

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO LIGOTAN Y FABELLA, ACCUSED-APPELLANT.

G.R. No. 119219. September 30, 1996

Ponente: MELO, J.

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MELO, J.:

The incident that transpired on the evening of February 27, 1994 will continue to hound Pinky like a nightmare, for it was on the said date and time that her honor and maidenhood, even before it has fully blossomed, were sullied by a man who acted more as a beast rather than a thinking being. The bestial act is already reprehensible per se, but what made it more obnoxious is that the prey was only a 7-year old child who at that time had not even begun schooling.

Pinky Valiente, with the assistance of her mother, Evelyn P. Valiente, charged Eduardo Ligotan, herein accused-appellant, with rape before the Regional Trial Court of the National Capital Judicial Region (Quezon City, Branch 76) in a complaint alleging:

That on or about the 27th day of February, 1994 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously, by removing the underwear of the said Pinky Valiente y Pantinople, a minor seven (7) years old, and placing himself on top of her and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW. (p. 5, Rollo.)

The prosecution's version of the incident, based on the testimony of Pinky Valiente, Evelyn Valiente, Edwin Borja, Dr. Rosalinda Cosidon, and SPO2 Francisco Floresca, is as follows:

On February 27, 1994 at about 10 o'clock in the evening, Pinky Valiente was sleeping in their house at Fairview, Quezon City, together with her 4-year old brother Bugoy, and her 2-year old sister Melanie. At that time, Pinky's parents were at her grandparents' house, a walk of about 30 minutes away. Pinky was suddenly awakened as accused-appellant was already on top of her. Pinky then noticed that she was no longer wearing her shorts. Accused-appellant then raised Pinky's feet and inserted his penis into her organ. But since his penis could not fully penetrate or fit in, accused-appellant inserted his index and middle finger into Pinky's organ which caused her to feel pain. Accused-appellant threatened her that he would kill her if she would complain. Thereafter, Pinky immediately left the room leaving accused-appellant behind and went to the adjoining house owned by her Aunt Gina. Accompanied by her Uncle Jun-Jun, the brother of his father, Pinky went to her grandparents' house. Upon reaching the house, Evelyn, her mother, noticed that she was crying and seemed to be afraid. Evelyn asked Pinky why she was crying but the latter replied that she had just urinated. Pinky just slept and did not reveal to anyone what accused-appellant did to her.

Five days after the incident, specifically on March 1, 1994, Pinky finally broke her silence by relating her ordeal to her Aunt Evangeline. On the night of the same day, Pinky confided to her mother that she was raped by

accused-appellant on the night of February 27, 1994. Evelyn who was then pregnant, suffered bleeding and gave birth the next day.

A few days after she delivered, Evelyn accompanied Pinky to the barangay hall to file a complaint against accused-appellant. Pinky narrated the incident to Edwin Borja, the Executive Officer of the Barangay. Accused-appellant was invited to the barangay hall for investigation but he denied the charges. Upon realizing that the case was beyond barangay jurisdiction, Edwin Borja referred the matter to the Lagro Police Station for possible investigation. SPO2 Francisco Floresca, the police investigator at the Lagro Police Station to whom the case was assigned, interrogated Pinky and her mother and thereafter prepared the statements as well as the letter-referral for inquest by the City Prosecution of Quezon City.

Dr. Rosalina Cosidon, Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame, Quezon City, conducted a medical examination on Pinky upon the request of the PNP-CIS. The Medico-Legal Report M-0402-94 prepared by Dr. Cosidon showed a shallow healed laceration at 3 o'clock at the hymen which could have been caused by the forcible entry of a hard blunt object compatible with an erect male penis, and a congested labia minora. The said report likewise revealed that Pinky was no longer a virgin.

On the other hand, the defense is based solely on the uncorroborated testimony of accused-appellant.

Accused-appellant testified that he worked as a gardener for the spouses Boy and Evelyn Valiente, parents of Pinky; that he used to stay in the house of Gina Valiente, sister of Boy Valiente, whose houses were separated only by a lawanit wall; that on the afternoon of February 27, 1994, he went to the house of Rafael Valiente, father of Boy Valiente where he, Boy, and a certain Danilo Lopez had a drinking spree; that at about 6:30 that evening, Evelyn arrived to fetch Boy, who, however, refused to go home; that thirty minutes later, the 3 children of Boy and Evelyn arrived; and, that Boy and his family spent their night in the house of Rafael Valiente. Accused-appellant, continuing, declared that he left the house of Rafael Valiente at 7:30 that evening and went to the Hard Diamond Beerhouse to drink with his two friends, Nognog and Nonoy; that his companions left the beerhouse at 1:30 a.m., leaving him behind asleep; that he was only awakened when he was asked to pay the bill of P375.00; and, that after paying the bill, he left the beerhouse at around 2 a.m. In fine, accused-appellant denied the charge of rape, saying that he did not know why he was being so charged, but that perhaps the Valientes wanted him out of the place he was staying in because he had an altercation once with Boy Valiente when he tried to pacify the latter who was then quarreling with his cousin, Eduardo Macalalay.

The trial court, convinced on the merits of the prosecution's case, rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime charged and sentenced him to an imprisonment term of reclusion perpetua and to indemnify the victim in the amount of P50,000.00 as moral damages, and to pay the costs.

Not satisfied, accused-appellant has interposed the instant appeal, contending that the trial court gravely erred in finding the testimony of Pinky Valiente to be credible despite clear inconsistencies when pieced together with the testimony of her mother regarding events before and after the alleged commission of the crime of rape, thereby negating positive identification of the culprit; and in disregarding his claim of alibi which gained strength due to the prosecution's failure to establish the true identity of the offender.

The appeal is bereft of merit.

The gravamen of the offense of statutory rape, as provided for in Article 335, paragraph 3 of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. Sexual congress then with a girl under 12 years is always rape. Thus, force, intimidation or physical evidence of injury is immaterial (*People vs. Palicte*, 229 SCRA 543 (1994)). In the present case, Pinky Valiente was only 7 years old at the time she was

violated and deflowered.

This is how Pinky Valiente candidly narrated her ordeal in the hands of accused-appellant:

Q.

Who was with you at the time you were sleeping in your house?

A.

My brother and my sister.

Q.

And what are their names?

A.

Bugoy and Melanie.

Q.

How old are they, if you know?

A.

Bugoy is 4 and Melanie is 2.

Q.

By the way, where is your house in which you were sleeping located?

A.

Fairview, Quezon City.

Q.

You said you were sleeping inside your room together with your brother Bugoy and sister Melanie, in what particular portion of the room were you then where you and your brother and sister were sleeping?

A.

On a papag, sir.

Q.

And while you were sleeping on the papag, was there anything unusual that happened?

A.

Yes, sir.

Q.

What happened?

A.

He entered the room. (Witness pointing to the direction of the accused)

Q.

Do you know his name?

A.

Yes, sir.

Q.

What is his name?

A.

Ed.

FISCAL SANTOS:

Is the identity of the accused admitted? May we know from the defense, your honor.

ATTY. RIVERA:

Yes, your honor.

FISCAL SANTOS:

Q.

You said that Ed, the accused herein, entered your room. What happened after that?

A.

He put off the light.

Q.

After putting off the light, what else did he do?

A.

He removed his clothes.

Q.

What clothes did he remove?

A.

His shorts.

Q.

After Eddie removed his shorts, what else did he do?

A.

He also removed my clothing.

Q.

What did Eddie remove from you?

A.

My shorts.

Q.

Were you wearing a panty at the time?

A.

No, sir.

Q.

After Eddie removed your shorts, what else did he do?

A.

He placed himself on top of me.

Q.

After that, what did he do?

A.

He raised my two feet.

Q.

After raising your feet, what else did he do?

A.

His penis could not penetrate.

Q.

Could not penetrate what, Ms. Witness?

A.

My vagina.

Q.

You mean, Ms. Witness, Eddie inserted his penis into your vagina but it would not fit in?

A.

Yes, sir.

Q.

And after that, what happened?

A.

"Dinukot."

Q.

What do you mean by "dinukot"?

A.

My pepe, dinukot.

Q.

How did he dinukot your pepe?

INTERPRETER:

Witness pointing to her index and middle finger as the one inserted by Eddie in her vagina.

FISCAL SANTOS:

Q.

You mean the accused, Eddie, inserted his index and middle finger inside your vagina.

A.

Yes, sir.

Q.

What did you feel?

A.

It was painful.

Q.

When accused Eddie inserted his penis into your vagina which, you said, did not fit in, what did you feel?

A.

I felt pain and he threatened me that he will kill me.

Q.

After Eddie threatened you that he would kill you, what else happened?

A.

I left.

(TSN, June 28, 1994, pp. 4-7.)

The Court finds Pinky's narration unbridled and unadulterated. As observed by the trial court, Pinky testified in a categorical, straightforward, spontaneous, and frank manner. It is simply inconceivable for Pinky, at 7 years of age, with all her naivete and innocence, to fabricate a story of defloration, allow an examination of her private parts, and thereafter submit herself to a public trial or ridicule, if she had not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished (*People vs. Dado*, 244 SCRA 655 [1995]). The spontaneity of Pinky's testimony can not be discredited by mere denials of accused-appellant. It is a well-settled rule that an affirmative testimony is far stronger than negative testimony, especially so when it comes from the mouth of a credible witness like Pinky (*People vs. Digno*, 250 SCRA 237 [1995]).

Likewise, well-settled is the rule that testimony of the rape victim is credible where she has no motive to testify against the accused (*People vs. Cabiao*, 210 SCRA 326 [1992]). The record of the case does not show any reason

why Pinky and her family would falsely impute to accused-appellant the commission of a very serious offense. In trying to discredit Pinky, accused-appellant attributed ill-motive by alleging that the reason why he was charged was that the Valientes wanted him out of their place. Such reason posited by accused-appellant is too flimsy and insignificant for Pinky and her family to falsely charge him with so serious a crime and to publicly disclose that Pinky had been raped and then undergo the concomitant humiliation, anxiety and exposure to a trial (*People vs. Manzana*, 250 SCRA 152 [1995]). It should also be noted that according to accused-appellant himself, he together with Boy (Pinky's father) and a certain Danilo Lopez had a drinking spree on the night of the rape. This certainly is not compatible with any alleged ill-feelings of the Valientes against him.

Moreover, it is doctrinally entrenched that when the paramount issue is the credibility of witnesses, as in the case at bar, the appellate courts will generally not disturb the findings of the trial court considering that the latter was in a better position to assess the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during trial, unless the court has plainly overlooked certain facts of substance and value which, if considered, may affect the outcome of the case (*People vs. Bantasil*, 249 SCRA 367 [1995]). After much consideration and upon perusal of the record of the case, the Court finds no reason to overturn the findings of the trial court which are in full accord with the evidence on record.

In his brief, accused-appellant raises certain points in the testimony of Pinky and her mother which he contends constitute inconsistencies and improbabilities that weaken the prosecution's case. However, going over the same, the Court finds them immaterial and inconsequential as to impair the credibility of Pinky and her mother.

The inconsistency in Pinky's statement as to whether she was already awake when the accused-appellant removed her underwear does not impair the main thrust of her testimony that she was raped by accused-appellant on the night of February 27, 1996. Rape as a harrowing experience is usually not remembered in detail. Rather, the victim of such atrocity would normally be inclined to forget the execrable event and push it into the deepest recesses of her subconsciousness reserved for unwanted experiences and memories. A rapist can not expect the hapless object of his lechery to have the memory of an elephant and the cold precision of a mathematician (*People vs. Atuel*, G.R. No. 106962, prom. on Sept. 03, 1996 citing the case of *People vs. Mandap*, 244 SCRA 457 [1995]). Thus, Pinky can not be expected to remember in complete and accurate detail her traumatic and horrifying experience at the hands of accused-appellant. The inconsistency on this point, even bolsters Pinky's credibility (*People vs. Abutin*, G.R. No. 119225, prom. on July 26, 1996, citing *People vs. Villaruel*, 238 SCRA 408 [1994] and *People vs. Manahan*, 238 SCRA 141 [1994]).

With respect to the improbability of Pinky knowing the exact time and date of the incident considering that she had not even gone to school, the same does not detract from the fact that accused-appellant actually raped her. Since distinguishing daytime from nighttime or one day from the other is a basic or elementary thing which is learned from day-to-day life, it is not impossible for Pinky who was then 7 years old to know the same.

Anent the testimony of Evelyn Valiente, Pinky's mother, that accused-appellant left the house of her in-laws to accompany Daniel Lopez to his house which was near Evelyn's house and thereafter, returned after 10 minutes, the same does not negate the commission of the crime against Pinky as the crime had been consummated within a short period of time for accused-appellant organ could not fully penetrate Pinky's vagina. On this point, worth mentioning is the following observation of the Office of the Solicitor General, to wit:

Verily, the testimony of Pinky's mother, Evelyn, that appellant left the house of her in-laws for only ten (10) minutes is only an approximation and does not detract from the fact that on the night of the incident, appellant left the house of her (Evelyn's) in-laws to accompany one Daniel Lopez to his house which is only about three (3) rooms away from Evelyn's house (tsn, July 5, 1994, p. 10). Appellant's absence from the house of Evelyn's parents in-law couldn't have been for just ten (10) minutes since as earlier stated, it takes about thirty (30)

minutes to travel the distance between Evelyn's house (where the rape was committed) and her parents-in-law.

(Appellee's Brief, p. 12.)

Accused-appellant further contends that Evelyn failed to ask Pinky why she was crying when she arrived at her grandparents' house. The record, however, belies such contention. Evelyn indeed inquired as to why Pinky was crying and this is made evident by her following testimony during cross-examination:

ATTY. RIVERA:

Q.

Do you know why they were crying?

A.

The girl did not tell me anything because she was afraid.

Q.

Did you ask her why she was crying?

A.

Yes, sir.

Q.

Did she tell you that she was afraid?

A.

No, sir.

Q.

Then, how come you know that she was afraid?

A.

I did not know yet.

Q.

And she did not tell you that she was afraid?

A.

I asked her what happened to her and she told me that she just urinated.

Q.

Why did you ask that? What was her condition?

A.

She was crying and she seemed afraid.

(TSN, July 5, 1995, pp. 11 to 12)

(underscoring for emphasis)

Accused-appellant's defense of alibi, that at the time of the incident he was at the Hard Diamond Beerhouse having drinking session with his two friends, does not merit serious consideration. For alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime, or in its immediate vicinity at the time of its commission (*People vs. Jose*, 250 SCRA 319 [1995]). At the time of the incident, accused-appellant says he was at the Hard Diamond Beerhouse, but this place is located only at the back of the house of Rafael Valiente and the distance from the house of Rafael Valiente to the house of Boy and Evelyn Valiente where the rape took place can be traversed by a 30-minute walk. Clearly, there was no physical impossibility for accused-appellant to be present at the scene of the crime at the time of its commission.

If it is indeed true that on the night of the incident, accused-appellant was at the Hard Diamond Beerhouse together with his two friends, he should have presented these persons to corroborate his testimony. Alibi must be supported by credible corroboration from disinterested witnesses and where such defense is not corroborated, it is fatal to the accused (*People vs. Calope*, 229 SCRA 413 [1994]). Thus, having failed to do so, accused-appellant's alibi becomes unbelievable.

Moreover, Pinky's positive identification of accused-appellant as her rapist negates alibi. Alibi being inherently weak because it is easy to concoct and difficult to prove, can not prevail over the positive identification of the accused, especially if made by the victim (*People vs. Sanchez*, 250 SCRA 14 [1995]). Accused-appellant was positively identified by Pinky as the person who ravished her on the night of February 27, 1994. Pinky's identification of accused-appellant as her defiler can not be doubted for she knew him well because he worked with her parents as a gardener.

Independent of accused-appellant's arguments, the fact that there was no full or deep penetration of Pinky's vagina does not negate the commission of rape which is committed even with the slightest penetration of a woman's sex organ. The Court, in a long line of cases, has consistently ruled that in the crime of rape, full or complete penetration of the complainant's private part is not necessary as the only essential point to prove is the entrance of at least the introduction of the male organ into the labia of the pudendum (*People vs. Lazaro*, 249 SCRA 234 [1995]). As narrated by Pinky, accused-appellant inserted his penis into her vagina but since it would not penetrate or "fit-in," accused-appellant inserted his index and middle fingers into her vagina. This consistent statement of Pinky was further substantiated and confirmed by Dr. Cosidon's Medico-Legal report which showed a healed laceration at 3 o'clock at the hymen which could have been caused by the forcible entry of a hard blunt object compatible with an erect male penis, and a congested labia minora.

Accused-appellant was, therefore, correctly convicted by the trial court of statutory rape.

With the passage of time Pinky's physical wounds may have already healed. But the deep psychological wounds and the stigma of being a rape victim will always be there for the rest of her life to continually remind her of the harrowing experience. How the Court wishes that, aside from vindicating Pinky's honor and having her culprit apprehended and punished, it can do something to cure those psychological wounds and to remove the stigma so that she can live a normal life again. Regrettably, this is beyond the resources of the Court.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ.,
concur.

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