

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONALDO ALMADEN, ALIAS “DODONG”; ACCUSED-APPELLANT.

G.R. No. 112088. March 25, 1999

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KAPUNAN, J:

Before us is an appeal from the Judgment[1] of the Regional Trial Court of Tacloban City, Branch 6-A, in Criminal Case No. 91-02-107, convicting appellant Ronaldo Almaden of the crime of rape. The dispositive portion of the appealed Judgment reads:

WHEREFORE, in view of the foregoing, the Court finds accused RONALDO ALMADEN guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code as amended, and he is hereby sentenced to suffer a penalty of RECLUSION PERPETUA, and to indemnify the offended party (Arlene Saldaña) the amount of Thirty Thousand Pesos (P 30,000) as moral damages.[2]

A complaint for "sexual assault" was filed on January 4, 1991, by the victim. Arlene Saldaña against appellant Almaden with the Municipal Trial Court of Palo, Leyte.[3] The municipal trial court conducted a preliminary investigation and recommended that appellant be charged with attempted rape.[4] However, the provincial prosecutor, after review of the case, filed an information for rape that reads:

That on or about the 27th day of December, 1990, in the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent-and with lewd designs, and by means of force, threats and intimidation did, then and there willfully, unlawfully, and feloniously have carnal knowledge with one ARLENE SALDAÑA- A, a 10-year old girl, without her consent and against her will and to her damage and prejudice.[5]

Arraignment was initially postponed upon manifestation of the defense that appellant Almaden was suffering from mental disorder.[6] After a mental examination determined that he was competent to stand trial,[7] Almaden was arraigned on June 21, 1991.[8] He pleaded not guilty to the charge of rape.[9]

To a large extent, the facts of the case are not in dispute. The victim Arlene Saldaña was then a young girl of 11 years.[10] Appellant admitted that the incident occurred on December 27, 1990, at around 8 o'clock in the morning, in Barangay Cahindok, Palo, Leyte. On that fateful morning, young Arlene was gathering firewood upon instructions of her mother with her friend Edwin Sudario,[11] also a minor.[12] Appellant Almaden chanced upon them as he was on his way to his farm.[13] He approached the children and ordered them to undress.[14] Arlene took off her shorts and underwear while Edwin lowered his jogging pants down to his knees. Arlene was ordered to lie on the ground and Edwin to place himself on top of Arlene. They were then made to simulate the sexual act.[15]

From this point, the versions of the prosecution and the defense vary. According to appellant, he left Arlene and Edwin immediately after the two had commenced to simulate the sexual act, and he continued on his way to his farm.[16] Yet, according to the prosecution, there was a more malevolent twist to the story. Arlene and Edwin testified that, contrary to appellant's declaration, appellant Almaden did not leave them as they were simulating

the sexual act. Rather, appellant positioned himself nearby and closely observed them with his weapon ready.[17] At the time of the incident, appellant was armed with a bolo.[18] Appellant Almaden unsheathed his bolo[19] in order to threaten the minors and compel them to undress and simulate the sexual act. [20] After the two minors simulated the sexual act, Almaden ordered Edwin to get up.[21] He then grabbed the supine Arlene by her arm and made her stand.[22] With his bolo in one hand and Arlene's arm in the other, appellant dragged Arlene to a nearby bamboo grove.[23] Meanwhile, Edwin seized the opportunity to escape. He pulled up his jogging pants and ran home. He then told his mother about the incident.[24]

At the bamboo grove, Almaden again forced Arlene to lie on the ground.[25] This time, appellant himself got on top of Arlene.[26] Appellant loosened his shorts, unzipped his fly and proceeded to insert his penis into Arlene's vagina.[27] Arlene, at the time, had no lower clothing because her shorts and underwear were at the place where she and Edwin were made to lie down. Appellant succeeded in inserting a small portion of his penis.[28] Arlene felt intense pain causing her to cry out, "Agi!"[29] Appellant next made Arlene to sit up. He knelt on the ground in front of Arlene and ordered her to suck his penis.[30] After sucking for about three minutes,[31] Arlene was made to swallow[32] a warm substance ejaculated from appellant's penis while inside her mouth.

Between the two versions of the incident, the trial court chose to give credence to the prosecution version and convicted appellant. Hence, this appeal wherein appellant assigns the single error that the trial court convicted him on the basis of "incredible, improbable and inconsistent testimonies of prosecution witnesses." [33]

As consistently held by the Court, the rule is that the trial court's evaluation of a witness's credibility is entitled to great respect.[34] And there is sound reason for this rule. It was the trial court that had the opportunity to observe first hand the demeanor of the witness on the stand and to gauge the truthfulness of his narration.[35] The tentative tone of voice, the flushed face, the pregnant pause in narration and the frequent fidgeting are, to the perceptive judge, telltale marks of truth or falsity. Yet, these same marks are not captured on record and upon review are lost to the appellate court.

In its well-written decision, the trial court observed that the "(v)ictim did not waver during her testimony, but narrated the events with straightforward confidence, clear, convincing and precise in every detail on how the bastardly (sic) act was committed by Ronaldo Almaden"[36] We find sufficient basis in the record for such evaluation of Arlene's testimony. Arlene gave a very candid narration of her ordeal thus:[37]

Q-

Now, when you reached the bamboo grove (sic) after you have been dragged by Ronaldo Almaden, what next did Ronaldo Almaden do to you?

A- He made me lie down and he placed himself on top of me.

Q-

At the time you were made to lie down by Ronaldo Almaden after you had been dragged to the bamboo grove (sic), where was your city shorts and your panty?

A- At the place where both I and Edwin where (sic).

Q- When accused Ronaldo Almaden placed himself on top of you, was he wearing any pants?

ATTY. SALINAS

Objection, Your Honor, very leading.

COURT

AS I SAID IN THIS STAGE, I WILL ALLOW LEADING
QUESTIONS.

PROS. CANDIDO

Yes because the witness is of tender age.

A-

Yes, sir.

Q- What did he do with his pants?

A- He pulled down the zipper of his pants.

Q- Do you know why he pulled down the zipper of his pants?

A- Yes, Sir, because he took out his penis.

Q- What did he do with his penis after he had taken that out and he was already on top of you?

A- He placed his penis into my vagina.

Q- Did he succeed in putting his penis inside your vagina?

A- Yes, Sir, but only a small bit of his penis into my vagina, because it would not enter.

Q- Now, did you not try to resist while the accused Ronaldo Almaden was trying to insert his penis inside your vagina?

A- I felt pain from my vagina up to the top of my head and I cried as it was very painful.

Q Did you not try to plead with Ronaldo Almaden not to do what he was trying to do with you?

A- I did that, Sir.

Q- What did you do to him?

A- I said "ouch."

Q- And what did Ronaldo Almaden do in response to your expression of pain?

A- He told me to get up.

Q- But that was after he had succeeded in inserting a little portion of his penis inside your vagina?

A- Yes, sir.

COURT

DO YOU KNOW HOW TO READ A WATCH?

A- Yes, sir.

COURT

MINUTES?

A- Yes, sir.

COURT

HOW MANY MINUTES WAS ALMADEN ON TOP OF YOU?

A- For a time but I cannot estimate how many minutes. Maybe five (5) minutes.

Thus, the trial court rejected appellant Almaden's version that he was unarmed at the time^[38] and very weak because he had just suffered an epileptic seizure.^[39] The trial court also dismissed his claim that he neither touched Arlene^[40] nor employed force or intimidation upon her.^[41]

Appellant Almaden disputes Arlene's claim that she was dragged by him to the bamboo grove. According to him, this is highly improbable because the Medico Legal Report^[42] mentions no injury on the victim's buttocks and legs. Appellant argues that if indeed Arlene was dragged, then she would have suffered injury on her buttocks and legs. And that if indeed Arlene was dragged and suffered injury, then such injury would have been discovered by the examining physician and placed in her report.

We dismiss appellant's contention. Arlene testified that she was injured when she was dragged to the bamboo grove, yet it appears that her injuries were not seen by the examining physician. For her part, the physician explained that while she examined the victim from head to foot,^[43] her focus was on the internal examination of Arlene's pelvis and hymen.^[44] Such focus on internal examination is understandable considering that Arlene was being examined on the basis of her claim that she was sexually assaulted.

Appellant also contends that Arlene's claim that she was raped is equally improbable because Arlene's hymen is intact.^[45] As repeatedly enunciated by the Court, an intact hymen does not negate a finding that the victim was raped.^[46] To commit the crime of rape, the rupture of the hymen is not indispensable.^[47] Even the full penetration by the penis is not necessary.

The gravamen of the crime of rape is carnal knowledge under the circumstances enumerated in the penal code.^[48] Carnal knowledge is, simply put, sexual intercourse^[49] between a man and a woman. With the slightest penetration, sexual intercourse is achieved,^[50] and the crime of rape is consummated. The examining physician even testified as an expert witness on obstetrics and gynecology^[51] that an intact hymen does not eliminate the possibility that a hard object or a penis was inserted into the vagina.^[52] In some cases, the physician said, the hymen is still intact even after the woman has given birth.^[53]

Although the appellant did not categorically raise the defense that the appellant's alleged epilepsy exempts him from criminal liability, much of the testimony of defense witnesses during the trial was devoted to appellant's medical condition. Epilepsy per se is not an exempting circumstance. As early as 1927, the Court has dismissed the defense of epilepsy thus:

Neither can the defense of lack of free will of the accused Ciriaco Aguilar, who is an epileptic, be sustained. While Ciriaco Aguilar, as an epileptic was susceptible to nervous attacks that may momentarily deprive him of his mental faculties and lead him to unconsciously attempt to take his own life and the lives of others, nevertheless, it has not been shown that he was under the influence of an epileptic fit before, during, and immediately after the aggression.^[54]

Appellant testified that he suffered an epileptic fit immediately prior to the incident.[55] However, according to the trial court, this was highly improbable because appellant himself said that he would weaken and sleep for several hours whenever he suffered an attack.[56]

In summary, we find that the trial court did not err in giving credence to the testimony of the victim Arlene and her friend Edwin. Their testimonies, far from being incredible and improbable as contended by appellant Almaden, were a true narration of what actually took place. Arlene's testimony was candid and straightforward, and no ill motive can be discovered why she would impute against appellant so grave a charge. She positively identified appellant as her assailant.[57] Arlene's actions immediately after the incident are consistent with the natural conduct of a young lass who had been sexually assaulted. Arlene promptly ran to her mother, reported the incident to the Barangay Chairman and immediately submitted to medical examination at the Leyte Provincial Hospital, all within one hour after the incident. No woman especially one who is of tender age would concoct a story of decoration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[58]

After a careful review of the records of the case, we find that the prosecution proved beyond reasonable doubt that appellant committed the nefarious deed against the victim Arlene. There is sufficient evidence to produce moral certainty that appellant Almaden, through force and intimidation, succeeded in consummating the sexual act with victim Arlene Saldaña who was then a woman under twelve years of age.

The award of "thirty thousand pesos in indemnity as moral damages," although not assailed by appellant, must be modified. The victim Arlene is entitled to both indemnity and moral damages. Indemnity may be automatically awarded upon proof of commission of the crime of rape.[59] As to moral damages, the records clearly disclose the basis for its award. The child Arlene testified that she felt extreme physical pain when she was ravished by Almaden.[60] A prosecution witness also testified that Arlene suffered the humiliation of tearfully relating her ordeal before a crowd.[61] We find this sufficient basis for awarding moral damages as provided in the Civil Code.[62] Consistent with current case law,[63] we deem the amounts of fifty thousand pesos in indemnity and fifty thousand pesos in moral damages as appropriate.

WHEREFORE, the Judgment appealed from is hereby **AFFIRMED** with the modification that accused-appellant should pay the victim, Arlene Saldaña, the amount of fifty thousand pesos (P50,000) as indemnity and an additional amount of fifty thousand pesos (P50,000) as moral dam

SO ORDERED.

Davide, C.J. (Chairman), Melo, and Pardo, JJ., concur.

[1] Penned by Judge Ruben A. Mendiola.

[2] Judgment, p. 15, Rollo, p. 28.

[3] Record, p. 5.

[4] Id., at 14-15.

[5] Id., at 1.

[6] Id., at 21.

[7] Id., at 24.

- [8] Id., at 35.
- [9] Ibid.
- [10] Born on July 2, 1979. TSN, January 31 1992, p. 21.
- [11] TSN, June 26, 1992, pp. 10-11.
- [12] TSN, April 3, 1992, p. 2.
- [13] TSN, June 26, 1992, p. 10.
- [14] Id., at 11 .
- [15] Ibid.
- [16] Id., at 11-12.
- [17] TSN, December 19, 1991, p. 11.
- [18] TSN, April 3, 1992, p. 12.
- [19] TSN, December 19,1991, p. 9.
- [20] Id., at 9-10. Id., at 12.
- [21] Id., at 12.
- [22] Id., at 13-14.
- [23] Id., at 12-14.
- [24] TSN, April 3, 1992, pp. 16-18.
- [25] TSN, December 19, 1991, pp. 14-15.
- [26] Ibid.
- [27] Id., at 16.
- [28] Ibid.
- [29] Id., at 17.
- [30] Id., at 19.
- [31] Id., at 20.
- [32] Id., at 21.
- [33] Brief for Appellant, p. 6, Rollo, p. 180.
- [34] People vs. Dones, 254 SCRA 696, 706 (1996) per Kapunan, J.
- [35] Ibid.
- [36] Judgment, p. 12; Rollo, p. 25.
- [37] TSN, December 19, 1991, pp. 14-18.
- [38] TSN, June 26, 1992, p. 14.

[39] *Id.*, at 18-19.

[40] *Id.*, at 14.

[41] *Ibid.*

[42] Signed by Dr. Lydia Jayobo, resident physician of the Leyte Provincial Hospital; Record, p. 9

[43] TSN, January 31, 1992, p. 8.

[44] *Ibid.*

[45] Brief for Appellant, p. 8, Rollo, p. 182.

[46] *People v. Gagto*, 323 Phil 539, 555-556 (1996) Per Davide, Jr., J.

[47] *Black's Law Dictionary*, 5[th] ed., p. 194.

[48] Art. 335, Revised Penal Code.

[49] *Black's Law Dictionary*, 5[th] ed., p. 193.

[50] *Ibid.*

[51] TSN, January 31, 1992, p. 3.

[52] *Id.*, at 9-10.

[53] *Ibid.*

[54] *People v. Mancao and Aguilar*, 49 Phil. 887, 893 (1927) per Villa-Real, J.

[55] TSN, June 26, 1992, pp. 18-19.

[56] Judgment, p. 11, Record, p. 24.

[57] TSN, December 19, 1991, p. 6.

[58] *People v. Abordo*, 258 SCRA 571, 581 (1996), per Mendoza, J., citing *People v. Manzano*, 250 SCRA 152, 161 (1995).

[59] *People v. Fuertes*, G.R. No. 126285, September 29, 1998, per Regalado, J.

[60] TSN, December 19, 1991, p. 17

[61] TSN, April 10, 1992, p. 4.

[62] Arts. 2217 and 2219, Civil Code.

[63] *People v. Dones*, 254 SCRA 699, 710 (1996) per Kapunan, J., citing *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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