

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR OLIVAR Y FACUNDO, DEFENDANT-APPELLANT.

G.R. No. 101577. November 13, 1992

Ponente: MELO, J.

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MELO, J.:

We are asked to determine whether or not a 13-year old provincial lass was deflowered and made to submit to the bestial desire of a lecherous man who vehemently denies the accusation against him. Complainant, however, assiduously seeks his conviction. Accused-appellant Victor F. Oliver is now in jail awaiting the outcome of the instant appeal from a judgment of conviction rendered by the Regional Trial Court of the Fourth Judicial Region (Branch XXV, Biñan, Laguna) in Criminal Case No. 3926-B finding him guilty beyond reasonable doubt of the crime of rape against the person of Rowena de los Santos.

On July 8, 1985, Rufina de los Santos, mother of the victim, filed a criminal complaint for rape against accused-appellant before the Municipal Court of Sta. Rosa, Laguna. Eventually, the corresponding information was filed, charging:

"That on or about May 29, 1985, in the Municipality of Sta. Rosa, Province of Laguna, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused Victor Olivar y Facundo, with intent to have carnal knowledge, by the use of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Rowena Delos Santos y Almira, a minor over twelve (12) years of age, against her will and consent, to the latter's damage and prejudice.

CONTRARY TO LAW." (p. 2, Original Record; p. 1, Decision; p. 12, Rollo.).

Upon arraignment on May 12, 1986, Victor F. Olivar entered a plea of "NOT GUILTY", and after trial on the merits, the lower court rendered its Decision, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered finding accused Victor Facundo Olivar guilty beyond reasonable doubt as principal, of the crime of RAPE, defined and penalized under Article 335 of the Revised Penal Code with aggravating circumstances of use of deadly weapon and abuse superior strength, not offset by any mitigating circumstance and hereby sentences him to suffer the penalty of reclusion perpetua; to indemnify the offended party the amount of FORTY THOUSAND (P40,000.00) PESOS; and to pay the costs.

Considering that this is a conviction for a capital offense which, pursuant to Section 3 of Rule 114, is not bailable, as a matter of right, where the evidence of guilt is strong, the bailbond posted by the accused is cancelled and the accused is hereby ordered committed to the Municipal Jail, Biñan, Laguna.

SO ORDERED." (p. 10, Decision; p. 21, Rollo.)

The following antecedent facts find support in the record:

On May 29, 1985, at about 11:00 o'clock in the morning, Rowena de los Santos, after asking permission from her mother to watch television, went to the house of accused-appellant which is just adjacent to their house. There

were also other houses surrounding their houses. At the time, the only persons in the house were the victim and accused-appellant. While they were watching television, accused-appellant suddenly held both hands of complainant with his left hand and forcibly pulled her to the upper floor of his house, while her mouth was covered by accused-appellant's right hand. Upon reaching the upper floor, accused-appellant released his right hand from the mouth of the victim and got hold of a pair of scissors from a small table. Complainant could not struggle and shout for help even if her mother was then in their house nearby because of accused-appellant's threats to kill her.

Consequently, accused-appellant took off Rowena's clothes and her panties and touched her private part while at the same time threatening to kill complainant if she resisted, and telling her to "pagbigyan mo ako". He went on top of her and inserted his penis into her private part while his hands were fully pressed on her hands. After about ten minutes, accused-appellant pulled out his penis and asked Rowena to put on her clothes and told her to go home. She did not report immediately the incident to her mother nor to anybody for fear for her life.

Rufina Almira de los Santos, mother of the victim, testified that at about 12:00 o'clock noon of that day, Rowena went home but she noticed that Rowena was walking with her two legs apart. Rufina then asked her daughter about the latter's unusual way of walking, but Rowena replied that she was having her menstruation. On the third day, Rufina noticed that Rowena was bleeding profusely and there were blood clots coming out of her private part, so Rufina brought Rowena to the Beato-Cauilan Clinic. After the examination, Dr. Paciencia Beato-Cauilan, an obstetrician at the clinic, told Rufina that Rowena was used ('ginamit'). Then and there, Rufina confronted Rowena in front of the doctor and Rowena admitted that she was indeed used by accused-appellant. Rowena told her mother that she was afraid to reveal what had happened because she was threatened by accused-appellant. From the clinic, mother and daughter proceeded to the Sta. Rosa Police Station where their statements were taken.

Dr. Paciencia Beato-Cauilan's testimony, on the other hand, is to the effect that the physical examination of Rowena revealed that there were hymenal lacerations of the vagina. She further said that something had forcibly entered the vagina so she advised the patient to go to the National Bureau of Investigation for further examination. However, no written report of the examination was prepared as the examination was just a mere slight pelvic check-over which took about five to ten minutes to finish.

In addition, Major Dario L. Gajardo, a Medico-Legal Officer of the PC Crime Laboratory at Camp Crame, also testified that he conducted a physical examination of the victim. In his written Medical-Legal Report No. N-1861-85 dated June 27, 1985, he declared that based on the examination conducted, there were deep and shallow but healed lacerations in the hymen of the victim and there were also injuries in the labia menora. He further testified that vaginal smears are positive for sexually transmitted disease (Gonorrhea) but negative for spermatozoa. He concluded that the lacerations were caused by sexual intercourse and that the victim, at the time of the examination, was already in a non-virgin states physically.

Assailing the aforementioned decision, accused-appellant assigns the following as errors allegedly committed by the court a quo, to wit:

"I

THE TRIAL COURT ERRED GRAVELY IN FINDING THAT THE CRIME OF RAPE WAS COMMITTED THROUGH FORCE AND VIOLENCE, WITH THE USE OF DEADLY WEAPON AND ABUSE OF SUPERIOR STRENGTH, AND IN NOT HOLDING THAT THE LONE AND UNCORROBORATED TESTIMONY OF ROWENA IS NOT IMPECCABLE AND DOES NOT RINGS (sic) TRUE 'THROUGHOUT'.

II

THE TRIAL COURT ERRED GRAVELY IN FINDING THAT INTIMIDATION WAS EMPLOYED BY ACCUSED UPON THE THIRTEEN YEARS (sic) OLD GIRL SPECIALLY VIEWED FROM HER ANSWER TO QUESTION NO. 20 OF HER SWORN STATEMENT, AND IN CONCLUDING THAT BECAUSE ROWENA WAS STILL IMMATURE TEENAGER HER TESTIMONY IS THE TRUTH AND IN NOT FINDING THAT HER LACK OF DETERMINED RESISTANCE (DID NOT EVEN MAKE AN OUTCRY) WHEN ALLEGEDLY ATTACKED AND HER ACTS IMMEDIATELY BEFORE, DURING AND AFTER THE ALLEGED RAPE CASTS (sic) DOUBT ON HER UNRELIABLE STORY.

III

THE TRIAL COURT ERRED GRAVELY IN NOT FINDING THE TESTIMONY OF ROWENA AS CONSISTENTLY INCONSISTENT WITH HER OWN PRIOR STATEMENTS ON MATERIAL POINTS.

IV

AND LAST BUT NOT THE LEAST, THE TRIAL COURT ERRED GRAVELY, IN CONVICTING THE ACCUSED AND IN NOT ACQUITTING HIM ON GROUNDS OF FAILURE OF THE PROSECUTION TO PRESENT CREDIBLE EVIDENCE AND PROOF BEYOND REASONABLE DOUBT."

(pp. 2-3, Appellant's Brief, pp. 29-30, Rollo.)

After a careful review of the records, We are convinced that, indeed, accused-appellant had raped complainant with the use of force and intimidation at the time and place and in the manner described by the latter. Verily, while both of them were watching television at the ground floor of the two-storey house of accused-appellant, the latter suddenly grabbed complainant and dragged her to the second floor of the house (TSN, June 29, 1987, pp. 16, 19-20). Upon reaching the upper floor of the house, accused-appellant threatened to kill complainant with a pair of scissors, which he got from a table, if the complainant does not accede to accused-appellant's libidinous desire (TSN, June 29, 1987, pp. 5, 21). Facing possible death, the minor Rowena inevitably gave in to the salacious desire of the accused-appellant. We can understand the meek reaction of Rowena to that harrowing experience of hers even when the defense claims that she should have shouted for help. Rowena, it is to be stressed, was just over 12 years old at the time of the commission of rape, an age at which one could easily be cowed and coerced.

Although the trial court erred in finding that there was violence in the commission of the felony, yet, force and intimidation were definitely employed, enough to constitute the crime committed, as rape. Intimidation includes the moral kind, such as the fear caused by threatening the girl with a knife (2 Cuello Calon, *Codigo Penal*, 12th Edition, p. 537; *People vs. Garcines*, 57 SCRA 653 [1974]). In the case at bar, rape was committed when intimidation was used on the victim and the latter submitted against her will because of fear for her life and personal safety (*People vs. Arengo*, 181 SCRA 344 [1990]).

Moreover, We cannot fault the victim for the delay in reporting that odious and despicable incident. One can not expect a 12-year old girl to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been forcibly sexually assaulted (*People vs. Tampus*, 88 SCRA 217 [1979]). Accordingly, the delay in divulging her incubus to the doctor, and who in turn told it to her mother, is understandable and was sufficiently explained.

Accused-appellant asseverates that the testimony of the complaining witness was not plausible, satisfactory, and sincere since there were inconsistencies in her testimony in open court vis-a-vis her sworn statement made at the

police station.

We are not persuaded.

The alleged inconsistencies referred to by the accused-appellant in his brief concern only trivial, minor, and insignificant details.

Accused-appellant points to a supposed inconsistency between complainant's testimony that she was raped in her house on May 29, 1985 (TSN, June 29, 1987, p. 3) and her sworn statement made at the police station that she was raped at accused-appellant's house (Sworn Statement, p. 2; Original Record, p. 3). He further avers that if complainant was indeed raped in her house, it would be unnatural for accused-appellant to have subsequently asked her to go home. Nevertheless, it is clear enough from the testimony of Rowena that the rape took place in the house of accused-appellant, and the inconsistency with her previous statement given at the police station was explained, thus:

"Atty. Emer Saul: Now you said this rape was happened (sic) in your house, now you stated again, he ordered you to go home, can you explain that how (sic)?

A: In the house of Victor Olivar, sir.

(tsn, June 29, 1987, pp. 4-5.)

Atty. Garcia: Miss Witness, you testified that on May 29, 1985 at 11:00 o'clock in the morning you were watching TV, may we know where did you watch TV?

A: At their house, sir.

Q: When you said 'kanila' to whom are you referring to?

A: At their (sic) house of Victor Olivar, sir.

(tsn, June 29, 1987, p. 15)

Q: You stated a while ago why do you watching (sic) TV together with Victor Olivar, is that correct?

A: Yes, sir.

Q: What did he do?

A: He pulled me, sir.

Q: Towards where?

A: Towards the upper floor, sir."

(tsn, June 29, 1987, p. 16)

The seeming inconsistency was brought about by confusion and merely represents minor lapses during Rowena's direct examination, and can not affect her credibility. Minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. Rowena was testifying in open court, in the pre-sence of strangers, on an extremely intimate matter, which is not normally talked about in public. Under such circumstances it is not surprising that her narration was less than letter-perfect (*People vs. Magaluna*, 205 SCRA 266 [1992], cited in the case of *People vs. Abuyan*, G.R. No. 95254-55, July 21, 1992). Moreover, the inconsistency may be attributed to the well-known fact that the atmosphere of the courtroom can affect the accuracy and manner of a witness in answering questions (*People vs. Como*, 202 SCRA 200 [1991]); *People vs. Serdan*, G.R. No. 87318, September 2, 1992).

Significantly, accused-appellant himself confirmed that on the date in question, complainant was at his house, although he wanted to convey the idea that Rowena, an innocent, inexperienced minor, made advances on him. He testified under cross-examination that:

"Fiscal:

Q: You said on May 29, 1985 in the evening of about 11:00 o'clock you were in your house and then you were awoken (sic) because somebody was leaning on your left thigh and that somebody is the complaining witness Rowena delos Santos, is this true or not?

A: Yes, sir.

Q: And did you recognize the complaining witness at that moment when you said she was leaning on your left thigh?

A: Yes, sir.

Q: What did you do when you recognized her?

A: I kissed her, sir.

Q: What else did you do?

A: Nothing more besides kissing her, sir.

Q: How many times did you kiss her?

A: Only once, sir.

Q: Which part of her body?

A: In her cheek, sir.

Q: Left or right cheek?

A: I cannot recall, sir.

Q: Did you embrace her besides kissing her?

A: No, sir.

Q: How long did you talk to her and kiss her?

A: I just kissed her cheek, sir.

Q: Why did you kiss her?

A: Because I thought it was my wife, sir.

COURT:

Q: What date was that?

A: Around 11:00 o'clock in the morning, sir.

Q: Why, was she not facing you when she hold (sic) her hands on your left thigh?

A: She was leaning with her left hand on my thigh while her side is (sic) facing me, your Honor.

FISCAL:

Q: Which is correct your alleged incident happened on 11:00 o'clock in the morning or 11:00 in the evening of May 29, 1985?

A: 11:00 o'clock in the morning, sir.

Q: Why were you then sleeping at 11:00 o'clock in the morning of May 29, 1985?

A: Because I was then a shoemaker and I had to work late at night, so the following morning my wife told me to watch and oversee the showmaking (sic) because I was so sleepy and I told the bordaderas to wake me up whether (sic) they needed anything, sir.

COURT: Did you usually sleep at 11:00 o'clock in the morning during those (sic) time?

A: Yes, your Honor."

(TSN, February 20, 1989, pp. 14-17).

Accused-appellant also contends that there was inconsistency between the testimony of complaining witness in open court that he was armed with a pair of scissors and the sworn statement of the former executed at the police station that at the time of the commission of the crime, accused-appellant was unarmed, which would otherwise belie and impugn the findings of the court a quo that rape was committed with the use of a deadly weapon.

We do not agree. As eloquently explained by Justice Leo Medialdea in *Biala vs. Court of Appeals*, 191 SCRA 50 (1990):

"... it is settled that contradictions made between averments in a sworn statement and those made during testimony in open court may be explained by the fact that a sworn statement will not always disclose all the facts and will oftentimes and without design incorrectly describe some of the material occurrences narrated."

It is a time-honored tenet as this Court has repeatedly ruled that the findings of facts of trial judge who tried the case and heard the witnesses, should not be disturbed on appeal and should be given considerable weight and respect, especially on the credibility of witnesses, since he was in a better position to decide the question, having heard and observed the demeanor, attitude, conduct and deportment of witnesses (*People vs. Dilao, et al.*, 100 SCRA 358 [1980]; *People vs. Cabrera*, 100 SCRA 424 [1980]; *People vs. Badeo*, 204 SCRA 122 [1991]; *People vs. Honrada*, 204 SCRA 858 [1991]; *People vs. Atilano*, 204 SCRA 278 [1991]; *People vs. Lardizabal*, 204 SCRA 320 [1991]; *People vs. Lee*, 204 SCRA 900 [1991]). The only exception to the rule is when a trial judge has plainly overlooked substantial facts and circumstances which might affect the result of the case if not properly considered (*People vs. Realon*, 99 SCRA 422 [1980]; *People vs. Laganzon*, 129 SCRA 333 [1984]; *People vs. Pascual*, G.R. No. 88282, May 6, 1992; *People vs. Simon*, G.R. No. 56925, May 21, 1992; *People vs. Blas*, G.R. No. 97930, May 27, 1992; *People vs. Serdan*, G.R. No. 87318, September 2, 1992). In the case at bar, We find no justifiable and compelling reason to disturb the findings and conclusions of the trial court on the credibility of the complaining witness.

Finally, accused-appellant claims that the trial court erred in convicting him of rape, insisting on his denial of having raped the victim and maintaining that the uncorroborated testimony of the complaining witness is not sufficient to convict him. Accused-appellant's posture of innocence is flimsy and jejune. As in any other rape case, it is most often that the only witnesses to its commission are the victim and the offender. Consequently, the only testimony available to prove directly the commission of rape is that of the victim herself. And as long as such testimony of the offended woman is positive, convincing, and credible, We will not hesitate to render a judgment of conviction. Furthermore, in weighing contradictory and opposing statements, greater credence must generally be given to the positive testimony of the prosecution witnesses than to the denial of the defendant (*People vs. Español*, [CA], 51 O.G. 2433; *People vs. Marilao*, 177 SCRA 271 [1989]; *People vs. Adap*, 189 SCRA 413

[1990]; People vs. Mariano, 191 SCRA 136 [1990]).

WHEREFORE, the decision appealed from is hereby affirmed in toto, with costs against the accused-appellant.

SO ORDERED.

Gutierrez, Jr., Acting C.J., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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