that the judge who penned the decision was not the judge who conducted the trial, the lower court should have considered the inconsistencies between the testimony and sworn statement of the victim, specifically the color and make of the bicycle used and the scar on the chin of the perpetrator. Appellant asserts that in her sworn statement, Kristine Joy stated that the perpetrator has a prominent scar on his chin, a moustache and deepened cheeks. When presented and shown to Kristine Joy, however, she could not pinpoint the scar near the chin of appellant. Likewise, Kristine Joy declared that the bicycle used was a stainless mountain bike with color red, while appellant's bike is a three-wheeler bike and the color is orange and green.

We have carefully and thoroughly reviewed the records of the case and We are convinced that the prosecution was able to positively identify the appellant as the perpetrator of the crime.

The inconsistency with regard to the scar on the chin of appellant was adequately clarified by Kristine Joy when

she took the witness stand. When asked if she could see any scar on the chin of appellant, Kristine Joy answered during the cross examination in this wise:

Atty. Feliciano:

But I would like to ask the complainant herself if she could see any scar aside from the admission from the counsel.

Court:

Q: May nakikita ka bang pilat ngayon?

A: Kapag nagagalit po siya, gumaganon po iyong baba niya.

(witness demonstrates)

TSN, May 23, 1995, p. 33.

Suffice it to say that with her clarification on the witness stand, there is no more inconsistency to talk about. Further, the inconsistency with respect to the scar does not necessarily discredit the victim considering that she was recounting details of an experience so harrowing and painful to recall, thus, it is reasonable to expect her to fall into minor lapses. Terrified and scared, it is understandable that Kristine Joy could not commit to memory the exact facial features of the man who raped her. For what is important is that Kristine Joy was able to identify appellant as the person who raped her.

The inconsistency as to the bicycle used by the appellant does not have any substantial effect on the nature of the offense. We take note of the fact that the apprehension of the appellant was done less than a month after the incident. It is common knowledge that it is easy to dismantle a bicycle, repaint it, add something to it, or fully dispose it and buy something new. The fact remains that Kristine Joy identified the appellant as the perpetrator of the crime.

On the witness stand, Kristine Joy positively identified the appellant. When asked if she could identify the man who raped her, she was candid and straightforward in pointing to the appellant.[7] During the police line-up in the Barangay Hall and in the NBI Office, Kristine Joy likewise positively identified the appellant.[8] Appellant failed to refute this positive evidence. He even waived his right to present his defense, clinging fully to his assertion that the prosecution failed to identify him based on the inconsistencies above-mentioned. However, as We have explained, these inconsistencies are not substantial enough to negate the fact that rape has been committed and that it was committed by appellant.

Further, We have duly scrutinized the transcript of stenographic notes and We find Kristine Joy's testimony very typical of an innocent child whose virtue has been violated.[9] Her steadfast and candid narration of how she was raped bears the earmarks of credibility, especially since no ill will motivated her to testify falsely against the appellant.[10]

Kristine Joy was seven (7) years old when the dastardly act was committed. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true.[11] We give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, for it is most unnatural for a young and immature girl to fabricate a story as sordid as her own defilement, allow a medical examination of her genitalia, subject herself to a public trial and expose herself to public ridicule for no reason other than her thirst for justice.[12]

The fact that the judge who tried the case was different from the judge who penned the decision does not in any

way taint the same. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him[13], which in this case We find none. Moreover, a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process of law.[14]

Appellant claims that his constitutional rights were violated during the identification process, hence, the identification made at this stage should not be admissible as evidence. We do not agree. It should be noted that the constitutional provision stated by the appellant (i.e., Section 12, Article III) is not applicable in this case. In *Gamboa vs. Cruz*[15], it was ruled that the safeguard embodied in Section 12, Article III of the Constitution applies only from the moment the investigating officer begins to ask questions for the purpose of eliciting admissions, confessions, or any information from the accused. A police line-up is not considered part of any custodial inquest because it is conducted before that stage is reached.[16]

In this case, appellant, together with other persons, was merely asked to be included in a line-up in the Barangay Hall. Appellant willingly obliged to have himself lined up for a possible identification.[17] The investigation did not focus on appellant. No questions were put to him. Rather, the questions were directed to the victim and the other persons who allegedly were sexually molested by the appellant. There is, therefore, no basis for appellant's allegations that his constitutional rights were violated.[18]

The alleged torture suffered by appellant in the hands of the investigators was not duly proven. In fact, appellant did not present any evidence to prove the same. These are but mere allegations which are unsubstantiated. Hence, the investigators are presumed to have performed their duties regularly and in good faith.[19]

We hold, however, that the lower court erred in taking judicial notice of the other cases wherein the appellant was convicted and the other pending cases filed against him. As a general rule, the court is not authorized to take judicial knowledge of the contents of the record of other cases, in the adjudication of cases pending before them or even when said other cases have been heard or are pending in the same court notwithstanding the fact that both cases may have been heard or are really pending before the same judge.[20] The prohibition is more compelling against taking judicial notice of the previous bad conduct of the accused. Courts may take judicial notice of the contents of the record of other cases before it only when there is no objection, with the knowledge of the opposing party, or at the request or with the consent of the parties.[21]

None of the exceptions appear to have been established in the instant case. However, notwithstanding this error committed by the lower court, this would not in any way affect the conviction of appellant of the crime of rape considering that there is independent evidence - clear, convincing and overwhelming evidence – which proved his guilt beyond reasonable doubt. The lower court did not err in holding him guilty and sentencing him to suffer the penalty of Reclusion Perpetua pursuant to Article 266-a of the Revised Penal Code. Appellant's conviction was based on the positive and categorical identification of him by Kristine Joy as the man who devoured her. The medical examination conducted to Kristine Joy after the rape incident further strengthens the fact that there was indeed carnal knowledge.

Finally, We deem it proper to award P50,000.00 as moral damages. Moral damages are automatically awarded to rape victims without the necessity of proof, for it is assumed that they suffered moral injuries entitling them to such award.[22] The award of P50,000.00 as civil indemnity to the victim is affirmed. Civil indemnity is mandatory in a finding of rape. It is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[23]

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the Regional

Trial Court, Branch 59 of Angeles City dated November 22, is hereby AFFIRMED, with MODIFICATION that herein appellant Dennis Maliwat y Macapagal is further ordered to pay Kristine Joy Calimlim the additional amount of P50,000.00 as moral damages.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

[1] Rollo, pp. 15-20.

[2] Records, pp. 2-3.

[3] Order dated May 22, 1995, Records, p. 39.

[4] TSN, May 23, 1995, pp. 8-18.

[5] Medico Legal Certificate, Exhibit "B", Records, p. 104.

[6] See Order dated July 9, 1996, Records, p. 204.

[7] TSN, May 23, 1995, pp. 18-19.

[8] TSN, July 18, 1995, pp. 24-28.

[9] People vs. Balgos, 323 SCRA 372 (2000).

[10] People vs. Gagto, 253 SCRA 455, February 9, 1996. citing People vs. Ulili, 225 SCRA 594 (1993); People vs. Joya, 227 SCRA 9 (1993); People vs. Matamorosa, 231 SCRA 509 (1994); People vs. Tabao, 240 SCRA 758 (1995).

[11] People vs. Montes, 416 SCRA 103, November 18, 2003, citing People vs. Garcia, 381 SCRA 722, May 7, 2002.

[12] People vs. Montemayor, 396 SCRA 159, January 28, 2003, citing People vs. Talo, 344 SCRA 294 (2000); People vs. Adora, 275 SCRA 441 (1997); People vs. Junio, 237 SCRA 826 (1994); People vs. Lagrosa, 230 SCRA 298 (1994); People vs. Domingo, 226 SCRA 156 (1993).

[13] People vs. Sansaet, 376 SCRA 426, February 6, 2002, citing Quinao vs. People, 333 SCRA 741 (2000).

[14] Ibid, citing People vs. Hapa, 361 SCRA 361 (2001).

[15] 162 SCRA 642 (1988).

[16] De La Torre vs. Court of Appeals, 294 SCRA 196 (1998). See also People vs. Pavillare, 329 SCRA 684 (2000).

[17] TSN, July 18, 1995, p. 27.

[18] Dela Torre vs. Court of Appeals, supra.

[19] People vs. Timon, 281 SCRA 577 (1997).

[20] Oscar M. Herrera, Remedial Law, Revised Rules on Evidence, Volume V, 1999, pp. 88-89, citations omitted.

[21] Herrera, Remedial law, Ibid, pp. 89-90, citing Occidental Land Transportation vs. Court of Appeals, March

19, 1993, 220 SCRA 167.

[22] People vs. Sabardan, 429 SCRA 9 (2004).

[23] People vs. Galvez, 365 SCRA 681, September 24, 2001, cited in People vs. Montemayor, 396 SCRA 159 (2003).

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