

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZALDY GUAMOS ALIAS “POKS,” ACCUSED-APPELLANT.

G.R. No. 109662. February 21, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

After a complaint for rape dated 26 September 1990 was filed by the mother of Michelle Dolorical, Rizaldy Guamos was charged with having raped Michelle, then a child eight (8) years of age.

At arraignment, accused Guamos pleaded not guilty.

The court a quo, after trial and in due time, found Guamos guilty of rape and sentenced him to reclusion perpetua and to indemnify Michelle Dolorical in the amount of P30,000.00 and as well as to pay her P40,000.00 as moral damages.

In this appeal, Guamos raises a lone assignment of error:

"The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape."

The trial court based its findings of relevant facts principally upon the testimony of Michelle Dolorical. Michelle declared in open court that, on 21 September 1990, at around 4:00 o'clock in the afternoon, while she was on her way from school to her grandfather's house, she was accosted by Guamos. Guamos dragged her to the poultry house of her grandfather. There in the poultry house, Guamos raised Michelle's skirt, knelt down before her, removed her panty, and inserted his penis into her sex organ. After satisfying his carnal feelings, the accused Guamos warned her not to tell anyone about the incident, otherwise he would strangle her. [1] Two (2) days later, while Michelle's mother was collecting their clothes which needed to be laundered, she discovered traces of blood in Michelle's underpants. She asked her daughter about the traces of blood and Michelle, after a while, admitted that she had been sexually assaulted. She told her parents that it was "Poks" who had sexually abused her.

Appellant Guamos raises the defense of denial and alibi. He maintains that he had been working at a construction site near the house of Michelle's grandfather when the alleged rape was committed. After he left his worksite at around 5:00 p.m., he proceeded to play basketball with his friends. Several witnesses corroborated his story. In addition, Guamos seeks to discredit and exclude the testimony of the rape victim upon the ground that she had not answered the questions posed to her at cross-examination during trial.

It has been said in a number of cases that in the review of rape cases, three (3) important points should be borne in mind:

(a)

an accusation for rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge;

(b)

considering that, in the nature of things, only two (2) persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and

(c)

the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. [2]

After examination of the evidence of record in the light of the foregoing points, the Court finds no basis for overturning the decision of the trial court finding that the guilt of Rizaldy Guamos had been established beyond reasonable doubt.

The gravamen of statutory rape is carnal knowledge of a woman under twelve (12) years of age. [3] Neither violence nor intimidation is a requisite for finding the offender guilty of statutory rape. Consent or acquiescence on the part of the under-age female provides no defense to the doer. The simple showing, therefore, that the accused had carnal knowledge of eight (8)-year old Michelle Dolorical is sufficient to sustain his conviction for rape. We find that this conclusion is borne out by the record:

"ATTY. GALIAS: (DIRECT EXAMINATION)

Q.

After you were called by Poks, what did Poks do to you?

MICHELLE DOLORICAL:

A.

He dragged me.

Q.

Where were you dragged, towards what direction?

A.

To the poultry house.

Q.

Who is the owner of that poultry?

A.

That was owned by my grandfather.

Q.

When you were already dragged at the poultry house of your Lolo Ping, what did Poks do to you?

A.

He raised my skirt.

Q.

And after raising your skirt, what else did Poks do to you?

A.

He knelt down.

Q.

After he knelt down, what else did he do?

A.

He removed my panty.

Q.

And after removing your panty, what did Poks do?

A.

He put out his penis.

Q.

And after putting out his penis, what did he do to you?

A.

He opened my vagina.

Q.

And after opening your vagina, what did Poks do with his penis outside?

A.

He inserted it.

x x x x x x x x

Q.

And when Poks inserted his penis to your vagina, what happened to your vagina?

A.

I felt pain.

Q.

Aside from pain, was there blood that came out?

A.

Yes sir.

x x x x x x x x

Q.

Did Poks tell you anything after the incident transpired?

A.

Yes Sir.

Q.

What did Poks tell you?

A.

That he will strangle me.

Q.

Why will Poks strangle you?

A.

If I tell that incident to anybody." [4]

The trial court found Michelle's testimony to be straightforward, credible and truthful. We find no reason to overturn that conclusion and to withhold credence from the testimony of Michelle. We note that, at her mother's instance, Michelle underwent physical examination at the hands of a physician. The results of the medical examination conducted upon her are consistent with the charge that she had been sexually assaulted. The medical certificate sets out the following findings:

"FISCAL DE JESUS: (DIRECT EXAMINATION)

Q.

What might have been the cause of this hematoma, what object, for example?

DOCTOR MEDY AUXILLOS:

A.

Any blunt instrument that could introduce force in that area could cause hematoma.

Q.

You consider man's penis as an instrument that could cause that hematoma?

A.

Yes, Sir.

x x x x x x x x

Q.

And what might be the probable cause of these lacerations in those different positions?

A.

That might have been caused by a blunt object inserted in the vagina.

Q.

And man's penis could be a probable cause for these lacerations?

A.

Yes, Sir." [6]

The defense of denial put up by appellant Guamos cannot prevail over the positive identification by Michelle Dolorical of the appellant as the doer of the rape. Courts have always understandably received the defense of denial with considerable caution, because such is inherently a weak and unreliable defense, one too easily put forward. Much the same is true of appellant Guamos' defense of alibi. It is only necessary to note that appellant Guamos did not, as he could not, allege that it was physically impossible for him to be at the scene of the crime at around 4:00 p.m. on 21 September 1990, considering that the construction site where he had insisted he was working that afternoon was only approximately ten (10) meters away from the poultry house [7] where, Michelle had testified, Guamos had inserted his male organ into her genitals. The corroborating witnesses presented by the defense were gangmates or "barkada" of Guamos and hence their testimony must be received with caution. Those gangmates, it should be stressed, merely testified that they saw him playing basketball after 5:00 p.m. on 21 September 1990, which is patently inconclusive as to his innocence since the prosecution had shown that the rape had been committed sometime around 4:00 or 4:30 p.m. that same afternoon.

Appellant Guamos also asserts that the testimony of Michelle laying the sexual assault upon her at his feet should not have been admitted because her testimony had not been subjected to cross-examination. This is a novel argument made possible by the curious way in which that cross-examination was handled by Guamos' counsel.

In the first place, it is not true that Michelle Dolorical had not been subjected to cross-examination. That cross-examination is recorded in the following terms:

"ATTY. HERNANDEZ (Defense Counsel):

Q.

You have testified during the last hearing that on September 21, 1990, at about 5:00 o'clock in the afternoon, a certain "Poks" called for you, is that correct?

A.

Yes, sir.

Q.

But you will agree with me, Michelle, that in Casiguran, Sorsogon, there are several persons whom you know being called "Poks", was it not?

A.

Yes, sir.

Q.

And now you further stated Michelle that this "Poks", this person whom you called "Poks", on September 21, 1990 at about 5:30 in the afternoon have called for you and after that he got hold of you and brought you to the poultry house, was it not?

A.

Yes, sir.

Q.

And after that, as you have testified before this honorable Court, you said that "Poks," one of the "Poks" whom you know in Casiguran, have knelt.... I withdraw that. After the said "Poks" one of the "Poks" whom you know in Casiguran, brought you to the poultry house, he put up your skirt and he knelt down, was it not?

A.

Yes, sir.

Q.

And after that, you have stated that he put out his penis, pulled down your panty and the same penis was allowed to touch your vagina, was it not?

MICHELLE DOLORICAL:

A.

Yes, sir.

Q.

The said penis merely touched your vagina, was it not?

(No answer)

ATTY. HERNANDEZ:

Your honor, we would like to make it of record that the witness, the way we understand of her age, she is in grade two and grade two pupils somehow are smart, comparing children of today with those of yesterday...

ATTY. GALIAS (Private Prosecutor):

A reply, your honor. This child now is in Grade III. The incident happened when she was in Grade II. Although it maybe true that children of today are articulate, it is a matter of judicial notice, that younger children are meek and shy.

COURT:

Such that the girl is having a hard time to answer the question propounded by the defense counsel.

ATTY. HERNANDEZ:

We will just leave it to the sound discretion of the honorable court.

Q.

Michelle, you want that Poks be incarcerated; in like manner, that if ever the said accused, Poks, did to you what you have stated, this representation, more so, wants that the said Poks be incarcerated also. I am here not only as counsel for the defense, but as an officer of the court. We want justice for you. The question now is, when the penis was put out by the said Poks, and he allowed it to touch your private part, what he did was merely to allow the said penis to touch your private part, was it not.

(No answer.)

Again, you honor, we would like to put it on record that the witness takes a hard time to answer the question propounded by this representation.

ATTY. GALIAS:

No answer from the witness. At this point in time, considering the tenderness of her age, we move that the question be simplified and that counsel refrain from adding additional statements because there is a tendency to confuse the child.

COURT TO ATTY. HERNANDEZ:

Simplify your questions.

x x x x x x x x

ATTY. HERNANDEZ:

Now the truth Michelle is that what you have stated during the last hearing was that, it was supplied to you specifically by your mother and your grandfather that if you will be asked (who committed) that act, you will just point to a person?

(No answer.)

ATTY. HERNANDEZ:

Again, much to our regret, the witness is unable to answer the question propounded by this representation. We will just leave it to the sound discretion of the Honorable Court. No further questions." [8] (Underscoring supplied)

Counsel for appellant seeks to make much of the fact that Michelle Dolorical did not answer some of the questions of defense counsel on cross-examination. We do not find, however, that this failure detracts from the admissibility or credibility of Michelle's testimony. Firstly, this appears to the Court to be a case of failure of Michelle to answer some questions rather than an obstinate refusal to do so. In formulating those questions on cross-examination, defense counsel obviously did not take into account that he was cross-examining a child of tender age (Michelle was approximately nine [9] years of age at the time she gave her testimony in open court) susceptible to confusion and probably easily intimidated. The questions posed by defense counsel to Michelle appear to us to have been long, elaborate and circumlocutious, difficult to comprehend even for adults. Thus, at one point, the trial court directed the defense counsel to simplify his questions. Defense counsel, after that directive from the trial court, tried once more but did not succeed in simplifying his questions. Promptly thereafter, defense counsel ceased cross-examination after stating for the record that Michelle was "unable to answer the question propounded by [him]" and that such counsel would "just leave it to the sound discretion of the honorable court. No further questions." [9] It is clear to this Court that defense counsel exercised no substantial effort to present intelligible questions to complaining witness Michelle Dolorical designed to elicit straightforward answers. We consider that she, in all probability, simply failed to grasp some of the questions put

to her on cross-examinations. The defense had made it very difficult if not practically impossible for her to answer those questions intelligently and truthfully.

It is, of course, the right of every party to cross-examine a witness "with sufficient fullness and freedom to test his [or her] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." [10] It is also the duty of the witness to answer questions put to him or her, subject to certain exceptions. [11] In the instant case, defense counsel did not ask the Court to enforce his right and to compel the witness (Michelle) to perform her duty. As noted earlier, the trial judge had instructed defense counsel to simplify his questions. Defense counsel, for his part, neither complained about this directive nor complied with it.

It is also noteworthy that defense counsel did not object to the testimony on direct examination of Michelle Dolorical after it became apparent that Michelle did not or could not answer the long and meandering questions of defense counsel. When the prosecution made its offer of evidence, defense counsel contended that the testimony on direct examination of Michelle Dolorical should not have been admitted and prayed for leave of court to file a demurrer to evidence. [12] The trial court granted the defense counsel leave to do so and, at the same time, admitted the prosecution's offer of evidence. [13] Defense counsel, however, did not file a demurrer to evidence. Accordingly, in its order of 25 February 1992, the trial court ordered the defense to present its evidence, noting that no demurrer had been filed though leave to do so had been sought and granted. [14] The accused did not question this order of the trial court and commenced instead to present its own evidence.

In the total circumstances of this case, we consider that accused Guamos had waived his right to object to the admissibility of Michelle Dolorical's testimony on direct examination upon the ground that she had not answered all of the questioned posed to her on cross-examination. The trial court believed that that failure had not affected the credibility of Michelle Dolorical's direct testimony. We find no sufficient reason for overturning this finding of the trial court.

Finally, appellant Guamos sought to assail the credibility of the testimony of Michelle Dolorical by claiming that there were people passing by in the vicinity of the scene of the crime, that is, the poultry house of Michelle's grandfather. The implicit argument is that no one in his right mind would rape anyone in such a place and risk discovery and possible arrest. The trial court was not impressed with this argument and we are not either. As pointed out by the Court in *People v. Mangalino*, [15] "lust after all is no longer respecter of time or place." [16] Rape can be and has been carried out even in places where people customarily congregate, as in parks, or along a roadside, within school premises, and inside a house where people other than the accused and the victim were present. [17]

WHEREFORE, the decision finding appellant Rizaldy Guamos guilty of the crime of rape is hereby AFFIRMED, except that the indemnity of Thirty Thousand Pesos (P30,000.00) is hereby INCREASED to Fifty Thousand Pesos (P50,000.00) in view of the tender age of the victim, [18] while the grant of moral damages of Forty Thousand Pesos (P40,000.00) is hereby DELETED, there being no proof of any special circumstance justifying the grant of such additional amount. [19]

SO ORDERED.

Romero, Melo, Vitug and Francisco, JJ., concur.

[1] Trial Court Decision, p. 2; Rollo, p. 23.

[2] *People vs. Casinillo*, 213 SCRA 777 (1992); *People vs. Pizarro*, 211 SCRA 325 (1992); *People vs. Dela Cruz*, 207 SCRA 449 (1992).

[3] *People vs. Ruben Repollo*, G.R. No. 108872, 7 October 1994; *People vs. Espino*, 230 SCRA 788 (1994); *People vs. Race*, 212 SCRA 90 (1992).

[4] TSN, 14 August 1991, pp. 7-9.

[5] Medical Certificate, Records, p. 5.

[6] TSN, 16 April 1991, pp. 21-22.

[7] TSN, 10 March 1992, p. 29.

[8] TSN, 20 August 1991, pp. 3-7.

[9] TSN, 20 August 1991, p. 7.

[10] Section 6, Rule 132, Rules of Court.

[11] Section 3, Rule 132, Rules of Court.

[12] Comments and Objection to the Offer of Evidence, p. 2; Records, p. 114.

[13] Order of 4 February 1991, p. 1; Records, p. 121.

[14] Records, p. 124.

[15] 182 SCRA 329 (1991).

[16] 182 SCRA at 342.

[17] *People vs. de los Reyes*, 203 SCRA 707 (1991).

[18] *People v. Perez*, 175 SCRA 203 (1989); *People v. Santos*, 183 SCRA 25 (1990); *People v. Felipe*, 191 SCRA 176 (1990).

[19] See, e.g., *People v. Ocampo*, 206 SCRA 223 (1992) and *People v. Sayat*, 223 SCRA 285 (1993), where the Court had awarded moral damages on account of the perversity of the offense, the offenders being the stepfather and the half-brother, respectively, of the rape victim.

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