

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.FLORENTINO ABAD, ACCUSED-APPELLANT.

G.R. No. 114144. February 13, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from a decision of the Regional Trial Court of Tarlac, Tarlac, rendered on 27 December 1993 finding accused-appellant guilty of the crime of Rape and sentencing him as follows:

WHEREFORE, judgment is hereby rendered convicting the accused of the crime of rape punished under Article 335 of the Revised Penal Code and sentences the accused to suffer the penalty of reclusion perpetua with all its attendant accessory penalties.

The Court further orders the accused to indemnify the offended party in the amount of P50,000.00 and the further sum of P30,000.00 as exemplary damages.

SO ORDERED.

Jenny Manaloto was a thirteen-year old girl who lived with her maternal grandparents since birth in their home in Barangay De La Paz, Tarlac, Tarlac. Her parents were separated. From infancy, she was raised by her grandparents who provided for her day-to-day needs and sent her to school.

One morning, sometime in the third week of April 1991, while her grandmother was away and she was attending to her daily chores, the accused, her grandfather, summoned her to one of the rooms in their house, pointed a bladed weapon at her neck, and tried to remove her panties. When she resisted, he slapped her. Succeeding in removing her underwear, the accused laid her down on the bamboo floor of the room, one hand still grasping the weapon. He then spat on his other hand, lubricated his penis with saliva, then proceeded to defile Jenny.[1]

According to Jenny, the accused forced himself on her an average of four times a month for the succeeding thirteen months, or about fifty-two (52) times. She informed no one of the sexual attacks against her. However, after an attack on 19 May 1992, she summoned enough courage to visit her estranged mother and inform her of the incidents. She was promptly brought to the Tarlac Provincial Hospital for medical examination where the examining physician, Dr. Maria Carmela Estrada found essentially negative gynecological findings except for a non-intact hymen.[2]

The accused-appellant denied the accusations against him, and in his own defense claimed that his granddaughter voluntarily left his house on 19 May 1992 after a scolding where she was hit and slapped by the former. According to him, he usually hit and scolded her whenever she was caught stealing rice (which she sold).[4] To bolster his claim, he suggested that his granddaughter had every occasion to report the alleged attacks during the thirteen-month period, but did not do so in spite of the fact that there were occasions where she was alone in the house, or free to go out or to sleep with other relatives.[5] Additionally, appellant contended that absence of relevant clinical findings in the gynecological examination conducted two days after the last attack, ought to have

ruled out the probability that the complainant was raped.

The trial court found the testimony of Jenny Manaloto credible and convicted the accused. Hence, this appeal, interposing the following assignment of errors:

I

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT WHICH IS HIGHLY INCOMPETENT AND UNRELIABLE AND IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FLORENTINO ABAD OF THE CRIME OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We affirm.

Our courts have been traditionally guided by three settled principles in the prosecution of the crime of rape: 1) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; 2) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and 3) the evidence of the prosecution must stand on his own merits and cannot draw strength from the weakness of the evidence of the defense.[6].

The prosecution anchored its case against the accused-appellant exclusively on the basis of the complainant's testimony. For obvious reasons, it was the defense, not the prosecution which presented the medical examination, though this was procured by the complainant's mother prior to the filing of the complaint. While we find nothing wrong with rape convictions obtained mainly on the basis of the complainant's testimony, the testimony should be clear and consistent and supported by the physical evidence. When an alleged rape victim says that she was defiled, she says all that is necessary to show that rape has been inflicted on her provided her testimony meets the test of credibility.[7] That determination is made by the court which has the opportunity to observe the demeanor of the complainant and the witnesses first hand and this Court will not, in the absence of a palpable misperception or misapprehension of facts, interfere with such court's original findings.

In the case at bar, much was made by the defense about alleged inconsistencies in the complainant's testimony mainly as to the kind of weapon used and the relative positions of the accused and the complainant during the incident complained of. Under the circumstances, and considering the age of the complainant, we find these so-called inconsistencies of little significance.

As to the kind of weapon, appellant makes much of the fact that the complainant was not sure as to whether or not a bolo (a large weapon) or a knife (relatively smaller than a bolo) was used to threaten her during the rape, to wit:

PROSECUTOR LLOBERA:

Q Once inside the room, what else happened, if any?

A When I was already inside the room, he removed my panty and then he pointed a bolo to me. (TSN, p. 6, Nov. 25, 1992; Exhibits '1-A')

ATTY. OVEJERA:

Q Who (sic) comes first, the act of removing your panty or the act of making you lie down?

A When the small knife was pointed at my neck, sir, that was the time when he simultaneously removed my panty. (TSN, p. 7, May 13, 1993; Exhibit '2-A')

However, appellant conveniently ignores the fact that throughout her testimony, the complainant consistently interchanged the phrase "small bolo" with the word "knife." To a person not used to handling deadly bladed weapons, a small bolo could be a knife; a large knife, a bolo. The supposed inconsistency" is more apparent than real. Moreover, curiously absent from appellant's lifted quotations from the transcript of stenographic notes was the following exchange, which clearly indicates that the complainant liberally mixed up the term "small bolo" with the word knife:

ATTY. OVEJERA:

xxx

Q When you entered the room, what happened next?

A He held me, sir, and at the same time he pointed a small bolo at my neck.

Q Will you demonstrate how he held you with a knife?

A He held me and pointed the small knife at my neck, sir. [8]

With respect to the alleged discrepancies in the complainant's testimony regarding the defendant's relative positions during the incident referred to in the complaint, it is plainly obvious, from a careful reading of the transcript of the testimony, that the inconsistencies were brought about by the lower court's and the defendant counsel's confusing interchanging of the words "right" and "left" when they referred to the (defendant's) hand which held the knife, and the hand which grasped the complainant's hand. Any adult would have been similarly confused by the dizzying trend of questioning. For example:

COURT:

Q What hand was holding the bolo?

A The left hand, sir.

ATTY. OVEJERA:

Q What did he do next?

A After that, sir, he removed my panty and laid me down.

Q What hand was he (sic) used in removing your panty?

A His right hand, sir.

COURT:

Q You mean to say, he removed your panty with his right hand?

A Yes, sir. [9]

xxx

ATTY. OVEJERA:

Q Madam Witness, the situation you have stated was that your grandfather was on top of you and making some motions to enter his penis and he was only holding your left hand with his right hand only, you were not injured by the knife?

A The left hand was holding the knife and his right hand was pinning my right hand, sir.

COURT:

Q The knife was being held by the left hand?

A Yes, sir.

Q How can he hold the knife on your neck by using his left hand and then pressing your right hand with his right hand, you mean to say the position of the accused was like that?

A No, sir. My grandfather was behind me.

Q I thought he went on top of you?

A At first he pointed the knife at my neck and he stayed behind me at the same time, sir.

ATTY. OVEJERA:

Q The situation was that you were only laid down on the floor and your grandfather was on top of you?

PROS. LLOBRERA:

May we know the situation? What situation?

ATTY. OVEJERA:

Q His grandfather was on top of her and one of her hands were held by her grandfather. Was there a situation like that?

A When he was on top of me that was the time when he held my hand, sir.

COURT:

Q What hand was that?

A My right hand, sir.

Q With what hand did he pin down your right hand?

A His right hand, sir.

Q You mean to say, your right hand was being pinned down by your right hand?

A I cannot remember anymore, sir, which hand was pinning my right hand because we were lying together at that time and our heads were over there.

Q But you are very sure that he was holding the bolo with his right hand?

A Yes, sir.

COURT:

Alright, proceed.

ATTY. OVEJERA:

Q And the bolo was pointed at the left portion of your neck?

A Yes, sir.

Q And while your grandfather was on top of you and inserting his private (sic) penis on you he was holding the knife with his left hand?

A Yes sir.

COURT:

Q If the left hand of the accused was holding the bolo and the right hand was pressing your right hand, how was (sic) he put saliva on his penis?

A He already placed saliva on his penis before he laid me down, sir.

xxx[10]

At one point during questioning, the lower court referred to the bolo as being held by the complainant's left hand. Later during the same testimony, the court itself either intentionally or unintentionally referred to the bolo during a question as being held by the defendant's right hand. Much later, the defendant's attorney suggested that the bolo was held by the right hand to which the complainant, confused by the rapid exchange of questions and unable to follow, answered yes.

Notwithstanding these minor inconsistencies, the complainant was clear and consistent as to what actually transpired during the first attack in April of 1991. Describing this attack with the kind of detail which would be difficult to rehearse, the complainant, in the face of the blistering questions from the defendant's counsel narrated:

ATTY. OVEJERA:

Q What did he do next?

A After that, sir, he removed my panty and laid me down.

Q What hand was he (sic) used in removing your panty?

A His right hand, Sir.

COURT:

Q You mean to say he removed your panty with his right hand?

A Yes, sir.

ATTY. OVEJERA:

Q But before he removed your panty, what other things he had done to you?

A He slapped me, sir.

Q Why did he slap you?

A So that he will be able to lay me down, sir.

Q And what were you doing then?

A I was crying, sir.

Q Who (sic) comes first, the act of removing your panty or the act of making you lie down?

A When the small knife was pointed at my neck, sir, that was the time when he simultaneously removed my panty.

Q You said he made you lie down. On what part of the house?

A At the bamboo floor of the room, sir.

Q When he made you lie down, will you tell how your grandfather was then holding the knife?

A He was still holding the knife with his left hand and after that he laid on top of me, sir.[11]

The credibility of a rape victim is not destroyed by the few minor inconsistencies in her testimony. Paradoxically, they may be badges of spontaneity: they indicate that the witness was unrehearsed.[12] On the whole, therefore, complainant's description of the rape incident on April, 1991 was clear and convincing and worthy of this Court's full faith and credit.

In an attempt at exculpation, appellant makes much of the fact that the gynecological findings of the resident, Dr. Maria Carmela Estrada were essentially negative,[13] and that the complainant took over a year to report the attacks. These contentions cannot succeed.

In her testimony, Dr. Estrada candidly admitted that she was only into her first year of residency at the Tarlac Provincial Hospital at the time of the examination, that a year prior to her appointment at the Tarlac hospital, she was merely a general practitioner in Camiling, Tarlac[14] with little practical experience in Gynecology or in the handling of rape cases.[15] Furthermore, from the testimony, it was quite obvious that she was not a board-certified Gynecologist.[16] Considering the examining physician's inadequate experience and supervised training in Gynecology, the said medical examination findings could not be accorded much significance by this Court.

Furthermore, the failure of the complainant to immediately report the rape to the immediate members of her family or to the police authorities, does not, in this jurisdiction, detract from her credibility, her hesitation being attributable to her age, the moral ascendancy of the accused appellant and his threats against the former.[17]

Altogether therefore, we consider as futile the attempts of the appellant to raise doubts as to the testimony of the complainant. No woman, especially one of tender age would concoct a rape complaint, allow a gynecologic examination and 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. Appellant raised Jenny virtually since birth. In the natural course of events, Jenny ought to be very grateful to the appellant, her grandfather, for bringing her up. Appellant has not demonstrated, to the satisfaction of this Court, why his granddaughter, his own flesh and blood, would turn against him and accuse him of a most dastardly deed. Even at her age, she would certainly know that if convicted her grandfather would surely suffer incarceration for most of his remaining life.[18] The absence of any motive on the part of the complainant together with her convincing testimony, is certainly fatal to the defense in the instant case.

IN VIEW HEREOF, the judgment of the trial court, finding accused-appellant guilty beyond reasonable doubt of the crime of Rape is AFFIRMED, in toto, with costs against accused-appellant.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] TSN, November 25, 1992, pp. 6-16.

[2] Record, p. 16. Examination of May 21, 1991 signed by the examining physician showed the following pertinent findings: The speculum examination showed a pink cervix with no (-) erosions, no erosions on the vaginal vault, hymen, not-intact. PE-cervix closed, soft with no (-) tenderness, uterus not enlarged, no (-) vaginal discharge, no (-) vaginal bleeding. Analysis for sperm - negative.

[3] TSN, September 23, 1993, p. 2. (Florentino Abad).

[4] Id., at 7.

[5] Id., at 5-6.

[6] *People vs. Godoy*, 250 SCRA 676 [1996].

[7] *People vs. Sanchez*, 250 SCRA 14 (1995).

[8] TSN, May 13, 1993, pp. 5-6. (underscoring supplied).

[9] TSN, May 13, 1993, p. 6.

[10] TSN, May 13, 1993, pp. 11-14.

[11] TSN, May 13, 1993, pp. 6-7.

[12] *People vs. Conde*, 252 SCRA 681 (1996).

[13] See, *supra*, note 2.

[14] *Id.*, September 13, 1993, p. 4 (The doctor's line of training was not even indicated in the record nor verified during her testimony).

[15] *Id.*

[16] *Id.*, at 3-4.

[17] *People vs. Dio*, 226 SCRA 176 (1993).

[18] The act complained of was committed with the use of a deadly weapon. The alternative circumstance of relationship, alleged in the complaint aggravates the crime. Under Article 335 of the Revised Penal Code as amended by R.A. 7659, the proper penalty would be Death. However, the crime was committed before the death penalty was imposed. Assuming the crime was committed after the re-imposition of the death penalty for certain heinous crimes (R.A. 7659) only the lesser penalty of reclusion perpetua could be imposed on the accused who is over seventy years of age.

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