

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME SAMBANGAN Y VELASQUEZ, DEFENDANT-APPELLANT.

G.R. No. L-44412. November 25, 1983

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is an appeal from the decision of the Court of First Instance of Rizal finding the accused Jaime Sambangan y Velasquez guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of reclusion perpetua, with the accessory penalty provided for by law, to indemnify Maria Theresa Manguera in the amount of P12,000.00 and to pay the costs.

The accused Jaime Sambangan y Velasquez was charged before the Court of First Instance of Rizal of the crime of Rape, committed as follows:

"That on or about the 27th day of April, 1975, in Kalookan City, Philippines, and within the juris-diction of this Honorable Court, the above-named accused, with lewd designs, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with Maria Theresa Manguera y Esplana, a minor of nine (9) years old, herein represented by her father Herminio Manguera y Cruz."

After trial, the Court of First Instance of Rizal convicted Jaime Sambangan y Velasquez of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua with accessory penalty provided for by law and to indemnify Maria Theresa Manguera the amount of P12,000.00 and to pay the costs. Hence, this appeal.

It appears from the records that:

"The complainant, Maria Theresa Manguera, was a young girl, nine years old, and a third grade pupil (p. 2, tsn., June 25, 1975). Her acquaintance with the accused Jaime Sambangan y Velasquez developed into intimacy when the Manguera family and Sambangan lived in the same compound, at 779 Corner 7th Street and 9th Avenue, Caloocan City.

"In the evening of April 27, 1975, accused brought complainant to the bodega of Mendoza & Sons (p. 3, Id.; Exh. "C") which was located in the compound where the complainant and her family reside. Once there, the accused ordered complainant to undress while he removed his pants and brief. Complainant, however, did not strip herself as ordered, but merely removed her shorts. Accused then lay on top of the complainant and tried to insert his private parts into her organ (p. 3, tsn., June 25, 1975). It was about this time that Bibiana Esplana Manguera, mother of the complainant noticed that her daughter Maria Theresa was not yet home, so she looked for her inside the compound. While she was on her way to the bodega, she saw Maria Theresa coming out with accused Jaime Sambangan. She asked her daughter to come home with her. Upon arrival at their house she inquired from Maria Theresa why she was with the accused Jaime Sambangan in the bodega at that time. Bibiana noticed that her daughter's panty was wet with whitish substance. She asked her daughter what happened and the reply was that the accused inserted his private part into hers. Bibiana confronted the accused about what he did to her daughter. Accused promised not to do it again and begged for forgiveness (p. 3, Decision).

On advice of a certain Mr. Mendoza, a co-owner of the compound where the incident took place, Bibiana Esplana Manguera, with her said daughter reported the incident to the police authorities on April 28, 1975. Ma. Theresa was physically examined by Dr. David Cabrera to determine whether she was sexually abused. Dr. Cabrera found a laceration of the hymen at 4 o'clock position but her private part would admit only a small finger with resistance. He also found indications of sexual intercourse but there was only partial penetration in that the insertion of the accused's private part into the complainant's private part was not complete.[1]

The accused-appellant on the other hand alleged that on April 27, 1975, he was working at 9th Avenue, 7th Street, Caloocan City; that he did not remember any un-usual event that took place in the date mentioned; that he did not know anything about what Maria Theresa testified regarding his molesting her by committing indecent act on her person; that he did not know anything about her testimony that he inserted his penis into her vagina; and that on April 27, 1975, he did not see or meet Maria Theresa Manguera in the morning and in the evening.

It has been established, however, that Maria Theresa Manguera and appellant knew each other before the act in question occurred; that on April 27, 1975, appellant brought her inside a bodega where he ordered her to undress while appellant took off his pants and brief; and that appellant placed himself on top of her. Appellant's claim, therefore, that he did not remember any unusual event on April 27, 1975, and that he did not "see and meet Maria Theresa Manguera in the morning and in the evening"[2] of that day is a downright lie. No young Filipina, of decent repute would publicly admit that she had been criminally assaulted unless that is the truth.[3] The contention of the appellant that he was accused of such serious offense because complainant's father, Herminio, and he "were in estranged relationship"[4] because of an affair he had with a niece of Mr. Manguera, is groundless. For, as aptly found by the lower court, "it is difficult to believe that Herminio Manguera would go to the extent of falsely accusing him of the crime of rape in which his very own daughter was involved, and the fact that Manguera had trans-ferred his niece to another place shows he had much less reason to manufacture a case of rape against the accused x x x on the other hand, it may not be far fetched to state that it was the accused who had a grudge against Manguera for having transferred his sweetheart and thereby deprived him of his alleged relationship with said niece" x x x.[5] Besides, a Barangay member would not have apprehended appellant where no strong ground to believe that he committed the act of which he is accused. No police investigator would take a confession (Exh. "C") and make appellant sign it if it were not true.[6] Moreover, no fiscal would have agreed to an irregularity.

Appellant's charging the different agencies of the government of falsely accusing him cannot stand. His claim that he was maltreated by a policeman while being investigated before his statement was taken (Exh. "C") is also without merit. At this point, appellant has not overcome the presumption as to the voluntariness of his confession. In fact, his confession (Exh. "C") narrates facts which could not have been dictated and supplied by anybody but he. Thus his narration:

"T: Ano ba ang hindi magandang ginawa mo kay 'Etes' na iyong itinuro o si Maria Theresa Manguera?

S: Kagabi po sumama po sa akin sa itaas ng bodega si 'Estes' tapos umupo kami sa mga gagawing kutsarang craft na may karton tapos po naghubad siya ang kanyang shorts tapos po nagtantal din ako ng pantalon at nagbati or nagsalsal ako at ng labasan na ako ay ipinahid ko ang tamod sa puki ni 'Etes'.

"T: Ano pa ang ginawa mo pagkatapos nuon?

S: Pinasuot ko na siya ng kanyang shorts at nag-pantalon na rin ako at kami ay bumaba na.

"T: Kailan at saan ba naganap ang bagay na ito?

S: Oras humigit-kumulang ika 8:00 ng gabi, kagabi Abril 28, 1975 doon po sa itaas ng Bodega, Mendoza and Sons, 779 corner 7th st., 9th Avenue, Caloocan City."[7]

would not convey any other than that he had committed a wrong upon the complainant. If appellant were allegedly maltreated, it is rather surprising why he did not state the alleged maltreatment when he swore to his confession before the fiscal.[8] The absence of evidence, therefore, showing how the investigating police officer maltreated and forced him to sign his statement (Exh. "C") and the lack of explanation why the investigator would concoct a false confession[9] only indicate the voluntary character of the execution thereof. Appellant's confession, therefore, is admissible, as it was not shown to have been involuntarily rendered.[10]

The alibi of appellant that he did not remember any unusual incident that took place in the evening of April 27, 1975 and that he was sleeping in his place of work when he was arrested by members of the Barangay at around midnight is but an attempt to exculpate himself inasmuch as he resided in the same compound as complainant. His presence, therefore, at the scene of the crime could not be discounted. It has been held by this Honorable Court in several cases that:

"To establish alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such place for so long a time it was impossible for him to have been at the place where the crime was committed, either before, or after the time he was at such other place." [11]

In this case, appellant failed to prove that it was physically impossible for him to have been at the scene of the crime either before, during or after the time he was at such other place. Likewise, appellant's defense in this regard cannot prosper considering that he was positively identified. A defense of alibi cannot prosper where the accused was positively identified as the assailant.[12] And above all, it is difficult to believe that complainant and her parents would have gone to the extent that would expose them to public trial if they were not actually motivated by a human desire to obtain redress of the wrong done to them.[13]

And, lastly, the contention of the accused that it was impossible for a nine year old who was violated by a man of twenty-one not to have made an outcry, or, at least, cried is untenable. Under Art 335 of the Revised Penal Code, carnal knowledge of a girl under twelve years is always rape, even if no force or intimidation is used. And as was held in the case of *People vs. de la Cruz* (56 SCRA 85):

"Appellant's attempt to discredit complainant's story by observing that she had made no outcry during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age, force or intimidation need not be present. The gravamen of the offense is the carnal knowledge of a woman below twelve years old."

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**, with costs against appellant.

SO ORDERED.

Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Makasiar, J., (Chairman), joins J. Aquino in his concurrence.

Aquino, J., see concurrence.

[1] pp. 2-3, Appellee's Brief.

[2] p. 3, tsn., Appellant's Brief.

[3] *People v. Gan*, 46 SCRA 667.

[4] p. 2, Appellant's Brief.

[5] pp. 9-10, Decision.

[6] p. 4, Appellant's Brief.

[7] pp. 7-8, Decision.

[8] People v. Casillar, 30 SCRA 352; People v. Pareja, 30 SCRA 693.

[9] People vs. Gomez, 28 SCRA 440.

[10] People vs. Dorado, 30 SCRA 52.

[11] People vs. Munoz, 107 SCRA 313; People vs. Capillas, 108 SCRA 173.

[12] People vs. Yutila, 102 SCRA 264; People vs. Bermoy, 105 SCRA 106.

[13] People vs. Selfacion, 1 SCRA 235.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. With deference to Mr. Justice Concepcion's opinion, the confession. Exhibit C is inadmissible under section 20, Article IV of the Constitution because it was taken during custodial interrogation. Anyway, it does not admit any rape because the accused merely stated that "nagsalsal ako at ng labasan na ako ay ipinahid ko ang tamod sa poki ni Estes".

The testimonies of the nine-year old victim (a third grade pupil), her mother and the medico legal officer, who found that there was a healed laceration of the hymen at the four o'clock position, are sufficient to prove the rape.

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