

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ALBIOR Y GEBAO, ACCUSED-APPELLANT.

G.R. No. 115079. February 19, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1], Quezon City, finding appellant, Francisco Albior, guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim, Lorena Tolentino, moral damages in the amount of P50,000.00, and to pay the costs.

Appellant was charged under an Information[2] which reads as follows:

That, on or about the 7th day of April, 1993 in Quezon City, Philippines, the above-named accused, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned LORENA TOLENTINO y BACATANO, a minor, 11 years of age, without her consent and against her will, to the damage and prejudice of said offended party.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty." Thereafter, trial commenced.

Complainant Lorena Tolentino, who said she was born on November 29, 1981, testified that, at around noontime of April 7, 1993, appellant, the live-in partner of her mother, raped her in their house at Sitio Militar, Bahay Toro, Quezon City. He inserted his penis inside her vagina while poking a knife on her neck and threatening to kill her if she would shout. She said appellant previously abused her at least five times. However, each time she told her mother, the latter just dismissed it as a sign of appellant's affection. She eventually told her Ate Malou.[3] With their brother and Malou, they reported the incident to the barangay captain.[4]

According to Malou, whose full name is Marilou Avillano, she went to the house of her mother in the morning of February 5, 1993 and saw appellant on top of her half-sister, Lorena. Both were naked. She told her mother about it but the latter merely instructed Malou to let Lorena sleep in Malou's house. On April 8, 1993, at about 6:00 P.M., Malou said she saw appellant kicking Lorena in front of her house. When Malou confronted him, appellant pulled out a bladed weapon and chased her away.[5]

The prosecution offered the testimony of Dr. Jesusa Q. Nieves, the medico-legal officer who examined complainant, but her testimony was dispensed with since appellant already admitted the contents of Dr. Nieves' medico-legal report to the effect that Lorena was no longer a virgin at the time she was brought to the Crime Laboratory Service, PNP GHQ, Camp Crame, Quezon City on April 10, 1993.[6]

Appellant denied he raped Lorena. He testified that he was at home on April 7, 1993 with his common-law-wife, Lorena, his other children, namely, Alex, Jimmy and Viola and their respective spouses. He said he was being falsely accused by Marilou because he once slapped Lorena whom he referred to as "Baby." [7]

Erselina Bacatano, the mother of Lorena, testified for appellant. She said on April 7, 1993 she was at home with her husband because she was not feeling well. She claimed Lorena's complaint was false and fabricated upon the insistence of Malou who had an ax to grind against appellant.[8]

Shirley Cordero, a neighbor of appellant corroborated the testimony of Bacatano that the latter was sick and stayed at home on April 7, 1993. Cordero said she was in the house of appellant from 12:00 noon until 3:00 P.M. of the said day.[9]

On March 15, 1994, the trial court rendered a decision finding the appellant guilty. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Francisco Albior y Gebao GUILTY beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay Lorena Tolentino the sum of P50,000.00 as moral damages and to pay the costs of the suit.

SO ORDERED.[10]

Appellant interposed this appeal alleging that the trial court committed the error of:

- . . . FINDING THE ACCUSED GUILTY OF THE OFFENSE CHARGED DESPITE UTTER LACK OF CLEAR FACTUAL EVIDENCE TO SUPPORT THE CONVICTION

In gist, appellant raises the issue of the credibility of the complainant-witness. He argues that the charge of the victim that she was raped is hard to believe, considering the alleged numerous inconsistencies in her testimony as well as the contradictions between her and Malou's testimonies. Allegedly among them:

(1) Complainant declared that she was advised to stay with her Ate Malou, after the fifth rape. However, during her previous answer, she said that after the second rape when she told her mother, she was already advised to sleep with her sister. The court even asked her where she stays during daytime and she answered she stayed in the house of her sister.

(2) Complainant said she was raped in a one-room house of her Tita Nita on April 7, 1993. However during the cross-examination, she admitted that the offense was committed at the residence of her mother and as testified by witnesses, said house has four rooms wherein the accused, his wife and Lorena occupied one of the two rooms of the ground floor.

(3) Complainant avers that she lived with her Ate Malou when she was grade III when in fact she admitted before the court in her previous declaration that she start[ed] living with her Ate Malou sometime in June, 1993.

(4) Likewise the statement given by the complainant that everytime she was raped by her stepfather, her mother would answer "Lambing lang iyon sa iyo" is highly improbable and unbelievable because no mother in this world would allow her daughter to be sexually assaulted for 5 times by her own husband without even lifting a finger to protect her child and for that matter to testify in court against her.

(5) The statement by the complainant that blood spots came out from her private part during the fifth rape and not during the first rape is inherently impossible....

(6) Complainant admitted before the court that she lived with her mother and stepfather only for the duration of 1992 when in fact the crime being imputed to the herein accused happened on April 7, 1993.[11]

Appellant also stresses that no physical evidence of rape was presented by the prosecution. As shown by the medical reports, he claims there are no signs of violence inflicted on complainant nor any indication of the

presence of spermatozoa in her genitalia. He likewise argues that if there was penetration of her genitalia, then complainant's hymen and vagina would have been severely lacerated. This was not so in Lorena's case, he adds, based on the medical-legal report. In effect, the appellant is assailing the sufficiency of the prosecution's evidence[12] and asserts that it is not enough to warrant his conviction.[13]

The Office of the Solicitor General (OSG), for the State, argues that alleged inconsistencies and contradictions in complainant's testimony pertains only to minor and collateral matters and not upon the basic aspect of the crime charged. Hence they do not justify reversal of his conviction and sentence.

In reviewing rape cases, we are guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but even 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; and (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.[14]

In support of his argument, appellant quotes the transcript of stenographic notes regarding Lorena's testimony, thus:

Court: Now, you said your mother told you to sleep with your elder sister. Did you do it as you were told?

L. Tolentino: Yes, your Honor.

Court: What do you mean? You just slept there at night or you stayed with your sister the whole day?

L. Tolentino: In the evening I sleep there every night but I only sleep in our house if Tio Fransing is not there.

Court: How about in the daytime, where do you stay?

L. Tolentino: At my elder sister's house.

Court: So, in other words, you are living already with your sister?

L. Tolentino: Yes, your Honor.

Court: That has been when?

L.Tolentino: From the time I told my sister about it.

Court: Can you recall more or less the date? When was the first time you lived with your sister?

L. Tolentino: I cannot remember anymore, your Honor.

Court: So that after April 7, 1993 or before April 7 when you started living with your sister?

L. Tolentino: 1993

Court: What month in 1993? Was that before or after April, 1993?

L. Tolentino: June, your Honor.

Atty. Bayani: June 1993?

L. Tolentino: Yes, your Honor.

Court: Alright, proceed.

Atty. Bayani: When you were first raped in Grade II, your mother asked you to stay with your Tita Malou?

Court: After?

Atty. Bayani: After the first rape, you told your mother about. . . did you not stay to sleep with your Tita Malou?

Court: Ate.

L. Tolentino: Not yet, sir.

Atty. Bayani: When were you asked to sleep with your Ate Malou?

L. Tolentino: When I told her about it again.

Q: That was the second rape because you said you were raped 5 times?

A: Yes, sir.

Q: And that was in the house of your Tita Nita?

A: Yes, sir.[15]

The appellant points to the affirmative answer of the complainant when she was asked whether she told Malou about her ordeal after the second rape, as inconsistent with her statements that she was advised to sleep in Malou's house only after the 5th rape. This inconsistency is more apparent than real. Further reading of her testimony reveals that complainant corrected herself and reiterated that it was after the fifth rape when she was advised to sleep with her Ate Malou:

Q:

So when was that? When you started ... when you said after the second rape, you were advised to sleep with your Tita [Ate] Malou. About what year? When was that?

A: Not yet, sir (underline supplied)

Q: When were you advised to sleep with your Ate Malou? After how many incidents?

A: After 5 times. (stress supplied).[16]

Appellant also considers inconsistent Lorena's statement that she lived with her Ate Malou since she was in grade 3, while in court she said she lived with the latter only sometime in June, 1993.[17] Appellant infers that if complainant had been staying with Malou while she was in grade 3, she must have been living with the latter since 1992[18] and not June 1993 as she previously stated. Appellant did not confront Lorena with this alleged inconsistency. Well established is the rule on evidence that previous statements cannot serve as basis for impeaching the credibility of a witness unless her attention was first directed to the discrepancies and she was then given an opportunity to explain them.[19]

Appellant also points to the inconsistency in complainant's testimony that she was raped in her Tita Nita's house which only had one room vis her later admission that she was raped in her mother's house which had four rooms. We agree with the OSG that "the private complainant may have only thought that their house was actually the room occupied by them (with her mother and appellant) to the exclusion of the three (3) other rooms of the house occupied by others." [20] Furthermore, an ample margin of error and understanding should be accorded to the young complainant who naturally would be gripped by tension certainly much more than adults, when required to relive an experience she would rather forget.[21] In *People v. Villaraza*, we observed that:

The failure of the private complainant, an eleven-year old puerile country girl, to respond properly to some

questions propounded to her does not thereby put to naught her reliability and sincerity. x x x. Minor lapses in the memory of a rape victim can be expected even as it is an understandable human frailty not to be able to recount with facility all the details of a dreadful and harrowing experience.[22]

Further, appellant points to complainant's alleged testimony that she stayed with her mother and the appellant only in 1992 while the rape happened in 1993. We find no such testimony. Lorena clearly stated that she stayed with her mother and the appellant since 1992 and only transferred to her Ate Malou on June 1993.[23]

Appellant avers that it is impossible and improbable that Lorena's own mother would simply dismiss her stories of rape, and instead testify against her, if indeed Lorena was telling the truth. We find nothing impossible nor improbable about these. It is not unheard of that, to protect the husband, a wife might even turn against her own daughter.

In several cases, we have held that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[24]

With respect to the negative findings of spermatozoa in the victim's genitalia, absence of spermatozoa does not necessarily negate rape.[25] Further, as for appellant's claim that the victim did not suffer complete laceration and other signs of physical violence, suffice it to say that even the absence of hymenal laceration does not rule out sexual abuse, especially when the victim is of tender age.[26] Nor is it necessary for the victim to suffer external injuries in order for the crime of rape to be established.[27] Moreover, appellant's contention that Lorena lied in her testimony that she bled only after the 5th rape, and not before, has no logical basis: it is possible that the first four were bloodless, but that the fifth rape would be bloody.

All told, the inconsistencies and contradictions raised by the appellant are details which do not destroy the complainant's credibility. They have also been convincingly explained by Lorena's testimony. Far from casting a doubt upon her testimony, these minor inconsistencies are badges of truthfulness and candor for they erase any suspicion that the testimony was rehearsed.[28] They serve to reinforce her credibility.[29] It is when the testimony appears totally flawless that a court might have some misgiving on its veracity.[30] This is especially true in rape cases where victims are not expected to have a total recall of the incident.[31]

As repeatedly ruled, factual findings of the trial court are conclusive upon this Court and its evaluation regarding the credibility of witnesses are given great weight and respect unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.[32] Based on the record and findings of the trial court, we find Lorena's story credible.

Juxtaposed against Lorena's straightforward testimony, appellant's defense is inherently weak. He interposed denial, which like alibi, cannot prevail over the positive identification of the accused as the perpetrator of the crime.[33]

There being no error in the finding of guilt made by the trial court, it should be affirmed. However, a slight modification in the award of civil damages is called for. The trial court failed to grant the necessary civil indemnity which is mandated by jurisprudence to be awarded to rape victims.[34] The award of the trial court of P50,000.00 in this case was only for the moral damages suffered by the victim. This is separate and distinct from the amount of P50,000.00 that should be awarded as civil indemnity.[35]

WHEREFORE, the assailed decision of the Regional Trial Court of Quezon City, Branch 91, is **AFFIRMED** with **MODIFICATION**. Appellant is declared guilty of rape and sentenced to suffer the penalty of reclusion perpetua.

Appellant is also ORDERED to pay the offended party, Lorena Tolentino, P50,000.00 as civil indemnity and P50,000.00 as moral damages, as well as the costs of suit.

SO ORDERED.

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

[1] Rollo, pp. 24-30, Penned by Judge Marina L. Buzon.¹ dated March 15, 1994 of the Regional Trial Court, Branch 9

[2] Id. at 9-10.

[3] Also referred to as Marilou Avillano.

[4] TSN, August 30, 1993, pp. 2-34.

[5] TSN, July 26, 1993, pp. 4-13.

[6] Id. at 1-2.

[7] TSN, September 13, 1993, pp. 4-13.

[8] TSN, November 10, 1993, pp. 3-12.

[9] TSN, October 11, 1993, pp. 3-14.

[10] Rollo, p. 30.

[11] Appellant's Brief, Rollo, pp. 56-57.

[12] Based mainly and primarily upon the private complainant's testimony.

[13] Arrived at by the trial court after finding the testimony of Lorena Tolentino to be natural and straightforward, Records, p. 77.

[14] People vs. Moreno, 321 SCRA 334, 348 (1999); People vs. Quijada, 321 SCRA 426, 431 (1999).

[15] TSN, August 30, 1993, pp. 19-21.

[16] Id. at 21.

[17] See no. (3) of appellant's list of inconsistencies.

[18] The complainant had just finished grade 4 when she filed the complaint in April 1993, Sworn Statement, Records, p. 6.

[19] People vs. De Guzman, 288 SCRA 346, 354 (1998).

[20] Appellee's Brief, Rollo, p. 272.

[21] People vs. Marcelo, 305 SCRA 105, 116 (1999).

[22] People vs. Villaraza, G.R. No. 131848-50, September 5, 2000, pp. 18-19.

[23] TSN, August 30, 1993, pp. 13-21.

[24] People vs. Rosales, 313 SCRA 757, 764 (1999); People vs. Brandares, 311 SCRA 159 (1999); People vs.

Onabia, 306 SCRA 23 (1999); People vs. Almaden, 305 SCRA 157 (1999).

[25] People vs. Gastador, 305 SCRA 659 (1999).

[26] People vs. Ayo, 305 SCRA 543, 557-558 (1999).

[27] People vs. Managaytay, 305 SCRA 316, 323 (1999).

[28] People vs. Vergel, 316 SCRA 199, 211 (1999); People vs. Bermudez, 309 SCRA 124 (1999); People vs. Obello, 284 SCRA 79 (1998).

[29] People vs. Pacistol, 284 SCRA 520, 537-538 (1998).

[30] People vs. Talledo, 262 SCRA 544, 550 (1996).

[31] People vs. Alfeche, 294 SCRA 352, 371 (1998).

[32] People vs. Baygar, 318 SCRA 358, 365-366 (1999); People vs. Lomboy, 309 SCRA 440 (1999); People vs. Venerable, 290 SCRA 15 (1998); People vs. Tejada, 170 SCRA 497 (1989).

[33] People vs. Magbanua, 319 SCRA 719, 738 (1999).

[34] People vs. Panique, 316 SCRA 757, 768 (1999) citing People vs. Maglente, 306 SCRA 546 (1999).

[35] People vs. Gementiza, 285 SCRA 478, 492 (1998).

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