

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMMANUEL ESPINO Y COBE, ACCUSED-APPELLANT.

G.R. No. 104948. March 07, 1994

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by Emmanuel Espino y Cobe from the Judgment, dated February 27, 1992, of the RTC, Third Judicial Region, Br. 58, Angeles City,[1] in Crim. Case No. 12290, where he was convicted for the Rape of Felisa Gaerlan.

Accused-appellant was charged with Rape in a Criminal Complaint, dated March 5, 1990, which reads:

“The undersigned Complainant, under oath accuses EMMANUEL ESPINO Y COBE of the crime of RAPE, committed as follows:

That on or about the 26th day of February, 1990, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of the tender age and innocence of the complainant, FELISA A. GAERLAN, who is below 12 years of age, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant against her will and consent.

“ALL CONTRARY TO LAW.”

When he was arraigned, accused-appellant entered a plea of not guilty.

Two eyewitnesses were presented by the prosecution to prove the rape charge against accused-appellant: complainant FELISA GAERLAN, born on March 10, 1979,[2] student, and a resident of Dau, Mabalacat, Pampanga; and RUBEN AQUINO of the Angeles City Police Department.

Felisa related that around noon on February 26, 1990, she was in front of the Golden City Market, selling plastic bags and playing[3] when she was approached by accused-appellant. He expressed his desire to buy all of the bags which Felisa was peddling,[4] and offered her thirty (P30.00) pesos to carry some onions for him. She agreed.

Felisa then voluntarily went with accused-appellant so they could get the onions.[5] When they arrived at the place called Sunrise-Sunset, a cogonal area inside the Sunrise Farm located in Barangay Cutcut, Angeles City, accused-appellant commanded Felisa to undress[6]. He, too, stripped down to his underwear. Accused-appellant made Felisa lie down on her clothes, took off his brief, and then mounted her. He inserted his penis into her vagina, and made push-and-pull movements while he was inside her.[7] This lasted only for a short while,[8] as the molestation was chanced upon by witness Ruben Aquino and two other policemen who were then conducting surveillance operations in connection with a series of rapes committed on children aged seven (7) to eleven (11) years old in the area.[9]

Upon seeing accused-appellant, naked, on top of Felisa doing push-and-pull movements,[10] the three policemen immediately tried to accost the former, who ran away.[11] After a brief chase, the three caught up with and arrested accused-appellant. He was brought to the police station where he was identified by Felisa as her rapist.[12]

On cross-examination, Felisa admitted that she did not see accused-appellant insert his penis into her vagina.[13] She did, however, see accused-appellant's organ after he removed it from her private part. She further admitted that the insertion of accused-appellant's penis did not cause her to bleed.[14]

Also presented by the prosecution was the physician who examined Felisa at the Angeles City General Hospital at around four o'clock in the afternoon of February 26, 1990,[15] DR. EUGENIO R. YOSUICO. He reiterated to the court his findings from that examination, as embodied in his certification (Exh. "C"), dated March 1, 1990, viz.:

"Conscious, coherent, ambulatory.

"HEENT -- essentially normal.

"C/L -- essentially normal.

"Breast -- flat.

"Abdomen -- flat, soft, (-) palpable mass.

"Pubic Hair -- (-)

"Hymenal Opening with old healed laceration wound at 3°, 9° position.

- admit 2 fingers with ease.

"Ext. -- essentially normal.

"GC & Sperm smear -- both negative."

He testified that the lack of fresh laceration wounds on, and the absence of semen in, Felisa's sexual organ were incompatible with her alleged rape on February 26, 1990.[16] He further testified that Felisa's hymenal opening easily admitted two fingers,[17] although he said that Felisa's healed wounds could have been caused by masturbation, and not by previous sexual intercourse.[18]

On both direct and re-direct examination, Dr. Yosunico, admitted, however, that it was possible for the rape of Felisa to have occurred even in the absence of lacerations to her hymenal opening and semen in her vagina, if the perpetrator of the act had a small penis and did not ejaculate.[19]

After the prosecution submitted its case, accused-appellant filed with the trial court a Motion To Dismiss/Demurrer to Evidence[20] on February 4, 1992. Accused-appellant was allowed by the lower court to present witnesses in his behalf,[21] but he refused.[22]

On February 27, 1992, accused-appellant was found guilty, and was sentenced as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of having carnal knowledge of a woman under 12 years of age, penalized as rape under Art. 335 of the Revised Penal Code, the accused Emmanuel Espino y Cobe is hereby sentenced to suffer an imprisonment of reclusion perpetua. He is also hereby ordered to indemnify the victim Felisa Gaerlan in the sum of P30,000.00 and to pay the cost of suit." [23]

Accused-appellant's lone assignment of error states:

“THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF HAVING CARNAL KNOWLEDGE WITH A WOMAN UNDER 12 YEARS OLD PENALIZED AS STATUTORY RAPE UNDER ARTICLE 335 OF THE REVISED PENAL CODE.”

He argued that his conviction is erroneous in the face of the findings of Dr. Yosunico, and the alleged contradictions in the testimonies of complainant and Ruben Aquino.

The appeal is unmeritorious.

As a general rule, rape is committed against a woman only if carnal knowledge of her is done either by using force or intimidation, or when she is deprived of reason or otherwise unconscious.[24] However, when the woman is under twelve years of age, the mere fact of sexual intercourse with her constitutes said crime. This is statutory rape as defined under Art. 335(3) of the Revised Penal Code.

The gravamen of statutory rape is the carnal knowledge of a woman below twelve years of age.[25] Violence or intimidation is not required.[26] In fact, even the consent of the minor below twelve to the sexual intercourse is not a defense in this offense[27] for the law does not consider that kind of consent voluntary.[28] A child less than twelve years of age cannot be considered to have a will of her own.[29]

In the case at bench, it is uncontroverted that complainant Felisa Gaerlan was born on March 10, 1979. She was, thus, only ten (10) years, eleven (11) months and sixteen (16), days old on February 26, 1990. Therefore, a showing of use of force or intimidation against complainant is not needed to establish the guilt of accused-appellant. A conclusive showing that he had sexual intercourse with Felisa on the specified date would justify his conviction.

A review of the records of the case reveals that the prosecution was able to make such showing.

Dr. Yosunico opined that the lack of fresh laceration wounds on, and the absence of semen in, complainant's sexual organ is incompatible with the commission of rape against her on February 26, 1990. The opinion is incorrect.

At most, the absence of any new laceration in Felisa's hymenal opening merely shows that there was no force committed on her by accused-appellant when he penetrated her. It does not, however, negate the commission of the crime of rape against Felisa. Accused-appellant was charged with statutory rape, which does not require force or intimidation as an element of the offense. Neither can accused-appellant's innocence be concluded from the absence of sperm in complainant's vagina. Our ingrained jurisprudence is that the presence of sperm cells in the private part of the victim is not indispensable to prove the offense of rape.[30]

Dr. Yosunico himself admitted the possibility that rape occurred on February 26, 1990 when he stated on re-direct examination by Fiscal Teilo Quiambao, that:

“Q Is it possible if the child was raped by a man whose penis is small and who did not ejaculate because there was somebody coming and he pull his penis, the hymenal opening would not have any laceration?

“A Yes, sir.”

(TSN of April 12, 1991, p. 8)

In sum, we agree with the lower court that the findings of Dr. Yosunico do not preclude the possibility that accused-appellant had carnal knowledge of complainant on February 26, 1990. Indeed, his findings are consistent with the guilt of accused-appellant. Firstly, the testimony of Felisa that accused-appellant was inside her only for a short time (“Sandali lang, po.”), as well as the testimony of Ruben Aquino that the police caught

accused-appellant in the middle of the sexual act and caused him to stop and run away, explain why no sperm was found inside complainant's vagina. As the sexual act was cut short, accused-appellant was unable to ejaculate before he exited complainant's private part.

Secondly, Dr. Yosuico's findings that complainant's hymenal opening could easily admit two fingers provides a reason for the absence of either bleeding or fresh lacerations in Felisa's vagina. As the doctor himself stated, if accused-appellant's penis is small enough, he could have penetrated complainant without causing any tearing in her hymenal opening.

The findings of Dr. Yosuico, therefore, cannot form the basis of accused-appellant's acquittal. This is more so in light of the testimony of the two principal prosecution witnesses as to the commission of the rape, and their positive identification of accused-appellant as the author thereof. Complainant Felisa Gaerlan testified:

"PROSECUTOR:

"Q Where did this accused bring you?

"A Sunrise-sunset, sir.

"Q What is this Sunrise-sunset?

"A It is a place where there are many "talahib" (cogon grass), sir.

"Q When he brought you there, what did he do to you?

"A He raped me, sir.

"Q When you said raped you, what did the accused actually do to you?

"A He removed my panty, sir....

"Q After removing your panty, what did he do next?

"A He placed himself on top of me, sir.

"Q While he was on top of you, what did he do?

"A He inserted his penis in me, sir.

"Q What part of your body did he insert his penis in?

(WITNESS POINTING TO HER VAGINA)

"Q What did you feel when he inserted his penis in your vagina?

"A I was hurt, sir.

"Q While his penis was inside your vagina, was he performing the push and pull movement?

"A Yes, sir, he was doing the push and pull movement.

"COURT:

"Q How long was the penis of the accused inside your vagina?

"A Just a few moments, sir. Sandali lang, po.

"Q You, what were you doing when he was raping you?

“A I was crying, sir.

“Q Will you please point to the person who according to you raped you at Sunset?

Go nearer.

(WITNESS POINTED TO A MAN WHEN ASKED GAVE HIS NAME AS EMMANUEL ESPINO.)

“Q You said that you saw the accused at that time. Is his haircut the same as his present haircut or present look when you first saw him?

“A His hair is a little bit longer, sir.”

(TSN of November 13, 1990, pp. 4-5.)

On the other hand, Ruben Aquino stated:

“(PROSECUTOR:)

“Q Do you know the accused Emmanuel Espino?

“A Yes, sir.

“Q If you will see again the accused, will you be in a position to identify him?

“A Yes, sir.

“Q Will you please point to him if he is inside the courtroom.

(WITNESS POINTING TO A SMALL MAN WHEN ASKED GAVE HIS NAME AS EMMANUEL ESPINO.)

“xxx xxx xxx

“Q Will you please tell us the circumstances that led to your surveillance and investigation on February 26, 1990.

“A We were tasked by the division chief, Ramos, to conduct a follow-up investigation regarding a series of rapes committed and perpetrated on school children ages 7 to 11 years old, sir.

“Q When you were directed to conduct surveillance and investigation regarding minor children 7 to 11 years old, what did you do, if any?

“A We chanced upon Emmanuel Espino while sexually abusing Felisa Gaerlan inside Sunrise Farm, Friendship, Cutcut, Angeles City, sir.

“Q When you chanced upon the accused raping or abusing Felisa Gaerlan, what did you do if any?

“A We tried to chase him and he tried to run away. And after a brief chase, we caught him and brought him to our station for investigation.

“Q What transpired at the police precinct when you brought the accused there?

“A We brought along the victim Felisa Gaerlan and she told us that she was sexually abused by the accused Emmanuel Espino.

“Q When you said that you chanced upon the accused abusing Felisa Gaerlan, what actually did you see when you said you chanced upon him and saw him abusing Felisa Gaerlan?

“A We saw the accused in naked body and he was in the act of abusing Felisa Gaerlan, sir.

“Q You said that you chanced upon the accused abusing Felisa Gaerlan, what actually was he doing?

“A He was on top of the girl Felisa Gaerlan, sir.

“Q When he was on top of the girl Felisa Gaerlan, was he already naked?

“A Yes, sir.

“Q How about the girl?

“Q She was also naked, sir.

“Q What action was he doing when he was on top of the girl?

“A He was performing the sexual act, sir. He was performing the push and pull movement.

“xxx xxx xxx”

(TSN of December 17, 1990, pp. 3-4.)

We cannot patronize accused-appellant’s posturing that the testimonies of complainant and Ruben Aquino are inconsistent and contradictory. The lower court found the prosecution witnesses to be credible, and it is elementary that, generally, findings of trial courts on the credibility of witnesses are given great weight and must be accorded high respect by appellate courts. In the instant case, we find no reason to depart from the general rule since no facts of substance or value were overlooked by the lower court.

We find the purported inconsistencies or contradictions in and between the testimonies of Felisa and Ruben to be minor. They do not negate the sexual intercourse between accused-appellant and complainant, or the identification of the former as the rapist of the latter. The two testimonies interlocked for the most part, and, in fact, complement each other. As corroborative testimonies, it is not required that they coincide on all aspects in order to be considered credible.

Furthermore, there is no showing that either of the two principal witnesses had reason to falsely accuse Emmanuel Espino of committing the dastardly crime of rape. Thus, the lower court did not err in giving the respective testimonies of complainant and Ruben Aquino full faith and credit, there being no evidence of improper motive on their part.

IN VIEW WHEREOF, the decision of the court, a quo, finding accused-appellant EMMANUEL ESPINO Y COBE guilty beyond reasonable doubt of the crime of RAPE under Art. 335(3) of the Revised Penal Code is hereby AFFIRMED IN TOTO. Costs against appellant.

SO ORDERED.

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

[1] Presided by Judge Eliezer R. De Los Santos.

[2] As evidenced by her Certificate of Live Birth (Exh. “B”), RTC Records, p. 146.

[3] TSN of November 13, 1990, pp. 3-4.

[4] Ibid.

[5] Ibid., at p. 12.

[6] Id., at p. 13.

[7] Id., at pp. 4-5.

[8] Id., at pp. 5-6.

[9] TSN of December 17, 1990, p. 5.

[10] Ibid., at p. 4.

[11] Id..

[12] Id..

[13] TSN of November 13, 1990, p. 14.

[14] Ibid., at pp. 14 and 17.

[15] Exh. "C"; RTC Records, p. 147.

[16] TSN of April 12, 1991, p. 6.

[17] Ibid., at p. 8.

[18] Id., at p. 6.

[19] Id., at p. 8.

[20] RTC Records, pp. 115-118.

[21] TSN of April 12, 1991, pp. 11-12.

[22] This is evidenced by the lower court's Order, dated November 18, 1991, which reads:

"When this case was called for reception of defense's evidence; Atty. Antonio Yao for the accused moved that he be given 20 days from today within which to file his demurrer to evidence. According to said Counsel if the motion is denied, he would be submitting the case for decision.

SO ORDERED."

[23] Judgment in Crim. Case No. 12290, dated February 27, 1992, p. 4; Rollo, pp. 39-42.

[24] See Article 335, Revised Penal Code.

[25] People vs. De la Cruz, 56 SCRA 84 (1974).

[26] See People vs. Bacani, 181 SCRA 393 (1990); People vs. Gonzales, 58 SCRA 265 (1974); People vs. Celis, 35 SCRA 129 (1970).

[27] R.C. Aquino, The Revised Penal Code, Vol. III, 395 (1988).

[28] L.B. REYES, The Revised Penal Code, Vol. II, 853 (1981).

[29] Ibid.

[30] See People vs. Goles, 192 SCRA 663 (1992).

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