

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO PALICTE, ACCUSED-APPELLANT.

G.R. No. 101088. January 27, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DANILO PALICTE appeals from the decision of the court a quo^[1] convicting him of rape and sentencing him to reclusion perpetua.

On 23 September 1988, around nine o'clock in the morning, Edievien Bañados, then only eleven (11) years old, was playing shatung with her brothers in front of the house of Danilo Palicte when the latter called her to go to him. He asked her to buy coke, bread, egg and cigarettes, but not before sending her brothers home. After Edieven came back with the goods, she and Danilo stayed in the living room and drank the coke. When she was about to leave, Danilo blocked her way and closed the door. He gave her a T-shirt. Danilo brought her to his room where he undressed her. He started kissing her. He forced her to lie on bed. He placed himself on top of her and inserted his penis into her vagina. He did this for half an hour. As Edievien felt the pain, she heard her brothers arrive. Since the door was closed, her brothers could only call out her name from outside. She could not answer as Danilo was covering her mouth. After the incident, she went home. The following day, she told her mother about the rape.

On 28 September 1988, Edievien was brought by her mother, Vivian Bañados, to Dr. Jose Ladrido, Jr., Davao City Health Officer, for physical examination. Dr. Ladrido found Edievien still a virgin,^[2] as her hymen was still intact.

Danilo told a different story. He said that on that day, 23 September 1988, Edievien and her brother roused him from his sleep to ask for "balimbing"; Edievien gave him and her brother coke to drink; he gave her a dress; she undressed herself to try on the new one so he left the room; when he came back, Edievien was still naked and had not put on the dress; then she laid on the bed; he laid beside her and kissed her; Edievien also kissed him; he held her sex organ as he masturbated but did not insert his penis inside the victim's vagina; after a while, Edievien put on her clothes and went home; her mother did not confront him concerning the incident, but she disliked him so the case was filed.

In this appeal, the accused alleges that the trial court erred in giving weight and credence to the incredible and improbable testimony of Edievien, and in finding him guilty of rape despite the medical finding that Edievien was still a virgin.

We cannot sustain the accused.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or otherwise unconscious; and, (c) when the woman is under twelve (12) years of age even though neither of the preceding circumstances be present.^[3]

The gravamen of the offense of statutory rape, as provided in Art. 335, par. (3), of the Revised Penal Code, is the carnal knowledge of a woman below twelve (12) years old. Sexual congress then with a girl under twelve (12) is always rape. Force, intimidation or physical evidence of injury are immaterial.[4] In the instant case, Edievien was only eleven (11) years old at the time her womanhood was defiled.

This is how she narrates her misfortune in the hands of the accused –

Q.

Then after you bought the drinks and the bread and the egg, what happened?

A.

Then he requested me again to buy him a cigarette.

x x x x

Q.

And then what happened after that?

A.

We drank coke inside his house x x x x At the living room, at the sala.

Q.

Then what happened?

A.

I told him that I am (sic) going home.

Q.

Did you go home?

A.

No because he closed the door x x x x I wanted to get out but he blocked my way at the door.

Q.

Then what happened?

A.

He gave me a t-shirt x x x x [h]e brought me to his room x x x x [h]e undressed me x x x x [h]e started kissing me.

Q.

After kissing you, what happened next?

A.

He made me lie on the bed x x x x [h]e inserted his penis in my vagina x x x x I felt pain.

Q.

What did you do when Danilo Palicte inserted his penis inside your vagina?

A.

My legs were wide open.

Q.

While he was doing all these things, what did you feel?

A.

I felt pain.

Q.

For how long did he do this to you?

A.

About half an hour.

Q.

Then what happened next?

A.

My brothers arrived.

x x x x

Q.

Inside the house of Danilo Palicte?

A.

No x x x x [o]utside the house x x x x [t]hey called for me x x x x I was not able to answer them.

Q.

Why?

A.

Because he covered my mouth with his hands.[5]

The foregoing narration of the victim herself clearly established the guilt of the accused beyond doubt. As observed by the trial court, it was given in a straightforward manner.[6] Apparently, it was clear and detailed, and free from self-contradiction. A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[7] Further, well-entrenched is the rule that the testimony of a rape victim is credible where she has no motive to testify against the accused.[8]

The records of the instant case do not disclose any reason why Edievien or her mother would falsely impute to Danilo the heinous crime of rape. A rape victim would not publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety and tribulation of a trial if her motive is not to bring to justice the person who had abused her.

The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. According to Dr. Jose Ladrado, Jr., who has been in medico-legal cases since 1963 and has examined many rape victims, if the victim is a child, as in the case of Edievien, rape can be done without penetration. Without penetration the male organ is only within the lips of the female organ, and there is interlabia or sexual intercourse with little, none, or full penetration, although he admitted that it was also possible that there was no rape since the hymen was intact.[9]

In the case before us, Edievien repeatedly testified that the accused inserted his penis into her vagina for half an hour, as a consequence of which she suffered pain. This, at least, could be nothing but the result of penile penetration sufficient to constitute rape. Being a virgin, as found by the examining physician, her hymenal resistance could be strong as to prevent full penetration. But just the same, penetration there was, which caused the pain. For, rape is committed even with the slightest penetration of the woman's sex organ.[10] Mere entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina, as in this case of Edievien, is sufficient to warrant conviction for consummated rape.[11]

WHEREFORE, the guilt of the accused DANILO PALICTE having been proved beyond reasonable doubt, his conviction for rape by the court a quo which sentenced him to reclusion perpetua is AFFIRMED, with the modification that civil indemnity is hereby awarded to his victim, Edievien Bañados, in the amount of P30,000.00, with costs against him. SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Regional Trial Court, Br. 15, Davao City, decision penned by Judge Jesus V. Quitain, Rollo, pp. 9-19.

[2] Page 34, Records.

[3] Art. 335, pars. (1), (2) and (3), Revised Penal Code; *People v. Puedan y Laongisip*, G.R. 92586, 26 April 1991, 196 SCRA 388.

[4] *People v. Graza*, G.R. 87928, 30 April 1991, 196 SCRA 512.

[5] *Tsn*, 7 November 1990, pp. 12-14.

[6] See Note 1 at p. 6; Rollo, p. 38.

[7] *People v. de Guzman*, G.R. Nos. 102409-10, 21 December 1992, 216 SCRA 754.

[8] *People v. Cabilao*, G.R. 62999, 25 June 1992, 210 SCRA 326.

[9] See Note 1, at pp. 3-4; Rollo, pp. 40-41.

[10] *People v. Alegado*, G.R. Nos. 93030-31, 21 August 1991, 201 SCRA 37.

[11] *People v. Hangdaan*, G.R. No. 90035, 13 September 1991, 201 SCRA 568.

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