

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCOS CLARIN, DEFENDANT-APPELLANT.

G.R. No. L-47200. October 30, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Before Us for automatic review is the decision of the Court of First Instance of Negros Oriental, Branch V (Dumaguete City) the dispositive portion of which reads:

"WHEREFORE, finding accused Marcos Clarin guilty of the crime of rape by force and intimidation with the use of a deadly weapon beyond reasonable doubt with the aggravating circumstances of abuse of confidence, nighttime and the complainant being the legitimate daughter of the accused, with-out any mitigating circumstance to offset the same, judgment is hereby rendered sentencing the accused the penalty of death and to pay the costs." (Appellee's Brief, pp. 2-3).

The crime charged was committed, together with antecedent facts and those that followed its commission, according to the evidence of the prosecution, and as quoted from the People's Brief, in the following manner:

"At the time of the incident in question, the complainant was then 17 years old. She reached only Grade V (pp. 39, 54, Tiblatin; p. 1, Records). She is the legitimate daughter of the accused Marcos Clarin, whose wife, complainant's mother, is Rustica Casissid. The couple have four sons and a daughter, complainant herein being the eldest (pp. 31, 33, 39, ts, Tablatin; pp. 2-3, 61-62, ts, Bael).

"Before the accused and his family came to reside in Sitio Kandalakan, Barrio Kalantukan in the municipality of Bayawan, Negros Oriental, they resided in Isabela, Negros Oriental (pp. 40-43, ts, Tablatin). While in Isabela, complainant's hands were asked in marriage by one Alejo Cumbis. But the accused, as the father of the girl refused to allow his daughter to marry said Cumbis. Consequently, the complainant left their house to live together with Cumbis. Despite this development, the parents of the complainant refused to forgive her and to give consent to her marriage. Thus, complainant and Cumbis lived together as common-law husband and wife for a year, more or less (pp. 40-41, 43, ts, id.). Sometime in April, 1971, Cumbis left the complainant ostensibly to go to Antique for a vacation and never returned. The complainant then returned to her parents. The accused, at first, refused to accept her, but later relented when his wife insisted (pp. 42-43, ts, Tiblatin; p. 14, ts, Bael).

"After Cumbis left the complainant in Isabela, the accused and his family, including the complainant, left in 1971 and took up residence in Sitio Kandalakan. To support his family, the accused planted crops and tobacco plants on the land of one Miniong Teves, which then overseered by one Delfin de Asis (pp. 41-43, 63-64, ts, Tiblatin). The accused and his family, including the complain-ant, resided in a house in Sitio Kandalakan. The accused also has a nipa hut, which was used to store tobacco leaves (pp. 32, 44, 48-49, ts, Tiblatin; pp. 2-3, 5, 8, 17-20, ts, Bael).

"In the evening of February 16, 1973, after the said family had taken their supper, the accused, in the presence of his wife and sons and said daughter, asked permission from his wife to allow Violenda to sleep with him at their nipa hut, giving the reason that he usually had bad dreams or nightmares (pp. 32, 45-47, ts, Tiblatin).

Because she was an obedient daughter, Violenda consented (pp. 43--44, 45, tsn, id.). It was already 7:00 o'clock that evening when the accused and his daughter, Violenda, went to the nipa hut, located about one kilometer away from their house. Violenda walked ahead of her father who was following her, holding the lighted lamp or lampara. He also took along a mat and a blanket (pp. 46-48, 49, tsn, id.).

"Upon arriving at the said hut, the ac-cused told his daughter Violenda to go up the hut. Violenda heeded and went up the hut, by using its two-step stairs. The accused followed her up the hut. Once inside, the accused placed the lampara in its usual place. The nipa hut was then not filled up with tobacco leaves, and there was more room inside for two or more persons to sleep on. There were tobacco leaves hanging, others were on the floor (pp. 48-49, 50-51, tsn, id.).

"Immediately thereafter, the accused told his daughter Violenda to take out or remove her panty, pointing at the same time a knife at her. Violenda became frightened and could not utter anything. But she did not obey her father. Hence, accused himself forcibly removed the panty of his daughter while she was then standing. By then, Violenda was seized with fear as she saw the knife this time pointed at her neck. She became nervous and could not do anything nor shout (pp. 33, 49-50, 51-52, tsn, id.). Having thus removed her panty, the accused told his daughter to lay on the floor, but she refused. The accused then forcibly held her hands and pulled her downwards, and made her lie on the floor. It did not take long for the accused to remove his pants. Thereafter, he laid on top of his daughter and forced sexual intercourse with his daughter who felt some pain. While in the course of the copulation, which lasted "may be an hour", the accused told his daughter not to cry, nor to tell anybody about it. Violenda then felt the penis of her father ejaculate inside her genital orifice during the coitus (pp. 33, 50, 52-54, tsn, id.).

"After the sexual intercourse, the accused again told his daughter Violenda not to tell her mother, nor anybody else, as to what he had just done to her. Violenda was crying then. He assured her that what they had just done was "no case, because that is (was) like a carabao that has no foot prints". He further told her daughter that they would do the sexual inter-course again early dawn because it would be quite dark still and cold. Violenda did not respond to her father's suggestion. Later, she remonstrated with the accused, asking why he was committing sexual intercourse with her when she was his daughter (pp. 33, 50, 55, 58-59, tsn, id.). All throughout the night, the accused lay beside her daughter, hugging her, inside the said nipa hut. Violenda could not sleep that night as she continued crying. She felt heart-broken because of what her own father had done to her. She was shocked by her experience (pp. 48, 55, 57, tsn, id.).

"Early the following day, while it was still dark, the accused asked permission from his daughter Violenda that they do the sexual copulation again, saying that it was quite cold. But she did not consent or give in to his suggestion. She pleaded instead with the accused to pity her because she was his own daughter. The accused took pity on her and no longer persisted in his intentions (pp. 58, 59, tsn, id.).

"When it was bright enough that morning of February 17, 1973, both the accused and the complainant left the nipa hut and returned to their house. The family except the accused, then took their breakfast. Instead, he left the house and went to the river to fish the whole day (pp. 33-34, 50-55-56, tsn, id.). After the accused had left the house, Violenda told her mother what her father had done to her during the night inside the nipa hut (pp. 56, 59, tsn, id.). The mother cried upon hearing the story of her daughter. Violenda told her mother to devise a way whereby they could bring the accused to the poblacion of Bayawan (pp. 33, 59-60, tsn, id.).

"At around 2:00 o'clock in the afternoon of the same day, February 17, 1973, both mother and daughter went to see Rogelio Casidsid, brother of Violenda's mother, at the latter's house, located about one kilometer away (pp. 10-12, 18-19, 20-21, 60, tsn, id.). The nipa hut where the accused stored his tobacco leaves is located about 200 arms length from Rogelio's house (pp. 19-21, tsn, id.). At Rogelio's house that afternoon, Violenda's mother informed Rogelio about the incident. Violenda was crying while her mother was telling the story to her uncle Rogelio. The latter noticed that Violenda's eyes were swollen. He was shocked and offended upon hear-ing the report. He investigated his niece Violenda, and the latter confirmed her mother's report that she

was raped by her father during the night inside the said nipa hut. Violenda also told her uncle that her father should be arrested for having raped her. Violenda's mother informed her brother that the accused was fishing in the river (pp. 11, 18, 21-22, 26-27, 34-35, 61, tsn, id.). Rogelio then suggested that they better give money to Violenda for the latter to invite her father to attend the fiesta in the poblacion of Bayawan that same day, where the accused could be arrested (pp. 12-13, tsn, id.).

"Rogelio Casidsid then told complainant and her mother to wait for him in his house in the meantime. He then went to see the barrio captain, Herman Tinapao, at the latter's house, located about three kilometers away. There, Rogelio told the barrio captain about the incident that befell his niece Violenda. He also told the barrio captain about their plan to invite the accused to go with them to the poblacion of Bayawan. Tinapao agreed, promising to see them there in the poblacion of Bayawan (pp. 22, 28, 29, tsn, id.).

"Returning to his house, after seeing the barrio captain, Rogelio Casidsid gave P13.00 to Violenda with instruction for her to invite her father to attend the fiesta in the poblacion of Bayawan (pp. 22, 24, 34, 60, tsn, id.). Rogelio then sent Violenda to look for her father in the said nipa hut that afternoon. The accused was in his nipa hut when Violenda approached him and she told him: "Tay, let us go to the poblacion for the fiesta. I have here P13.00 which I have been keeping" (pp. 23-25, 35, tsn, id.). Rogelio overheard what his niece told her father from his nearby house (pp. 25-26, tsn, id.).

"At about 3:30 o'clock in the afternoon of the same day, February 17, 1973, Violenda and her father went to the house of Rogelio Casidsid. From there, Violenda and her father and her uncle Rogelio left for the poblacion of Bayawan, arriving at the latter's place at around 7:00 o'clock that same evening. Rogelio asked permission from the two to look for barrio captain Tinapao. Together with a cousin, Danilo Tomefrancia, Rogelio went around and found the barrio captain at around 11:00 o'clock that same evening sitting on a cement block at the terminal about three kilometers away. Together with the barrio captain, Rogelio returned to the place where he had left Violenda and her father earlier (pp. 23, 27-30, 35-36, tsn, id.). While Rogelio and the accused were drinking beer, the barrio captain took Violenda aside and asked her about the truth of the report of Rogelio to him. Violenda confirmed the report that she was raped by her father the night before inside the nipa hut. Later, Rogelio and the barrio captain informed the accused that they pass the night at the municipal building (p. 36, tsn, id.).

"It was already 12:15 past midnight when the four arrived at the municipal building of Bayawan. Rogelio Casidsid first told Pat. Aly Lacson to arrest the accused Marcos Clarin because he had raped his own daughter. Pat. Lacson called Violenda aside and to come inside, and then he asked her whether the incident was true. Violenda confirmed the report that she was raped by her father. The policemen then arrested the accused and lodged him in the municipal jail that evening. Rogelio, his niece Violenda and barrio captain Tinapao passed the night in the said municipal building (pp. 14, 30, 37, tsn, id.).

"The following morning, February 18, 1973, Violenda and her uncle Rogelio Casidsid were investigated by the Chief of Police. The statement of Violenda was reduced to writing and the same was sworn by her before the municipal judge that same morning (p. 6, Records). Afterwards, Violenda, her uncle Rogelio Casidsid and barrio captain Tinapao went to the mayor's house. From there, the three proceeded to see Dr. Olympio B. Credo, resident physician of Bayawan Emergency Hospital, at his clinic-office. After the medical examination conducted on Violenda Clarin by the said doctor, the three returned to the Chief of Police. Afterwards, they went home (pp. 15, 17, tsn, id.).

"Dr. Credo testified that he had examined the body of victim Violenda Clarin at 8:30 o'clock in the morning of February 18, 1973. The victim told him that she was raped by her own father at around 7:00 o'clock in the evening of February 16, 1973 (pp. 3-4, 5-6, 7-9, tsn, id.). After the examination, the doctor issued the corresponding medical certificate (p. 4, tsn, id.; Exhibit "A"), which contains the following findings:

"RAPE:

- "1. Perineal area - nothing pertinent.
- "2. Labia major and labia menora - no erythematous lesion.
- "3. Vaginal introitus - admits two fingers easily without resistance. - presence of carunculae.
- "4. Vaginal canal - no erythema
- "5. Cervix - no erythema
- "6. Vaginal and cervical smear - negative for spermatozoa." (Exhibit "A")

"Dr. Credo further testified that he found no physical injury on the body of the victim, nor was there pertinent lesion in the perineal area, that is, between the female organ (p. 5, ts, id.); nor any hematoma or contusions on the vaginal canal of the female organ (p. 5, ts, id.). At the time of his examination of the said rape victim, the vaginal and cervical smear was found negative of spermatozoa (pp. 6, 8, ts, id.). According to the said doctor, it was possible that any spermatozoa in the victim's vagina must have already disappeared or died since the examination was conducted almost 36 hours after sexual intercourse (pp. 6, 8, ts, id.). Dr. Credo further declared that it is possible for the spermatozoa to live with-in 36 hours, although the life span of the spermatozoa in the vagina of a woman is only for few hours because it is acidic in nature (p. 8, ts, id.).

"According to Dr. Credo, he asked the victim Violenda Clarin why she came only for examination on February 18, 1973, and she told him that she could not get out from the place because she was guarded and that she could not escape at once (p. 7, ts, id.). He also was informed by her that she was not given any good or hard blow but that the accused applied a dagger against her; hence, she could not move, but that there was no penetration of the dagger (p. 9, ts, id.)."(Appellee's Brief, pp. 3-13).

The defense is one of simple denial, appellant alleging in effect that the charge was a pure fabrication, motivated by strong resentment and hatred of the supposed victim and the latter's mother against him for having upbraided them for the illicit relations they have been carrying on with their respective lovers, and by their desire to put him behind bars, so that they would be free to go on with their viciously immoral and illicit affairs.

Thus, he testified that his wife, at the time the alleged crime was committed, had been going out at night with one Baling Galon, giving rise to his strong belief that an illicit relation existed between them, as he in fact quarreled with her wife about the affair, and that at the time he testified in court, both were already living together. As for her daughter Violenda, she had left home also to live with one Alejo Cumbis in a common-law relationship, but when she was abandoned after over a year, she went back home. Appellant would have refused to accept her were it not for his wife's plea to let their daughter stay with them again.

The alleged motive of the rape victim and the latter's mother for falsely charging appellant with such a grave offense as could send him not only behind bars but possibly to the execution chamber, is utterly insufficient to induce the mother of the victim to consent to her daughter being exposed in a public trial as having been ravished by her own father, much less would the daughter consent to be so exposed for the justifiably disapproving attitude of appellant against their sexual misadventures. The complainant, particularly, had left behind her the immoral life she lived with a common-law husband, because the latter abandoned her. She had to come back home with nobody to depend upon for care, support and protection more than her own father. She would be the last person, in her state of being the victim of a man's infidelity, to desire his father's incarceration or possible execution whom, more than anybody else, she could hope for solace, love and care. If she gave a story of how her father raped her, knowing that by said act, if denounced to the authorities, she might lose him, there can be no question that she had done so under the compulsion of telling the truth, unable to bear the thought of having been beastly attacked by her own father.

Only her mother might be said to have some motive to wish appellant to be meted the extreme punishment under the law, if it was true that she had an illicit affair with another man, as appellant alleged. Even so, her own daughter would not con-sent to offer herself as the means of perpetuating such an af-fair, which is such a grave offense against her father, specially after she had herself experienced the pain of being a victim of desertion, infidelity and downright cruelty, and in a manner and under circumstances that would inflict an indelible blemish on her character and a lifelong disgrace and blot to her reputation. In her predicament of utter helplessness after being abandoned by an erstwhile common-law husband, complainant could not have preferred losing his father to a lifelong prison life, if not death by execution, the one man who could give her lasting paternal love and care, to allowing her mother unre-strained freedom to an illicit affair, and thereby add moral pain to the physical suffering of her father while awaiting, in the death row, the end of his earthly life. No person, much less a woman, could attain to such height of cruelty to one who has sired her, and from whom she thus owes her very existence, for which she naturally feels lasting and loving gratefulness. Her story of having been raped by his own father, as she gave it under the solemnity of an oath under the gaze of a public trial could, therefore, not but be the truth, painful though it was to her in revealing it in court.

The alleged inconsistencies and contradictions in the testimony of the victim, as have been very painstakingly pointed out by appellant's de officio counsel, who should be commended for his zealous and assiduous effort to save his client from the extreme punishment meted out on him, assuming that they exist more than from mere imagination, are, therefore, insuf-ficient to erase the firm conviction as to the truth of the victim's testimony. These supposed inconsistencies and contradictions could easily be explained as referring to minor and incon-sequential details, arising from the frailty of man's memory, not from the falsity of the story. They do not affect her cre-dibility at all, on the central fact constituting the very essence of the crime charged. One subjected to a most shocking experience is likely to forget the mere attendant circumstances, the mind being focused on the main and most absorbing act, and memory of the entire event, concentrated on such act. Recollection of incidental details merely related thereto necessarily becomes faint and sketchy with the passage of time, being on matters of indecisive importance if not without material signi-ficance, and on which testimony would, therefore, not be as care-fully or guardedly given for accuracy.

We could pass upon the alleged inconsistencies and contradictions, by merely saying that as quite satisfactorily demon-strated by the Solicitor General, they are more apparent than real, and that any rate, they refer to minor and inconsequential details, not in any way, affecting the credibility of the com-plainant's main testimony. However, for the satisfaction of counsel de officio whose zeal and industry in the defense of his client deserves commendation, We shall pass upon the inconsistency and contradictions pointed out by him as are worth mentioning. They are: (1) whether complainant had begotten a child or not; (2) whether she was raped twice or only once by appellant; (3) the time of the meeting with complainant's uncle to plan appellant's arrest and detention; (4) the precise time and place appellant used a knife to threaten her daughter; (5) the reason why it took complainant two days after the incident to go to the hospital for medical examination, and (6) whether corn or tobacco was stored inside the hut.

(1) If complainant told Dr. Credo that she had begotten a child, but she denied this in Court, complainant may have done so out of a natural desire and impulse to protect her honor. This would give more credibility to her story of rape committed against her by her own father, because despite her natural ten-dency to hide something that would put her to shame, she could not conceal her having been raped by appellant because the of-fense was too much to bear and keep to herself.

(2) When complainant said: "he was doing the sexual intercourse" at dawn, she could have meant to convey only the idea of appellant doing the movement of intercourse without there being an actual insertion, as was done

earlier in the night. So she stated she was raped only once.

(3) Any discrepancy as to the time when complainant and her uncle met to plan appellants' arrest and detention in the municipal jail during the fiesta loses significance because there was such a plan which was actually put into execution, a fact duly established and cannot be denied.

(4) The use of the knife could have started when complainant was going up the hut, and again used to accomplish appellant's bestial desire once inside the hut. Complainant never declared that it was only on either place or time, not both, that appellant threatened her with the knife.

(5) Complainant's reason for the delay in her going to the hospital for examination that she was guarded is not a lie, for just because her father went to fish the morning following the incident, gave her no assurance that he would not come back soon enough to prevent her from going to the doctor, as she knew appellant would certainly suspect her purpose should she go out of the house just after she had been raped.

(6) Only Herman Tinapao testified that the hut contained corn, but this does not necessarily mean that complainant told him that corn was stored in the hut, not tobacco. The mistake is evidently that of Tinapao which should not affect complainant's credibility.

The foregoing is an objective analysis of the supposed inconsistencies and contradictions committed by complainant. We are convinced that they are not that serious as counsel would make of them. There are no proofs of complainant's lack of sincerity and candor in giving her story of rape committed by her father against her, as to cast doubt or suspicion on the veracity of her testimony.

One fact that should not escape attention for a proper appreciation of its significance is the presentation of appellant's son, Marianito Clarin as a defense witness, but he wilted under the pressure of the heavy thought, as he said so in court, that what his father had done was bad, and so he and the other children of appellant would not testify in his favor to gain his acquittal (p. 62, t.s.n., March 9, 1977, Bael). Appellant's own son would not have uttered those words with tears in his eyes, unless he was convinced that his father so gravely offended his sister that he would not even lift a finger to save his father from the punishment that he deserves. By his words and conduct, he had strongly fortified belief in the truth of his sister's sad story.

The willingness of complainant to face investigators and to submit to a physical examination by a medico-legal officer, is a mute but eloquent testimony of the truth of her accusation against her father. If she was merely asked to narrate a fabricated story to build up a serious charge of rape against appellant, she would recoil at the possibility of being caught in her prevarication. She should feel deterred by the grave consequences of such wilful falsehoods which could easily be un-masked as such by the medical findings that would be made after a thorough examination on her body. It was the truth of her story that gave her the courage and boldness fearlessly to face interrogation, and medical examination, both effective means of verifying the truth of her serious accusation.

Speaking of veracity of a rape victim's story, this Court, in *People vs. Daniels*, 86 SCRA, 511, 527, had occasion to observe:

"Appellant assails the veracity of the testimony of the complainant. But what possible motive could a thirteen-year old girl barely in her teens have in fabricating a story that could only bring down on her and her family shame and humiliation and make her an object of gossip and curiosity among her classmates and the people of her hometown. It cannot be denied that a public trial involving a crime of this nature subjects the victim to what can be a harrowing experience of submitting to a physical examination of her body, an investigation by police authorities, appearance in court for the hearing where she has to unravel lewd and hideous details of a painful event which she would prefer to forget and leave it unknown to others. If Margarita did forego all these and preferred to face the cruel realities of the situation it was due to her simple and natural

instincts of speaking out the truth."

The above observation can aptly be applied as affording an accurate means of testing the veracity of the testimony of the complainant - the lack of motive to testify falsely specially against a loved one, and the ease and facility by which her falsehood could be discovered as to deter her from making such a grave accusation as that of rape against her own father.

It is a well-settled rule that for the lone and uncorroborated testimony of the offended party to be sufficient to convict for the crime of rape, it must be clear and free from any serious contradiction. Her story must be impeccable and must ring throughout or bear the stamp of absolute truth and candor. (People vs. Lacuna, 87 SCRA 364; People vs. Dazo, et al., 58 Phil. 420; People vs. Nebres, 58 Phil. 903; People vs. Ariarte, 60 Phil. 326; People vs. Delfinado, 61 Phil. 694.)

A perusal of the testimony of the offended party, and a careful scrutiny thereof, convinces Us that same was given with sincerity and candor. It leaves no room for the slightest doubt that it is not a mere fabrication. We have no hesitation to accept it after finding it so clear and credible against the mere denial of the appellant who has shown no motive on the part of her own daughter, which must be powerful in the extreme, to accuse him of such a grave offense, even at the sacrifice of losing her own father to a lifelong incarceration or perhaps death by execution, with her brothers and sisters, if not her mother, sharing, even more painfully, in the same sacrifice.

WHEREFORE, We agree with the court a quo that the guilt of appellant for the crime charged has been established beyond reasonable doubt. For want of the necessary number of votes, however, the death penalty imposed by the trial court is hereby reduced to reclusion perpetua, and with this modification the judgment appealed from is hereby affirmed in all other respects, with costs.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

Teehankee, J., no part.

Aquino, J., votes for the imposition of reclusion of perpetua.

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