

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO GARCIA Y BOTON, ACCUSED-APPELLANT.

G.R. No. 117406. January 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision [1] of the Regional Trial Court, xxx finding accused-appellant Alberto Garcia guilty of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay the victim P20,000.00 as moral damages, and to pay the costs.

The information [2] against accused-appellant alleged:

That on or about the 11th day of December, 1992 in xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant against her will and consent.

Contrary to law.

Upon arraignment on February 2, 1993, accused-appellant pleaded not guilty, whereupon he was tried.

Complainant AAA is the daughter of accused-appellant. She and her mother, BBB, testified as follows:

In the afternoon of December 10, 1992, accused-appellant arrived home from work, drunk. Except for AAA, then 13 years of age, nobody else was home. AAA was resting in her room when accused-appellant lay (“pumatong”) on top of her. Accused-appellant held AAA’s hands with one hand while he fondled her private parts with the other. AAA screamed at accused-appellant as she asked, “Tatay, why are you doing this to me when I am your daughter?” [3]

She punched accused-appellant but he hit her back on the right jaw with such force that she lost consciousness. Accused-appellant then got up, took off his clothes, and undressed complainant, and again lay on top of her, kissing her and mashing her breasts. [4] Then, accused-appellant inserted his penis into AAA’s vagina, which made AAA cry. [5]

When he was through, accused-appellant told AAA not to tell anyone what he had done to her or he would kill her, her mother, and her elder sister. But shortly after the incident, AAA told her mother what accused-appellant had done to her. On December 12, 1992, accompanied by her mother and sister, AAA went to the xxx Police Station to report the incident. They then proceeded to Camp Crame for a medical examination where AAA was examined by Dr. Vladimir V. Villaseñor, Medico-Legal Officer of the Crime Laboratory Service, Philippine National Police. [6] Dr. Villaseñor’s testimony was dispensed with after stipulations were made in open court that he was the one who examined the victim and that the findings of his examination are stated in Medico-Legal Report No. M-1917-92, dated December 14, 1992 (Exh. A). [7]

After the prosecution rested its case on November 15, 1993, the defense prayed for and was granted a period of 15 days within which to file a demurrer to evidence without leave of court. [8] However, the defense failed to do so within the period granted to it. Hence, on January 21, 1994, the defense was ordered to present its evidence. [9]

On March 8, 1994, the court reconsidered its order on motion of accused-appellant who claimed that the stenographer failed to complete the transcript of stenographic notes of the proceedings. Accused-appellant was granted 10 days within which to file a demurrer to evidence. [10] But accused-appellant again failed to file a demurrer to the evidence, prompting the court to declare him to have waived the right to present his evidence and consider the case submitted for decision. [11]

Accused-appellant moved for a reconsideration alleging that there was no Judge to preside over the case because Judge CCC had been appointed to the Court of Appeals. [12] But the new judge, Honorable DDD, found the excuse to be without merit and accordingly denied accused-appellant's motion. [13] On February 26, 1996, Judge DDD rendered a decision, the dispositive part of which states: [14]

WHEREFORE, foregoing considered, accused Alberto Garcia y Boton is found guilty beyond reasonable doubt for the crime of rape and is sentenced to suffer the penalty of reclusion perpetua and to indemnify the offended party, AAA, the amount of P20,000.000, and to pay the costs.

SO ORDERED.

Hence this appeal. Accused-appellant contends: [15]

- THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE COMPLAINANT WHOSE TESTIMONY IS TAINTED WITH DOUBTS AND CONTRADICTIONS.
- THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF RAPE WITHOUT HIS GUILT PROVEN BEYOND REASONABLE DOUBT.

We find these contentions to be without merit.

First. In adjudging rape cases, the Court is guided by the following principles: (a) an accusation of rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the nature of the crime in which only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) 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. [16]

This review will be confined to the evidence presented by the prosecution because, as already stated, accused-appellant failed to present his evidence. It has been held that the accused may be convicted solely on the testimony of the victim, provided such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. [17] The trial court's assessment of the credibility of witnesses is accorded great respect because of its opportunity to hear their testimonies and observe their demeanor and manner of testifying. The exception is when it has overlooked or misapplied some facts which could have affected the result of the case. [18]

In this case, AAA's testimony, both on direct and on cross-examination, is clear and spontaneous. She narrated how accused-appellant had raped her on or about December 11, 1992 and her narration was made with such richness of detail as only one telling the truth could do so.

On direct-examination, she stated: [19]

Q:

Now, what happened next after your father undressed you?

A:

He la[y] on top of me, kissed me, mas[h]ed my breasts and then he inserted his penis inside my vagina. Then, he continued mashing my breast[s], he kissed my entire body.

....

Q:

And what did you fe[e]l after your father inserted his penis into your vagina?

A:

I felt pain, ma'[a]m.

Q:

After that what else happened?

A:

After that from his penis came out white sticky fluid.

Q:

And after that white, sticky fluid came out [of] the private part[s] of your father, what happened next if any?

A:

[It was as if] my private part[s] (vagina) [were] being cut with a knife.

On cross-examination, she was equally firm and clear: [20]

Q:

And, because also, you hate your father, you also wanted him to be put in jail, is it not?

A:

Not because of that, but because he really raped me, sir.

Q:

And also, your mother would do everything just to [end] their affair, is it not?

A:

My mother did not tell us what she would do about it, sir.

....

Q:

Don't you pity your father?

A:

I pity my father, sir.

Q:

Then, why do you [want him to be put] in jail, when you say you pity him?

A:

I pity him, but I pity myself inasmuch as he raped me, sir.

Q:

So you really [want] him to be in jail?

A:

If the court [finds it warranted], yes, sir.

Q:

Please look again at your father, don't you feel pain seeing that your father [is] thinner now?

A:

No, sir.

When asked by the defense if she filed charges against her father because she hated him for his "womanizing" which resulted in frequent quarrels between him and her mother, AAA replied, "All I need is justice because he abused me, sir." [21] When asked again if she accused her father of committing a crime because she pitied her mother, Grace reiterated that she did so "because he really raped me." [22]

When the defense persisted in asking what she felt for her father and the reason why she accused him of a heinous crime, Aaa's eyes welled up with tears. [23] In another case, this Court said that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and

experience. [24] In this case, the misty eyes of the victim revealed the depths of shame and suffering she endured when her personhood was violated, giving credibility to her testimony.

Second. Accused-appellant contends that AAA's testimony is inconsistent with that of her mother. Accused-appellant points out that, after being asked where she was in the afternoon of December 11, 1992, AAA said she was in their house and that was when her father raped her. She was alone in the house with her father. Her mother was in her office and did not arrive home until around 7 p.m. AAA said she told her mother what happened to her in the afternoon of December 12, 1992. [25] But, it is contended, when her mother BBB testified, the latter said that AAA told her about the incident in the afternoon of December 11, 1992 but she took complainant to the hospital for examination in the morning of the same date. And when the fiscal asked for a clarification with respect to the date when the crime was committed, BBB said she had actually been told by her daughter that the latter had been raped by her father on December 7 and that December 11, 1992 was the date when they saw a doctor. BBB said she did not immediately bring her daughter to the hospital because her daughter went to school on December 7, 1992. [26]

Indeed, there are apparent inconsistencies not only between the testimony of the victim and that of her mother but also in statements made by the victim, as the following portion of the victim's testimony shows: [27]

FISCAL:

Ms. Witness, you said on cross examination that your father on December 11, 1992 went to work and left your house that time at 6:00 p.m. and returned back home at 7:00 a.m. the following day. Do you remember that?

A:

Yes, Ma'am.

Q:

Now, your complain[t] is about [the manner by which] your father abused you. What time did your father ma[k]e that abuse on your person?

....

A:

5:00 o'clock in the afternoon, Ma'am.

Q:

Of what date?

A:

December 11, 1992, Ma'am. At 5:00 p.m. in the afternoon that day, he already abused me.

Q:

Tell us why he was there at home at that time.

A:

He was there at home and drinking wine, Ma'am. And, at 5:00 o'clock in the afternoon of December 11, 1992, he abused me. Left the house at 6:00 a.m., December 12, 1992 and returned at 7:00 p.m., Ma'am.

COURT:

I still do not understand. Now, let us clear this. What time did your father leave the house on December 11, 1992?

A:

6:00 a.m., your Honor.

Q:

How could he abuse you when you said that he left your house that time and returned at 7:00 p.m.?

A:

It is like this, your Honor. He arrived home at 7:00 p.m. Then [he] slept and woke up at 6:00 a.m., the following day. Ate breakfast and slept again. He woke up at 12:00 noon that day, and woke up at 4:00 p.m. Started drinking wine at 4:30 p.m. and, at exactly 5:00 p.m., he already abused me, your Honor.

COURT:

So, it is not December 11, 1992, but December 10, 1992?

A:

Yes, your Honor.

COURT:

I think, it is clear now. The date is December 10, 1992, and not that stated in the Information. The date there is December 11, 1992, when in fact, upon questioning, the witness made this Court understand that the crime was committed upon her person on December 10, 1992. Proceed.

....

COURT:

And why was he there at home by 5:00 p.m., December 12, 1992?

A:

He was still there abusing me, Ma'am.

Q:

And what time was your father drinking wine?

A:

4:30 p.m., December 12, 1992, Ma'am.

Q:

What do you mean by the [phrase] "he left me in the house after abusing me and when he returned home, it was already around 7:00 p.m."?

A:

Because that is the usual time that he comes home from work, Ma'am. After abusing me, he left the house and when he returned home, it was already 7:00 p.m. of December 12, 1992, Ma'am.

However, these contradictions, which relate to the date when the latter was raped, do not concern material facts. They are irrelevant to the issue of whether the elements of rape are present in the case. But, on material points, the testimonies of AAA and her mother BBB are consistent. The prosecution presented Luzviminda Garcia to prove that she is the mother of private complainant and that she was aware of the present case filed against AAA's father, as well as to prove damages. [28] Her testimony is consistent with that previously given by AAA. BBB said, "My youngest daughter, AAA, complained to me that her father approached her already nude and started to mash her breasts. He forced her to undress and lie down and once lying down her father forced his organ into my daughter's organ." [29]

In *People v. Ayo*, [30] reiterating what had been said in other cases, we held that when a woman claims that she was raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony

meets the test of credibility, the accused can be convicted on the basis thereof. Unless she is motivated by truth, no woman, much less an eight-year old girl, would subject herself to the rigors of a public trial, describing before total strangers the shameful, humiliating and degrading experience of the sexual assault. The testimony of AAA establishes the fact that, through force and intimidation, her father succeeded in abusing her. AAA testified that her father pinned her on the bed and punched her on the jaw when she resisted. Her testimony is corroborated by the medico-legal report of Dr. Villaseñor which states that the hymen of the victim had “shallow healed lacerations at 3 and 8 o’clock” positions. [31]

Indeed, as held in *People v. Lim*, [32] the date of the commission of rape is not an essential element of the crime. In this case, AAA stated in her complaint that she had been raped “on or about the 11th day of December, 1992.” [33] Rule 110 of the Rules of Court (before these were amended by the Rules on Criminal Procedure that took effect on December 1, 2000) provides:

Sec. 11. Time of the commission of the offense.- It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the acts may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

Since time is not a material element of rape, it is sufficient that complainant alleged in the complaint that the crime was committed on or about December 11, 1992. What this Court said in *People v. Maglente*, [34] another case of incestuous rape, applies to this case:

It is indeed incumbent upon the prosecution to establish the guilt of the defendant beyond a reasonable doubt but to justify acquittal based on reasonable doubt, the doubt should relate to the facts constitutive of the crime charged. Discrepancies should touch on significant facts which are crucial to the guilt or innocence of an accused. Conversely, inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal. We stress that the exact date when complainant was sexually abused is not an essential element of the offense of rape. What is material in a rape case is the commission of the rape by the accused-appellant against the complainant.

At all events, the defense should have taken steps to impeach the credibility of the testimonies of the two witnesses. However, the defense failed to do so. It did not ask AAA whether she had previously made statements contradictory or inconsistent with her testimony nor did it make her explain any inconsistency. The credibility of the testimonies of the victim and her mother could only be questioned if they fail to explain the inconsistencies. Such procedure was not followed in this case, where the defense even decided not to cross-examine complainant’s mother.

Third. Considering the evidence in this case, we are convinced beyond a shadow of doubt that accused-appellant is guilty of rape committed against his own daughter. Even without the use of force, the conviction of accused-appellant for rape would be justified because, as a result of his relationship to the victim, accused-appellant exercised moral ascendancy over her. This fact takes the place of intimidation. However, the award of P20,000.00 as indemnity to complainant should be increased to P50,000.00 in line with our current rulings. [35] In addition, complainant should be awarded moral damages amounting to P50,000.00 as held in several cases. [36]

WHEREFORE, the decision of the Regional Trial Court finding accused-appellant Alberto Garcia guilty of rape and imposing upon him the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that the award of civil indemnity should be increased to P50,000.00 and, in addition, accused-appellant is ORDERED to pay complainant the amount of P50,000.00 as moral damages.

SO ORDERED.

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

[1] Per DDD, Jr.

[2] Records, p. 1.

[3] TSN (AAA), pp. 2-7, June 8, 1993.

[4] Id. at 7-8.

[5] Id. at 8-9.

[6] Id. at 9-11. The date of examination appears to be December 11, 1992 as shown in the Medico-Legal Report (Exh. A) of the Crime Laboratory Service of the PNP.

[7] Records, p. 77.

[8] Id. at 77.

[9] Id. at 81.

[10] Id. at 91.

[11] Id. at 94.

[12] Id. at 97-99.

[13] Id. at 103-104.

[14] Decision, p. 5.

[15] Appellant's Brief, p. 1; Rollo, p. 119.

[16] People v. Barcelona, G.R. No. 125341, February 9, 2000; People v. Bea, 306 SCRA 653 (1999).

[17] People v. Barcelona, supra; People v. Bonghanoy, 308 SCRA 383 (1999).

[18] People v. Salonga, G.R. No. 128647, March 31, 2000;

[19] TSN (AAA), pp. 8-9, June 8, 1993.

[20] TSN (AAA), pp. 11 and 18, July 26, 1993.

[21] TSN, p. 7, July 26, 1993.

[22] Id. at 11.

[23] Id. at 19.

[24] People v. Gecomio, 254 SCRA 82 (1996); People v. Joya, 227 SCRA 9 (1993).

[25] TSN, pp. 5-9, June 8, 1993.

[26] TSN (BBB), pp. 10-14, July 28, 1993.

[27] TSN, pp. 19-21, July 26, 1993.

[28] TSN, p. 3, July 28, 1993.

[29] *Id.* at 10-11.

[30] 305 SCRA 543 (1999).

[31] Records, p. 72.

[32] 312 SCRA 550 (1999).

[33] Records, p. 1.

[34] 306 SCRA 546 (1999).

[35] See *People v. Prades*, 293 SCRA 411 (1998); *People v. Gementiza*, 285 SCRA 478 (1998).

[36] See *People v. Lustre*, G.R. No. 134562, April 6, 2000; *People v. Maglente*, *supra*; *People v. Cantos*, 305 SCRA 786 (1999).

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