

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULYSIS CLOPINO Y VARGAS, ACCUSED-APPELLANT.

G.R. No. 117322. May 21, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from a decision[1] of the Regional Trial Court of Virac, Catanduanes, finding accused-appellant guilty of rape and sentencing him to suffer reclusion perpetua and to pay the complainant Melody Quintal the sum of P50,000.00 as moral damages.

The information against accused-appellant alleged —

That on or about the 16th day of February, 1992 at barangay Dugui Too, municipality of Virac, province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused wilfully, unlawfully and feloniously with force, violence and intimidation drag Melody Quintal to the forest and did then and there lie and succeeded in having carnal knowledge with her against her will and consent.

ALL ACTS CONTRARY TO LAW.

The evidence for the prosecution is as follows:

Melody Quintal was at the time material to this case a 16-year old high school student. On February 16, 1992, between 12:30-1:30 in the afternoon, she and her sister Jinky and cousin Beverly left Barangay Dugui Too in Virac, Catanduanes to go to school at the poblacion. Melody walked very fast, so much so that she was ahead of her companions. At the bend of the road, her companions lost sight of her. Beverly Beo claimed that they met a man wearing dark blue short pants, a light blue t-shirt, and a mask. Without warning, the man pushed them, causing them to roll down the ravine. Fortunately, they did not fall to the bottom because of the presence of “bigaho” plants. When they looked at the man who pushed them, they recognized him as accused-appellant. He ran in the direction where Melody was going.

Beverly and Jinky climbed up the ravine and tried to look for Melody but they could not find her. They found some of her belongings strewn on the road. These were her wrist watch, bag and umbrella. The strap of the bag was detached, while the handle of her umbrella was broken. They called her name several times but to no avail. They then went back to their barangay to report that Melody was missing. They informed Melody’s brother about what happened. Then they went to Melody’s mother who reported the matter to the barangay authorities. A rescue team went to the place where Melody was last seen.

Melody testified that at sitio Pagsangahan, she was surprised to find accused-appellant behind her. Accused-appellant was wearing blue shorts and a blue t-shirt. Although he had a mask on, Melody recognized him just the same as they were neighbors. Melody asked him about her sister and her companion, but instead of answering her, accused-appellant asked her to kiss him first. Then, accused-appellant held her by the arms. Melody said she shouted for help but apparently no one heard her. When she tried to shout again, accused-appellant tried to choke her and boxed her. The victim fell down and the accused-appellant dragged her

towards a forested area uphill, 250 meters away from the road.

She was asked by the accused-appellant to undress. As she refused to do so, the accused-appellant threatened to kill her. He then boxed her again, causing her to fall down. Accused-appellant then kissed her on the face and on the neck. Next, he removed her pants and panties and dragged her further uphill about 250 meters away. Accused-appellant asked her to lie down and as she refused to do so, the accused-appellant again hit her, causing her to lie down. Accused-appellant then removed his shorts and brief and went on top of her. He kissed her and tried to insert his penis into her vagina.

Melody testified that only about an inch of accused-appellant's penis was able to penetrate her vagina. He asked if she was still a virgin and upon being told that she was, accused-appellant inserted his finger into her vagina, apparently to engage her in foreplay. Then he again tried to put his penis into her vagina but, at that point, they heard people coming.

The accused-appellant ordered Melody to get dressed and told her to tell the people that he had saved her from someone who had tried to molest her. When finally they were found, the accused-appellant did all the talking. According to Leopoldo Gianan, a barangay tanod who was in the search team, accused-appellant was fixing his shorts while Melody was crying. When he asked Melody about what happened, accused-appellant told him not to bother her. Accused-appellant was holding Melody by the arm and did not want to leave her side. Melody did not talk because she had been threatened with harm by accused-appellant. But, once she reached their house, Melody told her father what happened. Her parents then reported the matter to the barangay authorities. Melody (together with her father, her sister Jovita and Beverly Beo) and the accused-appellant were taken to Camp Camacho, the Philippine Constabulary Headquarters in Virac, Catanduanes. Melody was examined by Dr. Cecilia Tanael of the Provincial Health Office at about 8:20 p.m. that evening, February 16, 1992. She was found to have suffered the following injuries:[2]

- Laceration of hymen, fresh (new) at 9 o'clock and 3 o'clock position
- (+) Whitish discharge at vaginal vault
- Admits one index finger snugly
- (+) Erythema at epigastric area
- (+) Abrasion 1 cm. each on ant. aspect, neck (both sides)

Dr. Tanael indicated in her certificate the following:[3]

- Clothes (T-shirt and pants) with dirt at buttocks area
- Dirt particles (R) buttocks

LABORATORY REPORT

- NEGATIVE FOR SPERMATOOZOA

She opined that it was possible that Melody had been raped.[4]

Only accused-appellant testified for the defense. Accused-appellant claimed that on February 16, 1992, between 12:30 to 1:30 in the afternoon, he saw Melody Quintal walking towards Ilawod. He followed her until sitio Pagsangahan, where he embraced and kissed her on the face, neck and breasts. He claimed that as she did not resist, he took it as a challenge to his manhood to make love to her. He put her on the ground, put his hand inside her pants and caressed her in the sex organ. He denied that he used force, or that he was able to put his penis into

Melody's vagina. He insisted that he only inserted his fingers into her vagina in an effort to arouse her. He also denied that he pushed Melody's companions down a ravine.

The trial court believed the prosecution's theory and found the accused-appellant guilty of rape. Hence, this appeal.

First. The defense maintains that there is an inconsistency between the sworn statement given by Melody to the PC on the one hand, and her testimony in court on the other. The defense cites the following portion of the sworn statement dated February 18, 1992 which she gave at Camp Francisco Camacho, Virac, Catanduanes:[5]

15Q:

Was his personal organ or his penis able to penetrate to your vagina?

A:

No, sir.

16Q:

Why?

A:

He tried it but it could not penetrate, he even asked me if I am still a virgen [sic].

17Q:

What else happened.

A:

After answering his question that I am still a virgen [sic], he told me that he will use his finger.

18Q:

Were your vagina fingered by him?

A:

Yes, sir.

In the complaint she filed with the Municipal Trial Court on the same day, February 18, 1992, she stated —

. . . [H]is personal organ did not penetrate instead he used his finger to guide his penis but ultimately did not succeed for reasons of independent to his well [sic] and the timely arrival of the people who were informed of the incident by her companions. . .[6]

However, it is asserted in Melody's testimony in the trial court that about one inch of the penis of the accused-appellant was able to penetrate into her vagina:[7]

VELASCO (Private Prosecutor)

Q:

After removing the short pants and brief, what did Clopino do?

A:

When he was already mounted on me, he tried to force his penis on my vagina, sir.

Q:

Did you feel the penis?

A:

Yes, sir.

Q:

Why can you say that the penis was being penetrated on your vagina?

A:

Because I was looking at him when he was holding his penis and trying to let it in my organ, sir. . . .

Q:

Was the penis able to penetrate completely inside your vagina?

A:

Yes, it was able to penetrate about an inch, sir.

The contention has no merit. The alleged inconsistency is more apparent than real. It must not be forgotten that the victim was only 16 years old at the time of the rape, inexperienced in the ways of the world. It is evident that what she meant by accused-appellant's organ not being able to penetrate her vagina was that there was no full penetration. But it is clear that accused-appellant did all he could to have sexual intercourse with her. If he was not able to have full penetration, it was because the victim was still a virgin. According to Melody, accused-appellant went on top of her, removed his brief and tried to insert his penis into her vagina. Indeed, how would accused-appellant know his penis would not go in unless he first tried to insert it into his victim's vagina? That was all that was necessary to commit consummated rape. It would have been a different story if there was no attempt at all to have sexual intercourse.

Thus, in her February 18, 1992 complaint, she said:[8]

. . . by means of force, intimidation and threats ordered her to undress herself and accused also removed his short pant and brief and place himself over her body and does the sexual play to her vagina but as a consequence in spite of his desire, his personal organ did not penetrate instead he used his finger to guide his penis but ultimately did not succeed for reasons of independent to his well [sic] and the timely arrival of the people who were informed of the incident by her companions. That all his acts is against the will of the complainant who suffered injuries to her vagina and some parts of her body as per Medico Legal Certificate hereto attached to form part of this complaint.

In her sworn statement of February 18, 1992, she said:[9]

15Q:

Was his personal organ or his penis able to penetrate to your vagina?

A:

No, sir.

16Q:

Why?

A:

He tried it but it could not penetrate, he even asked me if I am still a virgen [sic].

But more revealing than all these is the statement of Melody during the preliminary examination held before MTC Judge Honesto Morales on February 18, 1992, the same day the complaint before the MTC and the sworn statement before the PC were made. In her statement, she said:[10]

COURT:

Q

And when you were now lying on the ground what did he do?

A

He [lay] on top of me and keep on kissing me.

Q

What more?

A

When his organ could not enter then he used his finger.

Q

How did you know that his organ could not enter?

A

He told me that because his organ could not enter so he will use his finger.

Q

By the way, what was the condition of his body when he lied down on top of you?

A

He has no clothes.

Q

Not even pants or brief?

A

When he [lay] on top of me he was wearing brief but he removed it.

Q

Did you feel his organ touching yours?

A

Yes, sir.

Q

And as you said you feel his organ touching your organ also, did you feel that Ulysis tried to insert it?

A

Yes, sir.

Q

And that was the time you said that since it could not enter he told you that he will use his finger?

A

Yes, sir.

Q

By the way, for how long was Ulysis on top of you?

A

More or less two minutes.

She repeated this in her testimony in this case. She stated:[11]

VELASCO:

Q

After removing the short pants and brief, what did Clopino do?

A

When he was already mounted on me, he tried to force his penis on my vagina, sir.

Q

Did you feel the penis?

A

Yes, sir.

Q

Why can you say that the penis was being penetrated on your vagina?

A

Because I was looking at him when he was holding his penis and trying to let it in my organ, sir.

Q

How about your thigh then when he was forcing his penis to your vagina?

A

At first he inserted his one thigh between my thigh and then he was able to insert his other thigh between my thigh and he was forcing his penis to enter my organ, sir.

Q

About how many minutes in your estimate did he entail in causing the penetration of his penis in your vagina?

A

More than a minute, sir.

Q

Was the penis able to penetrate completely inside your vagina?

A

Yes, it was able to penetrate about an inch, sir.

Q

Because his penis, I am referring to the accused, was not able to cause the penetration completely, what happened?

A

When his penis was not able to penetrate completely, he insert [sic] his finger in my organ, sir.

It is thus clear that accused-appellant tried to insert his penis into the victim's vagina. If it did not go the full length and accused-appellant was not able to attain full penetration, it was not because he did not try to have intercourse with her but because the victim, being still a virgin, required stimulation. That was the reason

accused-appellant “fingered” her private part, apparently to arouse her.

It is not necessary, in order to have rape, that accused-appellant succeed in having full penetration. The slightest touching of the lips of the female organ or of the labia of the pudendum constitutes rape.[12] Accused-appellant is certainly wrong when he states that because his penis was not able to penetrate the vagina despite his efforts to do so, the crime should only be either attempted rape or acts of lasciviousness. As the Solicitor General rightly states, it can be logically concluded that when the accused-appellant was trying to insert his penis into the victim’s vagina, his penis touched the middle part of the complainant’s vagina and penetrated the labia of the pudendum.[13] It is impossible for the penis of the accused-appellant not to touch the labia of the pudendum in trying to penetrate her. As Melody narrated at the preliminary examination conducted on February 18, 1992:[14]

COURT:

Q Did you feel his organ touching yours?

A Yes, sir.

Q And as you said you feel his organ touching your organ also, did you feel that Ulysis tried to insert it?

A Yes, sir.

It must not have been an easy thing for Melody to tell in great detail what happened to her. The inconsistencies in her testimonies are understandable. More importantly, during her cross-examination, Melody was able to explain satisfactorily why she knew that the accused-appellant was able to put about an inch of his penis into her vagina:[15]

CONCEPCION: (Defense Lawyer)

Q Now, why were you able to know that, did you see the actual penetration?

A While he was doing that to me I could feel and I look what he was doing to me, sir.

Q Is it not that the man was on top of you, why were you able to see?

A While he was doing that to me, he was not mounted on me. His both legs were between my legs, and his legs were positioned as if just squatting, sir.

Q So, his two legs were not touching your legs at that time?

A Yes, sir, it was, because his thighs were inside my both thighs.

Moreover, under Rule 132, §13 of the Revised Rules on Evidence, in order to impeach a witness by evidence of prior inconsistent statement, the statement must be related to him and the circumstances of its execution stated. Then he must be asked whether he made such inconsistent statement. In this case, no attempt was made to impeach Melody’s testimony in court. She was not shown the complaint of February 18, 1992 and the sworn statement of the same date nor was she asked to explain any discrepancy. Instead, what she was asked was the following question:[16]

CONCEPCION:

Q And according to you the man was not able to succeed in having his penis penetrate your own organ?

VELASCO

- Misleading

COURT

- Sustained, because the witness mentioned that it was about to penetrate one (1) inch.

The question was misleading because she never really said that accused-appellant did not succeed in penetrating her. The trial court properly sustained the objection of the prosecution.

We have reviewed the records, and we found no reason why Melody should concoct a story as damaging to her reputation as this, if it were not true that she was raped. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[17]

Second. Accused-appellant contends that Judge Nilo B. Barsaga had no basis for saying that the testimony of Melody was given in a straightforward manner and, therefore, was credible. He points out that because Judge Barsaga did not try the case, another one, Judge Eduardo Israel Tanguanco, having done so, the former did not observe the witness' demeanor so as to be able to say that her testimony was straightforward. It may be that a judge who tried the case and had the opportunity to observe the demeanor of witnesses has an advantage over another who did not have such an opportunity. But such lack of opportunity does not necessarily prevent him from determining from the transcript of stenographic notes whether a witness was forthright and frank. How often has this Court itself found the testimony of witnesses to have been given in a straightforward manner on the basis solely of the records of the case. For example, in *People v. Compedio, Jr.*, [18] we said:

In the first assigned error, the accused-appellant attacks the credibility of prosecution witness Trinidad Sabando. On this score, the oft-repeated rule is that appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. This case, however, falls under one of the exceptions to the above rule, namely, where one judge heard the testimony of the witnesses and another penned the decision; hence, we are not precluded from making our assessment of the probative merit and value of the testimony of the witnesses on the basis of the transcripts of the stenographic notes thereof.[19]

After poring over Sabando's testimony, we find her to be a trustworthy witness. Her narration of the events and observations of what transpired before her were delivered in a direct, unaffected, and convincing manner. She stuck to her story and was uncompromising in regard thereto on cross-examination and on questions from

the court. We detect no indication of prevarication.

Indeed, there is no claim in this case that at any time in her testimony Melody Quintal hedged or even hesitated or otherwise indicated that she was withholding anything from the court. As held in *People v. Tuvilla*,^[20]

While the trial judge who presided over the trial of the case would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not follow that a judge who was not present during the trial cannot render a valid and just decision. The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge.^[21]

Third. Accused-appellant's conviction is not based solely on the victim's testimony, but on other evidence in the record as well. Dr. Cecilia Tanael, who examined the victim on the day of the incident, testified that the victim was probably raped, based, among other things, on the lacerations which she found in the victim's hymen. Dr. Tanael testified:^[22]

VELASCO

Q Now, in your considered opinion doctora, could this fresh laceration be caused by a half penetration of penis to the vagina?

A Anything which can enter the vagina can cause laceration, sir.

Q How about the penis?

A It could be, sir.

Q How about the finger?

A It could be sir, anything that could pass thru to the vagina can cause laceration.

In addition, Dr. Tanael found whitish discharge in the vaginal vault of the victim. Dr. Tanael said she could not rule out the possibility that the discharge was seminal fluid coming from a male person.^[23] Although the discharge was found negative for spermatozoa, she explained that this could only be because the amount of discharge was not enough for spermatozoa to be present. Besides, the absence of spermatozoa in the complainant's vagina does not negate the commission of rape.^[24]

Dr. Tanael's testimony also confirmed the victim's claim that she was hit several times in the stomach because she refused to do accused-appellant's bidding. As she testified:^[25]

VELASCO

Q And this findings of your, erithma at epigastric area, what is erithma [sic]?

A Erithma [sic] is redness, sir.

Q This epigastric area, what is this?

A The area below the externum, sir.

Q In your examination, you found reddish portion, could it be possible that the reddish portion was caused by used of fist blow?

A I [sic] can be caused bay [sic] any blunt force, sir.

Q Like fist?

A Yes, sir.

Earlier, Melody told the court how she had been boxed several times by the accused-appellant to make her lie down:[26]

ATTY. VELASCO

Q Thereafter, what happened?

A After he boxed me I fell down because of the pain and then he dragged me uphill, sir. . . .

Q After you were dragged to a distance of 250 meters from the road into the interior of the forest, what happened?

A When we reached there, he told me to remove my pants. When I did not heed what he told me, he threatened me that he would kill me and he kept on boxing me, sir.

Q What happened next?

A His boxing me caused me to fall, sir. . . .

Q While you were brought there, I am referring to the place wherein the second time you were dragged, what happened?

A He again told me to lie down, sir.

Q Did you lie down?

A No, sir.

Q Because you did not lie down, what happened?

A Because I did not lie down, he again boxed me on my stomach, sir.

Q Because he boxed you in your stomach, what did you do?

A His boxing me caused me again to lie down, sir.

Dr. Tanael also found abrasions in the neck and stomach, indicating that Melody had a struggle with accused-appellant:[27]

VELASCO

Q This abrasion 1 cm. inch on anterior aspect, neck (both sides), would you mind explaining it to the Court in a layman's language?

A Abrasion is caused by friction by another surface in the anterior aspect of the neck, below the buttocks.

(Witness pointing to her neck).

Q Is it possible doctora, that abrasion like this is caused because of the struggle of the victim from assailant?

A Basing from my physical examination, it is possible, because there is erithma at the epigastric area, and there is an abrasion, sir.

Q Can this be caused by grip of hands?

A It is possible, sir.

Q

A

A There were other tell-tale marks of the use of violence against the victim. Dr. Tanael noted that the clothes of Melody were dirty, particularly at the buttocks. This evidence of the use of force and violence belie the fantastic claim of accused-appellant that Melody agreed to have a tryst with him.

Indeed, how could accused-appellant claim that Melody voluntarily went with him when the two of them were not even lovers? Accused-appellant was 32, married. Melody was only 16, a high school student. It was unlikely they were lovers. On the contrary, the fact that her personal effects, consisting of her bag, her umbrella and her wrist watch were strewn on the ground and that according to Beverly Beo the victim's lips and neck were bruised and her clothes soiled attests to the resistance she offered to accused-appellant's assault. As the trial court said, considering all these facts, accused-appellant's claim that Melody voluntarily went with him and agreed to have sexual intercourse with him was simply incredible.

The trial court awarded P50,000.00 to the offended party as moral damages. However, moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Art. 2217 of the Civil Code. Accordingly, the amount of P50,000.00 should be considered as civil indemnity in accordance with our decision in *People v. Gementiza*.^[28]

WHEREFORE, the decision of the trial court is **AFFIRMED** with the **MODIFICATION** that the award of P50,000.00 should be considered indemnity to the offended party Melody Quintal.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Per Judge Nilo B. Barsaga.

[2] RTC Records, p. 2.

[3] Ibid.

[4] TSN, p. 12, Jan. 12, 1993.

[5] RTC Records, p. 4.

[6] Id., p. 1.

- [7] TSN, p. 9, July 15, 1992.
- [8] RTC Records, p. 1 (emphasis added).
- [9] Id., p. 4 (emphasis added).
- [10] Id., pp. 26-27 (emphasis added).
- [11] TSN, p. 9, July 15, 1992 (emphasis added).
- [12] People v. Castromero, G.R. No. 118992, Oct. 9, 1997.
- [13] Rollo, p. 108.
- [14] RTC Records, p. 27.
- [15] TSN, p. 29, July 16, 1992.
- [16] Id., pp. 28-29.
- [17] See People v. Molina, 53 SCRA 495 (1973).
- [18] 258 SCRA 254 (1996).**
- [19] Id. at 262.
- [20] 259 SCRA 3 (1996).**
- [21] Id. at 7.
- [22] TSN, pp. 6-7, Jan. 12, 1993.
- [23] Id., p. 8
- [24] People v. Solomon, 229 SCRA 403 (1993).
- [25] TSN, p. 8, Jan. 12, 1993.
- [26] TSN, pp. 7-8, July 15, 1992.
- [27] TSN, pp. 8-9, Jan. 12, 1993.
- [28] G.R. No. 123151, Jan. 29, 1998.

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