

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL OLIVA Y CORTERO, ACCUSED-APPELLANT.

G.R. No. 108505. December 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In statutory rape, only two elements need to be established: (1) that the accused had carnal knowledge of the offended party, and (2) that the offended party was below 12 years of age at the time of the sexual assault. Force or intimidation, not being an essential element of the crime, need not be proven.

The Case

This is an appeal from the Decision [1] of the Regional Trial Court of Pasig, Branch 158, convicting Ariel Oliva y Cortero of rape and imposing upon him the penalty of reclusion perpetua. The dispositive portion of the assailed Decision reads:

“WHEREFORE, in view of the foregoing, accused ARIEL OLIVA y CORTERO is found guilty beyond reasonable doubt of the crime of Rape under paragraph 3 of Article 335 of the Revised Penal Code and is sentenced to suffer in prison the penalty of reclusion perpetua and to indemnify the victim Jennelyn Santacera in the amount of P30,000.00 and to pay the costs.” [2]

Pursuant to the complaint [3] filed on January 27, 1992 by seven-year-old Jennelyn Santacera with the assistance of her mother, Gloria Santacera, Appellant Ariel Oliva y Cortero was charged with rape before the Regional Trial Court of Pasig. The felony was allegedly committed as follows:

“That on or about the 26th day of January, 1992, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court the above-named accused, by means of threats, force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, Jennelyn Santacera, a minor seven (7) years of age, against her will and consent.” [4]

When arraigned in Filipino on February 24, 1992, appellant, with the assistance of his counsel de oficio, Eugenio C. Mendinueto, pleaded not guilty. [5]

Trial ensued in due course. Thereafter, the lower court rendered its assailed Decision. In view of the penalty imposed, the appeal was filed directly with this Court. [6]

Facts of the Case

The prosecution presented as witnesses (1) Gloria Santacera, mother of the private complainant; (2) Jennelyn Santacera, [7] the victim; (3) SPO1 Rogelio Lorbes, [8] the investigating officer and (4) Dr. Vladimir Villaseñor [9] of the PNP Crime Laboratory who conducted the physical examination on the victim after the alleged rape. On the other hand, the defense presented Appellant Ariel Oliva, [10] Jaime Cortero [11] and Romeo Oliva, [12] the latter two being appellant’s uncle and father, respectively.

Version of the Prosecution

The facts as viewed by the prosecution are narrated in the Appellee's Brief:

"Gloria Santacera and her three (3) children Jennelyn (complainant herein), Marlon and Bonabie Joyce were residing at Kamias St., Tanimang Bayan, Manggahan, Pasig, Metro Manila (TSN, March 23, 1992, p.2; April 7, 1992, p. 2). Complainant is her only daughter who was then seven (7) years old (ibid. p. 6, Exhibit "B"). The Santaceras' were renting a one-room house owned by Jaime Cortera (TSN, March 24, 1992, p. 2) who had a house adjacent to them. Jaime Cortera's nephew, appellant herein and his mother "Inang" (ibid. p. 8) were both staying in his house.

On January 25, 1992, at around 7:00 p.m., appellant arrived at the house of Gloria Santacera after having a drinking spree with his co-workers in their office (ibid., p. 3; TSN, July 1, 1992, p. 2). Although appellant was apparently drunk, Gloria Santacera let him in because he had already earned her trust. Moments later, a certain Tirso came in and he joined the conversation of appellant and Gloria Santacera (ibid., p. 4). Appellant then bought two (2) big bottles of San Miguel Beer for him and Tirso to drink (ibid., p. 5; ibid., p. 3).

The drinking spree, however, did not last long because Tirso went out of the house while appellant was left behind (TSN, March 23, 1992, p. 5). Due to his insobriety, appellant fell asleep and he subsequently lay down on the floor near the door at the sala (ibid., p. 5). Gloria Santacera tried to drive him out but he did not bother to get up (ibid., p. 5).

Since it was already past eight o'clock in the evening, Gloria Santacera called upon her three (3) children to sleep in the sala (ibid., p. 7). The children slept under a mosquito net near appellant with complainant in between her brothers, Marlon and Bonabie Joyce (ibid., p. 7).

After the children had slept, Gloria Santacera decided to go out and have a chat with her neighbors because she could not get a good sleep. Several hours later, she returned to the house to check her children (TSN, March 24, 1992, p. 9). Seeing that her children were having a deep sleep, she again went out of the house with her friends to see the dance at the other side of the street (ibid, p. 9).

At around 1:00 a.m., complainant was awakened when she felt that she was no longer wearing her panty (TSN, April 7, 1992, p. 6). She looked for her panty and she saw appellant outside of the mosquito net unzipping his pants. Thereafter, appellant hastily positioned himself on top of complainant, held his penis (TSN, April 7, 1992, p. 3) and placed it to her vagina (ibid., p. 7).

While appellant was still on top of complainant, he kissed her and then boxed her on her mouth (ibid., p. 3). Afterwards, he took his knife in his back pocket and thrust it to complainant's neck threatening her that if she would cry out for help (ibid., p. 3) she would be killed (TSN, March 23, 1992, p. 4; March 25, 1992, p. 5). Complainant followed his order and appellant returned his knife in his pocket. At this instance, complainant's brothers were roused from their sleep and they still saw appellant on top of complainant. They began to cry and went towards the corner of the house. When their mother arrived, complainant opened the door and her mother saw appellant inside the mosquito net still lying on the floor and zipping his pants (TSN, March 23, 1992, p. 3; March 25, 1992, p. 4).

Complainant and her brother Marlon told the incident to their mother that prompted appellant to leave immediately the house. When Gloria Santacera confronted appellant in the house of his grandmother, he merely admitted that he just kissed complainant (ibid., p. 4; Exhibit "A").

Version of the Defense

The version of the defense is narrated in the appealed Decision as follows:

"Accused denied the acts imputed to him because he could not commit the offense charged since he had

treated the victim like a sister. He admitted though that he was already drunk when he arrived at the victim's house on the date of the incident. He even ordered two more bottles of San Miguel Beer Grande and drank with a certain Tirso and the victim's mother. After two shots of beer, accused fell asleep and woke up only when the victim's mother was shouting, accusing him of having raped the victim (TSN, July 1, 1992, pp. 3-5). She threatened to have him "salvaged" by her relatives. She also reported the incident to accused' (sic) uncle, Jaime Cortero who beat him up. From the victim's house accused went across to his grandmother to sleep, until he was awakened by policemen, who invited him to the police station upon victim's mother's complaint of rape. The only reason why he was charged of this offense was accused (sic) misunderstanding with victim's mother. Accused (sic) uncle, Jaime Cortero corroborated his testimony.

Romeo Oliva, father of the accused testified to prove the good moral character of the accused. He stated that his son had not been charged nor investigated of any offense aside from this case and that his son is a good child and industrious."

Lone Assignment of Error

Appellant ascribes this alleged error to the impugned Decision:

"The court a quo erred in convicting accused-appellant of the crime charged (rape) although the evidence presented against him did not prove his guilt beyond reasonable doubt." [13]

In the main, this appeal[14] assails the credibility of the prosecution witnesses and the sufficiency of the evidence presented to prove appellant's guilt beyond reasonable doubt. The following allegedly make Gloria Santacera's testimony unacceptable: (1) she could not have seen appellant zip his pants when she came back from the dance since she had previously closed the door of her rented house when she left; (2) Gloria's own testimony during trial, that appellant merely slapped the child, conflicts with the declaration in her affidavit that Jennelyn told her she was boxed by the appellant on the mouth; and (3) Gloria's description of the weapon used by the appellant as a double-bladed knife differs from the victim's testimony that the said weapon was a fan knife. [15] Appellant also argues that the medico-legal report contravened the prosecution's account that the victim was raped, slapped, or boxed by the appellant. Furthermore, the victim's assertion that appellant did not remove his pants is tantamount to an admission that there was no sexual congress. [16]

This Court's Ruling

The appeal lacks merit.

Sufficiency of Prosecution Evidence

After careful deliberation on this case, particularly on the evidence presented by the parties and the arguments raised in their respective briefs, the Court resolves to affirm the appellant's conviction.

Statutory rape is committed when the offender has carnal knowledge of a woman under twelve years of age.[17] Born on June 4, 1984,[18] the victim was only seven years old at the time of the alleged rape on January 26, 1992. That appellant had raped her is clear from her plain and straightforward testimony:

Q When you felt the accused removing your panty, what portion of your body was your panty on at the time you woke up?

A It was already removed, sir.

Q So when you saw that, you mean to tell us that it has been totally removed from your body?

A Yes, sir.

Q And where was your panty placed when you saw it?

A On the floor mat, sir.

Q And where was Ariel at that juncture?

A He was unzipping his pants, sir.

Q Where was he? Was he inside or outside the mosquito net?

A Outside, sir.

Q What was he wearing? Long or short pants?

A He was wearing long pants, sir.

Q Was he able to unzip his pants?

A Yes, sir.

Q How long did it take Ariel to unzip his pants?

A Just a while, sir.

Q What else did he do after unzipping his pants?

A He placed his penis on my vagina.

Q Do you mean to tell us that he did not remove his pants?

A No, sir.

Q So after unzipping his pants, he went inside the mosquito net. Is that what you mean?

A Yes, sir.

Q Do you mean to say that when he was already inside the mosquito net after unzipping his pants, he immediately placed his penis on your vagina?

A Yes, sir.

Q At that juncture, did you not cry for help?

A No I did not cry.

COURT -

Q Why did you not cry?

A Because he threatened me that if I would cry out for help, he would kill me.

Q You heard him say that?

A Yes, sir.

Q Will you tell us the exact words uttered by him?

A Kapag maingay ako, papataying (sic) niya ako at huwag daw akong magsumbong sa Mama ko.

Q And when he did that, were your brother and sister who are (sic) on your both sides awakened?

A They were awakened, sir.

Q What did your brother do when he woke up?

A They both cried, sir.

Q Why did they cry?

A Because they saw Ariel on top of me.

Q They both cried at the same time?

A Yes, sir.

Q They cried long?

A Yes, sir.

Q You said that Ariel boxed you on the mouth. How many times did he box your mouth?

A Only once, sir.

Q Were you hurt when he boxed you?

A Yes, sir.” [19] (Underscoring supplied.)

The trial court accorded credence to the foregoing testimony of Jennelyn Santacera:

“Victim’s testimony positively identified the accused as her molester. She has testified in a forthright manner without the least hesitation. The Court has observed the demeanor of the victim and at no time could it say that she just made up the incident and lied about it. As between a positive and categorical testimony which has a right of truth on one hand, and a bare denial on the other, the former is generally held to prevail.” (Citation omitted) [20]

We find no reason to disturb the findings of the trial court. Because it had the opportunity to observe the witnesses’ demeanor and deportment on the witness stand, its assessment of the credibility of witnesses is entitled to great respect. [21] In any event, appellant utterly fails to show sufficient bases to warrant the modification or reversal of the appealed Decision.

Indeed, it has been held that when a woman claims she was raped, she says in effect all that is necessary to show that rape has been committed. If her testimony meets the test of credibility, the accused can be convicted on the basis thereof. [22] If she is not motivated by the truth, no woman, much less a seven-year-old girl, would subject herself and her family to the rigors of a public trial, describing before total strangers the shameful, humiliating and degrading experience of the sexual assault. Moreover, there was no showing of any ill motive on her part to testify falsely against the appellant. [23]

Witness Gloria Santacera corroborated in part the testimony of her daughter:

Q And upon reaching your house[,] what did you do?

A When I arrived home, sir, I found out that my children are (sic) crying.

Q The three (3) of them?

A Yes, sir all of them.

Q Where were they at that time?

A They were standing on a corner, sir.

Q Inside the house?

A Yes, sir.

Q And where was the accused at that time?

A He was lying down on the place where my daughter Jennelyn has slept.

Q So, he was lying down while he was zippering his pants?

A Yes, sir.

Q But your children were already standing?

A Yes, sir.

Q Is it not a fact, Mrs. Witness, that the floor mat was covered by a mosquito net?

A Yes, sir.

Q So, you saw the accused here through that mosquito net?

A He was inside the mosquito net when I arrived and he was lying down.

Q And where were [you] at that time, you were still standing outside of your house, is it not?

A I was already entering our house, sir.

Q So, what did you do upon seeing the accused in that position and your children?

A I asked my children what had happened and they told me that Ariel had put down my daughter's panty and place[d] his penis on her vagina." [24] (Underscoring supplied.)

No mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement. [25] Furthermore, the prosecution's case is buttressed by Jennelyn's and her brother Marlon's disclosure of appellant's malfeasance to their mother, who thereafter confronted Appellant Oliva and reported the incident to the police.

Alleged Inconsistencies

The alleged inconsistencies or contradictions in the testimonies of the prosecution witnesses do not impair their credibility, for they refer only to minor matters which do not affect the cause of the prosecution.

Appellant contends that Gloria's own testimony that appellant merely slapped the child is inconsistent with the declaration in her affidavit that Jennelyn told her she was boxed by the appellant on the mouth. We hold that the divergence of Gloria's testimony from her affidavit does not impair her credibility. We have consistently ruled that affidavits are almost always incomplete and often inaccurate due to partial suggestions or want of specific inquiries. [26]

Appellant also underscores the alleged conflict in the prosecution's account in respect of the weapon used by appellant. Gloria described said weapon as a double-bladed knife while the victim claimed it was a fan knife. [27]

We are not persuaded by these alleged inconsistencies. It is relevant to cite the observation of the solicitor general on this point:

"x x x. There is no dispute that Gloria Santacera had testified that appellant used a double-bladed knife to threaten complainant. Complainant, however, did not positively testify that appellant used a fan knife instead of a double-bladed knife to threaten her. As borne by the records, it was the court interpreter and not complainant who said that the knife has a cover which could be opened like a fan knife. Nowhere in the records did complainant mention that the knife used was a fan knife. She simply testified that she was threatened by a small knife without describing whether it was single-bladed or a double-bladed knife." [28]

In any event, the use of force or intimidation is not an element of statutory rape. [29] The offense is established upon proof that the accused sexually violated the offended party, who was below twelve (12) years of age at the time of the sexual assault. [30] In other words, it is not relevant to this case whether appellant slapped or boxed the victim, or whether he used a single-bladed or a double-edged knife.

Results of Physical Examination

Appellant also argues that the results of the physical examination, conducted on the victim the day after the alleged rape, belie the accusation. The examining physician reported:

"GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and tight.

GENITAL:

There is absence growth of pubic hair. Labia majora are full, convex and coaptated with the dark brown labia minora presenting in between. On separating the same it disclosed an elastic, fleshy-type and intact hymen, with perforation at 5 o'clock.

CONCLUSION:

Subject is in virgin state physically.

There are no external signs of recent application of any form of violence.

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

It must be stressed that the absence of hymenal laceration does not disprove sexual abuse, especially when the victim is of tender age. Mere touching, no matter how slight, of the labia or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape. [31] Furthermore, the absence of spermatozoa in the vaginal area does not negate the commission of rape. [32] Rape is consummated by the sexual act, not by the ejection of spermatozoa into the female organ. As earlier observed, the victim's testimony shows plainly that there was actual carnal knowledge. In unmistakable terms, she testified to the fact of actual penetration as follows:

Q By the way Jennielyn (sic). Did the penis of Ariel touch your vagina when he attempted to put it inside?

A Yes, sir.

Q Were you hurt when Ariel placed his penis on (sic) your vagina?

A Yes, sir." [33]

Moreover, the fact that appellant did not remove his pants did not preclude the commission of the depraved act. It was clearly established that he unzipped his pants, held his genitalia and inserted it into the child's sex organ. [34] Indubitably, the sexual assault was consummated.

WHEREFORE, the appeal is hereby DENIED. The assailed Decision convicting Appellant Ariel Oliva of statutory rape is AFFIRMED. In line with current jurisprudence, [35] the award of indemnity to the offended party, Jennelyn Santacera, is INCREASED to P50,000. Costs against appellant.

SO ORDERED.

Narvasa C.J. (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Penned by Judge Jose R. Hernandez.

[2] Decision, p. 8; Rollo, p. 21.

[3] Docketed as Criminal Case No. 91038-92; Rollo, pp. 3-4.

[4] Records, p. 1.

[5] Records, p. 8.

[6] The case was deemed submitted for resolution upon receipt by this Court on January 24, 1996 of the letter of Venancio J. Tesoro of the Bureau of Corrections confirming the confinement of Appellant Ariel Oliva at the New Bilibid Prison.

[7] TSN, April 7, 1992, pp. 1-11 and May 20, 1992, pp. 1-11.

[8] TSN, May 25, 1992, pp. 1-5.

[9] TSN, June 25, 1992, pp. 1-4.

[10] TSN, July 1, 1992, pp. 1-11.

[11] TSN, July 13, 1992, pp. 1-10.

[12] TSN, July 15, 1992, pp. 2-5.

[13] Brief for the Appellant, p. 1; Rollo, p. 30

[14] In a Resolution dated September 20, 1995, this Court dispensed with the filing of Appellant's Reply Brief after the lapse of the period given to him to file one.

[15] Brief for the Appellant, pp. 6-7; Rollo, pp. 35-36.

[16] Ibid., pp. 8-10; Rollo, pp. 38-40.

[17] Article 335 of the Revised Penal Code (before its amendment by R.A. 7659) states that:

"Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

x x x

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua."

"Whenever the crime of rape is committed with the use of a deadly weapon x x x, the penalty shall be reclusion perpetua to death."

[18] Certificate of Live Birth, Exhibit B.

[19] TSN, April 7, 1992, pp. 6-9.

[20] Decision, p. 6; Rollo, p. 19.

[21] People vs. Ramirez, G.R. No. 97920, January 20, 1997 and People vs. Corea, G.R. No. 114383, March 3, 1997. See also People vs. Antipona, G.R. No. 119071, June 19, 1997 and People vs. Tadulan, G.R. No. 117417, April 15, 1997.

[22] People vs. Malabago, G.R. No. 108613, April 18, 1997; People vs. Butron, G.R. No. 112986, May 7, 1997. See also People vs. Perez, G.R. No. 118332, March 26, 1997; People vs. Roncal, G.R. No. 94705, May 6, 1997; People vs. Rabosa, G.R. Nos. 119-362-120269, June 9, 1997.

[23] See, e.g., TSN, July 1, 1992, pp. 1-11; TSN, July 13, 1992, pp. 1-10. See also People vs. Gabris, 258 SCRA 663, July 11, 1996.

[24] TSN, March 25, 1992, pp. 3-4.

[25] People vs. Alimon, G.R. No. 87758, June 28, 1996; People vs. Dela Cruz, 251 SCRA 77, 85, December 8, 1995; People vs. Sanchez, 250 SCRA 14, 27, November 16, 1995. See also People vs. Henson, G.R. No. 126175, May 29, 1997.

[26] People vs. Gabris, G.R. No. 116221, July 11, 1996. See also People vs. Traverro, G.R. No. 110823, July 28,

1997.

[27] Brief for the Appellant, pp. 6-7; Rollo, pp. 35-36.

[28] Brief for the Appellee, pp. 11-12; Rollo, pp. 71-72.

[29] People vs. Lagrosa, Jr., 230 SCRA 298, 305, February 23, 1994.

[30] People vs. Ibay, 233 SCRA 15, 27-28, June 8, 1994.

[31] People vs. Castromero, G.R. No. 118992, October 9, 1997. People vs. Butron, G.R. No. 112986, May 7, 1997; People vs. Devilleres, G.R. No. 114387, March 14, 1997; People vs. Rejano, 237 SCRA 627, 642, October 18, 1994.

[32] People vs. Digno, Jr., 150 SCRA 237, 242, November 23, 1995 and People vs. Peralta, 251 SCRA 6,19-20, December 7, 1995.

[33] TSN, April 7, 1992, p. 4.

[34] TSN, April 7, 1992, pp. 6-7.

[35] People vs. Pontilar, G.R. No. 104865, July 11, 1997 and People vs. San Juan, G.R. No. 105556, April 4, 1997. See also People vs. Edualino, G.R. No. 119072, April 11, 1997.

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