

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO VEDRA, ACCUSED-APPELLANT.

G.R. No. 108615. October 09, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Cagayan de Oro City, Branch 24, in Criminal Case No. 92-702, convicting appellant of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the victim the amount of P30,000.00 as moral damages.

The facts are as follows:

At around 7:00 P.M. on February 26, 1992, Gina Vedra, a 13 year-old girl, went to her grandmother's house to inform her parents that supper was ready. They told her to go ahead, so she headed home. When she reached a mango tree located about 100 meters from her house, a man came up to her and embraced her. She recognized the man as herein appellant Nilo Vedra, a cousin of her father.

Appellant dragged her behind the mango tree. She squirmed and resisted but to no avail. Appellant pointed a knife at her chest and removed her panty. Then he removed his pants. While standing, he attempted to put his penis inside her vagina. Unable to penetrate her vagina, he placed saliva on his penis. He tried again, and succeeded to insert his organ inside hers. The victim felt pain. Afterwards, appellant pulled up her panty. It was bloody. He threatened to kill her if her parents found out about the incident.

Her parents got home at around 10:00 P.M. that night. But, it was only on March 1, 1992, after bouts of worry, that she told them she was raped. Her father brought her to the Initao District Hospital for medical examination. Afterwards, her father secured a copy of the medical certificate and gave it to the police.[2] The police arrested appellant. After conducting the preliminary investigation of the charge, the Prosecutor filed on March 21, 1992, the following Information:[3]

That on or about February 26, 1992 at more or less 7:00 o'clock in the evening, in Sibucawan, Apas, Initao, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being an uncle of the complainant, did then and there willfully, unlawfully and feloniously, and by means of force and intimidation, abuse and threats upon Gina Vedra, a young woman of 13 years old, accused drag her to a secluded place, pinned her down and succeeded in having carnal knowledge with her against her will and consent.

CONTRARY TO and in violation of Article 335 of the Revised Penal Code.

Cagayan de Oro City, May 5, 1992.

Appellant assisted by counsel de oficio on arraignment entered a plea of not guilty.[4]

During trial, the prosecution presented as witnesses complainant Gina Vedra and Dr. Wilma Jane Berwin, resident

physician at the Initao District Hospital. Dr. Berwin examined the victim on March 2, 1992, or seven days after the incident, and found healed complete lacerations at 3:00 and 9:00 o'clock of the hymen.[5]

The defense, for its part, presented as witnesses (1) appellant, (2) his cousin, Leo Vedra, and (3) his mother, Josefa Vedra.

Appellant denied the charge of rape. He claimed that he was in Agora, Lapasan, Cagayan de Oro City in the afternoon of February 25, 1992 until February 29, 1992, helping his cousin carry fish boxes from the fish car to the landing area.[6] His cousin, Leo Vedra, corroborated his story.[7]

Josefa Vedra testified that on July 5, 1992, Gina Vedra suddenly arrived at her house. Gina said that she could not "swallow" her affidavit (about the rape) because it was dictated to her by her father and the police. Josefa took pity on Gina and offered to accompany her home. The victim refused, so Josefa informed Gina's grandfather and mother that the child was at her house.[8]

On rebuttal, three witnesses testified, namely (1) Gina Vedra, (2) Roque Vedra, the victim's eight year-old brother, and (3) Bienvenido Macalom, a neighbor of appellant.

Gina testified that on July 5, 1992, at around 8:00 A.M., she was washing clothes in the river when Lola Sefa, appellant's mother, approached her. Lola Sefa told her that she will give her something in the house. When they got to the house, Lola Sefa told her to go upstairs and locked her in a room. The following day, Elisibia Tacbobo, the sister of appellant, brought the victim's food and told her that if she would withdraw the case, she would be given a job. That night, her Lola Sefa allowed her to go home.[9]

Roque Vedra testified that on July 5, 1992, at around 8 A.M., while he was in the river, he saw his sister Gina talking with Lola Sefa.[10]

Bienvenido Macalong, appellant's neighbor, testified that appellant was in Sibokawanon from February 22 to 29, 1992. During said period, Macalong used to see appellant everyday, either working or playing basketball.[11]

On sur-rebuttal Christine Tacbobo, granddaughter of Josefa Vedra, testified that on July 5, 1992, at around 9:30 P.M., she saw Gina Vedra knocking at Lola Sefa's house. Gina was carrying a bag of clothes. When Christine opened the door, the victim said that she lost the P100.00 given by her father because she gave it to her boyfriend. Christine let Gina sleep with her in the house. Gina did not speak with Lola Sefa that night. The following day, at around 1:00 P.M., Gina and Lola Sefa had a talk. Afterwards, Lola Sefa went down to Initao to fetch the mother, grandfather and grandmother of Gina.[12]

On October 28, 1992, the trial court rendered its decision,[13] thus:

WHEREFORE, premises considered, the court hereby finds accused NILO VEDRA guilty beyond reasonable doubt as principal of the offense of rape defined and punishable under Article 335 of the Revised Penal Code as amended by Rep. Act No. 2632 and Rep. Act No. 4111. Consequently, he is hereby sentenced, with all accessories of the law, to a penalty of RECLUSION PERPETUA. In addition, he is hereby ordered to pay the private offended party, Gina Vedra the sum of THIRTY THOUSAND (P30,000.00) PESOS as moral damages without however, subsidiary imprisonment in case of insolvency.

Accused is credited fully of the preventive imprisonment he has undergone.

Hence, the present appeal. Appellant assigns[14] only one error:

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINING WITNESS, GINA VEDRA, DESPITE THE IMPROBABILITIES AND INCONGRUITIES OF HER TESTIMONIES WHICH SERIOUSLY ERODED HER CREDIBILITY.

In his brief,[15] appellant faults the trial court for swallowing the uncorroborated testimony of the victim hook, line and sinker. First, appellant contends that the rape could not have occurred while the assailant and victim were standing since sexual intercourse in this position cannot be made without the cooperation of the female partner. Second, appellant assails the reliance of the trial court on the "typical barrio lass" stereotype. Appellant points out that 13 year-old girls from the rural places already have access to professional health services, television, comics and even smuts. Appellant further contends that considering that the victim had a boyfriend, it is possible that she experimented with him about the proverbial birds and the bees. Lastly, appellant insists that his denial should have been given credence, considering the supporting testimonies of his relatives.

For the State,[16] the Office of the Solicitor General contends that the trial court correctly gave credence to the testimony of the victim. Her testimony was clear, straightforward and candid, and without any dubious motive shown why she would falsely impute the crime to appellant. Further, the commission of the crime of rape while standing is neither impossible nor improbable. A rapist rarely considers the position of his victim in committing the sexual act, for his purpose is to be sated and that alone. The OSG maintains that the only consideration in the crime of rape is penetration, no matter how slight. Further, appellant's insinuation that the victim had sexual intercourse with her boyfriend is conjectural and does not negate the commission of rape.

The main issue for our consideration pertains to the assessment of credibility of the witnesses. Needless to say, this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination.[17] Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and will be sustained by the appellate court unless the trial court overlooked, misunderstood, or misapplied some facts of circumstances of weight and substance which will alter the assailed decision or affect the outcome of the case.[18]

In this case, the trial court relied on the positive identification by the complainant that it was appellant who raped her. Complainant in fact even considers appellant as an "uncle" since he is the cousin of her father. Complainant could not mistake appellant for somebody else. She clearly narrated the circumstances constituting the rape. It was committed while she was pinned against the mango tree by appellant. As held in *People vs. Perez*,[19] a rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness. No woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[20] Well-entrenched is the doctrine which is founded on reason and experience that when the victim testifies that she has been raped, and her testimony is credible, such testimony could be the sole basis of conviction.[21]

As to appellant's defense of denial, the trial court observed that even if appellant was in Cagayan de Oro, it was not physically impossible for him to have been at the locus criminis since Cagayan de Oro was a mere 40-minute bus ride away. Further, the bare denials of appellant cannot prevail over his positive identification by the victim.[22]

As to the testimonies of witnesses on rebuttal and sur-rebuttal, they pertain to a peripheral issue, the alleged locking up of Gina at the house of Lola Sefa on the night of July 5, 1992. It has no direct bearing on the commission of the crime of rape. Nor does it destroy the credibility of complainant and the veracity of her testimony regarding the offense. What is important is whether the prosecution proved beyond reasonable doubt all the elements of rape under Article 335 of the Revised Penal Code, as charged in the Information.

After a careful consideration of the evidence on record, we find that the elements of the offense have been

sufficiently proved.

First, carnal knowledge clearly took place between the victim and appellant. Note that "carnal knowledge," does not require that the vagina be penetrated or that the hymen be ruptured. Rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ. As said in *People vs. Quiñanola*, the offense of rape is consummated, by the mere touching of the external genitalia by a penis capable of consummating the sexual act.[23] The victim testified that appellant inserted his penis inside her vagina which caused her pain. The position of the parties during sexual intercourse is not material in the crime of rape. We have already observed that carnal knowledge can be consummated whether in a standing,[24] sitting,[25] or dog-style[26] manner. Such sexual positions are not improbable nor impossible. Further, the victim's testimony was corroborated by the medical findings. When the victim's testimony is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[27]

Second, carnal knowledge was committed by the use of force and intimidation by appellant. He threatened the victim with a knife, and after the rape, he again threatened to kill her if she would tell her parents about it. The act of holding a knife by itself strongly suggests force, or at least intimidation, and threatening a woman with a knife is sufficient to bring her to submission.[28]

At the time of the commission of the rape in 1992, the penalty for rape committed through force or intimidation was reclusion perpetua. Hence, it was correctly imposed by the trial court. But it failed to award civil indemnity to the victim. Hence, civil indemnity in the amount of P50,000.00 should be awarded to the victim now, in line with current jurisprudence.

Civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[29] As to moral damages, the award to the victim should be increased from P30,000.00 to P50,000.00 pursuant to prevailing jurisprudence. In rape cases, moral damage are awarded without need of further proof, for it is assumed that the victim has suffered moral injuries entitling her to such an award.[30]

WHEREFORE, the decision of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 92-702 is **AFFIRMED** with **MODIFICATIONS**. Appellant Nilo Vedra is found guilty of rape and sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the victim Gina Vedra, the amount of P50,000.00 as civil indemnity, and P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] The records did not indicate his middle name or initial.

[2] TSN, September 21, 1992, pp. 3-13, 23-24.

[3] Records, p. 1.

[4] Records, p. 19.

[5] TSN, September 23, 1992, pp. 4-5; Medical Certificate, Exhibit "C", Records, p. 10.

[6] TSN, September 24, 1992, pp. 3-8.

[7] TSN, October 14, 1992, p. 9-12.

[8] TSN, October 14, 1992, p. 4-7.

[9] TSN, October 22, 1992, p. 4-6.

[10] Id. at 11.

[11] TSN, October 23, 1992, pp. 3-4.

[12] Id. at 15-27.

[13] Records, pp. 145-153.

[14] Rollo, p. 47.

[15] Rollo, pp. 45-56.

[16] Appellee's Brief, Rollo, pp. 74-88.

[17] *People v. Andaya*, 306 SCRA 202, 214 (1999).

[18] Ibid.

[19] *People v. Perez*, 296 SCRA 17, 27 (1999).

[20] *People v. Cabebe*, 290 SCRA 543, 554 (1998).

[21] *People v. Bolatete*, 303 SCRA 709, 729 (1999).

[22] *People v. Andaya*, 306 SCRA 202, 215 (1999).

[23] 306 SCRA 710, 731 (1999).

[24] *People v. Traverro*, 276 SCRA 301, 312 (1997); *P. v. Castro*, 196 SCRA 679, 685 (1991).

[25] *People v. Sulte*, 232 SCRA 421, 425 (1994).

[26] *People v. Meiorada*, 224 SCRA 837, 850 (1993); *People v. Saylan*, 130 SCRA 159, 167 (1984).

[27] *People v. Bation*, 305 SCRA 253, 269 (1999); *People v. Oarga*, 254 SCRA 90 (1996).

[28] *People v. Baltazar*, G.R. No. 115990, March 31, 2000, p. 11; *People v. Reynaldo*, 291 SCRA 701, 713-714 (1998).

[29] *People v. Marabillas*, 303 SCRA 352, 360 (1999).

[30] *People v. Alba*, 305 SCRA 811, 831 (1999); *People v. Prades*, 293 SCRA 411 (1998).

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