

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENEROSO SUJETADO Y ESMELLARIN, ACCUSED-APPELLANT.

G.R. No. 103967. April 07, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

The accused Generoso Sujetado y Esmellarin stands charged of the crime of Rape allegedly committed as follows:

"That on or about the 21st day of March, 1988, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation did, then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, a minor below twelve (12) years of age, against the latter's will.

Act contrary to law."^[1]

Upon arraignment, accused-appellant pleaded not guilty. After trial on the merits, the lower court rendered a decision^[2] the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, this Court hereby sentences accused Generoso Sujetado to suffer the penalty of RECLUSION PERPETUA; to indemnify the victim Livy Montelibano the amount of P30,000.00 with the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification and to pay the costs.

SO ORDERED."^[3]

From the above judgment of conviction, accused appealed to this Court, assigning the following as the errors allegedly committed by the lower court, to wit:

- "1. The lower court erred in convicting the accused-appellant on the basis of the testimony of the victim, whose very own mother would not even believe her;
2. The lower court erred in holding that the crime of rape was committed on March 21, 1988, despite the uncontroverted testimony of the defense witness on the impossibility of its commission;
3. The lower court erred in not holding that the crime of rape is only a frame up charge against the accused-appellant, the overseer of the hacienda, in order that the younger brother of the mother of the victim, could take over;
4. The lower court erred in holding that the defense witnesses testified for the accused, out of sympathy because the crime is punishable by reclusion perpetua;
5. The lower court erred in holding that Marilyn Montelibano and her husband would not expose their daughter to public trial if the accused did not abuse their daughter, Levy Montelibano;
6. The lower court erred in holding that Dr. Villarosa found a whitish substance which is seminal fluid on the

sexual organ of the complainant;

7. The lower court erred in holding that Emilio Tribo left the place as early as 1987, hence, it was impossible for him to do the act on March 21, 1988;

8. The lower court erred in failing to consider that the lacerations on the complaining witness are old lacerations."^[4]

Complainant Livy* Montelibano was born on June 28, 1976 to Melchor Montelibano and Marilyn Naranja Montelibano. At around 8:30 o'clock in the morning of March 21, 1988, when she was barely twelve years old, accused-appellant Generoso Sujetado, whose house is only about three (3) armslength from complainant's house, allegedly invited her to come up to his house to pull out his gray hair.^[5] Livy refused but accused-appellant held her hands and pulled her up into his house.^[6] Once inside a room accused-appellant made Livy lie down on the bed and pulled down her pants. Livy cried as accused-appellant removed his pants. Accused-appellant sucked Livy's breast and thereafter had sexual intercourse with her.^[7] After the sexual act, accused-appellant gave Livy a P5.00 bill which she refused to accept but accused-appellant insisted on placing the money on her palm.^[8]

Another prosecution witness, Jeffrey** Samartin, Livy's cousin, testified that at around 10:00 o'clock in the morning of March 21, 1988, he passed by accused-appellant's store to buy some sticks of cigarette.^[9] No one was manning the store so he called the occupants of the house.^[10] Accused-appellant came down from his house, followed by Livy who was still pulling up her pants.^[11] On her way home, Livy allegedly told him that she was sexually abused by accused-appellant.^[12] Jeffrey then told Livy's mother about what happened. After which, Mrs. Marilyn Montelibano, Livy's mother, told Livy to take a bath and on the same day, they went to the Provincial Hospital to have Livy's private parts examined. Said examination yielded the following results:

"External Genitalia (sic) : Reddening of labia majora and labia minora

- old healed hymenal lacerations at 2,4,5,6, 8,10 o'clock position (sic)

- Introitus admits 2 fingers with ease

I.E. - Cervix - close, small

- Uterus – Small

- Adnexa – Negative

- Discharge - whitish foul smelling

Speculum Exam: - Cervix erosions are noted with whitish discharges foul smelling

- Redness of vaginal wall noted

* Vaginal Smears done for sperm count and gram-staining."^[13]

Accused-appellant, a 58-year old father and grandfather, vehemently denies that he raped Livy. He recounted on the witness stand that at 6:00 o'clock in the morning of March 21, 1988, he left his house to water and prune the guava trees in Hacienda Flora where he was the overseer.^[14] Then, at about 8:30 o'clock that same morning, while he was still cutting the trees near the creek, one Generoso Tolentin approached him and told him that somebody wanted to buy his fighting cocks.^[15] When the buyer, one Clemens Mabugat, arrived, they returned to his house and after Mabugat had chosen the fighting cocks that he wanted to buy, they had a mock-fight.^[16] Accused-appellant remembers seeing complainant Livy in his house playing with his grandchildren. But she left a few minutes after they arrived.^[17] He learned from his wife that she bought some sticks of cigarettes from their

store.[18] Then, at a little past 11:30 o'clock, Mabugat and Tolentin left.[19] When asked why he was accused by Livy's mother, Marilyn Montelibano, of raping Livy, he said that it was done in order to ease him out as overseer of Hacienda Flora so Roberto Naranja, Mrs. Montelibano's brother, can take over his post.[20] The owner of the hacienda, Felipe Garcia, revealed that it is his policy to dismiss any of his employees against whom a case is filed.[21]

We cannot help but note that complainant Livy Montelibano is not the typical Filipina maiden who is innocent and demure. At the very young age of 12 years old, she already had several sexual relations with a married man, a certain Emilio Tribo. She herself admitted this in open court.[22] What is more incredulous is that her mother, Marilyn Montelibano, does not seem to be disturbed by her daughter's highly irregular conduct.[23] Livy's unchastity is, of course, not a defense in the crime of statutory rape as the gravamen of the offense is the carnal knowledge of a woman below twelve years of age. However, a painstaking review of the evidence on record does not convince this Court of the truth of complainant's testimony. The following facts and circumstances militate against an affirmation of the trial court's finding of guilt:

(1) The prosecution failed to present any evidence to rebut the overwhelming evidence of the defense that on March 21, 1988, the date of the alleged rape, at around 8:30 o'clock to 11:30 o'clock in the morning, accused-appellant was busy attending to a customer, Clemens Mabugat, who wanted to buy three (3) of his fighting cocks; and, on the same day and time, accused-appellant's wife, two of his grown-up children and several of his grandchildren were with him in his house where and when the rape allegedly took place. Thus, it was improbable for him to have raped Livy in the manner and form described by her. In convicting the accused, the lower court would explain said improbability in a rather simplistic manner:

"To the mind of the Court all these denials of witnesses for the defense putting a situation where rape is impossible could not be given credence. Why? Because the accused in his desire to accomplish the sexual act would always find a time and a way to do it in the most secret and possible way. He finds satisfaction of his lustful desire in the person of an innocent mentally weak Livy Montelibano. x x x"[24]

The above are mere conclusions which were not supported by clear and convincing evidence. We have time and again ruled that conclusions based entirely on conjecture and speculations cannot serve as a basis for conviction and will warrant the reversal of the finding of guilt by the trial court.

(2) The testimony of prosecution witness, Jeffrey Samartin to the effect that accused-appellant immediately went down from his house followed by Livy, to attend to a customer who wanted to buy some cigarettes, raises serious doubts as to its veracity. It is not in accord with human experience for the accused-appellant to have let himself be seen with Livy immediately after he had allegedly raped her. He could have ignored the call and let the customer leave, instead of allowing himself to be seen with Livy in an incriminating situation.

(3) Even the medical examination conducted immediately after the alleged rape failed to show that Livy was indeed raped. What were shown instead were old healed hymenal lacerations, which could be due to Livy's previous sexual relations with Emilio Tribo.

All told, Livy's and the other prosecution witnesses' testimony were not clear and convincing. Their story smacks of concoction rather than a narration of the truth. They failed to produce in the mind of this Court that moral certainty which will warrant the conviction of the accused-appellant.

While rape is a most detestable crime and ought to be severely and impartially punished, it must be borne in mind that it is an accusation which is easy to make but hard for the accused to defend, although innocent.[25] As is usually the case, the testimony of the complainant would be the only evidence presented by the prosecution on how the alleged rape was perpetrated, and the same should be regarded with utmost caution and the accused

should not be convicted unless the complainant's testimony is impeccable and rings true throughout.[26] These safeguards must be scrupulously observed, otherwise an innocent accused may languish in jail for the remainder of his lifetime. The prosecution in this case has failed to present proof beyond reasonable doubt upon which this Court may rest easy that accused-appellant is indeed guilty as charged. Failing thus, the acquittal of accused-appellant is in order.

It is thus the opinion this Court that the prosecution failed to establish the guilt of accused-appellant beyond reasonable doubt.

IN VIEW THEREOF, the challenge to the verdict finding the accused-appellant guilty is sustained and the accused is hereby declared NOT guilty of the crime as charged. His immediate release from incarceration is hereby ordered unless he is detained on some other legal grounds.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Rollo, p. 9.

[2] Penned by Judge Simplicia S. Medina.

[3] Rollo, p. 27.

[4] Rollo, pp. 38-39.

* Spelled "Levy" in the accused-appellant's brief.

[5] TSN, February 1, 1989, pp. 4, 5.

[6] Ibid., p. 6.

[7] Ibid., pp. 7, 8.

[8] Ibid., p. 11.

** Also spelled "Geofrey" in the other pleadings.

[9] TSN, January 18, 1990, p. 11.

[10] Id.

[11] Ibid., p. 12.

[12] Ibid., p. 13.

[13] Original Record, p. 132.

[14] TSN, April 2, 1991, pp. 6-7.

[15] Ibid., p. 8.

[16] Ibid., p. 9.

[17] Ibid., p. 10.

[18] Ibid., p. 11.

[19] Id.

[20] Ibid., pp. 13, 14.

[21] TSN, February 22, 1991, p. 13.

[22] TSN, February 1, 1989, p. 35.

[23] TSN, September 10, 1990, pp. 39-40.

[24] Supra, note 2 at pp. 6-7; Rollo, pp. 25-26.

[25] People vs. Mauro del Pilar, 164 SCRA 280 (1988) citing US vs. Flores, 26 Phil. 262, 269 (1913).

[26] People vs. Tapao, 108 SCRA 351 (1981).

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