

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO BALSACAO Y BALBABOCO, DEFENDANT-APPELLANT.

G.R. No. 112027. February 13, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

Appellant Pablo Balsacao y Balbaboco was charged with raping his own six-year old granddaughter, Kathleen Mary Lei Balsacao, in an information dated December 5, 1991, which reads thus:

"That on or about December 2, 1991, in the City of Manila, Philippines, the said accused, with lewd designs, by means of force, violence and intimidation, to wit: by then and there dragging one KATHLEEN MARY LEI Y BALSACAO, six (6) years old and daughter of the undersigned complainant, kissing her, poking a deadly weapon at her stomach and telling her not to shout otherwise she will be killed, undressing her and inserting his organ into her private parts, did then and there wilfully, unlawfully and feloniously had carnal knowledge of the said KATHLEEN MARY LEI Y BALSACAO against her will and consent."

Upon arraignment on February 10, 1992, the appellant entered a plea of not guilty.

On August 24, 1992, the prosecution sought the dismissal of the case on the strength of the "Affidavit of Desistance" [1] executed on August 12, 1992, by Perla Balsacao Lei, Kathleen Mary's mother and daughter of the appellant, where she manifested that she was no longer interested in prosecuting the case because she had already amicably settled the case with her father.

When examined by Judge Amor A. Reyes, however, Perla testified that she believed her daughter when the latter told her that the crime charged was indeed committed by the appellant, but she was willing to give him another chance. [2] In an order of even date, Judge Reyes denied the prosecution's oral motion to dismiss the case. [3]

The evidence for the prosecution consists mainly of the testimony of Kathleen Mary Lei who narrated that at around 8:30 in the morning of December 12, 1991, she was playing hide and seek with her sisters Ariane and Arilla at their room on the second floor of their three-storey house. Her father was not around at that time and her mother was then taking a bath. As she was getting a towel for her mother, her grandfather, herein appellant, took her to his room. With a knife pointed at her stomach, the little girl was ordered by her grandfather to undress, lie down on the bed, and close her eyes. The knife also prevented her from shouting for help. She can not recall if her panty was removed by her grandfather, but she vividly remembers him taking out his penis and inserting it into her private parts, and the pain she felt because of that. Thereafter, she was told to get out of his room. She cried and told her Aunt Sarah (Perla's sister) about what had happened. [4]

No medical examination was made on Kathleen Mary.

The accused denied the accusations against him and maintained that on December 2, 1991, at round 9:30 in the morning, he was attending to his chickens which he kept on the second floor. His daughter Perla was there with his grandchildren, Kathleen Mary, Jose, and a certain Nene. On that same day he was arrested by two (2)

policemen in civilian clothes who did not show him any warrant of arrest but told him to just explain at the police headquarters. [5]

On cross-examination, he admitted bearing no grudge against Perla, although they have not communicated with each other since the filing of the complaint. Perla once visited him in jail where he asked for her forgiveness. She told him that she will withdraw the case because they cannot prove the crime imputed to him. [6]

Judgment was rendered on February 25, 1993, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds accused PABLO BALSACAO GUILTY as principal of (sic) the crime and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with the accessory penalty provided by law, and to indemnify the offended party Kathleen Ma(r)y Lei (y) Balsacao the sum of P50,000.00 without subsidiary imprisonment in case of insolvency. With costs of suit.

SO ORDERED."

In this appeal, the appellant argues that aside from the prosecution's evidence being weak, the cross-examination of Kathleen Mary was incomplete. He further avers that there is no medical finding to support the allegation of rape. Finally, he points up the discrepancy in the date of commission as alleged in the information, which is December 2, 1991, and as testified by Kathleen Mary in court, which is December 12, 1991.

These arguments have no merit.

The court a quo had all the evidence they needed in the testimony of the victim. This was a seven-year old girl unwaveringly telling the court that her own grandfather took her to his room and, at knifepoint, ordered her to remove her clothing, lie on the bed and close her eyes. She could not remember some small details, like if her panty was removed, but she could not forget the pain when her grandfather forcibly shattered her maidenhead.

Nowhere in his testimony did appellant venture any reason why his granddaughter, who is only seven years old, should make statements which are completely outside the experience of an ordinary girl of her age. As the trial judge correctly observed, Kathleen Mary was merely telling the plain and unvarnished truth even when she said that the crime was committed on December 12, 1991, a date erroneously supplied by the fiscal at the onset of her direct examination.

Anyway, on cross-examination, the date was corrected by the defense counsel himself. Thus, he asked:

"ATTY. VALLEGA

q No, on Dec. 2, 1992 when he raped you, where is (sic) your lolo at that time on Dec. 2, 1991?

A He was inside the room(,) sir.

q Whose room you are (sic) talking about?

a In his room(,) sir. [7]

By so testifying, Kathleen Mary has not only positively placed her grandfather at the crime scene on the date alleged in the information, but also, and more important, has affirmed her testimony on direct examination. Hence, although her cross-examination was not concluded, the appellant cannot insist now that her entire testimony be stricken out as hearsay. Anyway, had the defense deemed it necessary to continue with the cross-examination of Kathleen Mary after several lapsed settings, it could have insisted and asked the court to compel her attendance, but it did not. The appellant was instead placed on the stand on January 18, 1993, without first pursuing the cross-examination of Kathleen Mary that the defense deemed indispensable.

As regards the absence of any medical finding which would confirm that the victim was raped, suffice it to say that the same is not an indispensable requisite in proving a crime of rape. [8]

Two more factors sway this Court to rule out the appellant's appeal. First, he admitted being at the crime scene on the date in question. In fact, it was there that he was arrested that very same day. He offered no excuse for the serious charge against him, except simple and bare denial. This defense must, of course, yield to his positive identification as the culprit by the victim. Second, appellant testified that Perla visited him in detention to inform him that the case will be withdrawn. It was there that he asked for her forgiveness. Clearly, such pardon was sought for the offense he stood accused of and not for any other matter.

The proper penalty to be imposed upon the appellant in this case is reclusion perpetua to death, since the rape was committed with the use of a knife, a deadly weapon. At the time of its commission, however, the imposition of the death penalty was still suspended under mandate of the 1987 Constitution.

ACCORDINGLY, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Melo, and Francisco, JJ., concur.
Vitug, J., see dissenting opinion.

[1] Records, p. 39.

[2] T.S.N., August 24, 1992, p. 3.

[3] Records, p. 41.

[4] T.S.N., July 27, 1992, pp. 1-10.

[5] T.S.N., January 18, 1993, pp. 1-6.

[6] Ibid., pp. 7-8.

[7] T.S.N., July 27, 1992, p. 9.

[8] *People v. Diaz*, G.R. No. 100752, August 4, 1992, 212 SCRA 147; *People v. Saldivia*, G.R. No. 55346, 203 SCRA 461; *People v. Manaay*, No. L-47489, June 18, 1987, 151 SCRA 31.

DISSENTING OPINION

VITUG, J.:

The crime of rape is by itself already detestable but when a grandfather stands trial for raping his own six-year old granddaughter, the very inquest thereon becomes an excruciating experience even for those who are used to the judicial process. I see myself, however, still being unable to concur with the majority opinion that finds accused-appellant's guilt to have been proven beyond reasonable doubt.

The following points, collectively, put to serious doubt, in my view, a moral certainty on the alleged commission of the offense:

Firstly, Kathleen could not remember whether or not her panty was removed by her grandfather, a detail which

could not be considered insignificant since evidently she vividly was able to recall and narrate everything else that had supposedly transpired.

Secondly, no medical examination, albeit not always indispensable for conviction, was conducted on her person. Kathleen testified that her grandfather inserted his penis into her. At her tender age, the natural physical consequence of such an act would have been the occurrence of profuse bleeding on her private parts. If she, indeed, told her Aunt Sarah of the bestial act committed on her, her aunt would have most certainly noticed such bleeding. No evidence at all was adduced in this regard.

Thirdly, it would be difficult to believe that the accused dared rape his granddaughter at a time when almost all of the entire family were present in the house, including her two sisters, Ariane and Arilla, with whom she was "playing" shortly before the alleged rape took place.

Fourthly, the need by the accused to still use a knife to intimidate Kathleen into submission would defy reason. Kathleen was only then six years of age.

Regrettably, the lackadaisical performance by the prosecution in presenting its case, which has relied mainly on the victim's testimony, constrains me to consider the evidence as insufficient as to warrant a finding of guilt beyond reasonable doubt.

Accordingly, I must vote for the reversal of the judgment of conviction.

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