

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY GABAYRON, ACCUSED-APPELLANT.

G.R. No. 102018. August 21, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

There is no crime more atrocious in human experience than the rape of a girl by her very own father. Yet, despite the vile and repugnant nature of this crime, it has, sadly, become prevalent, if not rampant, in our society.

Jerry Gabayron was charged with the crime of rape before Branch 21 of the Regional Trial Court of Imus, Cavite, in an information[1] which reads as follows:

“That on or about November 11, 1987, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with lewd design, did, then and there, wilfully, unlawfully and feloniously, undress, abuse and have sexual intercourse with his own daughter, Summer C. Gabayron, a minor under twelve years old girl(sic) against her will, to the damage and prejudice of said Summer C. Gabayron.

CONTRARY TO LAW.”

The evidence, as summarized by the trial court, tends to show the following:

“The people’s evidence indicates that the accused and his wife, Remedios Cesista, have three children, namely, Summer, Dawn--- both female--- and Winter--- a male. The accused’s family used to live at Block 25, Lot 13, San Manuel, Bagong Bayan, Dasmariñas, Cavite.

On October 5, 1986, accused and his wife separated from bed and board. The two daughters of accused were left with him while Winter went with his mother.

One day in November of 1987, the accused came home drunk. Accused went to Summer’s bedroom, undressed her, kissed her, and tried to insert his penis into Summer’s vagina. Summer cried due to pain. The accused stayed on top of Summer for about 5 minutes. (TSN, March 11, 1991, pp. 4-7) The accused repeated such beastly acts several times more up to 1989.

At the start of the sexual abuse in November, 1987, Summer was below 12 years old as she was born on January 15, 1976 (Exhs. “C” & “C-1”).

Summer did not relate immediately the fate she suffered at the hands of her father because she was threatened (Id., Id., p. 9). She only reported what happened to her after more than one year.”

During the arraignment on February 27, 1991, accused-appellant pleaded not guilty to the crime charged. On March 11, 1991, Summer Gabayron, together with her mother Remedios, executed an affidavit of desistance. However, the trial court, considering that the crime charged is statutory rape, did not approve of the same, but instead required that the testimony of the victim be made in a full-blown trial. Trial ensued thereafter.

The prosecution presented Summer Gabayron as its lone witness. In her testimony, Summer disclosed that her grandmother, her father, her Aunt Gina and her siblings all lived with her in the same house since her parents separated. They all slept in the same room but later, she and her sister Dawn were transferred to a separate room. The following is her testimony, viz:

“DIRECT EXAMINATION:

Summer Gabayron - testifying with the aid of an interpreter.

ASST. PROS. HERRERA-Do you know the accused, Jerry Gabayron?

A

Yes, sir.

Q

Why do you know him?

A

He is my father,sir.

Q

On November 1, 1987, do you remember if there was anything unusual that happened to you and your father?

A

Yes, sir.

Q

Will you kindly tell the Honorable Court what was that unusual incident that happened?

A

He repeated what he did to me; he undressed me like an attempted rape.

Q

Where did this incident take place?

A

In our house, sir.

Q

In Dasmariñas, Cavite?

A

Yes, sir.

Q

Will you kindly tell this Honorable Court how did he undress you?

A

It happened during that night he went home drunk and then he went to my bedroom, undressed me, kissed me on my lips and then downward and took off my panty.

Q

After doing all those things, what happened next, if anything happened?

A

He tried to insert his organ into mine but it was very painful so, I cried in pain. Then, he stopped, sir.

Q

How far was he able to insert his organ that you felt the pain?

A

I do not know, sir, how far it went, but I felt the pain.

Q

So what you want to tell this Honorable Court was that his organ was able to reach a part of your organ, that's why you felt the pain?

A

Yes, sir.

Q

How old are you?

A

:Fifteen, sir.

Q

What is your birthday?

A

January 15, 1976, sir.

Q

And this happened on November 1, 1987?

A

Yes, sir.

Q

Now, after you cried in pain, what happened next?

A

He did not continue sir, and then, he went down and the next day, it's as if nothing happened.

Q

A while ago, you said that he attempted to repeat what he had done before. Do you want to tell this Honorable Court that this was not the first time that he did this thing, trying to have sexual intercourse with you?

A

Yes, sir, he did it for so many times, not only twice.

Q

After this incident in November, 1987, was there another time?

A

That's not the last time because I remember that it happened again on January 14, the day before my birthday, but I cannot remember the year.

COURT

This year, not last year?

A

I think it was 1989, I cannot remember.

COURT

But after January 1, 1987?

ASST. PROS. HERRERA: Yes, your Honor.

Q

Do you have any document to show that you were really born on January 15, 1976?

A

Yes, sir.

Q

You said that after this January 1, 1987 incident, your father tried to repeat or to do again what he tried to do in 1987. Now, after that time, did you have occasion to approach any doctor to have yourself examined?

A

When I told my mother what happened, it was only at that time that she let me be examined by a doctor.

Q

When did you tell your mother?

A

It was two years after the incident because I kept quiet.

Q

Where were you examined?

A

At NBI, sir.

Q

In all those times that your father... I will withdraw that question, your Honor.

In connection with this January 1, 1987, how long did he stay on top of you before he finally resisted or withdrew?

A

About five minute, sir.

COURT

Cross.

CROSS EXAMINATION

ATTY. CAJIGAL: Madam Witness, you remember the first time that your father attempted to abuse you?

A

After the separation of my father and my mother, it was months after that separation the first time it happened.

Q

Do you remember when your father and mother separated?

A

October 5, 1986, Ma'am.

Q

And that happened in your own house, Madam Witness?

A

Yes, Ma'am, in our house in Cavite.

Q

Aside from you and your father, who are living in that house?

A

My grandmother, my other siblings, my Tita Gina.

Q

Who is sleeping with you in your own room?

A

At first, we were sleeping in the same room, but later on, we were transferred to a separate room, my sister and me.

Q

How about your auntie, where does she sleep?

A

In the other bedroom, Ma'am.

Q

What about your grandmother?

A

Also in the separate room, Ma'am.

Q

In the same room where your tita was sleeping?

A

No, sir, in another room.

Q

Why, your house is composed of how many rooms?

A

Three bedrooms, Ma'am.

Q

And, your father has a separate room?

A

He was sleeping on the floor outside the bedroom.

Q

Now, the following day, did you relate to your Tita and to your grandmother what happened?

A

No, Ma'am.

Q

Why?

A

Because he was threatening me, Ma'am.

Q

What did your father do to make you feel that you were threatened?

A

He told me not to relate what happened to anybody because he will get mad at me.

Q

And you became afraid?

A

Yes, Ma'am.

Q

But, your father did not tell you that he will kill you if you reveal that to someone else?

A

No, Ma'am.

Q

Why did it not occur to you to seek refuge to your mother?

COURT:

Are you trying to prove that she consented to it? Even is she consented, that is statutory rape.

A

I did not tell her because when they separated I did not know where my mother transferred.

Q

Now, Miss Summer, you parents are separated, is it not?

A

Yes, Ma'am.

Q

And, as a matter of fact, they have separated when the instant case was filed against your father?

A

Yes, Ma'am.

The medico-legal report[2] (Exh. "B") presented by the prosecution states these findings:

"General Physical Examination:

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory. Breast developed, hemispherical, doughy. Areolae, light brown, measures 0.8 cm. in diameter.

No extragenital physical injuries noted.

Genital Examination:

Pubic hair, fully grown, moderately dense. Labia majora and minora, coaptated. Fourchette, moderately tense. Vestibular mucose, pinkish. Hymen, thick, wide, intact. Hymenal orifice admits a tube 1.5 cm. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.

Conclusions:

1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.

2. Hymen intact and its orifice small (1.5 cm.) as to preclude complete penetration of an average-sized, adult, male organ in full erection without producing hymenal injury.”

The defense presented four witnesses, namely: the accused-appellant, Jerry Gabayron; accused-appellant’s son, Winter Gabayron; accused-appellant’s sister, Gina Gabayron, who was living with them at the time of the incident; and one Celestino Santos a neighbor.

In his testimony, the accused-appellant contended that he usually sleeps at the Manila Yacht Club and only comes home once a month to bring subsistence for his family.[3] He claimed that his wife admitted to him that she wanted him in jail so she could marry another man,[4] and that Summer told him that if she would not pursue the case against him, her mother will have her put in jail for disobedience.[5] He admitted, however, that he and his wife reconciled in October of 1990.[6]

Winter Gabayron testified that at the time he was living with his father and sisters, he never noticed anything unusual between his father and his sister.[7] He disclosed that at the time of the alleged rape on January 1, 1989, he was sleeping in the lower tier of a double deck bed, while his sisters slept at the upper deck. Their father slept on the floor. At that time, he was never awakened by, nor did he notice anything unusual.[8]

Gina Gabayron, the accused-appellant’s sister, testified that on January 2, 1989, at 1:00 A.M., she woke up when her brother Jerry came home drunk.[9] She made coffee for him then waited for him to go to sleep first. She was not aware of anything unusual happening that night.[10] Although she claimed that Summer told her that the reason why the latter filed charges of rape against her father was because she was threatened by her mother, she nonetheless admitted that she had no personal knowledge as to what these threats were.[11]

Celestino Santos only testified to the effect that he had a conversation with Summer, although he could not remember the date when it took place, where she allegedly told him that she filed the case against her father only at the instigation of her mother.[12]

On rebuttal, the prosecution again presented Summer Gabayron on the witness stand, who categorically denied that she filed the case only at her mother’s instigation. She also denied ever telling Santos that the reason why she filed the case was only because her mother threatened her.[13]

On September 24, 1991, the trial court rendered a Decision, the dispositive portion[14] of which is quoted hereunder:

“WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape of his own daughter who was then below 12 years of age, the accused is hereby sentenced to be imprisoned for the duration of reclusion perpetua with the accessory penalties attached thereto, to pay the offended party the amount of P30,000.00 and the cost of this suit.

SO ORDERED.”

Accused-appellant is now before us seeking the reversal of his conviction. He adduces the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT CONSIDERING THE FACT THAT THE ALLEGED VICTIM’S MOTHER, REMEDIOS GABAYRON, HAD SUFFICIENT MOTIVE TO FALSELY CHARGE THE APPELLANT WITH RAPE.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNRELIABLE TESTIMONY OF

COMPLAINANT SUMMER GABAYRON AND IN TOTALLY DISREGARDING THE EVIDENCE FOR THE DEFENSE.

III

THE TRIAL COURT ERRED IN NOT BELIEVING THE TESTIMONY OF THE APPELLANT AS CORROBORATED BY HIS WITNESSES.

IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We are not persuaded by accused-appellant's arguments.

The accused-appellant, in his defense, denies raping his daughter. He contends that the filing of the case against him is motivated by the desire of his estranged wife, Remedios Cesista, to keep him in jail so as to be free to marry another man. However, in his testimony,[15] the accused-appellant has admitted that Remedios was in fact trying to find ways to have him released from jail:

Q: Now, aside from what your daughter told you, do you remember of any incident(sic) when your wife visited you in the detention cell?

A: Yes, Ma'am, two times.

Q: And what transpired during that one of her visits?

A: Yes, Ma'am, she visited me in the cell and told me not to worry because there are many persons who will fixed(sic) this case."

He reiterated the same thing during his cross examination:[16]

"ASST. PROS. HERRERA-

You said that you talked to your wife and she said that "don't be worry"(sic) and because she knows that you can fix your case. So, what you want to tell this court [is that] even your wife is "helping you to fix the case in order that you will be released?

A: Yes, sir."

Moreover, Remedios assisted Summer in filing the affidavit of desistance. These acts of Remedios are inconsistent with accused-appellant's contentions. Instead, they indicate the weakness of his argument since the motive he ascribes to Remedios is merely self-serving on his part. If it is, as he says, that the accusations against him were borne out of Remedios' desire to leave him, we see no reason why she would even lift a finger in his assistance, much less make any effort to have the case against him withdrawn. The fact that she did so negates ill-motive in the filing of the case against the accused-appellant, and we find it difficult to subscribe to his claim that Remedios would file this complaint out of sheer malice, knowing that it would expose her own daughter to humiliation and public curiosity, and could send the father of her children to prison for the rest of his life.[17]

If indeed Summer was merely coerced by her mother into making accusations against her father, that coercion was no longer present when she made her testimony on March 11, 1991, since her parents have already reconciled as early as October, 1990. We see no reason why Summer, knowing that her parents had reconciled, would persist, during her testimony, in accusing her father of rape, if no such rape occurred. Considering that an affidavit of desistance had already been filed by her mother on her behalf, a clear indication that Remedios desired to have the charges against her father dropped, Summer should have made her testimony in support of her father's innocence, if he was truly innocent and a victim of his wife's machinations. Yet, she did not do so, but instead

unwaveringly narrated the odiousness she suffered at the hands of her very own father. It is unbelievable that a daughter would agree to charge her own father with rape, exposing herself to the ordeal and embarrassment of a public trial, and subjecting her private parts to examination, just to keep a mantle over her mother's liaison with another man.[18] It is clear that Summer's testimony against her father is the truth and made of her own free will. Thus, accused-appellant's specious assertion that Summer was only forced to file a case against him does not hold water. There is no probable reason why she would want him imprisoned, considering that she stayed with him instead of going with Remedios when they separated. It is highly improbable that Summer, knowing as she did that her mother was the one who abandoned them, would accede to her mother's whims and endanger her father's freedom, since it was her father that she looked to for support. A daughter, especially one of her tender age, would not accuse her own father of this heinous crime had she really not been aggrieved.[19]

The circumstances of the case at bench is similar to the circumstances attendant in *People v. Baculi*,[20] wherein the father, accused of raping his fourteen year old daughter, contended that the case was instigated against him by his wife and daughters out of deep resentment for his strictness as a parent. In disregarding such a contention, this Court declared that:

"Moreover, the willingness of the complainant to face police investigators and to submit to a physical examination is mute but eloquent testimony of the truth of her charge against her own father. If she were merely prodded to relate a fabricated story to build up this serious charge, she would recoil at the possibility of being caught in prevarication. She should feel deterred by the grave consequences of such willful falsehoods which could easily be unmasked by the medical findings that would be made after a thorough examination of her body. As it turns out, she cried upon learning that the findings were negative, no doubt a spontaneous reaction to the possibility that she may never obtain justice for the outrage committed by her father. It was the truth of her story that gave her the courage to face interrogation and medical examination, both effective means of verifying the truth of her serious accusation."

Accused-appellant draws attention to the fact that based on the medico-legal findings, there is no showing that his daughter's hymen was penetrated, nor there was any evidence of injuries inflicted. However, jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor it is necessary that the vagina sustained a laceration especially if the complainant is a young girl.[21] The medical examination merely stated that the smallness of the vagina orifice only precludes COMPLETE penetration. This does not mean that rape does has not been committed. The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ.[22] Presence of a laceration in the vagina is not essential prerequisite to prove that a victim has been rape.[23] Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymen.[24] Entry of labia or lips of the female organ merely, without rupture of hymen or laceration of the vagina, is sufficient to warrant conviction.[25] 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.[26] As we held in *Baculi*: [27] "there could still be a finding of rape even if despite the repeated intercourse over a period of four years the complainant still retained an intact hymen without signs of injury." In the case at bench, Summer's testimony has establishes without a doubt that accused-appellant's managed to come into contact with her vagina, enough to cause her pain.

It is further asserted by the accused-appellant that it is impossible for him to have raped Summer since at the time of the alleged incident, Summer was sleeping beside her sister, and that there were other occupants in the room as well. We are not impressed by the validity of said argument, as we have repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside the

house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping. In *People vs. Quinevista*,^[28] wherein the same argument was raised by the accused therein, this Court discussed this jurisprudential doctrine in detail:

In *People vs. Rafanan*, (182 SCRA 811, 819) this Court rejected, accused-appellant's defense of improbability despite the fact that the victim was sleeping beside his eight-year-old daughter in the same mat and under the same mosquito net and the child not having awakened despite the struggle put up the victim, and further suggesting that it would be highly improbable for a man to seek and force himself upon a woman in his house, with his wife sleeping on the floor above him. The Court emphasized that rape has been committed in many different places including places which to many would appear to be unlikely and high-risk venue for sexual advances.

Moreover, in *People vs. Codilla*, (224 SCRA 104) it has also been held that 'it is of no moment that the rape occurred with the complainant's parents, brothers and sisters just sleeping in the nearby room. It is not impossible and nor incredible for her family members to be in deep slumber and not be awakened while the sexual assault was being committed.'"

That Summer was raped while her sister slept beside her may not be as easy to achieve as it would be had she been alone, but it is by no means an impossible act. We stress once more that lust is no respecter of time and place.

The accused-appellant also points out that the sworn statement given by Summer, who was assisted by her mother, showed that it was not only Summer who was allegedly abused by him, but also his other daughter Dawn. Summer's Sinumpaang Salaysay states in part:

"12. T: Pansamantala ay wala na akong itatanong sa iyo. Mayroon ka pa bang nais idagdag o kaya ay ibig alisin sa iyong salaysay?

A: Ibig ko pong idagdag na noon pong buwan ng Hulyo, 1988, ang oras ay humigit-kumulang sa ika-11:00 ng gabi ay pumasok po uli sa aming kuwarto ang aking ama at ibig na naman po akong pagsamantalahan. Nag-uumiyak na po ako noon at ayaw kong pumayag. Nagising naman po ang aking kapatid na batang babae na si DAWN GABAYRON at ng makita akong umiiyak ay niyapos po niya ako nagtanong sa aking kung ano ang nangyari at sumagot po ako ng wala, habang ang aking ama ay nakaupo sa gilid ng aming kama. Nahiga na po uli kaming magkapatid pero nakaupo pa rin po sa gilid ng kami(sic) ang aming ama. Ilang minuto po ang nakalipas ay naramdaman ko na nilapitan ng tatay ko ang aking kapatid na si Dawn at maya-maya po ay naramdaman ko na gumagalaw ang hinihigaan naming kama. Noon pong sumulyap ko sa kanila ay nakita ko po na nakadapa sa ibabaw ng aking kapatid na si "Dawn" ang aking ama. Hindi ko na natagalang pagmasdan ang ginagawa ng tatay ko sa aking kapatid dahil sa nakaramdam po ako ng hiya, galit at awa sa nangyayari sa aming dalawang magkapatid

Accused-appellant asserts that if such were really the case, then he should have been charged not only for the crime of raping Summer, but also for raping Dawn as well. There is no basis for this argument. The fact that he has not been charged with raping Dawn is immaterial, as it does not negate rape on the part of Summer. We agree with the Solicitor General,^[29] who stated that:

"True, Summer's complaint may have indicated that appellant also abused Dawn. But the failure of Remedios to pursue prosecution of appellant for molesting Dawn is something beyond Summer. Rape is a private offense and Summer's concern and/or authority to become a complainant is limited to herself. What is more, Remedios may have wanted to spare Dawn from the embarrassment Summer had to undergo as an incident of such prosecution. After all, just one conviction for rape would suffice to send appellant behind bars."

That Dawn Gabayron was not presented as a witness by the prosecution is of no moment. In rape cases, the

prosecution is not bound to present witnesses other than the victim herself, as an accused may be convicted solely on the testimony of the complaining witness, provided such testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.[30] In the case at bar, we see no reason to deviate from this rule nor to disturb the findings of the trial court. Testimonies of child-victims are given full weight and credit,[31] since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[32] Appellate courts will generally respect the findings of the trial courts on the credibility of the witnesses since trial courts are in a better position to weigh conflicting testimonies. They heard the witnesses themselves and observed their deportment and manner of testifying. Unless it is found that the trial courts have plainly overlooked certain facts of substance and value, the trial court's conclusion on credibility of witnesses should be respected.[33]

This Court, however, disagrees with the lower court in the imposition of P30,000.00 as moral damages. In line with present jurisprudence, we increase this amount to P50,000.00. Of all the so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation and disgust than incestuous rape.[34] When a man perpetuates his lascivious designs on his own direct blood relative, he descends to a level lower than beasts.[35] Incestuous rapes are extremely disgusting, because "the man who rapes his own daughter violates not only her purity and trust, but also the mores of his society which he has scornfully defied. By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery."

WHEREFORE, premises considered, the decision of the court a quo finding the accused-appellant JERRY GABAYRON guilty of rape and sentencing him to reclusion perpetua is hereby AFFIRMED with the MODIFICATION that the indemnity imposed be increased to P50,000.00. SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, p. 5.

[2] Original Records, p. 6.

[3] TSN, April 24, 1991, p. 5.

[4] TSN, April 24, 1991, p. 4.

[5] TSN, April 24, 1991, p. 6.

[6] TSN, April 24, 1991, p. 11.

[7] TSN, April 3, 1991, p. 12.

[8] TSN, April 3, 1991, p. 11.

[9] TSN, April 10, 1991, p. 4.

[10] TSN, April 10, 1991, p. 5.

[11] TSN, April 10, 1991, p. 11.

[12] TSN, June 6, 1991, p. 3.

[13] TSN, June 6, 1991, p. 7.

[14] Criminal Case No. 1608-90, penned by Hon. Roy S. Del Rosario; Rollo, p. 77.

[15] TSN, April 16, 1991, p. 7.

[16] TSN, April 24, 1991, p. 9.

[17] *People v. Mabunga*, 215 SCRA 694 [1993].

[18] *Supra*.

[19] *People v. Dusohan*, 227 SCRA 527 [1993].

[20] *People v. Baculi*, 246 SCRA 756 [1995].

[21] *People v. Lazaro*, 249 SCRA 234 [1995].

[22] *People v. Lazaro*, *supra*.

[23] *People v. Sapurco*, 245 SCRA 519 [1995].

[24] *People v. Lazaro*, *supra* at 21.

[25] *People v. Caballes*, 199 SCRA 152 [1991].

[26] *People v. Ylarde*, 224 SCRA 405 [1993].

[27] *People v. Caballes*, *supra*.

[28] 244 SCRA 586 [1995].

[29] Appellee's Brief.

[30] *People v. Dones*, 254 SCRA 696 [1996].

[31] *People v. Digno, Jr.*, 250 SCRA 237 [1995].

[32] *People v. Vitor*, 245 SCRA 392 [1995].

[33] *People v. Padre-e*, 249 SCRA 423 [1995].

[34] *People v. Baculi*, *supra*.

[35] *People v. Mandap*, 244 SCRA 457 [1995].

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