

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONESTO MANUEL Y PADILLA, ACCUSED-APPELLANT.

G.R. No. 121539. October 21, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Honesto Manuel y Padilla was charged with raping his cousin-in-law, 11-year old Nestcel Marzo in an information that reads:

"That on or about the 23rd day of May 1993, in Quezon City, Philippines, the above-named accused, with lewd design, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant NESTCEL MARZO Y GOROSPE, eleven (11) years of age, a minor, against her will, to the damage and prejudice of the latter in such amount as may be awarded under the provisions of the civil code.

CONTRARY TO LAW."

On arraignment, accused-appellant pleaded "not guilty". Whereupon, trial on the merits ensued. The prosecution presented T/Sgt. Nestor Marzo, the victim's father, P/Senior Inspector Jesusa Nieves Vergara, Medico-Legal Officer of the PNP Crime Laboratory, Camp Crame and the alleged victim herself, as witnesses. The defense, on the other hand, presented accused-appellant.

The prosecution established the following facts:

Nestcel Marzo, accompanied by her grandmother, came to Metro Manila from Binalonan, Pangasinan, supposedly to enjoy her vacation with her father who was assigned to the Office of the Civil Defense, PNP Camp Aguinaldo, Quezon City. Since her father was then still in the province, Nestcel was left to the care of spouses Honesto Manuel and Annabelle Manuel in a rented room at the Limpin Tailoring Shop located at the Concessionaire, Camp Aguinaldo, Quezon City. Annabelle was Nestor's niece and Nestcel's cousin. Said shop consists of two rooms, one occupied by a certain Emma, the shop proprietress, while the other was occupied by the spouses. Since Annabelle was still recuperating in a hospital, having just given birth, Nestcel was left in the care of accused-appellant.

Nestcel slept with accused-appellant in their room. On the night of May 23, 1993, Nestcel was awakened from her sleep to see accused-appellant by her side looking down at her. The latter then undressed and embraced her. Thereafter, accused-appellant played with his organ and tried to penetrate her from behind. Before Nestcel could close her legs, she felt accused-appellant's penis touch her vagina and thereafter felt a fluid-like sticky substance flowing thereon.

After having ejaculated, accused-appellant left Nestcel inside the room. The following day, Emma saw Nestcel crying outside the room. After some prodding, Nestcel related to Emma what accused-appellant did to her. Emma immediately reported the matter to Nestcel's uncle who in turn reported it to the police resulting in

accused-appellant's arrest.

Nestcel was subjected to a medical examination with the following findings:

"Findings are compatible with recent loss of virginity. There are no external signs of recent application of any form of violence." [1]

Accused-appellant denied the allegations of the prosecution. He alleged that on that day, he returned home at around 7:00 in the evening from the hospital where his wife had just given birth. After supper, he prepared the mattress. The usual sleeping arrangement would have Nestcel sleeping outside the room, but that night, Nestcel slept beside him. He, therefore, placed a divider between two of them.

At around 10:00 of the same night, accused-appellant claimed to have been awakened when he noticed Nestcel already sleeping beside him. Apparently aroused, he removed her panty. On second thought and realizing the wrong he was about to do, he allegedly desisted, went outside the room and just masturbated to relieve himself of his urge. The following day, he saw Nestcel crying outside the room.

The trial court gave credence to the version of Nestcel and ruled:

"WHEREFORE, the Court finds the accused, Honesto Manuel, guilty beyond reasonable doubt, as principal, of the crime of Rape, defined and penalized in Article 335 of the Revised Penal Code; there being no mitigating circumstances to offset the same, hereby sentences said accused to suffer the penalty of Reclusion Perpetua, with the accessories provided for by law and to pay the costs.

The accused is, likewise, ordered to pay the sum of P30,000.00 as moral damages.

The preventive imprisonment already served by the accused shall be deducted in full from the principal term of his penalty." [2]

In this appeal, accused-appellant assails the court a quo's decision and submits the following:

1. The trial court gravely erred in giving credence to the untruthful and improbable testimony of prosecution witness Nestcel Marzo.
2. The trial court erred in finding accused-appellant Honesto Manuel guilty of rape beyond reasonable doubt.

This Court finds accused-appellant's testimony neither credible nor trustworthy.

Accused-appellant brands as dubious the testimony of the victim that "the accused undressed her, laid beside her and then held her organ as the accused wanted to insert his private organ to her organ."

This Court finds nothing dubious about said testimony. On the contrary, the testimony was plausible in its entirety as Nestcel narrated chronologically how accused-appellant acted to consummate the crime.

Accused-appellant further argues that if indeed it was his desire to ravish the complaining witness, he could have consummated his lustful act easily considering that the latter was already naked and helpless.

Said reasoning is, not only irrational, but is belied by medical findings as well as the testimony [3] of the medico-legal officer, thus:

"COURT:

x x x x x x x x

Q -

The victim you have examined is merely 11 years old?

A -

Yes sir.

Q -

Considering the nature of her genital organ at the time of your examination, can it be possible that there is some forcible entry?

A -

Yes, Your Honor.

Q -

But only up to the level of the hymen, there was no complete penetration and because the entry is only up to the hymen, could it be possible that the organ was able to penetrate at that distance?

A -

Yes, Your Honor."

Accused-appellant's insinuation that it was Nestcel who brought about such suggestive circumstance of lying by his side is not credible. This Court notes that Nestcel tried to close her legs. Such was an indication of resistance. But even if Nestcel's feeble attempt to close her legs could hardly be considered as an indication of resistance, it should be remembered that Nestcel was then only eleven years old. She could not possibly resist accused-appellant who was trusted by her grandmother to act as guardian.

Be that as it may, this type of rape is statutory in nature. Article 335 of the Revised Penal Code provides: "Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- (1) By using force or intimidation;
- (2) When the woman is deprived of reason;
- (3) When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceeding paragraph shall be present." (Italics supplied)

No proof of involuntariness on the part of the victim is necessary as she is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant, the only circumstance that need to be proved is the fact of intercourse.[4]

Accused-appellant finds improbable and unbelievable the accusation considering that he was behind Nestcel and that she had closed her legs.

An eleven-year old innocent barrio lass could not possibly have made up the following testimony in cross-examination:[5]

"Atty. Benzon:

Q -

You said you close (sic) your legs when the accused was trying to insert his penis, so the accused was not able to insert his penis?

A -

When I was not able to close my legs properly he was able to touch with his penis my organ.

Q -

What was touched by his penis, was it your anus or your vagina?

A -

My vagina."

For rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia and even the briefest of contacts under circumstances of force, intimidation or unconsciousness, even without rupture of the hymen, is already rape in our jurisprudence.[6] It is axiomatic in criminal law that in order to sustain a conviction for rape, full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ within the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape. Thus, that the victim's hymen is intact and has no sign of laceration does not negate a finding that rape was committed.[7]

Lastly, accused-appellant disputes Nestcel's testimony that the fluid emanating from him dropped on Nestcel's organ since this does not jibe with the medical finding that no semen was found in her organ.

This is misleading. Nestcel's testimony during cross-examination is clear:

"Court:

Q -

How did you know that a portion of sexual organ of your Kuya Dong entered your vagina?

A -

I felt it, Your Honor.

Q -

And it was, and after that you felt some fluid come out?

A -

I felt something wet.

Atty. Benzon:

Q -

Where did you feel this sticky substance?

A -

In front of my organ.

Q -

Did you not say that the accused was trying to insert his organ from behind?

A -

Yes sir.

Q -

How did it happen that you felt the sticky substance in front of your organ?

A -

It was sometime that his organ was inserted before the fluid came out."

From said testimony, it is clear that only a portion of accused-appellant's organ was able to penetrate Nestcel's vagina. In fact the medico-legal officer stated that there was no complete penetration as the penetration was only up to the level of the hymen. It would be logical, therefore, not to find any semen inside the vagina.

Besides, the presence of spermatozoa in the vaginal area is not one of the elements of the crime of rape. Rape is consummated by the sexual act, not the ejection of spermatozoa into the female organ.[8]

If there is one area of Nestcel's testimonial evidence which accused-appellant could have disputed vigorously, it is in the alleged position of accused-appellant while the act was being committed. This Court observed that accused-appellant did not take advantage of Nestcel's apparent contradictory testimony in her direct and cross examination with regard to the position of accused-appellant in his effort to penetrate her. Accused-appellant only made a general and sweeping statement that Nestcel's allegations of rape were "inconsistent, improbable and contradictory to each other on material points."

In her direct examination,[9] she testified that accused-appellant went on top of her. However, in her cross examination,[10] she testified that accused-appellant tried to enter her from behind.

Notwithstanding said lapse in accused-appellant's argument in this appeal, this Court sees nothing contradictory and inconsistent on material points. It should be noted that Nestcel, being only eleven years old, could not be expected to be sophisticated and knowledgeable in the ways of sex. Accused-appellant's efforts to shift positions to consummate the crime would not be material nor in any way relevant to the case.

More importantly, the complaining witness stood firm in her testimony that a portion of accused-appellant's penis penetrated her vagina.[11] Whether his failure to fully penetrate her was due to the virgin state of the victim or to her attempt to close her legs to prevent access is immaterial. The fact remains that a portion of accused-appellant's penis entered Nestcel's vagina, as consistently asserted by the latter during both direct examination and cross.[12] Such assertion, coming as it does from a naive eleven-year old girl, is credible enough as found by the trial court.

Time and again, this Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" -- all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[13]

Moreover, Nestcel's credibility was reinforced by the failure of accused-appellant to ascribe any ill-motive on the part of the former which could have undermined her credibility. It is settled that where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a crime, the testimony is worthy of full faith and credit.[14]

Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.[15] It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[16]

As the trial court aptly observed:

"The Court cannot believe that a young barrio girl who was brought up in a rural community far and away from the blinding neon lights of a city limits and unaccustomed to the fun and luxury of a highly urbanized community would easily give up her virginity to a person whom she considers a substitute parent. And considering that she was left in the custody of the accused for a day or two, to grant accused's proposition that it was Nestcel who went to his side is something beyond even the wildest expectation."

The passage of Republic Act No. 7659[17] would have subjected accused-appellant to the death penalty due to the presence of the aggravating circumstance that the victim was under eighteen (18) years of age and the former was then acting as her guardian. Since the crime was committed in May 1993 which was before R.A. No. 7659 took effect on December 31, 1993, the imposable penalty would only be reclusion perpetua.[18]

WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED with the MODIFICATION that accused-appellant Honesto Manuel y Padilla is ordered to pay Nestcel Marzo indemnity in the amount of P50,000.00 instead of P30,000.00 in line with prevailing jurisprudence and moral damages in the amount of P50,000.00.[19] Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, Purisima, and Pardo, JJ., concur.

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- [1] Medico-Legal Report No. M-840-93, Records, p. 10.
- [2] Decision penned by Judge Justo M. Sultan.
- [3] TSN, April 6, 1994, p. 6.
- [4] People v. Ignacio, G.R. No. 114849, August 24, 1998.
- [5] TSN, September 7, 1993, p. 12.
- [6] People v. Evangelista, G.R. No. 121627, November 17, 1997.
- [7] People v. Tabugoca,, G.R. No. 125334, January 28, 1998.
- [8] People v. Oliva, G.R. No. 108505, December 5, 1997.
- [9] See note 5, p. 5.
- [10] Supra, p. 12.
- [11] Supra, pp. 5 & 11.
- [12] Supra, pp. 5 & 12.
- [13] People v. Atop, G.R. Nos. 124303-05, February 10, 1998.
- [14] People v. Ferrer, G.R. Nos. 116516-20, September 7, 1998.

[15] People v. Bersabe, G.R. No. 122768, April 27, 1998.

[16] See note 13.

[17] An Act to Impose the Death Penalty on Certain Heinous Crimes.

[18] Section 19(1), Art. III, 1987 Constitution: "Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

[19] People v. Prades, G.R. No. 127569, July 30, 1998.

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