

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETRONILO ABAPO, ACCUSED-APPELLANT.

G.R. No. 108584. December 22, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision[1] of the court a quo finding herein accused-appellant Petronilo Abapo guilty of two (2) crimes of rape alleged to have been committed as follows:[2]

“In Criminal Case No. 133(90) -

The Undersigned Offended Party accuses PETRONILO ABAPO of the crime of Rape under Article 335 of the Revised Penal Code, committed as follows:

That sometime in January, 1989, in Digos, Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused aforementioned, after covering the mouth of said offended party who was then sleeping with his hand and after warning her not to shout, otherwise he would kill her, her mother, and her brother and sisters, did, then and there wilfully, unlawfully, and feloniously have carnal knowledge of said Offended Party, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.”

xxx xxx xxx

“In Criminal Case No. 136(90)

The Undersigned pursuant to a complaint signed by Cherry Lyn M. Navalon, herein Offended Party, and attached hereto as Annex ‘A’, accuses PETRONILO ABAPO of the crime of Rape under Article 335 of the Revised Penal Code, committed as follows:

That sometime in late September and/or early October, 1989, in Digos, Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the accused aforementioned, by means of force or intimidation exerted upon the aforementioned offended party, a minor of 11 years of age, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of said Cherry Lyn M. Navalon, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.”

When arraigned, accused pleaded not guilty. A joint trial of the two (2) cases on the merits ensued, after which a decision was rendered, the dispositive part of which reads:[3]

“WHEREFORE, premises considered and in view of the foregoing, this Court finds the accused Petronilo Abapo guilty of the 2 crimes of rape and hereby punishes him to suffer two (2) life sentences as follows:

In Criminal Case No. 133(90) an imprisonment of reclusion perpetua or life sentence and to pay the victim Merlyn Navalon the following amounts:

- 1) P100,000.00 for moral damages;
- 2) P100,000.00 for corrective or exemplary damages to serve as warning and stern lesson to others in the future for the public good;
- 3) P20,000.00 in the concept of actual or compensatory damages;
- 4) P30,000.00 as attorney's fees; and
- 5) P10,000.00 for expenses of litigation.

In Criminal Case No. 136(90) an imprisonment of reclusion perpetua or life sentence and to pay the victim Cherry Lyn Navalon the following amounts:

- 1) P100,000.00 for moral damages;
- 2) P100,000.00 for corrective or exemplary damages to serve as warning and stern lesson to others in the future for the public good;
- 3) P20,000.00 in the concept of actual or compensatory damages;
- 4) P30,000.00 as attorney's fees; and
- 5) P10,000.00 for expenses of litigation.

In both cases, to pay the costs of suit."

The accused is now before the Court and assigns the following as errors allegedly committed by the trial court:

"ASSIGNMENT OF ERRORS

I. THE HONORABLE COURT ERRED IN NOT HOLDING THAT THE HEREIN TWO (2) CASES OF RAPE AGAINST THE ACCUSED WERE MERELY FABRICATIONS.

II. THE HONORABLE COURT ERRED IN NOT BELIEVING THAT BERNARDO NAVALON, JR., THE FATHER OF THE TWO COMPLAINANTS IS NOT A GOOD FATHER AND HAS THE CAPACITY TO DO THE EVIL DESIGN, WITH NENITA DONATO (HALF SISTER) AND CESAR NAVORRA (HALF BROTHER) OF FABRICATING CHARGES AGAINST THE ACCUSED AND THE TWO (2) COMPLAINANTS COLLABORATED WITH THEM.

III. THE HONORABLE COURT ERRED IN NOT FINDING THAT THE ACCUSED WAS ILLEGALLY ARRESTED, INVESTIGATED AND LOCKED UP IN JAIL WITHOUT A WARRANT OF ARREST AND HIS RIGHTS UNDER THE CIRCUMSTANCES AND UNDER THE CONSTITUTION VIOLATED. HE WAS NOT INFORMED AND EXPLAINED OF HIS RIGHTS. FORCE WAS USED AGAINST THE ACCUSED AND YET THE ACCUSED WAS NOT ARMED AND THE ARRESTING OFFICER WAS ARMED, WORST [sic] THE ARRESTING OFFICER PATM. GERARDO DIAMANTE AND THE COMPLAINANTS TRIED TO EXTORT MONEY FROM THE ACCUSED SO THAT THE CASE WOULD BE WITHDRAWN.

IV. THE HONORABLE COURT ERRED IN NOT HOLDING THAT THE GUN, BULLETS, LEATHER BAG, ETC. ALLEGEDLY USED BY THE ACCUSED IN THREATENING THE TWO (2) PRIVATE COMPLAINANTS WERE PLANTED AND WAS PART OF THE FRAME UP. THEY WERE NOT TAKEN FROM THE ACCUSED BUT IN THE HOUSE OF A STRANGER WHILE THE ACCUSED WAS IN JAIL AND WORST [sic] THEY WERE TAKEN WITHOUT A SEARCH WARRANT. HENCE INADMISSIBLE AS EVIDENCE ESPECIALLY THAT THE OFFER OF EXHIBITS WERE PROPERLY AND SEASONABLY OBJECTED.

V. THE TRIAL COURT ERRED IN NOT FINDING THAT AT THE TIME OF THE ALLEGED RAPES IN APLAYA AND 4th BONIFACIO ST., DIGOS, DAVAO DEL SUR, THE TWO PRIVATE COMPLAINANTS WERE NO LONGER IN THOSE TWO PLACES MAKING THE ALLEGATIONS OF RAPE IMPOSSIBLE.

VI. THE HONORABLE COURT ERRED IN NOT FINDING THAT THE CLAIM OF RAPE BY MERLYN NAVALON THAT AT THE TIME SHE WAS RAPE [sic] HER ELDER BROTHER MELCHOR, SISTER ARGELYN, WERE BESIDE HER AND ANOTHER SISTER CARMELYN JUST NEARBY IS INCREDIBLE AND NOT BELIEVABLE.

VII. THE HONORABLE COURT ERRED IN NOT HOLDING THAT THE TWO PRIVATE COMPLAINANTS, MERLYN AND CHERRY LYN LOST THEIR VIRGINITY AS PER MEDICAL CERTIFICATE BECAUSE BOTH HAD A SEXUAL INTERCOURSE WITH THEIR ELDEST BROTHER, BERNARDO NAVALON III, WHICH EXPLAINS THE LOSS OF VIRGINITY AND FREE ENTRY IN THE VAGINA OF THE TWO PRIVATE COMPLAINANTS.

VIII. THE HONORABLE COURT ERRED IN NOT BELIEVING THAT THE ACCUSED AND CARMINIA MANLICLIC ARE NOT AMOROUSLY RELATED.”

The evidence for the prosecution was summarized by the Solicitor General in the following manner:[4]

“Merlyn and Cherry Lyn Navalon are two (2) of the eight (8) children of Carmenia Manliclic with common-law husband Bernardo Navalon, Jr., with whom Carmenia lived from 1971 to 1987. Merlyn was born on June 10, 1977 (Exh. ‘C’, Birth Certificate) while Cherry Lyn was born on June 28, 1978 (Exh. ‘D’, Birth Certificate; TSN, Oct. 29, 1990, pp. 13--14, Carmenia Manliclic). Sometime in 1987, Carmenia left the family abode in Bob, Magsaysay, Davao del Sur bringing with her the two younger children, Melchor and Argelyn. Together with appellant, they lived as husband and wife in Bonifacio 4th Street, Digos and later transferred to Aplaya, Digos in April 1989 in a house they rented from Magdalena Romero. Carmenia’s other children, namely Bernardo III, Alquin, Carmelyn, Merlyn and Cherry Lyn joined and lived with their mother at one time or another (TSN, Oct. 29, 1990, pp. 17-18, Carmenia Manliclic; Sept. 23, 1991, pp. 6-7, Magdalena Romero; Sept. 25, 1991, pp. 5-6, Merlyn Navalon).

In January, 1989, Merlyn was living with her mother and appellant in Bonifacio 4th, Digos, Davao del Sur. As appellant was the one who shouldered the family expenses, the children in return cared for him, washed his clothes, cleaned the house, and in the case of Merlyn and Cherry Lyn, even plucked appellant’s mustache. The house they lived in had only one bedroom for Carmenia and appellant, while the children slept in the sala (TSN, Sept. 25, 1991, pp. 6-7, Merlyn Navalon). One night in January, 1989 (near midnight), while Merlyn was sleeping, appellant crawled towards her and started touching her private parts, her nipples and kissed her face and removed her panty. When Carmenia moved in her room, appellant hurriedly went back inside. Merlyn tried to stay awake but unfortunately fell asleep. She was awakened with appellant already on top of her. She tried to free herself but was warned by appellant who threatened to kill her and her younger brother and sisters. A gun was placed beside her. Appellant succeeded in having intercourse with her (TSN, Sept. 25, 1991, pp. 13-16, Merlyn Navalon; Sept. 26, 1991, p. 9, Merlyn Navalon).

In the case of Cherry Lyn, sometime in the first week of October, 1989 in their house in Aplaya, Digos, Davao del Sur, appellant requested her to pluck his mustache. Appellant further asked Cherry Lyn to kiss him which she complied with as appellant gets angry if Cherry Lyn fails to obey any command. Afterwards, appellant started touching her body, her face and nipple. He also succeeded in having sexual intercourse with Cherry Lyn. During that time, Cherry Lyn’s brothers and sisters were around but was (sic) ordered by appellant to go to another room and sleep. Carmenia Manliclic was attending a meeting in the school but she arrived at the house when Cherry Lyn and appellant were still in a compromising situation. A quarrel ensued between appellant and Carmenia (TSN, Oct. 9, 1991, pp. 9-10, 14, Cherry Lyn Navalon).

On October 10, 1989, Cherry Lyn's uncle Cesar Navora (her father's half-brother) came to the beach in Aplaya. Cherry Lyn decided to leave Aplaya and go with her uncle. She first stayed in her father's house in Bob, Magsaysay but was later transferred by her aunt, Nenita Donato (her father's half-sister) and enrolled at Bansalan (TSN, Oct. 9, 1991, p. 5, 17, 23, Cherry Lyn Navalon). It was only during the first week of March 1990 that Cherry Lyn was able to tell her aunt about what happened to her and to her sister Merlyn and requested her aunt to get her two younger sisters who might be victimized by appellant. She did not tell her mother what really happened not only because of appellant's threat to kill them but also because she felt that her mother knew about the rape as she was able to witness the tail-end of the incident (TSN, Oct. 9, 1991, pp. 9, 12, 15, Cherry Lyn Navalon; Oct. 11, 1991, p. 5, Nenita Donato).

Nenita Donato brought Cherry Lyn to the police station to complain about the incident. She was also subjected to a medical examination (TSN, Oct. 9, 1991, p. 12, Cherry Lyn Navalon; Oct. 11, 1991, p. 6, Nenita Donato). Dr. Asuncion Z. Tajon, Municipal Health Officer of Digos, Davao del Sur, found as follows: pelvic examination - vulva, no abrasion, no swelling x x x. Vagina admits middle finger freely (Exh. 'A', Medical Certificate dated March 8, 1990; TSN, July 30, 1991, p. 6, Dr. Asuncion Tajon).

Nenita Donato proceeded to Monkayo, Davao to talk to Merlyn about Cherry Lyn's story. Merlyn was earlier taken by her elder sister Novilla from Aplaya to Monkayo when Novilla, who was visiting from Tagum, Davao del Norte where she was studying, found her inside the room with appellant and suspected an untoward incident happened (TSN, Oct. 11, 1991, p. 8, Nenita Donato; Sept. 26, 1991, pp. 14-15, Merlyn Navalon). She brought Merlyn to the health center for examination and Dr. Tajon, who also conducted the examination, found that 'no physical injury noted, vulva-no sign of inflammation or injury, vagina admits middle finger freely without pain or resistance' (Exh. 'B'), Medical Certificate, March 12, 1990; TSN, July 30, 1991, p. 7, Dr. Asuncion Tajon).

The defense, on the other hand, presented an entirely different narrative. It vehemently denied the charges and averred that the two (2) rape cases were mere fabrications of Bernardo Navalon Jr., Nenita Donato, Cesar Navorra, Cherry Lyn Navalon and Merlyn Navalon because (1) they were jealous of the accused whom they suspected to have an illicit relation with Carmenia Manliclic, and (2) they wanted to take vengeance against the accused for having financially supported Carmenia Manliclic in her case for support against Bernardo Navalon, Jr. which resulted in the award of portions of the Navalon rice land to Carmenia Manliclic and her children.

The defense further alleged that Joan Narvasa, a Navalon relative and a school teacher of Barayong, Magsaysay, Davao del Sur, conspired with the Navalons and falsified the school register to evidence that Cherry Lyn and Merlyn were not in Barayong, Magsaysay, Davao del Sur nor in Bansalan, Davao del Sur, but rather in Digos, Davao del Sur at the time they were raped. As testified to by Carmenia Manliclic, Merlyn was taken by Novilla Navalon and brought to Monkayo in March 1989, while Cherry Lyn was taken by Cesar Navorra in August 1989. Cherry Lynn herself testified that she was attending school at Bansalan Central Elementary School, a place very far from Digos, Davao del Sur, from June 1989 to March 1990.

The defense likewise presented Bernardo Navalon III, the eldest brother of Cherry Lyn and Merlyn, who admitted having sexual intercourse with the two (2) private complainants (his sisters). He also claimed that Pat. Gerardo Diamante, a prosecution witness, was overzealous in filing the case against the accused for the purpose of extorting money from the accused. Lastly, the defense averred that the accused was arrested without a warrant of arrest and was not informed, under the circumstances, of his constitutional rights.

The principal issue in this appeal is anchored on the credibility of the witnesses.

It is well-entrenched in our jurisprudence that where the issue is one of credibility of witnesses, appellate courts give great weight to the findings of fact by the trial courts as they are in a better position to examine real evidence, as well as observe the demeanor of the witnesses.[5]

We find the testimonies of Merlyn and Cherry Lyn to be credible. It is an accepted rule that the credibility of a rape victim is not destroyed by some inconsistencies in her testimony. In fact, such inconsistencies are to be expected if a witness is unrehearsed and testifies spontaneously. The fact also stands out that the results of the medical examination show that the complainants had previous sexual intercourse, since they were no longer in a virgin state. We seriously doubt that two (2) young inexperienced girls who were below twelve (12) years when they were raped, would concoct such a ghastly story about the physical abuse done to them, if this did not actually happen.

The appellant contends that the charges against him are mere fabrications of the complainants, their father and some relatives. He alleges that he is a frame-up victim. And yet, these allegations cannot outweigh and invalidate the positive identification of the accused-appellant by the complainants. Further, and no matter how hard the appellant tries to convince this Court that the complainants' father, along with his relatives, have the capacity to do evil, we are not convinced that a father would subject his two (2) young daughters to the humiliation and trauma of a rape trial simply because he had allegedly lost a case which resulted in an award of some portions of land to his common-law wife and their children (including complainants herein). Moreover, no amount of coercion from their father could have prepared the complainants for the rigors of a rape trial and convince the trial court of their honesty and integrity, if no rape had been committed against them. As observed by the trial court:

“The denial by the accused is dwarfed by the positive identification by the victims of the rape (sic) whose declarations were all ringing with earmarks of sincerity. x x x The idea of vengeance arising from a land conflict would not inspire any belief, for nobody would invent rape for an alleged loss of a piece of land in a court decision. Why will two (2) young women, who are minors, agree to expose their virtues as women and subject themselves with loss of honor as women for love of a small estate? Besides, one-half of such land was in fact given to the children by amicable settlement. x x x”

We likewise cannot lend credence to the assertion of the appellant that it was the brother of the two (2) complainants who abused them resulting in the loss of their virginity. This we see as an utterly desperate attempt to distract the Court and focus on some other person who could be suspected of abusing the two (2) complainants. Merlyn and Cherry Lyn vehemently denied having sexual intercourse with their brother, Bernardo Navalon III. And even if we were to assume *arguendo* that the above imputation were true, the same would just be the basis of an entirely different criminal case, without any bearing on the present suit because, here, we speak of two (2) incidents where the appellant has been positively identified as having sexually abused Merlyn and Cherry Lyn. It just amazes us to see the power that the appellant and Carmenia Manliclic (the mother) have over Bernardo Navalon III to have effectively convinced the latter to confess to such a crime in order to exculpate and save the skin of the appellant. As regards the contention that the appellant and Carmenia Manliclic are not paramours, this circumstance, in the light of the present charges, is trivial and not fatal to the prosecution's case. Neither does the fact that the brother and sister of Merlyn were beside her at the time of her rape render the accusation of rape against appellant incredible and not believable. As earlier stated, the fact of rape and the supporting medical findings have been clearly established in this case^[6] and we find no reason to doubt their veracity.

We now come to the contention that at the time of the alleged rapes, the two (2) complainants were no longer in Digos, Davao del Sur, thus making the allegations of rape incredible. We agree with the observation of the Solicitor General:

“Appellant contends that it was impossible for him to have raped the victims since at the time the crimes were allegedly committed, both the victims were no longer residing with their mother either in Bonifacio 4th, Digos or in Aplaya.

Thus, as regards Cherry Lyn who was allegedly raped on the first week of October, 1989, she was already

studying in Bansalan, Davao del Sur and living with an aunt. But Cherry Lyn categorically stated that she left her mother on October 19, 1989, which was corroborated by the testimony of her aunt. The reliance of appellant on Exhibit 'J' or '3' which is Cherry Lyn's report card is misplaced. Cherry Lyn is a transferee from another school and her records from one school are simply carried to another and reported in the report card of the issuing school.

More importantly, Cherry Lyn could no longer remember the exact date when she was raped by appellant but it was during the time when she was staying with her mother who was then living together with appellant. That she had been living with her mother is admitted by Carmenia herself and Joan Narvaza who testified that Cherry Lyn was unable to finish her studies in Barayong Elementary School as she was taken by her mother on November 28, 1988 (TSN, July 30, 1991, pp. 19-20).

With respect to Merlyn, it was alleged that she was brought to Monkayo, Davao in March, 1989. As the crime was committed in January, 1989, its commission is not improbable, as claimed by appellant. Carmenia, in a futile attempt to save her paramour, claimed that Merlyn had not lived with her. Yet, her testimony is debunked by her statement in a complaint against Bernardo, Jr. for support claiming that her children, including Merlyn, were staying with her and in her custody. Such inconsistent claims, arrayed against the positive statement of Merlyn that she lived with her mother, and the testimonies of other witnesses, could not be given any credence."

Thus, the discrepancy in the report card of Cherry Lyn[7] has been satisfactorily explained. As a transferee, her records were simply carried over to the new school. This fact is further bolstered by the testimony of Joan Narvaza[8] who affirmed that Merlyn and Cherry Lyn indeed dropped out of their classes at Barayong Central Elementary School in November 1988 in order for them to stay with their mother at Digos, Davao del Sur. The lame attempt of the defense to discredit the testimony of Narvaza (due to an alleged distant relation to an aunt of the two (2) complainants) cannot be given credence because the mere relationship to a party does not militate against the credibility of the witness.[9] As shown by the records of the case at bench, the evidence provided by Merlyn and Cherry Lyn Navalon is positive, clear and exhibited no sign of exaggeration or inconsistency despite the rigorous cross-examination they underwent.

Besides, the defense itself showed inconsistencies in its arguments when, first, it claimed that the allegations of rape were impossible because Merlyn and Cherry Lyn were no longer in Digos, Davao del Sur at the time the rapes were allegedly committed, and then, on the other hand, it claimed that the allegations of rape on Merlyn were incredible and not believable because at the time she was allegedly raped, her brother and two (2) sisters were just nearby. The defense should have taken the time to reconcile the two (2) conflicting theories or simply should have stuck to one theory and then supported the same. As it stands, the theory of the facts proffered by the defense only becomes seriously impaired by such inconsistencies.

Further, the appellant argues that the court a quo erred in not finding that his rights under the Constitution were violated in view of his illegal arrest and the lack of a search warrant over the evidence offered against him, and that the arresting officer and the complainants tried to extort money from the appellant so that the case against him could be withdrawn.

On the matter of the illegal arrest, it is well-settled that the filing of a petition for bail should be considered as a waiver of any irregularity attending the arrest.[10] The appellant cannot likewise attempt to exculpate himself by alleging that the evidence (i.e. gun, bullets) were planted as part of the frame-up against him and that, nonetheless, they were taken without a search warrant. We emphasize that the crimes charged in the present cases are statutory rapes, that is, having carnal knowledge of a woman under twelve (12) years of age. All that is necessary to convict the accused of such charge is the fact of carnal knowledge, which has been more than adequately proven in this case. All other matters bear little significance to the case.

Finally, neither are we inclined to consider the allegation of extortion as the same is self-serving and without basis. The appellant has raised too many extraneous issues which only serve to convince this Court all the more of his guilt.

WHEREFORE, in view of all the foregoing, the appealed decision is hereby **AFFIRMED** with the clarification that the penalty imposed on appellant is **RECLUSION PERPETUA** (not Life Imprisonment) in each of the two (2) cases.

The award for moral damages is reduced from P100,000.00 to P50,000.00 for each rape victim. The award of P100,000.00 for exemplary damages is deleted, but the award of P20,000.00 for each of the victims as actual damages stands, while the awards for attorney's fees and expenses of litigation are reduced from P30,000.00 and P10,000.00 respectively to P15,000.00 and P5,000.00, respectively for each of the victims.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Penned by Hon. Dominador F. Carillo, Regional Trial Court of Davao del Sur, Branch 19.

[2] Rollo, pp. 23-24.

[3] Ibid., p. 37.

[4] Ibid., pp. 162-167.

[5] *People v. Rodriguez*, 172 SCRA 742 (1989).

[6] TSNs, 25 September 1991, pp. 12-16; 9 October 1991, pp. 8-10; 30 July 1991, pp. 6-10.

[7] Exhibits "J" and "K".

[8] TSN, 30 July 1991, pp. 19.

[9] *Primero v. Court of Appeals*, 179 SCRA 542 (1989).

[10] *Harvey vs. Defensor-Santiago*, 162 SCRA 840 (1988).

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