

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELEE, VS. HUGO YLARDE Y DELA CRUZ, ACCUSED-APPELLANT.

G.R. No. 100521. July 05, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 38, Lingayen, Pangasinan, in Criminal Case No. L-4340, finding appellant guilty beyond reasonable doubt of rape (Article 335, Revised Penal Code) and sentencing him to suffer the penalty of reclusion perpetua and to pay costs. The trial court also ordered appellant to pay P20,000.00 as moral damages, without subsidiary imprisonment in case of insolvency.

The information filed against appellant reads as follows:

“That on or about the 30th day of June, 1990 in the afternoon (sic) in the municipality of Tayug, province of Pangasinan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to perform lewd and lust desire did then and there wilfully, unlawfully and feloniously have carnal knowledge of Dessa Castillo y Morden, a five (5) year old girl and who is under twelve years of age, thereby forcibly have (sic) sexual intercourse with the said victim, to the damage and prejudice of the said Dessa Castillo y Morden” (Rollo, p. 18).

At his arraignment, appellant pleaded not guilty and thereafter trial ensued.

After trial, the court a quo found that on June 30, 1990, at about 2:00 P.M., Dessa Castillo, a five-year old girl, was playing with several playmates in front of Farmacia Yanse at the public market of Tayug, Pangasinan. Appellant, who was then drunk, pulled Dessa and placed her on his lap. When Dessa told appellant that she wanted to urinate, appellant brought her to the comfort room inside the public market (TSN, February 28, 1991, pp. 4-5).

When they were inside the comfort room, appellant removed her panty. He then brought out his penis and inserted it into the victim’s vagina while she was in a standing position. Dessa felt pain but no blood came out from her vagina. She wanted to shout but was ashamed to do so (TSN, February 25, 1991, pp. 6-7, 12--14).

Dessa told her mother, Vivina Castillo, what appellant did to her. Vivina immediately confronted appellant and haled him to the police station, where Pat. Alexander Sevidal and Pat. Oscar Lopez conducted an investigation. Vivina then brought Dessa to the Eastern Pangasinan District Hospital, where Dr. Eufracio Jovellanos conducted a medical examination. The medical findings were:

- “1. contusion on the left lateral labia minora and there is swelling on that part of the vagina which is outside the vaginal canal;
2. presence of small laceration near the left side of the ureteral orifice which is near the vaginal canal;
3. no hymenal laceration noted;

4. vaginal orifice noted;

5. negative for presence of spermatozoa on microscopic examination x x x" (Decision, p. 4; Rollo, p. 21).

The doctor testified that the contusion suffered by the victim was probably caused by a blunt object, like a penis touching the vagina. Likewise, the laceration could have been caused by a male organ (TSN, March 7, 1991, pp. 9-10).

Appellant denied the accusation against him and claimed that he was on his way home when he saw Dessa fall from the table. He then helped her stand-up. However, when Dessa's mother saw what he did, she immediately cursed him and had him arrested by the police. It was only then that he learned he was being accused of raping Dessa (TSN, March 5, 1991, pp. 6-7).

In this appeal, appellant, interposes a lone assignment of error, to wit:

"THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT HUGO YLARDE GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE" (Appellant's Brief, p. 4).

In support thereof, he contends that: (1) it was highly improbable that the rape would be committed under such circumstances of time and place, which were at daytime and in a public toilet; (2) it was highly inconceivable for appellant to have raped the offended party while he was in a standing position for the latter is shorter than him; and (3) that if he raped the victim, she should have shouted for help (Appellant's Brief, p. 5).

Appellant's plea for acquittal rests on shaky grounds. It is not hard to believe that the incident happened inside a public toilet for at that place (a small town) and that time of day (2:00 P.M.) there were very few people near the area. Besides, rape can be committed even in places where people congregate, or in places which to some, would appear to be unlikely (People v. De los Reyes, 203 SCRA 707 [1991]).

The second point raised by appellant is misleading. A careful perusal of the record does not indicate the position of appellant when he inserted his penis into the complainant's vagina. What the record disclosed was that it was the offended party who was standing at that time. The victim testified that:

"Q. You said (sic) were raped by the accused inside the comfort room?

A. Yes, sir.

Q. You were made to lay (sic) down?

A. No, sir.

Q. You were standing?

A. Yes, sir" (TSN, February 25, 1991, pp. 13-14; Underlining supplied).

So, as correctly observed by the Solicitor General, appellant could have lowered his body to enable him to insert his penis into the vagina of the complainant while the latter was in a standing position.

Appellant's allegation that complainant's testimony is contrary to human experience because of her failure to shout when she was sexually abused, is untenable. The fact that there was no outcry from the offended party is immaterial in the rape of a child below twelve years of age (People v. Bacani, 181 SCRA 393 [1990]).

The elements of statutory rape as provided for in Article 335, paragraph 3 of the Revised Penal Code are the following: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under (12) years of age. All these elements are present and have been established by the evidence.

What must be proven in the crime of rape is merely the introduction of the male organ into the labia of the pudendum and not the full penetration of the complainant's private part (*People v. Castillo*, 197 SCRA 657 [1991]). In this case, the uncontroverted medical evidence clearly showed that indeed, there was an entry of the sexual organ of the accused on the labia minora of the offended party.

The defense that appellant did not sexually molest the victim but merely helped her when she fell from the table is, in effect, a denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive testimony of the witnesses that the accused committed the crime (*People v. Payumo*, 187 SCRA 64 [1990]).

As correctly noted by the trial court:

“It is a well-settled rule in this jurisdiction that this kind of defense is weak and flimsy not only because it is easy to fabricate but oftentimes comes from a biased and polluted source. In order to be worthy of credit and value, denial should be proven and established by strong, convincing, and credible evidence and that it should be conformable to reason, logic and common sense, for there is no adequate test for the truth of human testimony, except its conformity to human knowledge, logic and experience” (Decision, p. 6; Rollo, p. 23).

In this case, an eye-witness, Susana Gonzales, positively identified appellant as the one who brought the victim to the toilet. The victim also positively identified appellant as the one who had carnal relations with her.

If appellant merely succored the victim when she allegedly fell from a table, her mother, Vivina, would have been grateful to him for coming to the aid of her daughter. Lastly, a mother would not subject her child to a public trial with its accompanying stigma on her as the victim of rape, if said charge is not true (*People v. Rio*, 201 SCRA 702 [1991]).

The fact that appellant did not flee from the crime scene does not negate his guilt for after learning of the rape, the victim's mother immediately accosted him and did not give an opportunity to flee.

WHEREFORE, the decision appealed from is AFFIRMED in toto except with regard to the indemnity which should be increased to P50,000.00 (*People v. Alegado*, 201 SCRA 37 [1991]).

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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