

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNALDO B. DONES @ “NENE”, ACCUSED-APPELLANT.

G.R. No. 108743. March 13, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision[1] in Criminal Case No. 852 of the Regional Trial Court of Surigao del Norte, Branch 31 at Dapa, Surigao del Norte convicting appellant Arnaldo B. Dones of the crime of rape under Article 335(1) of the Revised Penal Code, imposing on him the penalty of reclusion perpetua and directing him to pay the victim, Marialina Ruaya, an indemnity in the amount of P50,000.00 plus moral and exemplary damages in the total amount of P10,000.00 without subsidiary imprisonment in case of insolvency.

Not satisfied with the decision, appellant interpose the present appeal alleging that the trial court erred in finding him guilty of the crime charged "despite the incredible testimony of the complainant."

Appellant was charged with rape on August 27, 1991 in an information which reads as follows:

That on the 9th day of July, 1991 at or about 1:00 o'clock dawn in the Poblacion of Dapa, province of Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, accused with all freedom, intelligence, criminal intent and lustful designs did then and there voluntarily, unlawfully and feloniously with the use of force and intimidation, and with all pretense that he possessed healing power, secured sexual intercourse by taking advantage of superiority and coercive force upon a 14 year old girl (Marialina L. Ruaya) and successfully obtaining the dastard act consequently inflicting upon the girl and family actual, moral and exemplary damages in the sum of P80,000.00.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty to the crime charged. At the trial, the prosecution presented evidence proving the following:

Marialina Ruaya then almost 14 years old,[3] was staying in a boarding house owned by her parents in Bgy. 6, Dapa, Surigao del Norte while studying as a first year student at the Dapa National High School. Marialina would go home on weekends to her parents Abrito and Nemesia Ruaya who were residing in Cabugao, Del Carmen, Surigao del Norte.

On Saturday July 8, 1991, Marialina arrived in Cabugao complaining of headache and fatigue. because of their daughter's complaint and their own various ailments, the Ruaya couple decided to submit themselves and Marialina for treatment to a quack doctor ("medico"), appellant herein, who was also known by his nickname "Nene." At about 5:00 in the afternoon of July 8, 1991, they arrived at a shack, which appellant use as a "clinic," at the reclamation area located some twenty (20) fathoms away from the Dapa residence of the Ruayas. The "clinic" was made of bamboo and nipa and measured four by three meters with a cardboard wall dividing the sala and a small room.

There were other patients when they arrived at the "clinic." Appellant took the pulse of both Nemesia, who was complaining of gastric pain, cough and nervousness, and her husband, Abrito, who had rheumatism. Appellant then applied "tayhop" by breathing on top of their heads, and massaged them. The couple donated P25.00 to the appellant and paid P200.00 for two belts for Abrito and Marialina. Each belt was made of an empty armalite shell which was pressed flat at one end with a hole bored thereon through which a plastic string was inserted to serve as handle.[4] Abrito was made to wear the belt because he was suffering from "barang" (witchcraft). After Abrito left the "clinic," appellant told Marialina to go inside the small room and kneel before an altar for about thirty (30) minutes. He then told Nemesia that her daughter should remain in the "clinic" as she was suffering from a serious ailment and she might die if the devil enters her body. He also told Nemesia that she would go home, otherwise, she "might be affected by Satan." [5] Believing appellant, Nemesia left the "clinic." Appellant then entered the room where Marialina was kneeling, mumbled and chanted some prayers, placed his hands around her neck and kiss her on the cheek. He ordered her to lie down on a "petate," a mat stretched out on the floor, and put out the light from a small lamp in the altar.

Appellant laid down beside Marialina, telling her that he had to do so to prevent Satan from taking her. Then he touched her vagina and nipples. Marialina struggled to resist his advances and tried to prevent appellant from taking off her panty. Appellant told her that should she refuse to obey him, she would be given to a "person unlike us." Appellant massaged her body twice, purportedly to get out of the devil out of her body. She became frightened but was not able to shout because his mouth was tightly covering hers. Then he removed her panty and put himself on top of her. He next wrapped his arms vise-like around her to prevent her from moving and to ensure the insertion of his sex organ into her private parts. Sometime later, she felt an "ejection" streaming out of appellant's organ inside her vagina.[6] Marialina reckoned the time to be around 1:00 in the morning because she heard a "crow crowing." [7] Appellant then told her to sleep.

Nemesia brought to Marialina her breakfast in the morning of July 9, 1991. Believing appellant's warning that once she got exposed, Satan will enter her body, Marialina took her breakfast inside the room. Despite appellant's absence at that time, she could not muster enough courage to disclose her defloration to her mother because of shame. However, she informed Nemesia that she wanted to go home. When appellant learned of Marialina's intention to leave he refused to grant her permission, saying that he would not assume any responsibility should something happen to Marialina, fearing to the "threat" of Satan entering her body. Thus, Marialina was constrained to stay behind. When Nemesia returned to bring her lunch at noon, Marialina refused to talk and just stayed in bed complaining of headache.

Wondering why her daughter would not even rise from bed and had remained asleep most of the time, Nemesia fetched her at around 2:00 in the afternoon of July 9, 1991. Not long thereafter, appellant went to the Ruaya's residence telling them that Satan followed his patient to her house. Appellant asked Marialina to sit on a stool and blew air "tayhop" on her forehead. Afraid that Satan might enter her body as warned by appellant, Marialina acceded to his demand that she return to his "clinic."

At around 5:00 that same afternoon, Nemesia went back to the "clinic" to take her daughter home. Appellant at first would not allow Marialina to leave on the pretext that she had to be treated for five (5) more days. This time Nemesia was adamant. Appellant allowed Marialina to go but he warned her mother. "Bantay kon magkuhakuha kaw dako" which meant that they should be on guard for they might come back to him again.[8] Marialina spent the night with her parents in their house at reclamation area.

The Ruaya couple went home to Cabugao with Marialina in the early morning of July 10, 1991. Finding it unusual that her daughter kept herself in bed, Nemesia insisted that her daughter tell her the truth if something happened to her. Marialina finally broke her silence. She revealed that appellant raped her. Nemesia awakened her

husband and told him of the incident.

Marialina braced herself and decided to seek justice. Accompanied by her parents, on July 11, 1991, she proceeded to the municipal hall of Dapa, Surigao del Norte and reported the matter to Pat. Pedronio Esparrago. She and her mother executed written statements which were sworn to before a prosecutor. Then they proceeded to the Surigao District Hospital where Marialina underwent a medical examination. Dr. Cheryl Avelino found that Marialina's hymen sustained lacerations in the 3, 6 and 9 o'clock positions. According to Dr. Avelino, the lacerations were fresh and could have been inflicted some twenty-four (24) hours before the examination. She found Marialina's vagina to be negative of sperm cells but she noticed Marialina's pained expression as she conducted the examination on her.

The following day, July 12, 1991, Marialina filed the complaint charging appellant with rape before the Municipal Circuit Trial Court of Dapa-Socorro, Surigao del Norte. On July 13, 1991, appellant posted bail in the amount of P30,000.00 which was fixed by the said court. Appellant having waived the second stage of the preliminary investigation, the record of the case was forwarded to the Regional Trial Court of Dapa, Surigao del Norte, which forthwith issued an order for his arrest with no bail recommended. Appellant was arrested on October 17, 1991 and, at his arraignment on that same day, he pleaded not guilty to the charge. Thereafter, trial ensued.

Appellant interposed denial as his sole defense. A 42-year old married contractual employee who used to be a fourth year Forestry student, appellant became aware of his "God-given" healing power on March 10, 1989 when a resident of Caramkang, Mangagoy complained of a headache and appellant healed him through a simple massage. His healing power became known when he was able to cure his mother and sister of their ailments after their transfer to Dapa from Lingig, Surigao del Sur. He would receive his patients in his mother's house but after his sister complained of his numerous patients, on July 1, 1991, he started his healing sessions in the small house of Alberto Mozo in the reclamation area which was located just across their house. He had treated approximately 300 people before the incident took place.

According to appellant, on or about 6:30 in the evening of July 9, 1991, Abrito and Nemesia Ruaya and their daughter Marialina, came to his "clinic" for treatment. Abrito wanted to be relieved of muscle pains While Marialina, who was obviously in pain, was suffering from "pasmó, empacho." Appellant prayed over Marialina after attending to her father. He requested her to sit and wait as he treated another patient, Agatonica dela Torre.

Appellant spent that night in the "clinic" with his mother (Lazara Dones), Agatonica, a blind woman known only as Silveria, and Marialina. He does not require his patients to stay overnight even if they were seriously ill but he allowed Marialina to stay upon the request of her mother in order that intensive care be administered to Marialina. He retired at around 10:00 that evening while Marialina slept an hour earlier.

Appellant woke up early in the morning of July 9, 1991. He prayed over Marialina for the second time. Marialina left the house at about 5:00 in the afternoon accompanied by a woman neighbor and headed for her own home. He denied having refused to allow Marialina to be brought home by her mother. Drawing a sketch of the hut where they slept that fateful night, appellant showed that while the distance between him and Marialina was only a couple of meters, he slept in the sala with his mother Lazara Dones, a blind woman named Silveria and Agatonica dela Torre. However, according to his own mother and Agatonica, appellant slept not in the sala but in the small room with Marialina.

The defense also presented appellant's mother, Lazara Dones and Agatonica dela Torre, an 80-year old "patient" of appellant. Both testified that they did not notice anything unusual during the whole night when Marialina was in the "clinic." Agatonica declared that she was awake all night and would frequently call appellant to administer his healing power.

Professing innocence of the crime charged, appellant alleged that the rape case filed against him was the result of a land dispute between his family and that of Marialina's. The Ruayas were alleged asserting ownership over the lot in Dapa belonging to his family and on which the Ruayas had constructed the house.

In rebuttal, Nemesia denied that her family was claiming ownership over the lot and even admitted that Lazara Dones owned the lot which they had been renting for a P15 a month since 1977. While she went to the Bureau of Lands, it was not to verify the ownership of the lot but to be informed of her family's rights as appellant's mother had demanded the demolition of the Ruaya's house after the filing of the rape case against appellant.

On September 30, 1992, the trial court rendered the assailed decision finding the appellant guilty beyond reasonable doubt of the crime charged. Hence, this appeal.

Two briefs have been filed in behalf of appellant, one by the Public Attorney's Office (PAO) dated May 18, 1994 and another by Atty. Lucimano E. Lancin. The first brief alleges, as its lone assignment of error, that the trial court erred in finding appellant guilty beyond reasonable doubt of the crime of rape despite "the incredible testimony of the complainant;" while the second brief argues that the lower court erred "in giving credence to the uncorroborated testimony of the complainant, and in rejecting the corroborated version of the accused" and "in finding the accused guilty beyond reasonable doubt of the crime of rape."

Clearly, the issue boils down to credibility of witnesses.

As this Court has time and again held, the trial court's evaluation of the testimony of a witness is accorded with the highest respect because it has the direct opportunity to observe the witness on the stand and determine if he or she is telling the truth or not, except when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could affect the result of the case.[9] None of the exceptions exists in this case. Nevertheless, we shall proceed to discuss appellant's contentions.

Appellant asserts that Marialina's alleged struggle to prevent the rape could not have gone unnoticed by the other occupants of the hut which was small and rickety and would wobble at the slightest movement, not to mention the division therein made of carton which had holes and would therefore allow vision of what was going on in the small room.

We do not agree. In a long line of rape cases, the Court has held that rape can be committed even in places where people congregate, in parks along the roadside, within school premises and even inside the house where there are other occupants[10] or where other members of the family are also sleeping.[11] Lust is no respecter of time or place.[12]

That Agatonica and Lazara failed to notice anything unusual during the night is not difficult to explain. Agatonica dela Torre was then already 80 years old and wracked by disease, which could have impaired her senses. Even if Agatonica had full possession of her faculties, she had a motive to testify in favor of appellant, being his neighbor and patient. On the part of Lazara, she is appellant's own mother whose desire to bail out her son is understandable. These two witnesses were, thus, naturally biased in appellant's favor.[13] A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[14] Corroborative evidence in defense of an accused, if tainted with bias, weakens his defense.[15]

Moreover, affirmative testimony, such as Marialina's, is stronger than a negative one. The former has more value than the latter for the reason that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial.[16]

Appellant claims that it is against human experience that the victim would go to sleep in this "clinic" after being ravished.

That Marialina went to sleep after she was raped hardly dents her credibility. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[17] In fact, Marialina's aforementioned conduct after she was ravished is not an extraordinary reaction considering her tender years, her ailing condition and the physical and emotional exhaustion she underwent when appellant vented his bestial desires on her, not to mention the terror she was subjected to by appellant's warning of her impending death in the hands of the devil if she would not surrender herself to his animal instincts.

Neither may the negative finding of semen in Marialina's private parts negate sexual assault. As Dr. Avelino herself testified, as a rule, sperm cells survive in the genitalia of a woman for 72 hours. However, there are cases where they survive less than 30 hours depending on the acidity of the vagina.[18] Nonetheless, it is a settled rule that the absence of spermatozoa in a victim's sex organ does not disprove the commission of rape. The important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.[19]

Appellant contends that the absence of physical injuries outside the victim's genitalia would indicate that she did not put up a struggle or that the sexual intercourse was a consensual act. For the crime of rape to exist, it is not essential to prove that the victim struggled or that there were external signs or physical injuries. Proof of physical injuries is not necessary because such injuries are not essential elements of the crime. As a matter of fact, the failure of the victim to resist does not negate rape.[20] Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety.[21]

The straightforward testimony of Marialina reveals that she struggled to resist appellant's advances. Apart from the force and violence that appellant employed on the victim, he also undoubtedly applied moral intimidation on her by making her believe that Satan would take her away if she did not submit herself to his sexual advances. She was not a wordly wise woman - she is a simple barrio lass in her early teens. She could not be expected to put up a fight in defense of her womanhood. Force or intimidation in rape is relative. It is viewed in the light of the victims perception and not by any hard and fast rule.[22] Intimidation even includes that of the moral kind which induces fear in the mind of the rape victim.[23]

Marialina's failure to disclose her defloration to her mother when she brought her breakfast and lunch does not taint her credibility. Her silence was impelled by both fear for her life and shame for the degradation that had befallen her. It is not uncommon for a young girl of tender age to be intimidated into silence by the mildest threat against her life.[24] Silence is not an odd behavior of a rape victim.[25]

We do not give credence to the defense's insinuation that the rape charge was instigated by her family because of a land dispute. As we have ruled in a number of cases, it is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[26]

The trial court therefore, did not err in giving full faith and credence to the uncorroborated testimony of the victim. In rape cases, the prosecution is not bound to present witnesses other than the victim herself[27] as an accused maybe convicted solely on the testimony of the complaining witness provided such testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.[28] Normally, no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt, unless she has, in fact, been raped. Marialina's credibility merited the trial court's approval because she related her defloration through force and intimidation in a "candid, straightforward and logical" manner "free from any taint of fabrication as insinuated by the accused." [29]

Under Art. 335 of the Revised Penal Code, rape through force or intimidation is punishable by reclusion perpetua. The trial court correctly imposed this penalty because under Art. 63(1) of the same Code, where the law prescribes a single indivisible penalty, it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the crime.

Consistent with jurisprudence,[30] appellant is ordered to indemnify the victim, Marialina Ruaya, in the amount of P50,000.00 in lieu of the total damages of P60,000.00 imposed by the trial court.

WHEREFORE, the decision of the trial court is hereby AFFIRMED, subject to the modification that the appellant indemnify Marialina Ruaya in the amount of P50,000.00. Costs against the appellant.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Penned by Judge Melchor M. Libarnes, RTC, Branch 31, Dapa, Surigao del Norte.

[2] Rollo, p. 6.

[3] She was born on September 24, 1977 (TSN, November 11, 1991, p. 35; Record, p. 17)

[4] TSN, February 27, 1992, p. 9.

[5] Id., at 31.

[6] TSN November 11, 1991, p. 20.

[7] Ibid.

[8] Supra, Note 4 at 12.

[9] People v. Sabellina, 238 SCRA 492, 498 (1994).

[10] People v. Ulili, 225 SCRA 594 (1993); People v. Codilla, 224 SCRA 104 (1993).

[11] People v. Cura, 240 SCRA 234, 242 (1995).

[12] People v. Segundo, 228 SCRA 691 (1993).

[13] People v. Rafanan, 182 SCRA 811 (1990).

[14] REGALADO, REMEDIAL LAW COMPENDIUM, 1988 ed., p. 553 citing 11 Moore on Facts, Sec. 1091, p. 1225.

[15] People v. Minano, 220 SCRA 681 (1993).

[16] People v. Mendoza, 236 SCRA 666.

[17] People v. Arnan, 224 SCRA 38 (1993).

[18] TSN, November 11, 1991, p. 78.

[19] People v. Fortez, 223 SCRA 619 (1993); People v. Abiera, 222 SCRA 378 (1993); People v. Magallanes, 218 SCRA 109, 110 (1993).

[20] People v. Alib, 222 SCRA 517, 519 (1993).

[21] People v. Angeles, 222 SCRA 451, 462 (1993).

[22] People V. Casipit, 232 SCRA 638 (1994).

[23] People v. Tayag, 227 SCRA 169, 178 (1993).

[24] People v. Errojo, 229 SCRA 49 (1994); People v. Alib, supra.

[25] People v. Rejano, 237 SCRA 627, 629 (1994).

[26] People v. Ching, 240 SCRA 267, 282 (1995); People v. Tabao, 240 SCRA 758 (1995).

[27] People v. Ulili, supra.

[28] People v. Junio, 237 SCRA 826, 827 (1994).

[29] Decision, pp. 19-20. Rollo, pp. 31-32.

[30] People v. Bondoy, 222 SCRA 216 (1993); People v. Joya, 227 SCRA 9 (1993); People v. Sabellina, 238 SCRA 492 (1994).

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