

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANSELMO O. BUTRON ALIAS “ANSING,” ACCUSED-APPELLANT.

G.R. No. 112986. May 07, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The appellant admits to having sexually molested the ten-year-old victim in this case, but claims that he merely used his fingers and is thus guilty only of acts of lasciviousness and not of rape. The Court is not convinced, for there is proof beyond reasonable doubt that there was penetration of the victim’s private organ.

This is an appeal from the Decision[1] dated July 6, 1993 of the Regional Trial Court, 10th Judicial Region, Branch 2,[2] Butuan City, in Criminal Case No. 5283, finding appellant guilty of rape.

On August 19, 1992, Jocelyn A. Bautista, assisted by her mother Caridad A. Bautista, filed a Complaint[3] before the 4th Municipal Circuit Trial Court of Cabadbaran-Remedios Trinidad Romualdez, Province of Agusan del Norte, charging Accused-appellant Anselmo O. Butron of rape. After preliminary investigation, Provincial Prosecutor Paul R. Azura filed in the Regional Trial Court the following Information on September 25, 1992 against the accused-appellant:

“That on or about the 18th day of August, 1992, at 10:00 o’clock in the morning, more or less, in the family residence, Barangay 9, Poblacion, Municipality of Cabadbaran, Province of Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Jocelyn A. Bautista, a ten-year old minor, against her will and in her own house.

CONTRARY TO LAW.”[4]

Arraigned on November 9, 1992, the accused appellant, assisted by Counsel Jesus G. Chavez, pleaded not guilty to the charge.[5]

The Facts

Version of the Prosecution

The prosecution presented five witnesses: (1) Jocelyn Bautista, who gave a personal account of the rape; (2) Dr. Teonista K. Mora, who testified on the results of the physical examination she had conducted on Jocelyn; (3) Police Officer Tito Arboleda; (4) Caridad Bautista, the mother of Jocelyn; and (5) Edgar Jimenez, a friend of the appellant.

In the appellee’s brief, the Solicitor General provided the prosecution’s summary of the facts:

“In the morning of August 18, 1992, 8-year old[6] Jocelyn Bautista was left in their house, which was situated under the Cabadbaran bridge, to take care of her younger brother. (p. 3, TSN, January 6, 1993) Earlier, her parents trooped to the fields to harvest peanuts. (p. 15, TSN, January 6, 1993)

At about 10:00 a.m. that same morning, while Jocelyn was rocking her younger brother, appellant suddenly went up their house. (p. 3, TSN, January 6, 1993) He brought with him a bottle of rugby and a pair of underwater fishing goggles. He then sniffed from the bottle, took off his goggles, and dropped it in a pail. (p. 4, Ibid)

Jocelyn thereafter testified how she was mercilessly violated when appellant twice inserted his finger into her organ. And still unsatisfied, appellant went on to pull her legs, pin her down, went on top of her, and twice inserted his male organ into her vagina. (pp. 3-4, Ibid)

Appellant, unperturbed, casually went down the stairs only to go up again but this time, with a knife in his hand. He threatened appellant (sic) that he will stab her if she did anything as speak to anyone of what befell her. (p. 4, Ibid)

Later that day, the PNP Station received a report that a young girl was raped under the Cabadbaran bridge, pointing to appellant as the prime suspect. (p. 5, TSN, January 4, 1993) Thus, while on his way home, appellant was arrested and the following objects were recovered from him: a bottle of rugby (Exh. 'A-3'); rubber sling (Exh. 'A-2'); knife (Exh. 'A-1'); and goggles for underwater fishing (Exh. 'A'). (p. 3-4, Ibid) When brought to the police station, Jocelyn -- who was then wearing a bloodstained dress -- positively identified appellant as her vicious attacker. (p. 6, Ibid)

On the next day, Jocelyn underwent medical examination. Teonista Mora, resident physician of the Cabadbaran District Hospital, found that (a) there was actual bleeding on the vaginal canal; (b) the hymen was torn stillate-shaped; and (c) there was spermatozoa in the vagina. (pp. 13-15, TSN, January 4, 1993)

Jocelyn, with the assistance of her mother, filed a complaint with the Municipal Trial Court of Cabadbaran. (pp. 6-7, TSN, January 6, 1993) This became the basis of the information for rape brought before the lower court."^[7]

Version of the Defense

The defense presented only one witness in the person of Accused-appellant Anselmo Butron. In a nutshell, he raises the defense of denial. As succinctly presented in his brief:

"The evidence for the defense shows that the accused Anselmo Butron went indeed to the house of the complainant-victim. However, he denied raping the complainant victim but admitted fingering her. (TSN, January 21, 1993, pp. 2-3)"^[8]

The Error Assigned

Appellant posits this lone error against the trial court's Decision:

"The trial court gravely erred in finding the accused-appellant guilty of the crime of rape instead of acts of lasciviousness"^[9]

The Court's Ruling

The appeal is not meritorious.

Credibility of Witnesses

The Court reiterates the following standard in reviewing an appeal from a conviction for rape:

"In reviewing the evidence of this case, this Court was guided by the three (3) settled principles in reviewing rape cases, namely, (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized

with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.”[10]

In the present case, Appellant Anselmo Butron admits to having sexually molested the ten-year-old complainant Jocelyn Bautista at the time and place stated in the complaint. Appellant however contends that “what he did was merely insert his finger into her vagina and not rape her as found by the trial court.”[11] Appellant Butron argues that his position was “affirmed and confirmed” by the complainant herself, and he cites the following:

“First, before the Honorable Judge Lilia Andrade Covera during the preliminary investigation on August 25, 1992:

Q. What did happen (sic) next?

A. He held me covering my mouth and I resisted.

Q. Why?

A. Because he fingered my vagina.

Q. Did you shout?

A. No, Ma’am, because he covered my mouth and even threat (sic) me with the knife.

Q. Did he put his penis inside your vagina? (Witness refused to remember the incident)

A. He let me lie down on the floor, it’s painful.

Q. What did the person do next?

A. He went out of the house.’ (Exh. 1A; underscoring supplied)

Second, during the trial on cross-examination:

‘Q. But you will remember that you were asked by that woman what Anselmo Butron did to you? Did that woman not ask you that question?

A. She asked me.

Q. And your answer to that woman was that Anselmo inserted his finger into your vagina?

A. Yes, sir.

Q. Because that is (sic) really what happened? And you were telling the truth then?

A. Yes, sir. (TSN, January 6, 1993, p. 9)

Third, also during the trial when the Court propounded clarificatory questions.

‘COURT:

Q. You told the court that Anselmo Butron inserted his penis into your vagina?

A. No.

Q. You mean Anselmo Butron never inserted his finger into your vagina?

A. He inserted.’ (TSN, January 6, 1993, pp. 9-10)”[12]

Moreover, appellant contends that the nature of the victim’s injury does not support the claim that he had inserted his penis into the private part of the victim. Appellant submitted as evidence the medical certificate dated January 15, 1993 (Exh. “2”) issued by Dr. Benjamin C. Kho showing that his non-erect organ “measured seven centimeters in length and nine centimeters in diameter.”[13] He thus argues, rather haughtily and egotistically, that “(o)ne does not need to have a medical training but only have (sic) to imagine how large the same penis would be if erect and inserted into the young victim’s vagina. It would create not only a stillate-shaped injury but could have completely lacerated the victim’s hymen.”[14]

The Court is not persuaded by appellant's boasts. In assessing the credibility of witnesses, it is well-settled that:

"...when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility of witnesses must be respected." [15]

After a meticulous review of the records in this case, the Court finds no error in the ruling of the trial court giving full faith and credence to the testimony of Jocelyn Bautista, stating that she was indeed raped by Appellant Butron. Her account was direct, candid, replete with details, and supported by physical evidence.

It is a truism that "when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof." [16] This is so in the instant case, where the testimony of Jocelyn, a mere ten-year-old at the time of the rape, "as to the circumstances of the rape must be given weight, for testimony of young and immature rape victims are credible." [17]

No Material Inconsistency in the Victim's Testimony

Appellant's insistent argument that Jocelyn admitted he had not used his penis but had inserted only his finger into her private part is misleading. A reading of her complaint and whole testimony in court readily and clearly shows that the appellant selectively quoted out of context from and woefully misinterpreted Jocelyn's testimony. Her statements on the stand that she was raped are clear, categorical and worthy of belief, viz.:

Q. What did he do? (sic) to you before he inserted his penis into your vagina?

A. He pulled my legs then he pushed my head against the cement.

Q. My question is: what did Anselmo Butron do to you immediately before he inserted his penis into your vagina?

A. He smelled rugby (sic) and placed his goggles into our pail.

xxx xxx xxx

Q. Did he not insert his finger into your vagina before he inserted his penis into your vagina?

A. He inserted his finger into my vagina two times before inserting his penis into my vagina.

Q. You said that he inserted his penis into your vagina for two times. After that, what did he do?

A. After that, he went downstairs.

Q. When he went downstairs, what did you see from him?

A. I saw and he showed me a knife and told me that if ever I will tell somebody about what happened, he will stab me. (Witness making a slashing motion.) [18] (Underscoring supplied.)

Thus, in simple language bereft of equivocation, the young victim affirmed that the appellant had carnal knowledge of her. She testified that appellant had inserted not only his finger into her private part; it is clear that the finger was subsequently followed by appellant's sexual organ, thus consummating rape.

Indeed, after her cross-examination, she replied "No" to the trial court judge's clarificatory question, "(Y)ou told the court that Anselmo Butron inserted his penis into your vagina?" Her answer, however, does not belie her charge of rape. It will be noted that the witness is a very young girl not yet twelve years old, who might have been

prone to an occasional misapprehension of a question propounded to her on the stand. It is very likely that she misunderstood the judge's clarificatory question as referring to her prior answer which informed the court that the appellant had inserted his finger into her private part. She probably thought that the judge was asking her whether she had told the court that appellant had inserted his penis into her organ; thus, she said "No" to clarify her previous answer to the question which dealt with insertion of the finger, not of the penis.[19] That is, she must have meant to say, "No, that was not what I said."

Jocelyn's sworn answer to the Municipal Circuit Trial Court Judge, who conducted the preliminary investigation, unmistakably intimated that she had been raped, even if her answers did not graphically provide a second-by-second account of the whole sordid incident. To the judge's question on whether appellant had inserted his penis inside her vagina, her answer that "(h)e let me lie down on the floor, it's painful,"[20] sufficiently answered the same in the affirmative. As noted by the investigating judge, Jocelyn "refused to remember the incident." This is not unnatural because "a court cannot expect a rape victim to remember every ugly detail of the appalling outrage, especially so since she might in fact have been trying not to remember them." [21] In the case before us, it is palpable that Jocelyn remembered the painful sexual intercourse forced upon her by appellant. But she just did not want to replay the whole rape in her mind and simply gave her terse but sufficient answer to this crucial question posed by the judge conducting the preliminary investigation.

It is hornbook doctrine that "the testimony of a witness must be considered in its entirety and not by truncated portions thereof or isolated passages therein." [22] Besides, it is an accepted rule that the credibility of a rape victim is not impaired by some inconsistencies, if there are any, in her testimony. [23] Inconsistencies are to be expected of persons of such tender age as the private complainant. Protracted cross-examination of a young girl not accustomed to public trial may produce contradictions that need not necessarily destroy her credibility. Hence, the alleged inconsistency in Jocelyn's testimony as pointed out by Appellant Butron does not render the same incredible or unacceptable.

Lacerated Hymen Not an Essential Element of Rape

That young Jocelyn's hymen was not completely lacerated does not discredit her categorical testimony that she was raped by Appellant Butron. Jurisprudence teaches us that "(i)n the crime of rape, full or complete penetration of the complainant's private part is not necessary as the only essential point to prove is the entrance, or at least the introduction of the male organ into the labia of the pudendum. The present case clearly establishes the crime of statutory rape, i.e., the offender had carnal knowledge of a woman under twelve (12) years of age. x x x The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate rape which is committed even with the slightest penetration of a woman's sex organ." [24]

Furthermore, sexual contact is confirmed by the medical certificate issued by the physician who examined the victim only about 6 1/2 hours after the incident. The presence of sperm cells in the vagina of the victim indubitably shows that there was actual penetration of the private parts, and belies appellant's allegation that he inserted only his finger, not his penis, into the vagina of the victim. As aptly stated by the trial court:

"Between the two (2) versions, the Court believes that there was coitus between the complainant and the accused based on the finding of the physician, Dr. Teonisto K. Mora, as medico-legal expert witness testified that when he examined the complainant he found semen or spermatozoa inside the vagina and injuries in complainant's private parts that he concluded that the complainant was raped. The medical certificate (Exh. C) Dr. Mora issued to the complainant shows the following findings:

'-There was (sic) blood clots surrounding the entrutitus, actual bleeding at the anterior portion of the vaginal canal.

-The hymenal covering was torn stillate-shaped.

-Index finger easily inserted.

-Vaginal smear -- positive for human spermatozoa.'

The defense failed to explain the presence of sperm cell(s) or spermatozoa inside the vagina of the complainant. The findings of the doctor that an erect penis was introduced into the vagina of the complainant and while inside there was ejaculation, and there was semen inside the vagina indicate that there was sexual intercourse. The court does not find any reason for the doctor to prevaricate or falsify his findings or his testimony.”[25]

Dr. Mora elucidated the matter in her testimony as follows:

Q. Now, from the result of your findings, what could have caused these injuries, actual bleeding at the anterior portion of the vaginal canal? etc.

A. It must be that this child had been assaulted physically because as the facts mentioned here that there was (sic) blood clots surrounding the entrutitus, actual bleeding at the anterior portion of the vaginal canal.

[Q.] Meaning, there was insertion of a male organ?

A. Yes, sir.

Q. And it ejaculated?

A. Yes, sir.”[26]

She reiterated the same statement during cross-examination:

“Q. When you were asked by the prosecutor, you right away mentioned of an erected (sic) penis.

A. Because of the presence of spermatozoa.

Q. You said that on the basis of the spermatozoa.

A. Plus others which I mentioned. (Witness pointing to the medical certificate.)”[27]

The argument that the insertion of the penis would have resulted in the complete laceration of the hymen, and not only a “stillate-shaped injury,” is clearly belied by the medical certificate. Speculative at best, such postulation merely reflects appellant’s misplaced swaggering braggadocio concerning his manhood, which does not lessen his guilt or excuse his conduct.

Based on the foregoing discussion, our conscience rests easy upon the moral certainty that Appellant Anselmo Butron is indeed guilty of rape as charged. However, the amount of P30,000.00 imposed by the trial court as civil indemnity shall be increased to P50,000.00 in accordance with prevailing jurisprudence.[28]

WHEREFORE, the appeal is DENIED. The Decision appealed from, convicting Appellant Anselmo Butron of the crime of rape and imposing on him the penalty of reclusion perpetua, is hereby AFFIRMED subject to the modification that he shall pay Jocelyn Bautista civil indemnity in the amount of fifty thousand pesos (P50,000.00).

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 18-24.

[2] Judge Rosarito F. Dabalos presiding.

[3] Rollo, p. 10.

[4] Ibid., p. 11.

[5] Record, p. 17.

[6] The information alleges however that Jocelyn was “a ten-year old minor.” The Court finds this inconsistency immaterial because statutory rape is committed, per Art. 355 of the Revised Penal Code, when the victim is “under twelve years of age.” That the victim was below twelve years of age was not contested by the accused.

[7] Appellee’s Brief, pp. 2-4; rollo, pp. 58-60.

[8] Appellant’s Brief, pp. 3-4; rollo, pp. 37-38.

[9] Ibid., p. 4; rollo, p. 38.

[10] People vs. Tacipit, 242 SCRA 241, 247, March 8, 1995; citing People vs. Lim, 206 SCRA 176, February 13, 1992. See also People vs. Subido, 253 SCRA 196, 204, February 5, 1996.

[11] Appellant’s Brief, p. 4; rollo, p. 38.

[12] Ibid., pp. 4-5; rollo, pp. 38-39.

[13] Records, p. 123. The Court deems it more in accord with ordinary human experience and physical probability that Dr. Kho meant 9 cm. in circumference, and not in diameter. Webster’s Third New International Dictionary defines diameter to be the length of a straight line through the center of an object (thickness), and circumference as the line that bounds a circular plane surface.

[14] Appellants Brief, pp. 5-6; rollo, pp. 39-40.

[15] People vs. Alimon, G.R. No. 87758, p. 12, June 28, 1996; citing People vs. Vallena, 244 SCRA 685, June 1, 1995, and People vs. Tismo, 204 SCRA 535, December 4, 1991.

[16] People vs. Ramirez, G.R. No. 97920, pp. 12-13, January 20, 1997; quoting People vs. Sanchez, 250 SCRA 14, November 16, 1995, citing United States vs. Ramos, 1 Phil. 81, (1901); Anciro vs. People, 228 SCRA 629, December 17, 1993; and People vs. Repollo, 237 SCRA 436, October 7, 1994.

[17] People vs. Espinoza, 247 SCRA 66, 72, August 3, 1995; citing People vs. Guibao, 217 SCRA 64, January 15, 1993.

[18] TSN, p. 4, January 6, 1993.

[19] Ibid. pp. 9-10.

[20] Record, p. 10.

[21] People vs. Jimenez, 250 SCRA 349, 356, November 28, 1995; citing People vs. Adlawan, 83 Phil. 194, (1949).

[22] People vs. Sagaral, G.R. No. 112714-15, p. 8, February 7, 1997; citing People vs. Natan, 193 SCRA 355, January 25, 1991.

[23] Ibid., pp.8-9; citing People vs. Gozum, 135 SCRA 295, February 28, 1985, and People vs. Abapo, 239 SCRA 373, December 22, 1994.

[24] People vs. Lazaro, 249 SCRA 234, 242-243, October 12, 1995; citing People vs. Castillo, 197 SCRA 657, May 29, 1991, and People vs. Palicte, 229 SCRA 543, January 27, 1994.

[25] Rollo, pp. 22-23.

[26] TSN, January 4, 1993, pp. 15-16.

[27] Ibid., p 23.

[28] People vs. Lazaro, supra, p. 243.

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