

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRVIN TADULAN Y EPAN, ACCUSED-APPELLANT.

G.R. No. 117407. April 15, 1997

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellant Irvin Tadulan was charged with the crime of rape before the Regional Trial Court of Pasig, Branch 157, Metro Manila, in a complaint docketed as Criminal Case No. 92-186, alleging as follows:

"That on or about the 2nd day of April, 1992 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, armed with a knife, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Maristel Cruz, a minor, nine (9) years old, without her consent and against her will.

CONTRARY TO LAW."^[1]

When arraigned under the foregoing indictment, appellant pleaded not guilty to the crime attributed to him. Thereafter, trial commenced with both prosecution and defendant presenting evidence consisting of testimonies of witnesses and documentary exhibits.

The evidence presented by the prosecution tended to establish the following facts:

" x x x Complainant Estela Santos owns a house at No. 6 Dr. Garcia St., in Barangay Sumilang Pasig, Metro Manila where she resides with her common-law husband and their minor daughter, Maristel Cruz. Behind the said house, complainant also owns a three-door apartment building, one unit of which was rented and occupied by accused Irvin Tadulan, his wife Adefa Tadulan and their three children name [sic] Dianne, Angie and Bochoy who were aged 10, 9 and 5, respectively. In 1992 complainant's daughter, Maristel Cruz was about nine (9) year [sic] old (Exh. 'A') and was in grade school. She often played with the accused's children in the vicinity of their house and the apartment building.

In the morning of April 2, 1992, at about 11:00 o'clock, Maristel Cruz was playing with the other children when she was called by Irvin Tadulan into the latter's apartment unit. He brought the girl upstairs and told her to lie down on the floor. Irvin Tadulan then removed the shorts and panties of Maristel Cruz and his own pants and briefs. He kissed the girl and fondled her breasts and private parts. Then he put himself on top of her and inserted his organ into her genitals. Maristel Cruz felt the pain in her vagina. She pushed Irvin Tadulan away from her and got up, but the latter poked a kitchen knife at her and told her to remain lying down; and because of fear, Maristel Cruz lay [sic] down on the floor again. Irvin Tadulan placed himself on top of her once more, kissed and fondled her breasts as before, and finally succeeded in inserting his penis into her sex organ. As he had intercourse with Maristel Cruz, blood oozed out of her vagina and she felt the pain. Shortly thereafter, however, she heard her mother calling her. So, Irvin Tadulan told her to dress up quickly and ordered her to go home.

Upon reaching home, Maristel Cruz did not inform her mother that Irvin Tadulan had carnal knowledge of her; but two days later, their laundry woman saw the blood stains on her panties and told her mother about it. At

first, Maristel Cruz refused to talk when her mother asked her about the said blood stains, but when the mother persisted in asking her, the girl cried and revealed that Irvin Tadulan had sexual intercourse with her. The mother (Estela Santos) was shocked. She reported the matter to her godson who immediately confronted Irvin Tadulan relative to what he had done to Maristel Cruz. At first, Irvin Tadulan denied having done the act imputed to him by the said girl, but he later on admitted that he had sexual intercourse with her.

Shortly thereafter, Irvin Tadulan's wife (Adefa Tadulan) arrived from a trip from Cagayan de Oro City, and Estela Santos immediately informed her that her husband, Irvin Tadulan has raped her (Estela) daughter Maristel Cruz. Estela Santos further informed Adefa Tadulan that she would not take action against the latter's husband if they would vacate the apartment unit right away. Adefa Tadulan later on met with Estela Santos and told her that she had driven away Irvin Tadulan, but requested that she and her children be allowed to stay until Saturday, April 11, 1992. Estela Santos thereafter noted, however, that Irvin Tadulan was still coming home to the apartment unit every night despite the promise of his wife that she herself would call the police should he ever come back to the place. So, Estela Santos conferred with her cousin, a lawyer, and later on made up her mind to file a criminal charge against Irvin Tadulan before leaving for abroad, for she was then scheduled to go to the United States to fetch her mother who was ill due to a stroke.

On the night of April 11, 1992, Estela Santos heard a loud noise coming from the apartment building, and when she inquired about it she came to know that it was Irvin Tadulan creating the noise because he was kicking the door of the apartment unit occupied by him and his family. So, Estela Santos called up the police because of her apprehension that Irvin Tadulan would create trouble due to the quarrel that was then taking place between him and his wife. Responding policemen soon arrived at the place in a mobile car, and because Irvin Tadulan was denounced by his wife for having rape [sic] the daughter of Estela Santos, the said police officers brought Irvin Tadulan to the Pasig Police Station for questioning and also asked Estela Santos and her daughter to follow them. So, that same evening, Estela Santos and her daughter went to the Pasig Police Station where they gave their respective sworn statements (Exhs. 'B' & 'E') and lodged their complaint against Irvin Tadulan. It was during the taking of her statement before the police when Maristel Cruz also revealed that Irvin Tadulan had laid with her not only on April 2, 1992. She stated that Irvin Tadulan had previously laid on top of her and first attempted to have intercourse with her sometime in September 1, 1991, but it was not consummated because she was hurt whenever he tried to insert his penis into her vagina.

In order to determine physical signs of sexual abuse, the Pasig Police Station made a Request For The Medico Legal Examination of Maristel Cruz to the PC Crime Laboratory Service at Camp Crame, Quezon City (Exh. 'F') on the following day, April 12, 1992, upon the written Consent For Examination (Exh. 'G') which was signed by the mother, Estela Santos. A medico-legal officer of the PCCLS examined Maristel Cruz and then issued Medico-Legal Report No. M-0708-92 dated April 13, 1992 (Exh. 'C') finding her 'hymen with deep, healed laceration at 4 o'clock', and with the conclusion that the 'Subject is in non-virgin state physically'. Thereafter, the Pasig Police Station forwarded the sworn statements of Maristel Cruz and her mother, together with all the pertinent papers to the Office of the Provincial Prosecutor of Rizal where the said minor child and her mother signed the Complaint for Rape (Exh. 'D') against Irvin Tadulan, which initiated the prosecution of the said accused in this case."^[2]

On the other hand, accused Irvin Tadulan set up the defense of alibi and pardon. In support of his defense, Tadulan testified that he could not have raped Maristel Cruz in his apartment unit in Sumilang, Pasig, Metro Manila, at 11:00 o'clock in the morning of 2 April 1992 as he was then at his place of work at the Republic Asahi Glass Corporation in Pinagbuhatan, Pasig, Metro Manila, where he was employed as a mobile equipment operator. His testimony was corroborated by his supervisor at the plant who testified that on 2 April 1992, Irvin Tadulan worked with him at the company plant during the first shift, from 6:00 a.m. to 2:00 p.m.; and that as shown in Tadulan's daily time record (Exhibit " 1 "), said accused punched in at 5:25 a.m. and punched out at 2:31 p.m.

Relative to the defense of pardon or condonation, Adefa Tadulan, wife of accused-appellant, testified that when she arrived at their apartment on 7 April 1992 from Cagayan de Oro, she learned from Estela Santos and her daughter Maristel Cruz that the latter had been raped by her husband; that she again went to see Estela Santos and asked for forgiveness and that the latter told her: "Hayaan mo na lang, umalis na lang kayo dito, kung ang Dios nagpapatawad, tao pa kaya." Said witness also testified that she asked Estela Santos if the accused Irvin Tadulan could just leave first while she and their children would vacate the apartment unit on the coming Saturday, and Estela Santos agreed; and that pursuant to said agreement, Irvin Tadulan immediately left the apartment and she started packing their belongings and sent their children to Cagayan de Oro in the company of her mother.

Adefa Tadulan further testified that on the night of 11 April 1992, her husband came home and upon learning that she had sent their children to the province, he got angry and they had a violent quarrel. The noise created by the quarrel was heard by Estela Santos who immediately called the police; and on that same night, Estela Santos and Maristel Cruz lodged a complaint for rape against accused Irvin Tadulan despite the previous understanding between Estela Santos and Adefa Tadulan that Estela would not take action anymore against Irvin Tadulan.

Prior to the reception of evidence for the accused, his counsel filed a Motion to Plead Guilty to Lesser Offense[3] praying that accused be allowed to plead guilty to the crime under Article 336, Revised Penal Code, denominated as Acts of Lasciviousness. No communication having been received from the complainant with regard to said offer to plead guilty to a lesser offense, the trial proceeded for the reception of evidence for the defense

After trial, the now appealed judgment was rendered by the lower court finding accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive part of the decision reads as follows:

"WHEREFORE, AND IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this Court hereby finds accused IRVIN TADULAN guilty beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 of the Revised Penal Code, and he is hereby sentenced to the penalty of Reclusion Perpetua, with the accessory penalties the law provides therefor.

Accused Irvin Tadulan is also hereby ordered to indemnify the offended minor girl, Maristel Cruz in the sum of THIRTY THOUSAND PESOS (P30,000.00), with interest thereon at the legal rate of six per cent (6%) per annum from the filing of the complaint in this case until the same is fully paid.

SO ORDERED."[4]

In this appeal, accused Irvin Tadulan assigns the following errors to the trial court:

I

THE TRIAL COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EVIDENCE ADDUCED BY THE DEFENSE.

II

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES MARKED AS THEY ARE WITH INCONSISTENCIES AND IMPROBABILITIES WHICH CAST SERIOUS DOUBTS AS TO THEIR TRUTHFULNESS.

III

ASSUMING THAT THE PROSECUTION'S VERSION OF THE INCIDENT IS CORRECT, THE TRIAL COURT ERRED IN NOT CONSIDERING THE FACT THAT ACCUSED-APPELLANT WAS ALREADY

PARDONED BY COMPLAINANTS.

IV

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON GROUND OF REASONABLE DOUBT.[5]

The issues raised by accused-appellant boil down to credibility of witnesses.

In rejecting the version of the accused-appellant, the trial court made the following findings and conclusions to which we agree.

"This Court finds, however, that the abovementioned testimonies of accused Irvin Tadulan and his witness cannot prevail over the more convincing testimony of the rape victim, Maristel Cruz, who positively identified the said accused as the one who raped her and described in a clear and straightforward manner how she was sexually abused by him. In the absence of any clear showing of ill motive that might have impelled her to impute the heinous crime of rape against the said accused, there is no reason to doubt the veracity of the declarations of the said victim in court; for as held in a case (People vs. Camasis, 189 SCRA 649), 'it is hard to believe that a young unmarried woman would reveal that she was deflowered and allow the examination of her private parts and thereafter permit herself to be the subject of public trial if her motive was not to bring to justice the person who wronged her.' Also applicable here is the well-settled principle that 'alibi is unavailing as a defense where there is positive identification of the perpetrator of the crime, most specially, when the said identification is made by the victim of the rape herself in the absence of any motive to implicate the assailant' (People vs. Felipe, 191 SCRA 176, and cases therein cited). Besides, it has been held time and time again, that for alibi to prosper as a defense the accused must show that he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity at the time of its commission (People vs. Tasurra, 192 SCRA 266). In this case, however, it is clear that accused Irvin Tadulan was not so situated on April 2, 1992, for according to him he was at the plant of the Republic-Asahi Glass Corporation in Barangay Pinagbuhatan, Pasig, Metro Manila -- which is but a few kilometers from Barangay Sumilang of the same municipality where the crime was committed.

Relative to the defense of pardon or condonation also set up by accused Irvin Tadulan, his wife Adefa Tadulan testified that on April 7, 1992 when she arrived at their apartment unit from a trip from Cagayan de Oro City, she came to know from both Estela Santos and her daughter, Maristel Cruz, that the latter has been raped by her husband; that she again met with Estela Santos and asked for forgiveness; and that the said mother told her: 'Hayaan mo na lang, umalis na lang kayo dito, kung ang Diyos ay nagpapatawad, tao pa kaya.' The said wife also testified that she asked Estela Santos if her husband could just leave first while she and their children could vacate the apartment unit on the coming Saturday, and Estela Santos agreed; and that pursuant to the said agreement Irvin Tadulan immediately left their house, after which she also sent their children to Cagayan de Oro City in the company of her mother and then started packing-up their belongings. She further testified that on the night of April 11, 1992, however, her husband came home and quarreled with her upon knowing that she had sent their children to the province; that because of the noise their quarrel created, Estela Santos called for the police; and that on that same night, Estela Santos and her daughter lodged a complaint for rape against Irvin Tadulan, despite the previous understanding between her and Estela Santos that the latter would not anymore take any action against her husband.

It should be pointed out, however, as earlier narrated above, that according to Estela Santos, she agreed not to file any complaint against Irvin Tadulan upon the representation of his wife, Adefa Tadulan, that she had driven away her husband, and her promise that if he would ever return to their apartment unit, she herself would call for the police; that she (Estela Santos) noted, however, that Irvin Tadulan was still coming home to their apartment unit every night; that she was prompted to call for police assistance because she saw Irvin Tadulan kicking the door of the apartment during a violent quarrel with his wife on the night of April 11, 1992;

and that because soon after policemen arrived at the place, Adefa Tadulan herself informed them that her husband has raped Maristel Cruz, she (Estela Santos) and her said child proceeded with the filing of their complaint for rape against Irvin Tadulan.

From the evidence just discussed, it would appear that the initial desistance of Estela Santos from taking any action against Irvin Tadulan, was upon the representation of the latter's wife Adefa Tadulan that she had driven away her husband, and her promise that should he ever come back to their apartment unit she herself would call for the police; but that the said representation turn [sic] out to be untrue, and the promise was not complied with because Irvin Tadulan was still coming home every night and, in fact, he and her [sic] wife had a violent quarrel in the apartment unit on the night of April 11, 1992. Otherwise stated, the desistance was subject to certain conditions which were not complied with, and for which reason Estela Santos proceeded with the filing of a criminal complaint against Irvin Tadulan. Upon such circumstances, it is clear to the mind of this Court that the complainant has not expressly pardoned the said accused.

Besides, there are authorities holding that pardon must be granted not only by the parents of an offended minor but also by the minor herself in order to be effective as an express pardon under Art. 344 of the Revised Penal Code. Thus, in the case of *People vs. Lacson, Jr.*, (C.A.) 55 O.G. 9460, we find the following words: 'Neither must we be understood as supporting the view that the parents alone can extend a valid pardon. Far from it, for we, too are of the belief that the pardon by the parents, standing alone, is inefficacious.' It was also held in another case, that 'The express pardon of a person guilty of attempted abduction of a minor, granted by the latter's parents, is not sufficient to remove criminal responsibility, but must be accompanied by the express pardon of the girl herself.' (U.S. vs. Luna, 1 Phil. 360)

In the present case, the supposed pardon of the accused was allegedly granted only by the mother (Estela Santos) without the concurrence of the offended minor, Maristel Cruz. Hence, even if it be assumed for the sake of argument that the initial desistance of the said mother from taking any action against the accused, constitutes pardon, it is clear that upon the authorities cited above, such pardon is ineffective without the express concurrence of the offended minor herself.

In fine, this Court concludes that the prosecution has proved the guilt of the accused Irvin Tadulan of the crime of rape charged against him, and that the defenses of alibi and pardon or condonation set up by him are lacking in merit."^[6]

We have consistently held that appellate courts, as a rule, will not disturb the findings of the trial court on the credibility of witnesses. We have sustained trial courts in this respect, considering their vantage point in the evaluation of testimonial evidence, absent, of course, any showing of serious error or irregularity that otherwise would alter the result of the case.^[7] We find no such serious error or irregularity in the case at bar.

Accused-appellant alleges that the trial court gravely erred when it disregarded the defense of alibi despite the overwhelming evidence that the accused did not leave his place of work on 2 April 1992. According to the appellant, his immediate supervisor, Leandro Daguro, testified that he (appellant) reported for work on 2 April 1992 and was assigned in a critical area, and being the only driver at that time a problem would have ensued had he left his post at any given time on 2 April 1992. Appellant likewise faults the trial court when it observed that there was no physical impossibility for him to be at Barangay Sumilang, Pasig where the crime was committed because the court mainly focused its attention on the fact that Barangay Pinagbuhatan is but a few kilometers away from Barangay Sumilang, both in Pasig, hence, appellant could have returned to his place of work after committing the crime at the time and place it occurred. Accused argues that the distance between the two barangays was never an issue, that the question really is whether or not appellant left or could have left his work at the Republic Asahi Glass Corporation in Barangay Pinagbuhatan and gone home to Barangay Sumilang in the morning of 2 April 1992.

We are not persuaded. The testimony of Leonardo Daguro that accused could not have left his work as this would have resulted in a big problem at the area where appellant was working is too simple for comfort. The same witness testified that he could not remember if a problem arose on that date when the crime was committed and that he was supervising an average of seventeen (17) men in different sections of the raw material department so that he had to go around each section.

We quote with approval the following observation of the court a quo:

" x x x Besides, it has been held time and time again that for alibi to prosper as a defense the accused must show that he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity at the time of its commission (People vs. Tasurra, 192 SCRA 266). In this case, however, it is not so situated on April 2, 1992, for according to him he was at the plant of the Republic Asahi Glass Corporation in Barangay Pinagbuhatan, Pasig, Metro Manila -- which is but a few kilometers from Barangay Sumilang of the same municipality where the crime was committed." [8]

Accused-appellant tries to discredit the victim's testimony by questioning her behavior after she was allegedly raped by the accused in September 1991 in that she did not show any fear of the accused on 2 April 1992 when she was called by him. It should be borne in mind, in this connection, that the victim was only a naive nine (9) year old child when the crime was committed on her. She considered the accused as a friend, almost like a relative, as in fact she called him "Tito Loloy." She therefore unsuspectingly went near the accused when called by the latter.

As we have stressed in a recent case -

" x x x it is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected under the circumstances from mature people. The range of emotion shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims." [9]

The victim Maristel was too young to totally comprehend the consequences of the dastardly act inflicted on her by the accused-appellant.

As correctly observed by the Solicitor General: "(A)s regards the acts imputed to Estela, the delay of seven (7) days from the date of her knowledge of the rape incident on 4 April 1992 in reporting to the authorities the rape of her daughter is excusable. At that time, she was not yet certain of the steps she would take considering the delicate nature of the problem they were facing" (citing People v. Danguilan, 218 SCRA 98; People v. Joaquin, Jr., 225 SCRA 179)." Besides, we have ruled that a delay in prosecuting the rape is not indicative of fabricated charges. [10]

Finally, the accused's denial and alibi cannot prevail over his positive identification by the victim Maristel as her rapist. Maristel testified in a clear and straightforward manner that appellant through force and intimidation and with use of a deadly weapon (kitchen knife), succeeded in having carnal knowledge of her. [11]

As for the defense that Estela Santos, as the mother of the victim Maristel, expressly pardoned him, we sustain the trial court's finding which reads as follows:

"From the evidence just discussed, it would appear that the initial desistance of Estela Santos from taking any action against Irvin Tadulan, was upon the representation of the latter's wife Adefa Tadulan that she had driven away her husband, and her promise that should he ever come back to their apartment unit she herself would call for the police; but that the said representation turned out to be untrue, and the promise was not complied with because Irvin Tadulan was still coming home every night and, in fact, he and her wife had a violent quarrel in the apartment unit on the night of April 11, 1992. Otherwise stated, the desistance was subject to

certain conditions which were not complied with, and for which reason Estela Santos proceeded with the filing of a criminal complaint against Irvin Tadulan. Upon such circumstances, it is clear to the mind of this Court that the complainant has not expressly pardoned the said accused.

Besides, there are authorities holding that pardon must be granted not only by the parents of an offended minor but also by the minor herself in order to be effective as an express pardon under Art. 344 of the Revised Penal Code. Thus, in the case of *People vs. Lacson, Jr.*, (C.A.) 55 O.G. 9460, we find the following words: 'Neither must we be understood as supporting the view that the parents alone can extend a valid pardon. Far from it, for we, too are of the belief that the pardon by the parents, standing alone, is inefficacious.' It was also held in another case, that 'The express pardon of a person guilty of attempted abduction of a minor, granted by the latter's parents, is not sufficient to remove criminal responsibility, but must be accompanied by the express pardon of the girl herself.' (U.S. vs. Luna, 1 Phil. 360)

In the present case, the supposed pardon of the accused was allegedly granted only by the mother (Estela Santos) without the concurrence of the offended minor, Maristel Cruz. Hence, even if it be assumed for the sake of argument that the initial desistance of the said mother from taking any action against the accused, constitutes pardon, it is clear that upon the authorities cited above, such pardon is ineffective without the express concurrence of the offended minor herself."^[12]

WHEREFORE, the appealed decision dated 4 August 1994 in Criminal Case No. 92186 of the Regional Trial Court, Branch 157 of Pasig, Metro Manila, is hereby **AFFIRMED**, with modification as to the indemnity for the victim which is raised to P50,000.00 from P30,000.00 to conform with prevailing jurisprudence including the recent case of *People v. Romualdo Miranda y Geronimo, et al.*, G.R. No. 97425, 24 September 1996, where the victim was also a minor, as in the case at bar.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Hermosisima, Jr., J., on leave.

[1] Original Records, p. 1; Criminal Case No. 92186.

[2] Decision, pp. 1- 31; Rollo, pp. 18-20.

[3] Original Records, p. 55.

[4] Original Records, pp. 200-201.

[5] Rollo, p. 41.

[6] Ibid., pp. 20-22.

[7] *People v. Angelito Talledo*, G.R. No. 118918, 27 September 1996 (citing *People v. Laroa*, 248 SCRA 277.

[8] Decision, p. 199; Rollo, p. 21.

[9] *People v. Remoto*, 244 SCRA 506.

[10] *People v. Cabresos*, 244 SCRA 362.

[11] TSN, Maristel Cruz, May 29, 1992, pp. 26-27, 30-36, 30-40.

[12] Rollo, pp. 21-22.

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