

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REINO ROLL Y PACHECO, DEFENDANT-APPELLANT.

G.R. No. L-42963. July 20, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the decision of the Court of First Instance of Rizal convicting the above-named accused of the crime of rape and sentencing him as follows:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Reino Roll guilty beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the offended party in the amount of P12,000.00 pursuant to Art. 345 of the Revised Penal Code without subsidiary imprisonment in case of insolvency and to pay the costs.

"Accused shall, however, be credited in full for the period of his preventive imprisonment."[1]

As narrated in the People's brief, the facts as proven by the State evidence are as follows:

"Complainant Milagros Rosendo, a young girl, 14 years of age and a resident of Boy's Town Village, Parang, Marikina, Rizal is undisputably possessed with a very low intellectual capacity as evidenced by the fact that it took her seven years in school to reach the 3rd grade, and by the manner she gave her answers during the trial of this case (pp. 8-9, tsn, August 20, 1974).

"Complainant and accused are neighbors in Boy's Town Village, Parang Marikina, Rizal (pp. 7 & 10, tsn, August 20, 1974; pp. 4 & 6, tsn, October 8, 1974). Complainant as well as her parents, particularly her mother, Mrs. Rosita Rosendo, were in good terms with the accused before the incidents in the case at bar transpired, so much so that the accused even had occasion to offer Mrs. Rosendo to be a "ninong to one of her children (p. 4, tsn, August 21, 1974).

"One morning in the month of December, 1973, complainant went to the store of her neighbor, the herein accused Reino Roll, and bought soap. Immediately after paying for the soap, accused suddenly pulled complainant inside the store. Once inside the room of the store, accused tore complainant's duster and removed her panties. Then accused pushed and forced her to lie down on a bed inside the room (p. 17, tsn, August 20, 1974). Accused thereafter unbuttoned and removed his pants and went on top of her with the end in view of having carnal conversation with her. Complainant immediately resisted the accused. She kicked the accused (p. 18, tsn, August 20, 1974) as well as the wall separating the room and the store, and shouted at least three (3) times for help (p. 11, tsn, August 20, 1974). While she was thus resisting she saw through the window of the store at least five (5) persons composed of 3 children and 2 adults passed by the store (p. 17, tsn, August 20, 1974). Unfortunately, these five persons apparently were not attracted by her shouts for help (pp. 15-16, tsn, August 20, 1974). Notwithstanding complainant's resistance and cry for help, accused succeeded in inserting his penis inside the vagina of the former who then felt pain in her private part and bled which constrained her to shout "Aray" (pp. 9-12, tsn, August 20, 1974). After she was raped by the accused, she went home where she washed her bloodstained panties without the knowledge of her mother who was not then at home (p. 17, tsn, August 20, 1974).

"Complainant who was afraid of being whipped by her mother refrained as much as possible from reporting to the latter that she (complainant) was raped by the accused (p. 13, tsn, August 20, 1974).

"Two weeks later, at around 8 o'clock in the morning, while complainant was alone in their house, accused arrived thereat and again raped her. Two weeks thereafter, complainant who could no longer bear the abuses committed upon her by the accused, was constrained to report as she did report the matter to her mother, Rosita Rosendo (pp. 12, 13, tsn, August 20, 1974) who in behalf of her aggrieved minor daughter (complainant), filed a complaint against the accused with the P.C. at Camp Crame where her said daughter underwent physical and medical examination (pp. 2, 3, tsn, August 21, 1974).

"Dr. Desiderio Moraleda of the Medico-Legal Division, P.C. Crime Laboratory, testified that on February 20, 1974, he was requested by the Commanding Officer of the CIS to physically and medically examine complainant Milagros Rosendo (p. 2, tsn, August 20, 1974). Before he actually conducted such examination upon the person of Milagros Rosendo, the latter informed him that she was abused by one Reino Roll (the accused) in the morning of December 22, 1973 at Parang, Marikina, Rizal (p. 5, tsn, August 21, 1974).

"Dr. Moraleda, in the course of his examination of Milagros, found shallow healed lacerations of the latter's hymen at 3 and 7 o'clock positions which are indications that an object or instrument was inserted into her vaginal canal, and which was bigger than the opening of her vagina thereby causing her hymen to be lacerated. He also testified that the healed lacerations could have been the result of an insertion of a human organ. Based from the appearance of the healed lacerations, Dr. Moraleda estimated that the lacerations could have been more than one (1) month prior to the date of his examination. He further testified that the orifice which is the opening of the vagina of the subject (Milagros) moderately resisted the introduction of the index finger and also of the spectrum, and on examination of the vaginal canal, it was narrow with moderately shallow rugosities constituting the elevation on the lining of the vaginal canal. Finally, he concluded that Milagros Rosendo is physically no longer a virgin (pp. 3-7, tsn, August 20, 1974; Exh. "A", p. 1, Folder of Exhibits)."[2]

Appellant denies that he raped the complainant, alleging that even from the complainant's testimony, evidence of violence or intimidation is wanting, or at least insufficient; and that, in fact, he did not commit any act of sexual intercourse with the complainant at all on the day of the alleged rape.

To support his contention that the prosecution's evidence suffers from deficiency with respect to the employment of force, violence or intimidation, appellant particularly stresses the fact that while he was removing his pants, complainant could have bolted out of the room, or she could have opened the window through which she peeped out and saw moving persons passing by.[3] Appellant also points to the fact that complainant never said anything about force or violence as the means that enabled him to gain entry into her genital organ, for he never tied her up, nor in anyway restricted her bodily movements.[4]

What is plainly of record which appellant cannot deny is the complainant having testified, among others, as follows: "He pulled me inside his place (store)"; "The accused tore my dress x x x" (p. 10, tsn, August 20, 1974); "After accused pulled my panty, he pushed me on their bed"; "He went on top of me." She further testified: "I was kicking their wall" (p. 11, tsn, August 20, 1974); "The accused was able to rape me in spite (sic) of my kicking him because he was holding on the bed." (p. 18, tsn, Id).

The aforequoted portions of complainant's testimony clearly attest to how untrue and unfounded is appellant's contention that complainant never said anything about force and violence having been employed upon her to make him succeed in his beastly desire. She also said she shouted at least three (3) times for help as she was kicking the accused (p. 18, tsn, Id). We underscored the word "rape", whose connotation is one of force and violence, for this is the precise word used by complainant while testifying in court. The act of shouting and kicking the appellant is likewise indicative of the resistance complainant used to repel the assault against her which also connotes force or violence.

It is, therefore, naive to claim that complainant never said anything about force or violence. Appellant himself quoted from the testimony of complainant: "Q. You said he was holding a knife? A. Yes, sir." [5] The act of holding a knife by itself is strongly suggestive of force, or at least intimidation, being used in appellant's trying to consummate, as he did consummate, his lascivious intent, which intimidation can give rise to the crime of rape just as much as violence or force (*People vs. Garcines*, 57 SCRA, 653, June 28, 1974).

Neither is it accurate for appellant to say that he did not tie her or otherwise restrict her bodily movement. When complainant said: "The accused was able to rape me in spite (sic) of my kicking him because he was holding on to (sic) the bed", and that "he was preventing my legs from kicking the wall", this can mean no other than that appellant effectively restricted her in her bodily movements, with his arms holding on to the bed to press her against it, aided by the weight of his body, that of a well-built man of 38 years of age.

With all the acts of violence dealt on her, such as being pulled inside the store and pushed on the bed after pulling down her panty, how could complainant, then placed in a state of fear, think of bolting out of the room, or opening the window from which she saw some persons passing by while appellant was taking off his pants? The victim is a young girl, so mentally retarded, it took her seven (7) years to reach third grade in school. She could not be expected to take the bold measures appellant would want her to have taken under the circumstances she narrated.

The improbability of the rape having been committed is also sought to be established by appellant, the latter stressing that the store where the rape supposedly took place was so near adjoining houses and nearer still to where many persons were passing by at the time.

As pointed out by the Solicitor General the records do not show that the store was near some houses in the neighborhood. What is extant on the record is the testimony of complainant that the "houses were separated from each other." And while there might have been persons passing by at the time - around 8:00 o'clock in the morning - their attention would not be drawn to the store in their hurry to go to their work, the sexual assault being perpetrated not in open view, but hidden therefrom by a wall separating the store from the room where the carnal act took place.

The delay of complainant in reporting the rape to her mother is easily explained by the fear of complainant, a mentally retarded girl of only 14 years, and still in third grade, to be whipped by the mother. This precisely was her explanation, such that even when appellant committed another act a second time in the house of complainant, she kept the disgrace to herself. It was only when appellant made a third attempt that complainant no longer could stand the appellant's abuses, and was then constrained to report to her mother what appellant had done to her. It must have been because complainant did not report the very first act that appellant was emboldened to repeat the act, but to his boundless regret which was brought about by his own disastrous miscalculation of the girl's sense of decency and chastity.

There is indeed no reason to doubt the sincerity and veracity of the complainant in giving her story of the harrowing experience she went through in the hands of appellant. She had no ax to grind against him, to induce her to concoct a story she will have to narrate in public at the expense of her womanly honor and reputation. To support her claim of having been raped, she had to submit herself to physical and medical examination, which she would not normally do unless she had to, for the sake of truth and justice, which she seeks against no one else but he who did her a very grave offense, particularly against her honor - the appellant herein.

The foregoing observations render appellant's alibi simply futile, in the face of his having been positively pointed to as the perpetrator of the grievous crime charged. Not only complainant but also her parents, with whom appellant admittedly had cordial relations, testified against him. He said complainant's parents approached him for

a settlement by means of monetary consideration. If this is true, it will prove all the more that appellant had really committed the wrong imputed to him, but because of their good relations, complainant's parents could still find compassion not to send him to a life-long stretch behind bars. However, this claim of appellant sounds to be but a futile effort to show some semblance of motive behind the accusation against him, which he, in effect, claims to be false and fabricated. In the first place, the complaint had already been filed, and an attempt at settlement should more naturally come from appellant. Secondly, from his occupation as a mere scavenger, appellant would not be a good choice for an extort victim as appellant would want to portray himself with his claim of having been approached by complainant's parents for a monetary settlement of the case.

By and large, We have not the slightest doubt that the complainant had been raped and by no other man than the appellant herein, on the day as alleged in the information.

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

SO ORDERED.

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

[1] p. 80, Rollo.

[2] pp. 2-5, Appellee's Brief, p. 93, Rollo.

[3] p. 7, Appellant's Brief, p. 73, Rollo.

[4] p. 6, Id.

[5] p. 11, tsn, August 20, 1974; p. 6, Appellant's Brief.

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