

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO RAMOS Y BARREDO, ACCUSED-APPELLANT.

G.R. No. 115656. June 27, 1995

Ponente: MELO, J.

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MELO, J.:

Upon complaint of Maria Sierra Aguilar, herein accused-appellant was charged with rape before the Regional Trial Court of Caloocan City. After trial, a conviction decision was rendered on February 24, 1994, disposing:

WHEREFORE, the prosecution evidence having established the guilt of the accused, NILO RAMOS Y BARREDO @ NILO, beyond reasonable doubt for the two crimes of rape, the Court hereby imposes a penalty of reclusion perpetua for each of the said two crimes under Article 335 of the Revised Penal Code, and to indemnify the offended party, Maria Sierra Aguilar, the sum of Forty Thousand (P40,000.00) Pesos, and to pay the costs.

(p. 26, Rollo.)

Dissatisfied, accused-appellant has interposed the instant appeal wherein it is argued that conviction for two counts of rape is improper because it is premised on improbable and inconsistent testimony of private complainant and because the information charged only one count of rape.

The background facts were succinctly summarized by the Office of the Solicitor General as follows:

Appellant is the uncle of complainant Ma. Sierra Aguilar being the full blood brother of her mother, Marina Ramos Aguilar. Appellant resided and grew up in the same house as complainant since he was taken in by the parents of complainant as a little boy. Appellant lived with them at Sterling Compound, Caloocan City up to the time of the incident (tsn., Feb. 13, 1985, pp. 3-4).

Sometime in September 1993, complainant was twice sexually molested by appellant. The first occurred at about 7 one September evening. She was then looking for her younger sister Celina, when she met her uncle. She casually asked him if he saw her sister. Instead of helping her, appellant pulled her inside a room near the pigpen. Once inside, appellant undressed complainant, and made her lie down. Although the room was quite near their house and appellant was unarmed, complainant was not able to shout for help. She was cowed into silence by her uncle's threat to kill her and her family. Appellant thus succeeded in having his carnal desire sated. After appellant left her, complainant proceeded home and went straight to her room and cried. She did not report her devastating experience to her mother for fear that the latter would not believe her, considering that her molester was her own uncle (Ibid., pp. 4-9).

Barely a week after the first incident, appellant again molested complainant. This time inside the comfort room, at about 10 in the evening. Appellant undressed complainant and made her lie down on the floor. With his moral ascendancy and threats to kill complainant, appellat again succeeded in satisfying his lust (Ibid., pp. 10-110. As in the first incident, complainant did not reveal her ordeal to her mother for fear that her parents might think that she was making false accusations against appellant (tsn., May 29, 1985, p. 9).

One year later, complainant's father was killed, and appellant was the prime suspect. After appellant was arrested, complainant told her mother the crime committed against her by appellant. Bereaved by her father's death and bothered by her conscience, complainant had at last summoned enough courage to tell her mother her ordeal and filed a complaint against appellant (tsn., April 17, 1985, pp. 7-11; May 29, 1985, pp. 8-9).

Dr. Bienvenido Munoz, the medico-legal officer of the NBI testified that he examined complainant on October 2, 1984. Dr. Munoz found complainant's hymen intact but distendible and its orifice wide about 2.6 cm. in diameter as to allow complete penetration by an average adult Filipino male organ in full erection without producing genital injury. According to him, this condition is inherent to complainant's nature (tsn., July 22, 1985, p. 7).

(pp. 3-6, Appellee's Brief; p. 78, Rollo)

Accused-appellant asseverates that the testimony of complainant is "evidently saddled with disparities and improbabilities". He points out that the complainant testified that she was raped by accused-appellant in a pigpen just a few steps away from her house and that her mother, brothers, and sisters were in their house at that time, yet she did not make an outcry or shout for help.

But surely, complainant's failure to shout for help or to resist the advances of accused-appellant can be explained by the fact that accused-appellant was threatening and intimidating her at that time. He threatened to kill not only complainant but also her whole family.

Q -

Did you not shout, push or kick him?

A -

I did not say anything sir.

Q -

Why?

A -

Because he was threatening that he was going to kill me.

(tsn., p. 6, February 15, 1985)

x x x

Q -

Did you not shout?

A -

No sir.

Q -

Why not?

A -

Because he was threatening me that if ever I shout he was going to kill us.

Q -

What do you mean "us"?

A -

My family, my mama, my papa and I.

(tsn., p. 4, April 17, 1985)

The threats and intimidation undoubtedly frightened and paralyzed complainant, but still not without some effort, instinctive though it may have been, at resisting the assault upon her honor, thusly:

Q -

And you did not struggle to free from the hold?

A -

I fought back, sir.

Q -

What do you mean you fought back? What exactly did you do when you fought back?

A -

I kicked him, sir.

(tsn., pp. 3-4, May 29, 1985)

Notwithstanding the fact that accused-appellant was unarmed, the threats and intimidation directed against complainant must be viewed in the light of her perception and judgment at the time of the rape and not by any hard and fast rule (*People vs. Codilla*, 224 SCRA 104 [1993]). Moreover, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety (*People vs. Angeles*, 222 SCRA 451 [1993]). Furthermore, accused-appellant was her own uncle who, therefore, decidedly exercised moral ascendancy over her.

Accused-appellant also contends that complainant's delay of one year in reporting the sexual assault against her to the police authorities negates her credibility.

The argument is far from persuasive. We have repeatedly held that delay in reporting rape does not undermine the charge where the delay is grounded on accused-appellant's death threats (*People vs. Dio*, 226 SCRA 176 [1993]). It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threats on their lives (*People vs. Abordo*, 224 SCRA 725 [1993]). Accused-appellant had threatened complainant with death and they lived in the same house. The threats were, therefore, continuing and ever-present. Only when accused-appellant was arrested on suspicion of killing complainant's father was the threat lifted and complainant felt safe in reporting the rape.

Q -

Why, was Nilo already arrested during that time?

A -

Yes sir.

Q -

Because of the killing of your father, is that correct?

A -

Yes sir.

Q -

And that is why you decided to report this matter to the police because he was already arrested?

A -

Yes sir.

(tsn., p. 8, April 17, 1985)

Accused-appellant puts much capital on the inconsistent testimony given by complainant regarding the time she reported the rape to the police. First, she testified that she reported the rape the day following the second rape (tsn., p. 12, February 13, 1985). However, in her testimony on April 17, 1985, she declared that she reported the rape two weeks after the commission of the rape (tsn., p. 6, April 17, 1985). Finally, on cross-examination, she admitted that she reported the rapes to the police authorities a year after the two incidents (tsn., p. 8, May 29, 1985). The above inconsistencies are minor details which do not detract from complainant's credibility (*People vs. Dominguez*, 217 SCRA 170 [1993]; *People vs. Ocampo*, 218 SCRA 609 [1993]), and may be disregarded if they do not impair the essential veracity of the testimony of a witness (*People vs. Colcol, Jr.*, 219 SCRA 107 [1993]). Complainant's confusion regarding the date she reported the crime to the police authorities do not impinge on or affect in any manner the facts constituting the commission of the rape as testified to by her. Her testimony must thus be given full faith and credit.

Concerning the delay in informing the police authorities about the assault on complainant's honor, we concur with the observations of the trial court when it said:

First, that the private complainant, on re-direct examination, on the same day of the trial, when asked why she reported the rape only after a year, said:

The reason why I did not report the matter immediately was because Nilo Ramos was the brother of my mother and they may not believe me. They might think that I am only making accusation against Nilo Ramos. (tsn., p. 9, May 29, 1985)

Indeed, in the natural course of things, she could not have the courage then to tell her mother that the latter's own brother raped her. She may not be believed, and rightly so. But after Nilo killed her father, which her mother and herself both believed, Maria must have acquired some courage and confidence that her mother would believe her, finally resolved enough is enough, the depraved offender must be punished, and thus she finally revealed to her mother her uncle's assault.

Further, she said that she reported the matter to her mother because she was "bothered by her conscience. She was restless and uneasy." (tsn., p. 9, May 29, 1985)

In this light, the victim's admission that she filed a complaint for rape because Nilo killed her father, was a logical consequence of her unburdening her conscience -- the feeling of guilt for the concealment of the rape done by the same man who killed her father which became unbearable, more so as she anguished and saw her mother in deep sorrow to no end.

Simply stated, she filed the rape complaint not out of a revenge or hatred but in order that justice may prevail for

her and her family.

(pp. 25-26, Rollo.)

There being no showing that complainant was impelled by any improper motive in making the accusation against accused-appellant, her testimony is entitled to full faith and credit (*People vs. Tolentino*, 218 SCRA 337 [1993]). Complainant would not have publicly disclosed that she had been raped and in the process risk undergoing the trouble and humiliation of a trial if her motive was not to bring to justice the defiler of her virtue (*People vs. Domingo*, 226 SCRA 156 [1993]). It is to be stressed that complainant was a guileless, inexperienced 14-year old girl at the time of the rape. It would be highly improbable for a girl of such tender age and inexperienced in sexual matters to fabricate charges for no reason at all that will put herself and her family in a very compromising situation which could even invite reprisal (*People vs. Guibao*, 217 SCRA 64 [1993]).

Accused-appellant sets up the defense of alibi to evade condign punishment but, of course, we must say once more that not only is alibi the weakest of defenses for the ease of its fabrication (*People vs. Magallanes*, 218 SCRA 109 [1993]; *People vs. Dio*, *supra*, but more importantly, it cannot prevail over positive identification (*People vs. Dominguez*, *supra*; *People vs. Amador*, 226 SCRA 241 [1993]). Complainant's identification of the accused-appellant as her defiler cannot be doubted for accused-appellant is her own uncle.

Finally, accused-appellant points to and would find refuge in the testimony of Dr. Bienvenido Munoz, the Medico Legal Officer of the National Bureau of Investigation, who declared that, upon examination of the genital organ of the complainant, he found no extra genital physical injuries, with the hymen intact. In the first place, the medical examination took place a year after the sexual assault on the complainant and whatever injuries might have been inflicted on the genital organ of complainant would have then already healed. In the second place, absence of extensive abrasions on the vaginal wall does not rule out rape, the slightest penetration being enough (*People vs. Cervantes*, 222 SCRA 365 [1993]; *People vs. Arnan*, 224 SCRA 37 [1993]). A woman might have had previous sexual intercourse and yet the hymen may remain unruptured; thus, the fact that the medical examination of the victim showed that her hymen was still intact is not inconsistent with a finding that she was raped (*People vs. Moreno*, 220 SCRA 292 [1993]). Furthermore, a medical examination is not indispensable in the prosecution for rape (*People vs. De la Cruz*, 224 SCRA 506 [1993]).

However, the contention of accused-appellant that he cannot be convicted of two crimes of rape is well-taken. A reading of the information clearly shows that accused-appellant was charged with the commission of only one act of rape. He can, therefore, be convicted of only one crime of rape even if the evidence shows that two separate acts of rape were committed (*People vs. Joya*, 227 SCRA 9 [1993]).

One last point. The trial court awarded indemnity in the amount of P40,000. Pursuant to our ruling in *People vs. Bondoy* (222 SCRA 216 [1993]), we hold that complainant is entitled to moral damages in the amount of P50,000.

WHEREFORE, the decision appealed from is hereby MODIFIED, and accused-appellant is hereby found guilty beyond reasonable doubt of one (1) crime of rape and sentenced to reclusion perpetua and ordered to indemnify the complainant the amount of P50,000.00 as moral damages.

SO ORDERED.

Feliciano, (Chairman), Romero, Vitug, and Francisco, JJ., concur.

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