

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL PEREZ Y MAGPANTAY, ACCUSED-APPELLANT.

G.R. No. 113265. March 05, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Kalookan City, Branch 124, dated April 5, 1991, in Criminal Case No. C-35033 finding appellant Manuel Perez y Magpantay guilty of rape and sentencing him to suffer the penalty of reclusion perpetua. Appellant was also ordered to indemnify his victim, Jennifer Dimaano, the sum of P50,000.00 and to pay the costs.

Appellant is the common-law husband of the victim's mother, Yolanda Casapao Dimaano.[2] He and Yolanda have been co-habiting since 1980 when the latter left her husband for appellant. The 12 year-old victim, Jennifer Dimaano, is the elder of the two daughters of Yolanda by her estranged husband. Jennifer's Certificate of Live Birth (Exhibit "A") shows that she was born on April 26, 1978 and thus, was already 12 years of age at the time of the incident on May 31, 1990. Yolanda has also borne appellant two children. All of them live in a one-story shanty with no partitions located at Block 54, Lot 3, Dagat-dagatan, Kalookan City.

In an information dated June 5, 1990, appellant was charged with rape allegedly committed as follows:

That on or about the 31st day of May 1990, in Kalookan City, Metro-Manila, and within the jurisdiction of this Honorable Court, above-named accused, with lewd design and taking advantage of his relationship as his (sic) stepfather, did then and there, willfully, unlawfully and feloniously lie and have sexual intercourse with one JENNIFER DIMAANO y CASAPAO, a minor of 12 years, against her will and without her consent.

CONTRARY TO LAW.[3]

On arraignment, appellant pleaded not guilty to the charge. Trial then commenced.

The trial court summed up the prosecution's evidence as follows:

At about 6:00 A.M. on May 31, 1990, Manuel Perez woke up Jennifer who lying asleep on the cemented floor of the house (TSN-Sept. 5, 1990, pp. 4, 26). The door and the windows of the house were closed. (TSN-Sept. 5, 1990, pp. 26-27). Manuel Perez ordered Jennifer to remain lying down on the cemented floor and began undressing Jennifer. Manuel then kissed the cheeks of Jennifer. He proceeded to kiss and touch the breasts of Jennifer as well as the upper part of Jennifer's body. (TSN-Sept. 5, 1990, pp. 5, 28). Manuel, who was dressed in short pants, did not remove the same but he unzipped the zipper of his short pants. He pulled the legs of Jennifer apart and placed himself on top of the body of Jennifer. He then inserted his private part inside the private part of Jennifer. (TSN-Sept. 5, 1990, pp. 5, 36). All this time Jennifer protested and complained of pain but was unable to resist because Manuel threatened to kill her. After satisfying his lust, Manuel again threatened Jennifer not to tell anybody about what happened to her. (TSN-Sept. 5, 1990, pp. 5, 29). Jennifer left the house after the incident and proceeded to the nearby house of her aunt, Othelia Marco, who was then out of the house. Jennifer glanced at the clock in Othelia's house and found out that it was 6:00 A.M. in the

morning of May 31, 1990 (TSN-Sept. 9, 1990, pp. 14-15). Jennifer remained outside the house until Manuel called her later on to clean the bleedings. (TSN-Sept. 5, 1990, p.16).[4]

It was not until June 3, 1990 that Jennifer disclosed her harrowing experience to a certain Malou (Marilou Castellano),[5] a kumadre of her mother, who was then staying with them. Malou promised to help her. She brought her to the Navotas Police Station in order to report the rape incident. The Navotas police, however, told them to report the matter to the Malabon Police Station. Malou and Jennifer then proceeded there, but they were advised that the matter fell under the jurisdiction of the Kalookan City police force. Malou and the victim, however, did not proceed to the Kalookan City police force as it was already late in the evening.

The next day, Jennifer reported the incident to her aunts, Othelia Marco and Myrna Casapao. They then accompanied Jennifer and Malou to the Kalookan City police station, where Jennifer filed a complaint for rape against appellant. After the police investigation, Jennifer was advised to go to the then-Philippine Constabulary (PC) Crime Laboratory in Camp Crame, Quezon City for a physical examination. However, it was only on June 13, 1990, that Jennifer submitted herself to a physical examination.

Dr. Manuel Aranas, a medical officer of the PC Crime Laboratory, examined Jennifer and found her to be "in non-virgin state physically." [6] He found that her hymen had a deep healed laceration at 5 o'clock and a shallow healed laceration at 10 o'clock. [7] In his interview with Jennifer, she disclosed to him that appellant first sexually abused her when she was 8 years old.

In his defense, appellant resorted to a bare denial. He claimed that at the time of the incident, he was in the house sleeping with his two infant children. He said his common-law spouse, Yolanda, was just outside washing their clothes. He claimed that the charges against him were fabricated. He said Jennifer accused him of rape because he had chastised Jennifer for borrowing money by using his name. He added that Jennifer was pressured by Yolanda's relatives who wanted Yolanda to be separated from him. [8]

To corroborate his story, appellant's counsel put Yolanda, the victim's mother, on the witness stand. She stoutly insisted that appellant could not have raped her daughter, Jennifer. She also denied Jennifer's claim that Yolanda washed clothes for a living and thus was not in their house when the rape occurred. Yolanda testified that at the time of the alleged rape, she was doing the family laundry beside a water tap which is just two steps from the door of their house. The rape could not have taken place without her knowledge. She admitted that her kumadre, Malou, stayed at their house for several days, but claimed that the reason Malou assisted Jennifer in charging appellant with rape was that Malou was in love with Manuel but her love was unrequited. [9]

The prosecution then presented Jennifer anew as a rebuttal witness. She vehemently denied the allegations of the defense that she is a liar and she frequently borrowed money from their neighbors using appellant's name. She admitted that the washing of clothes in Dagat-dagatan was done in a public faucet, but this was located some five to six meters away from the door of their house. As to her mother's claim that she was not a laundry woman but only washed the family's clothes, Jennifer declared that she was the one who did the family laundry and at the time of the incident, her mother was in Navotas, washing other people's clothes for a fee.

Jennifer's aunt, Myrna Casapao, likewise took the stand anew as a rebuttal witness. Myrna denied that she forced her niece to charge appellant with rape. She averred that the victim voluntarily filed the complaint with the Kalookan City police.

The defense opted not to present any evidence on sur-rebuttal.

On April 5, 1991, the trial court rendered its judgment in Criminal Case No. C-35033, thus:

WHEREFORE, in view of the foregoing, this Court finds the accused MANUEL PEREZ y MAGPANTAY

guilty beyond reasonable doubt for the commission of rape on Jennifer Dimaano, as charged in the Information, which is punishable under Article 335 of the Revised Penal Code, as amended. This Court hereby sentences said accused MANUEL PEREZ y MAGPANTAY to suffer imprisonment of reclusion perpetua, there being no mitigating circumstances, to indemnify the victim, Jennifer Dimaano y Casapao, in the amount of P50,000.00 as consequential damages and to pay the costs.

The accused shall be entitled to the full period of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended, provided the conditions enumerated therein have been complied with.

SO ORDERED.[10]

Hence, this instant appeal with this sole assignment of error:

THE TRIAL COURT ERRED IN NOT FAILING TO NOTICE THAT THE TESTIMONY OF THE ACCUSED[11] WAS SEVERELY AND SUBSTANTIALLY FLAWED ON SEVERAL MATERIAL POINTS.

Appellant contends that it was error for the trial court to have convicted him based solely on complainant's testimony. He submits that a closer scrutiny of her declarations in open court will show that her testimony was neither consistent nor credible. Appellant points out that on direct-examination, she claimed she was asleep and was only awakened when appellant approached her and began undressing her, thus:

Q: Jennifer, do you recall of (sic) any unusual incident that took place on May 31, 1990?

A: Yes, Madam, I was raped by Manuel Perez.

Q: And what time did the rape take place?

A: Six o'clock in the morning, Madam.

Q: Can you relate to us how this rape took place?

A: Yes, Madam. I was sleeping then and I was awoken(ed) when Manuel Perez approached me.

Q: Then, what happened?

A: He undressed me, Madam.

Q: And then next?

A: He kissed my cheeks, Madam.

Q: Continue.

A: He also kissed my breast and upper part of my body, Madam.

Q: Then, what happened?

A:

Then he inserted his private part to my private part, Madam.[12]

On cross-examination, however, she gave a completely different narration. Instead of being asleep and then awakened by appellant's approach, she declared that she was outside of their house, only to be called inside by appellant, and made to lie down. She was then undressed preparatory to sexual intercourse. The assailed testimony reads:

Q:

But you can remember how the accused Manuel Perez undressed you? Will you tell this Honorable Court how your clothing was removed?

A: I was then lying on the cement floor when he undressed me, sir.

Q: Why were you lying on the cement floor on May 31, 1990 at 6:00 o'clock in the morning?

A: Because he ordered me to lie down, sir.

Q: Before he ordered you to lie down, where were you during that time?

A: I was then outside and he called me, sir.

Q: And you know that Manuel Perez was going to rape you again, when he ordered you to lie down?

A: Yes, sir.[13]

Appellant now insists that these inconsistencies show that private complainant was neither a credible nor a reliable witness.

For the appellee, the Office of the Solicitor General (OSG) counters that there is no inconsistency or fundamental self-contradiction in any of complainant's statements which would render them incredible or unreliable. Private complainant was merely narrating the different events, which led to the rape as they happened in chronological order.

In rape cases, the lone testimony of the offended party, if free from serious and material contradictions, is sufficient to sustain a verdict of conviction.[14] In the instant case, we find the alleged inconsistencies relied upon by appellant in his bid for acquittal, immaterial and irrelevant. The linchpin of complainant's testimony is that appellant raped her. On this matter, she did not waver or contradict herself. What appellant makes much of are trivial issues that cannot foreclose the fact that appellant had carnal knowledge of her. Thus, whether she was asleep when appellant approached her or awake when appellant called her, prior to the ravishment, are trivial details. For a discrepancy to serve as basis for acquittal, such must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction.[15] Moreover, even the most candid witnesses oftentimes make mistakes or variations in their declarations, considering the treachery of human memory. Here, we find that an ample margin of error and understanding should be accorded the 12-year old rape victim. Minor lapses are to be expected when a person is recounting the details of a horrifying experience. Hence, she cannot be expected to mechanically retain and then give an accurate account of every single lurid detail of her harrowing experience.[16] Thus, far from eroding her credibility, her lapses could instead constitute signs of veracity for they show that her testimony was neither rehearsed nor contrived.[17]

We also find that a thorough perusal of complainant's complete testimony in this case shows that she was able to adequately explain the so-called contradiction that appellant is harping on for a reversal of his conviction. On re-direct examination, she declared:

Q: Jennifer, before you were raped, what were you doing on May 31, 1990?

A: I was sleeping, sir.

Q: And how did you wake up?

A: When Manuel Perez kissed me, sir.

Q: And what did you do when Manuel Perez kissed you?

A: I tried to stand up, sir.

Q: And when you tried to stand up, what did he do?

A: Manuel Perez told me to lie down and if I will not do so, he will kill me, sir.

Q: And what did you do?

A:

I do (sic) what he said. I lied down because he told me if I will not do so, he will kill me.[18]

From the foregoing, it is evident that her testimony on direct-examination that she was awakened when appellant approached her and kissed her is not at all inconsistent with her subsequent declarations on cross-examination that when she woke up and tried to stand, appellant made her lie down.

Appellant next contends that complainant's ability to remember the exact time she was raped further opens her credibility to attack. He insists that in her affidavit, she declared before the public prosecutor conducting the inquest that she was raped at 7:00 A.M. of May 31, 1990. In open court, however, she testified with exactitude that the rape actually place at 6:00 A.M. of said date. Appellant stresses that this fundamental discrepancy is more than enough to negate her credibility. He also submits that her act of going to her aunt's house to look at the clock is incongruent with the demeanor of one who has supposedly just been ravished.

These arguments lack merit. With respect to the discrepancy of the time of the rape, settled is the rule that in rape cases, the date or time of the incident is not an essential element of the offense and therefore need not be accurately stated.[19] Furthermore, inconsistencies between an affidavit and statements made in open court do not necessarily damage offended party's credibility, for affidavits are generally incomplete or even inaccurate and cannot be considered final repositories of truth.[20] As to appellant's assertion that the offended party's conduct after the alleged sexual assault is inconsistent with one who has supposedly just been raped, the rule is that there is no standard form of behavioral response when one is confronted with a strange or startling experience.[21] Otherwise put, nobody can exactly tell how a victim of sexual transgression is supposed to act or behave after her ordeal.

Having examined the entire record, we find that the totality of the evidence presented by the prosecution proves beyond doubt all the elements of rape.[22] Private complainant testified as to how appellant had carnal knowledge of her. The carnal knowledge took place under circumstances of violence and intimidation. Her testimony is supported by the results of the medico-legal examination conducted upon her at the police crime laboratory. Moreover, she positively pointed to appellant in open court as the person responsible for her defilement. Against said positive identification, appellant's puerile defense of denial will not hold water, for he does not even deny that he was with the offended party at the time of the commission of the crime. Moreover, his attempts to cast ill motive on private complainant or her family for fabricating the charge of rape against him have no evidentiary weight. It would be most unnatural for a young and immature girl to fabricate a story of rape by her mother's common-law spouse; allow a medical examination of her genitalia; and subject herself to a public trial and possible ridicule, all because her maternal relatives want her mother to separate from her common-law spouse.[23] Perforce, appellant's conviction must stand.

As to the penalty imposed, we find that the trial court correctly sentenced appellant to reclusion perpetua. Note that the rape complained of in this case took place on May 31, 1990 or way before the restoration of the death penalty for cases of qualified rape by virtue of R.A. No. 7659. The death penalty law took effect only on December 31, 1993, as per our holding in *People v. Simon*, 234 SCRA 555, 569 (1994).

On the award of damages, we find that a modification is in order. The trial court awarded offended party the sum of P50,000.00 as "consequential damages." The award of P50,000.00 to the rape victim is more precisely termed as civil indemnity. The imposition is mandatory upon the finding of rape.[24] In addition, the amount of P50,000.00 is also awarded to a victim of rape as moral damages.[25] Hence, the trial court's decision must be modified in this respect.

WHEREFORE, the decision of the Regional Trial Court of Kalookan City, Branch 124 dated April 5, 1991, finding appellant Manuel Perez y Magpantay guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of reclusion perpetua is **AFFIRMED WITH THE MODIFICATION** that appellant is also ordered to pay the victim, Jennifer Dimaano y Casapao, the sum of P50,000.00 as civil indemnity and another sum of P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 17-23.

[2] In the assailed decision, the victim's mother's name is given as "Nellie Casapao." She is also sometimes referred to in the transcripts as "Nelly" or "Nelia." Exhibit "A" for the prosecution consisting of the victim's Certificate of Live Birth, however, shows that her real name is Yolanda Casapao Dimaano.

[3] Records, p. 1.

[4] Supra note 1, pp. 17-18.

[5] Also referred to in the records as "Malou Reyes."

[6] Exhibit "E," Folder of Exhibits, p. 5.

[7] Ibid.

[8] Supra note 1, at 20.

[9] Id. at 21.

[10] Rollo, p. 23.

[11] This should read "VICTIM" or "PRIVATE COMPLAINANT."

[12] TSN, September 5, 1990, pp. 4-5.

[13] Id. at 28-29.

[14] People v. Villaraza, G.R. Nos. 131848-50, September 5, 2000, p. 17.

[15] People v. Antonio, et al., G.R. No. 128149, July 24, 2000, pp. 7-8, citing People v. Bato, G.R. No. 134939, February 16, 2000, pp. 6-7; People v. Sancha, G.R. Nos. 131818-19, February 3, 2000, p. 8.

[16] People v. del Rosario, G.R. No. 134581, October 26, 2000, p. 9.

[17] People v. Benito, 303 SCRA 468, 477-478 (1999), citing People v. Silong, 232 SCRA 487, 494 (1994), People v. Querido, 229 SCRA 745, 750 (1994).

[18] TSN, September 12, 1990, p. 2.

[19] *People v. Castillo*, G.R. No. 130205, July 5, 2000, p.8, citing *People v. Pagpaguitan*, 315 SCRA 226, 240 (1999), *People v. Garcia*, 346 Phil. 475, 491 (1997).

[20] *People v. Lampaza*, 319 SCRA 112, 122 (1999), citing *People v. Pontilar*, 275 SCRA 338, 354 (1997), *People v. Española*, 271 SCRA 689, 709 (1997).

[21] *People v. Paraiso*, 319 SCRA 422, 435 (1999).

[22] Rev. Pen. Code. art. 335. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

(1) By using force or intimidation;

(2) When the woman is deprived of reason or otherwise unconscious; and

(3) When the woman is under twelve years of age or is demented.

[23] *People v. Brigildo*, G.R. No. 124129, January 28, 2000, p. 10.

[24] *People v. Garcia*, G.R. Nos. 137379-81, September 29, 2000, p. 16, citing *People v. Antonio*, G.R. No. 122473, June 8, 2000, p. 10.

[25] *People v. Lomibao*, G.R. No. 135855, August 3, 2000, p. 18.

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