

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON LERIO @ ROMAN, ACCUSED-APPELLANT.

G.R. No. 116729. January 31, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated July 7, 1994, of the Regional Trial Court of Tayug, Pangasinan, Branch 51, convicting accused-appellant of the crime of statutory rape, imposing upon him the penalty of reclusion perpetua, and ordering him to indemnify the victim the amount of P50,000.00 as moral damages.

Appellant Marlon Lerio[1] was 19 years old, single, farmer, and resident of San Macario Norte, Natividad, Pangasinan, while the victim was Jennifer M. Soriano, 11 years old and a grade five (5) student, at the time of the offense charged.

The fact as summarized by the Office of the Solicitor General, and which we find to be supported by the records, are as follows:[2]

"At around 7:15 in the evening of January 22, 1992, complainant Jennifer Soriano, who at that time was only eleven (11) years old, was on her way to watch television (TV) at the house of Apong Belen Casandig. When she was at the side of the house of Belen Casandig, she was intercepted by appellant Marlon Lerio alias 'Roman'. He grabbed her, covered her mouth in such a way that she cannot shout for help and carried her towards the place where there were piles of dried cogon (tsn., November 11, 1993, pp. 3-4; January 20, 1994, p. 34).

As he carried her, complainant tried to struggle to free herself, but was unable to do so. Appellant laid her down on the piles of cogon and proceeded to divest her of her underwear. While doing so, he went on top of complainant and sexually assaulted her. Jennifer Soriano struggled against his attack but to no avail (tsn., Nov. 11, 1993, pp. 43-45).

When they heard her parents calling her by name, appellant released her and she ran away, carrying her underwear (tsn., January 20, 1994, pp. 43-45).

Floro Volante, the barangay captain of San Macario Norte, Natividad, Pangasinan testified that on the evening of January 22, 1992, Arsenio Soriano, the father of complainant, reported that his (Arsenio Soriano) daughter was raped by Marlon Lerio. He went to complainant's house and later he went to the crime scene together with complainant and her parents. While there, he saw the disarranged piles of cogon. They likewise discovered a headband belonging to complainant, which the latter picked up. Still in the course of his investigation, he went to appellant's house and questioned him in the presence of his parents (tsn., February 19, 1993, pp. 3-6).

The barangay captain's testimony was corroborated by complainant's mother, Estrelita Soriano. She further testified that she examined her daughter's private parts, which was reddish at the time, and that she saw seminal fluid in her daughter's private part (tsn., August 11, 1993, pp. 28-30).

Dr. Perfecto Tebangan, the Rural Health Officer, testified that he examined the complainant fourteen (14) days

after the incident. Although Jennifer Soriano told him that she was raped, he did not see any scratch, scar or hematoma on the latter's body, and that the hymen was still intact (tsn., February 1, 1994, pp. 3-6)."

On June 10, 1992, appellant was charged with the crime of rape under the following Information:[3]

"I N F O R M A T I O N

The undersigned, upon a verified complaint of ESTRELITA M. SORIANO, hereby accuses MARLON LERIO of the crime of RAPE, committed as follows:

That on or about the 22nd day of January, 1992, in the evening, along the pile of harvested cogon at Barangay San Macario Norte, municipality of Natividad, province of Pangasinan, New Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with JENNIFER SORIANO, a minor 11 years of age, against her will and consent to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code.

Tayug, Pangasinan, April 20, 1992

(SGD) CARLOS TRECE R. MAPILI
Assistant Prov'l. Prosecutor

APPROVED
(SGD) JOSE ANTONIO M. GUILLERMO
Provincial Prosecutor"

Upon arraignment, appellant entered a plea of not guilty.[4]

At the trial, the prosecution presented the following witnesses: (1) Barangay Captain Floro B. Volante; (2) Estrelita M. Soriano, the mother of the victim; (3) Jennifer M. Soriano, the victim; and (4) Dr. Perfecto B. Tebangin, Municipal Health Officer of Natividad, Pangasinan.

For the defense, appellant was the sole witness. His version of the incident is that on the night of January 22, 1992, he was at the house of his grandfather in San Macario, Natividad, Pangasinan watching television with his aunt and cousins. The house of his grandfather was located some two (2) meters away from the house of the victim. At around 7:30 in the evening, he went outside to urinate, and on his way back, he met the victim beside the house. He asked her to accompany him to get some 'komiks' from the house of his uncle. He held her hands and kissed her on the lips, but did not have sexual intercourse with her. He claims that the parents of the victim filed the rape charge against him because they were infuriated when they learned that he kissed their daughter.[5]

On July 7, 1994, the trial court rendered a decision[6] finding appellant guilty of statutory rape under Article 335, No. 3 of the Revised Penal Code. The dispositive portion of the decision states:

"WHEREFORE, the Court, finding the accused GUILTY as charged, hereby sentences (sic) him to suffer the penalty of reclusion perpetua, which shall carry with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification, in accordance with Articles 335 and 41 of the Revised Penal Code.

However, and as mandated by Article 29 of the same Code, the accused is hereby credited in the service of his sentence with four-fifths (4/5) of the time during which, prior to the finality of this judgment, he shall have undergone preventive imprisonment, there being no writing on record that shows that he ever voluntarily agreed as a detention prisoner to abide by the same disciplinary rules imposed upon convicted persons.

Additionally, the accused is hereby ordered to indemnify Jennifer Soriano for moral damages in the amount of

P50,000.00 in accordance with Article 100 of the Revised Penal Code and with Article 2219 of the Civil Code, and to pay the costs.

SO ORDERED."

Hence, the present appeal. Appellant makes the following assignment of errors:[7]

- THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE HIGHLY INCREDIBLE, INCONSISTENT AND UNRELIABLE.
- THE TRIAL COURT GRAVELY ERRED IN DISREGARDING IN EVIDENCE THE MEDICAL CERTIFICATE ISSUED BY DR. PERFECTO TEBANGIN AND IN NOT GIVING CREDENCE TO THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.
- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT.

In his brief, appellant assails the credibility of the victim and her witnesses arguing that her lurid story is not borne out by the medical findings. And even granting that he may have tried to force himself on the victim, the sexual act was never consummated because the victim, per her own testimony, was constantly struggling to be free.

For the State, the Office of the Solicitor General prays for the affirmance in toto of the trial court's decision, considering that jurisprudence is replete with rulings that rape may be committed even without vaginal lacerations or rupture of the hymen. Further, the OSG argues that the victim and her parents would not have made themselves the butt of barrio gossip by divulging that the victim was raped, if it were not true.

In sum, the issues revolve on the credibility of the prosecution witnesses, the probative value of the medical certificate that the hymen of the victim was still intact, and the sufficiency of evidence to convict appellant.

Findings of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed on appeal, absent any showing of palpable mistake or grave abuse of discretion.[8] The records show that the victim was placed on the stand no less than three (3) times, yet she never wavered under withering cross-examination. Her statements were categorical, straightforward, candid, and credible. The Court has time and again ruled that the sole testimony of the victim in a rape case is sufficient to sustain a conviction if such testimony is credible.[9]

Further, no ill-motive could be imputed against the victim or her parents to manufacture such an accusation against the appellant, particularly where appellant, by his own admission, is on good terms with the family of the victim.[10] The victim and her family could not raise such a serious charge against the appellant unless justifiably motivated by a sincere desire to seek justice for a wrong done, for such a charge if untrue would only expose the victim and her entire family to humiliation and stigma attendant to a rape trial.[11] Moreover, we find that appellant's defense of denial and alibi could not stand, in the face of his positive identification as the offender, and in view of the credible testimonies of the victim, her mother and the barangay captain.

It was duly established during trial that the victim was only eleven (11) years old at the time of the rape. Where the girl is below twelve (12) years of age, violence or intimidation is not required,[12] and the only subject of inquiry is whether "carnal knowledge" took place. In *People v. Quiñanola*, G.R. No.126148, May 5, 1999, pp. 20-21, we held that -

"In the context it is used in the Revised Penal Code, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. (6

WORDS AND PHRASES 273 citing Walker v. State, 273 S.W. 2d 707, 711, 197 Tenn. 452). The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ [People v. Cabebe, G.R. No.125910, May 21, 1998] or, as once so said in a case, by the "mere touching of the external genitalia by a penis capable of consummating the sexual act." (People v. De la Peña, 233 SCRA 573 cited in People v. Castromero, 280 SCRA 421.)

In this case, the victim testified that appellant "inserted his penis inside her vagina"[13] and that she felt "pain at the center." [14] Appellant kept on making "push and pull motion until she felt something spread on the skin of her vagina." [15] Clearly, carnal knowledge took place.

Appellant now desperately anchors his appeal on the lack of physical evidence of rape on the body of the victim. But his arguments are far from convincing. First, it is well-settled that rupture of the hymen or vaginal lacerations are not necessary for rape to be consummated.[16] Second, a medical examination is not indispensable in the prosecution of a rape victim.[17] Insofar as the evidentiary weight of the medical examination is concerned, we have already ruled that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape.[18] What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible,[19] and this we find here to be the case. Moreover, Dr. Tebangan himself clarified that since he examined the victim some fourteen (14) days after the incident, it is possible that during examination, there was no longer any evidence of the injuries which she might have sustained as a result of the rape.[20]

Considering, the evidence for the prosecution and for the defense, we are in accord with the verdict that the appellant is guilty beyond reasonable doubt of the crime charged.

At the time of the commission of the rape, the penalty therefor under Article 335 of the Revised Penal Code[21] was reclusion perpetua. Here, no mitigating or aggravating circumstances attended the commission of the crime. Hence the penalty imposed by the trial court is appropriate.

Pursuant to existing jurisprudence, the amount of P50,000.00 as indemnity should be awarded to the victim.[22] The award to her of P50,000.00 as moral damages should also be affirmed.[23]

WHEREFORE, the appeal is hereby DENIED. The decision appealed from is AFFIRMED with MODIFICATIONS as to damages. Appellant MARLON LERIO is found guilty beyond reasonable doubt of statutory rape and sentenced to suffer the penalty of reclusion perpetua. He is also ordered to pay the victim the amount of P50,000.00 as indemnity and P50,000.00 as moral damages. Costs against appellant.

SO ORDERED.

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

[1] The Information and Decision did not indicate his middle name.

[2] Rollo, pp. 95-97.

[3] Records, p. 1.

[4] Id., at 54.

[5] TSN, April 5, 1994, pp. 2-20.

[6] Records, pp. 173-191.

- [7] Rollo, p. 46.
- [8] People v. Vergel, G.R. No. 128813, October 4, 1999, p. 1.
- [9] People v. Sugano, G.R. No. 127574, July 20, 1999, p. 8.
- [10] TSN, April 5, 1994, p. 9.
- [11] People v. Cabebe, 290 SCRA 543, 554 (1998)
- [12] People v. Lualhati, 171 SCRA 277, 283 (1989).
- [13] TSN, November 11, 1993, p. 6; TSN, January 20, 1994,43; TSN, January 26, 1994, p. 3.
- [14] TSN, November 11, 1993, p. 6.
- [15] Ibid.
- [16] People v. Tolentino, G.R. No. 130514, June 17, 1999, p. 4; People v. Quiñanola, G.R.No. 126148, May 5,1999, p. 20; People v. Ayo, G.R. No. 123540, March 30,1999, p. 15; People v. Almaden, G.R. No.112088, March 25, 1999, p. 8, People v. Marcelo, G.R. No. 126714, March 22, 1999, p. 12; People v. de la Cuesta, G.R. No. 126134, March 2, 1999, p. 7; People v. Sagun, G.R. No. 110554, February 19, 1999, p. 10.
- [17] People v. Venerable, 290 SCRA 15,26 (1998)
- [18] People v. Brandares, G.R. No.130092, July 26, 1999, p. 6; People v. Dela Cuesta, G.R. No. 126134, March 2,1999, p. 13; People v. Taneo, 284 SCRA 251, 268 (1998)
- [19] Ibid.
- [20] TSN, February 1, 1994, pp. 3-8; Exhibit "F".
- [21] Now Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, the Anti-Rape Law of 1997, which took effect on October 22, 1997.
- [22] People v. de Guzman, 265 SCRA 228, 246 (1996)
- [23] People v. Prades, 293 SCRA 411, 431 (1998)

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