

EFREN ANCIRO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 107819. December 17, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The principal issue raised in this petition is the propriety of the trial court's denial of a motion to strike out the testimony of the private complainant whose cross-examination was not finished because she had left for abroad.

The petitioner was prosecuted for the rape of Gloria Dalin, a 14-year old lass, allegedly committed on 23 February 1979 in Bangkal, Carmona, Cavite. The case was docketed as Criminal Case No. BCR-79-154 of the then Branch 5 of the Court of First Instance, later Branch 19 of the Regional Trial Court of Bacoor, Cavite. The case was subsequently transferred to Branch 21 of the Regional Trial Court of Imus, Cavite.[1]

On 9 March 1988, the trial court promulgated its decision,[2] the dispositive portion of which reads as follows:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under Art. 335 of the Revised Penal Code, said accused is hereby sentenced to suffer the penalty of imprisonment to an indeterminate term ranging from six (6) months and one (1) day of prision correccional minimum, as minimum, to eight (8) years and one (1) day of prision mayor medium, as maximum, and to pay the offended party P10,000.00 for moral damages and P5,000.00 for attorney's fees and the cost of the suit."

It appreciated in favor of the petitioner the privileged mitigating circumstance of minority considering that he was born on 13 August 1963,[3] and by reason thereof, it lowered the penalty prescribed in Article 335 of the Revised Penal Code, i.e., reclusion perpetua, by two degrees and applied the Indeterminate Sentence Law.

Petitioner appealed the decision to the Court of Appeals, which docketed the case as CA-G.R. CR No. 05592. In his brief,[4] he sought the reversal thereof on the ground that the trial court erred in convicting him (a) "on the basis of the testimony of the offended party despite that [sic] there is no complete testimony on record of offended party and that cross-examination was not terminated without the fault of accused-appellant," and (b) despite the absence of "evidence to prove his guilt beyond reasonable doubt." In support of the first, he reiterated and amplified the arguments he had adduced before the court a quo, and as to the factual issue, he asserts that:

"it is highly incredible for complainant to have been sexually abused when she was with five other companions three of whom are males while three of them are females. Moreover, why did her companions leave the place and left her alone? The answer is because complainant and accused were intimate and have [a] love affair even before the incident in question. The allegation regarding the use of force was merely an afterthought."[5]

In the Appellee's Brief,[6] the People traversed the petitioner's claim that his right to cross-examine the complainant was denied. Thus:

"On 08 March 1984, after the direct examination of complaining witness Gloria A. Dalin, counsel for appellant requested continuance of the cross-examination (TSN, 08 March 1984, p. 25) since he was not ready to

cross-examine the witness (Records, p. 147). The cross-examination was therefore reset to 24 April 1984 and 28 May 1985[7] (Id.).

On 23 April 1984, counsel for appellant filed a Motion for Postponement of the Hearing (Cross-examination) set for 24 April 1984.

The hearing set for 28 May 1984 was likewise postponed and reset to 09 July 1984 due to power failure (Records, p. 163).

Eventually, on 09 July 1984, appellant's counsel was able to cross-examine the complaining witness (Records, p. 172; TSN, 09 July 1984, pp. 1-30).

On 11 July 1984, appellant's counsel continued his cross-examination of the complaining witness (TSN, 11 July 1984, pp. 1--28).

On 20 August 1984, since complaining witness was 'not yet in the Philippines, and there are no other witnesses available (Records, p. 183; TSN, 20 Aug. 1984, p. 26) aside from Dr. Dario Gajardo, Medico-Legal Officer of the PC-Crime Laboratory', the hearing was reset to 10 October 1984, 22 October 1984, 20 November 1984 and 27 November 1984. (Id.).

x x x

On 28 October 1985, appellant filed a 'Motion to Strike Out the Testimony of Gloria Dalin' on the alleged ground that 'the cross-examination of Dalin was not yet terminated' (Records, pp. 232-233).

On 20 June 1986, the Trial Court denied the foregoing Motion, holding that 'the records of this case will readily indicate that Gloria Dalin has already been sufficiently cross-examined.' Further, the court added, the defense had been given full opportunity (actually, the cross-examination of Dalin by appellant's counsel was conducted in two court sessions) to finish its cross-examination but it failed because of the way the same was conducted (Records, pp. 257-258).

On 01 October 1986, the 'Motion for Reconsideration' of appellant with respect to the foregoing adverse decision was likewise denied (Records, p. 270).

On 08 April 1987 and 12 October 1987, appellant presented evidence in his behalf and thereafter, rested his case.”[8]

In its Decision of 25 June 1992, the Court of Appeals affirmed with modification the decision of the trial court. As modified, the penalty of imprisonment was increased to an indeterminate sentence of 10 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, while the indemnity was increased to P50,000.00. It appreciated in his favor the privileged mitigating circumstance of minority since he was over 15 and under 18 years of age at the time he committed the crime and accordingly imposed a penalty one degree lower than that prescribed for the offense. In resolving the issues raised in the appeal, it held:

"The accused was not denied his right to cross-examination, albeit the same was not entirely completed. The records of the case would reveal that the defense was afforded ample opportunity for cross-examination. After the direct examination of the offended party on 8 March 1984, the trial court granted the motion of the defense for a continuance of the hearing on another date to allow it to prepare for a thorough examination of the offended party's testimony. On 9 July 1984, the date set for the continuation of the cross-examination, the offended party was present and in fact was sufficiently interrogated by the defense counsel:

x x x

The Supreme Court, in the case of *People vs. Gorospe* (129 SCRA 223) has ruled that:

x x x

'While cross-examination is a right available to the adverse party, it is not absolute in the sense that a cross-examiner could determine for himself the length and scope of his cross-examination of a witness. The court has always the discretion to limit the cross-examination and to consider it terminated if it would serve the ends of justice.'

But even if in gratia argumenti, we sustain appellant's contention and exclude the testimony of the offended party, there is still sufficient evidence on record to establish the guilt of the accused beyond reasonable doubt. As the trial court emphasized in its decision, the judgment of conviction was not based solely on the offended party's testimony."[9]

The evidence for the prosecution was carefully summarized by the trial court in its decision, thus:

"The people's version of the case is that on February 23, 1979 complainant Gloria Dalin (Dalin, for short), together with five (5) companions, went to a 'manggahan' at Bangkal, Carmona, Cavite to rest and at the same time pick mangoes. While thus picking mangoes, accused and a young male companion -- about ten (10) years old -- arrived. Frightened by this sudden appearance, Dalin and her companions scampered away in different directions. Accused shouted at them to come back which, Dalin and her companions, due to fear, heeded. And return, they did.

On order of the accused, Dalin and Ruby Laurente were tied together to a hanging branch of a mango tree with banana fiber locally called 'saha'. The other members of the group were also tied with the same fiber but separately.

After a while, accused directed those tied separately to play a racing game promising the one to reach him first to be set free. Thus, they were untied for this purpose.

While the game was in progress, Dalin and Ruby were busy trying to free themselves and since the 'saha' was fresh and slippery, they succeeded. Thus freed, they ran towards the river. Accused who chased them was able to overtake Dalin. Ruby, on the other hand, proceeded home and reported the matter to Dalin's mother.

Accused pulled Dalin by the hair in dragging her to a hut where he forcibly removed Dalin's short pants. Thereafter, he used earthen pots -- which broke one after the other due to the force of the impact -- to prop up the buttocks of Dalin for easy sexual penetration. Accused succeeded having coition with Dalin four (4) times. Accused desisted only upon the entreaties of his young male companion.

Taking advantage of the lull, Dalin rushed home. On the way, she met her mother who was already looking for her as a result of the report of Ruby.

Immediately, Dalin and her mother went to a PC Detachment in the area and reported the rape done to her by the accused. The PC authorities, however, directed them to proceed instead to the police station of Carmona, Cavite which they did. The necessary investigation was done therein. Thereafter, Dalin was brought to the PC Crime Laboratory at Camp Crame for medical examination. As it was already quite late in the evening, and there being no physician available at that date and time, the medical examination was conducted the following day -- February 24, 1979 -- at about 10:30 in the morning. The doctor, Dr. Dario Gajardo, who examined Dalin submitted the following findings, to wit:

Findings:

GENERAL AND EXTRAGENITAL:

x x x. The following injuries are noted:

[Here follows an enumeration of seventeen (17) abrasions and contusions on different parts of the body, especially the buttocks and the hands.]

GENITAL:

There is 'lanugo-type' of pubic hair, labia majora are full, convex and coaptated with dark brown, hypertrophied labia minora presenting in between. On separating the same are disclosed a fresh, healing laceration at the posterior commissure and vulvar mucosa and an elastic, fleshy type hymen with a deep, fresh laceration at 6 o'clock position. External vaginal orifice offers strong resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency with moderate amount of whitish secretions.

Vaginal and peri-urethral smears are negative for gram negative diplococci and for spermatozoa.

REMARKS:

Findings are compatible with recent loss of virginity."[10]

In his defense, the appellant contends that he and the private complainant had a love affair even before the incident in question and were on intimate terms. On 29 February 1979, the private complainant came to the "manggahan" to play "bahay--bahayan" with him. He played the role of the "father," while the private complainant acted as the "mother." They repaired to a nearby hut where they apparently took their roles so seriously that they engaged in some necking and petting. He, however, strongly denies that he had sexual intercourse with the private complainant.[11]

In convicting the petitioner, the trial court gave full faith and credit to the prosecution's version:

"The injuries suffered by Dalin -- -seventeen (17) in all -- belie the claim of voluntariness. On the contrary, said injuries portrayed a picture of the accused and Dalin struggling and fighting. Indeed, according to the doctor, the injuries suffered by Dalin in her forearm and arm are defense wounds. Meaning, said wounds were suffered when she put up a fight.

Dalin's hymen was lacerated. And the doctor was positive that said laceration was caused by the insertion of the male organ. It could not have been due to the insertion of a finger.

Differently stated, the evidence of the prosecution established beyond any reasonable doubt that the accused succeeded in having carnal knowledge of Dalin by force.

Not only this. The flight of the accused to [the] Bicol Region after commission of the crime reveals his guilt."[12]

In this petition for review on certiorari, the petitioner alleges that the Court of Appeals had no "jurisdiction to decide and affirm [his] conviction on the basis of the direct examination of Gloria Dalin alone without terminating the cross-examination due to the [sic] Gloria Dalin," and that in affirming with modification the trial court's decision, the Court of Appeals "has departed from the accepted and usual course of judicial proceedings when it overlooked facts of substantial consequences which establish the innocence of petitioner from the offense charged."

In the Comment[13] filed on 27 July 1993 by the Office of the Solicitor General, the public respondents asseverate that the petitioner was able to exhaustively cross-examine the complaining witness on 09 July 1984 and

11 July 1984, the transcripts of stenographic notes of which consist of a total of 58 pages,[14] which cross-examination the trial court found sufficient; they assert that the Court of Appeals did not err in affirming with modification the judgment of conviction.

The petitioner filed his Reply to the Comment on 14 October 1993.[15]

After deliberating on the allegations, issues, and arguments raised by the parties, we find the challenged decision to be unflawed by any reversible error. Perforce, the petition must be denied.

We agree with the respondents and the trial court that the petitioner was not denied the right to cross-examine the offended party. He was given ample and sufficient time to do so. His counsel, Atty. Loyola, could have conducted the cross-examination on 8 March 1984 immediately after the termination of the direct examination but did not allegedly because he was not ready. Counsel then spent two court sessions (9 July and 11 July 1984) cross-examining the private complainant. On 9 July 1984, Atty. Loyola cross-examined her for one hour, and when he was asked by the court if he was through with the witness, he replied: "I think, I need one more hearing." [16] On 11 July 1984, Atty. Loyola continued the cross-examination,[17] which was later stopped because the private complainant became indisposed. Nevertheless, although the prosecution had announced that it was ready for the continuation of the cross-examination on the following day, Atty. Loyola told the court that he would be at the Sandiganbayan and suggested that the continuation be had on 20 August 1984. When the prosecuting fiscal informed Atty. Loyola that the offended party would leave the country and might not be able to return to the Philippines, the following exchange transpired:

"Atty. Loyola -?

According to the witness, she will be returning. Because she cannot answer, what will happen to the witness if we force her to testify? We do not want to force her.

Fiscal Gervacio --

She is available tomorrow.

Atty. Loyola -?

I will not be available tomorrow. I will not take advantage of this. If she is not around on the 20th we will proceed with another witness." [18]

This clearly shows that Atty. Loyola was fully aware that the private complainant was scheduled to leave the Philippines, and that if she should be unavailable for the continuation of the cross-examination, he was willing to forego further cross-examination and present another witness. Even if this were farthest from his mind, we are further convinced that, knowing of the expected departure of the private complainant, Atty. Loyola wanted a scenario wherein the private complainant either would be unable to testify or could no longer be cross-examined -- in which case he would move that her testimony be stricken out from the record. This is easily borne out by the counsel's dilatory tactics -- he neither cross-examined her on 8 March 1984 nor agreed that the cross-examination be continued on 12 July 1984. He also deliberately dragged out his cross-examination on 9 July and 11 July 1984.

Fortunately, the trial court saw through this scheme; thus, in its 20 June 1986 Order[19] denying the petitioner's motion to strike out the testimony of the private complainant, it stated:

"The records of this case will readily indicate that Gloria Dalin [the private complainant] has already been sufficiently cross-examined. Further, the defense had been given full opportunity to finish its cross-examination but it failed because of the way the same was conducted."

Our examination and evaluation of the transcripts of the stenographic notes of the proceedings of 9 July and 11

July 1984 support this conclusion of the trial court.

It should also be noted that the petitioner took the witness stand. His direct testimony corroborated the testimony of the private complainant on the incidents before the rape. He admitted that he kissed the private complainant and touched her breast but denied her allegations in the statement which she executed before Judge Arvizu concerning the rape.[20] Wittingly or unwittingly, he thus rebutted the testimony of the private complainant, thereby rendering moot, by waiver, his objection thereto.

Howsoever viewed, the testimony of the private complainant must stand. The petitioner had not only been given sufficient opportunity to finish the cross-examination of the private complainant, by his conduct he has, as well, waived his right to further cross-examine her. His constitutional right to meet the witness face to face[21] was not impaired.

In *United States vs. Anastasio*,[22] this Court held that "the right of confrontation thus guaranteed and secured to the accused is a personal privilege" which can be waived. We stated the purpose of confrontation thus:

"The chief purpose of confrontation is to secure the opportunity for cross-examination; this has been repeatedly pointed out in judicial opinion, so that if the opportunity of cross-examination has been secured the function and test of confrontation has also been accomplished, the confrontation being merely the dramatic preliminary to cross-examination. The second and minor purpose is that the tribunal may have before it the deportment and appearance of the witness while testifying. But the latter purpose is so much a subordinate and incidental one that no vital importance is attached to it; consequently, if it can not be had it is dispensed with, provided the chief purpose, cross-examination, has been attained. (Greenleaf on Evidence, vol. 1, par. 163)."[23]

In *People vs. de la Cruz*,[24] we held:

"The fact that the cross-examination of the complainant was not formally terminated is not an irregularity that would justify a new trial. The right to confront the witnesses may be waived by the accused expressly or by implication. (U.S. vs. Anastasio, 6 Phil. 413; 4 Moran's Comments on the Rules of Court, 1970 Ed., p. 201-2)."

We reiterated this rule in *Savory Luncheonette vs. Lakas ng Manggagawang Pilipino*,[25] *People vs. Seneris*,[26] *People vs. Gorospe*,[27] *De la Paz vs. Intermediate Appellate Court*,[28] *Fulgado vs. Court of Appeals*,[29] and *People vs. Carcedo*. [30]

In *Savory Luncheonette*, we said:

"The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.

The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone." [31]

In fine, as we stated in *Fulgado*:

"The principle requiring a testing of testimonial statements by cross-examination has always been understood as requiring, not necessarily an actual cross-examination, but merely an opportunity to exercise the right to

cross-examine if desired."[32]

We also agree with the Court of Appeals that even if the testimony of the private complainant were to be stricken out, there is enough evidence on record to prove beyond reasonable doubt that the petitioner committed the crime of rape. For one, there is the testimony of Ruby Laurente. She testified that she and the private complainant were tied by the accused. The accused then told her that if she acceded to his desire to rape her, she would be freed. She however managed to escape and forthwith went to Maria Paz Dalin, the mother of the private complainant, and told her what happened. Then the two of them, together with Perfecta Calix (the then Vice-Mayor of Carmona) and other persons, searched for the private complainant whom they eventually found near a river. The private complainant, who was crying, told them that she had been ravished by the petitioner. Ruby testified thus:

"ATTY. GONZALES:

Q And what was she doing when you saw her?

Witness:

A She was crying, sir.

Q Do you know why she was crying?

A No, sir.

Q What did she say, if any, when you found her?

A She told me that she was raped by Efren Anciro.

Q To whom did she tell that?

A To us and to her mother.

Q And when that information was disclosed by Gloria Dalin, what did you and the rest of your companions do, if any?

Witness:

A We went home and we went to the Municipality of Carmona and reported the incident.

Q To whom did you report the incident?

A To Rolando Melo, sir.

Q Who is that Rolando Melo?

A Station Commander, sir, of Carmona, Cavite.

Q Was there any investigation conducted by that Station Commander regarding the incident?

A Yes, sir."[33]

For another, there are the testimonies of the Station Commander, corroborating the fact of the immediate reporting of the incident and the investigation he conducted, and of Dr. Gajardo whose medical findings support the finding of rape.

The statement of the private complainant to Ruby Laurente that she was raped by the petitioner, which was not objected to by counsel for the petitioner, is part of the *res gestae* and is admissible under Section 42, Rule 130 of the Revised Rules of Court. The requisites for the admission of evidence as part of the *res gestae* are present, viz.:

(1) the principal act or the *res gestae* -- which is the rape -- was a startling occurrence, (2) the declaration by the complainant that she was raped by the accused was made before she had the time to contrive or devise, and (3) the statement referred to the occurrence in question and its immediately attending circumstances.[34]

It is settled that when a woman says that she has been raped, she says, in effect, that all that is necessary to constitute the commission of this crime has been committed.[35] Also, in the instant case, the complainant immediately reported the incident and voluntarily submitted herself to an investigation by the police authorities and an examination of her private parts by the medico-legal officer. It is difficult to believe that she would tell a story of defloration, allow the examination of her private parts, and thereafter subject herself to the rigors and embarrassment of a public trial if she were not raped.[36]

Finally, there is the un rebutted finding of the trial court that the petitioner fled to the Bicol Region soon after the incident. Flight evidences guilt and a guilty conscience; it strongly indicates a guilty mind or betrays the existence of a guilty conscience.[37]

Like the trial court and the Court of Appeals, we are convinced that the guilt of the petitioner for the crime charged was proved beyond reasonable doubt.

The modifications made by the Court of Appeals are correct. Since the petitioner was a minor above fifteen but less than eighteen years of age at the time he committed the crime, the penalty to be imposed upon him shall be one degree lower than reclusion perpetua, the penalty prescribed by Article 335 of the Revised Penal Code. The trial court would have been correct if the petitioner were less than fifteen but above nine years of age at the time he committed the crime and had acted with discernment, in which case he would not be exempt from criminal liability but would be meted a penalty at least two degrees lower than that prescribed for the offense.[38] The increase of the indemnity to P50,000.00 is in accordance with the current policy of the Court.

WHEREFORE, no reversible error having been committed by the respondent Court of Appeals, the instant petition is DENIED and the decision of said Court of 25 June 1992 in CA-G.R. CR No. 05592 is hereby AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.

[1] Original Records (OR), 132.

[2] OR, 339-343 Annex "A" of Petition; Rollo, 60-66. Per Judge Roy S. del Rosario.

[3] Exhibits "1" and "2"; OR, 309-310.

[4] Annex "C" of Petition; Rollo, 40-59.

[5] Rollo, 52.

[6] Annex "D" of Petition; Id., 67-108.

[7] Should be 1984.

[8] Rollo, 71-73.

[9] Rollo, 29-31.

[10] Rollo, 60-64.

[11] Rollo, 64.

[12] Id., 64-65.

[13] Rollo, 143-169.

[14] Id., 156.

[15] Id., 178-184.

[16] TSN, 9 July 1984, 29.

[17] TSN, 11 July 1984, 2-24.

[18] Id., 25-26.

[19] OR, 257-258.

[20] TSN, 8 April 1987, 3-10.

[21] Section 14(2), Article III, 1987 Constitution.

[22] 6 Phil. 413 [1906].

[23] Id. at 416.

[24] 56 SCRA 84, 92 [1974].

[25] 62 SCRA 258 [1975].

[26] 99 SCRA 92 [1980].

[27] 129 SCRA 233 [1984].

[28] 154 SCRA 65 [1987].

[29] 182 SCRA 81 [1990].

[30] 198 SCRA 503 [1991].

[31] Supra, footnote 25, at 263-265.

[32] Supra, footnote 29, at 88.

[33] TSN, 10 October 1984, 22-24.

[34] People vs. Sanchez, 213 SCRA 70 [1992].

[35] U.S. vs. Ramos, 1 Phil. 81 [1901]; People vs. Rosell, 181 SCRA 679 [1990]; People vs. Barcelona, 191 SCRA 100 [1990].

[36] People vs. Patilan, 197 SCRA 354 [1991].

[37] People vs. Garcia, 209 SCRA 164 [1992]; People vs. Martinado, 214 SCRA 712 [1992].

[38] Article 68, Revised Penal Code.

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