PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO DAWISAN, ACCUSED-APPELLANT.

G.R. No. 122095. September 13, 2001

Ponente: BUENA, J.

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BUENA, J.:

Convicted of rape, accused-appellant Domingo Dawisan now assails the decision[1] of the Regional Trial Court of Calbayog City, Branch 31, dated 27 March 1995, in Criminal Case No. 1590 adjudging him guilty beyond reasonable doubt of raping a 17-year old lass, and sentencing him to suffer the penalty of reclusion perpetua and to pay the sum of P50,000.00 as indemnity, and costs.

In an information dated 13 January 1993, accused-appellant Domingo Dawisan was charged with the rape of minor Francisca Catalan as follows:

> "That on or about the 12[th] day of December 1992, in the morning, at Brgy. Mag-ubay, Oquendo District, Calbayog City, Philippines and within the jurisdiction of this honorable court, the above-named accused, with lewd designs and by means of force, did then and there wilfully, unlawfully and feloniously have carnal knowledge upon the undersigned without her consent and against her will.
>
> "Contrary to law."

Upon being arraigned, accused-appellant pleaded not guilty to the charge.

As gleaned from the collective testimony of prosecution witnesses namely, Francisca Catalan, complainant; Maria Catalan, mother of Francisca; and Dr. Jose V. Ong, Officer-in-Charge of the Calbayog District Hospital, the facts of the case unfold.

Around 11:30 A.M. of 12 December 1992, Francisca Catalan was cooking rice at their home situated in Barangay Mag-ubay, Oquendo District, Calbayog City when she was asked by her mother, Maria Catalan, to get their bolo from accused-appellant's house which was just adjacent to the Catalan residence.[2] Maria planned to use the bolo in husking a coconut. Upon arrival at Dawisan's house, Francisca greeted Domingo's eight-year-old sister, Vilma, and asked the latter about the bolo. Thereafter, Francisca proceeded to the kitchen, got the bolo and, on her way out, passed in front of a bedroom where accused-appellant Domingo stayed.

As Francisca was passing by the door of the bedroom, Domingo suddenly grabbed and dragged her towards the room,[3] covering Francisca's mouth. As a result, Francisca lost grip of the bolo.[4] Inside the bedroom, Domingo pinned Francisca down the floor, put away the hammock, and with his right hand undressed himself by lowering his short pants and brief.[5] Accused-appellant then pulled down Francisca's skirt and panty to just above her knees, touched Francisca's private parts and forcefully separated her thighs to facilitate the penile invasion.[6]

Accused-appellant then had carnal knowledge of her by inserting his penis inside Francisca's vagina.[7] Francisca tried to resist the sexual attack but "one of her hands cannot do anything because (she) had polio";[8] she felt weak and trembled.

In the midst of the coerced coitus, Maria, worried that her daughter was not back yet despite the short distance between their house and the Dawisan's — proceeded to the Dawisan household and surprised Domingo who was naked from waist down and perched on top of her daughter.[9] Stunned, accused-appellant "immediately separate(d) from Francisca" by rolling over to the left side of the young lass. Seething with motherly indignation, Maria scouted for something to strike her daughter's ravisher and upon seeing a piece of wood in the sala, picked it up and swung it against Domingo hitting his knee.[10] Accused-appellant then stood and fled.

During trial, the court noted that Francisca's right forearm was shorter than her left and the fingers of her right hand could hardly be opened.[11] In fact as a result of her condition, Francisca had to drag her right foot when she walks.[12]

At the stand, Francisca narrated that accused-appellant ravaged her for the first time on 06 December 1992 inside a room of the Dawisan's residence were she and three of her young nieces - Marjory, Sinang and Margie - slept. Francisca testified that accused-appellant threatened to snuff out her life if she were to divulge the carnal ordeal. According to Francisca, prior to the 06 December incident, she and a few of her child relatives were allowed to sleep in the Dawisan's residence for twelve (12) nights already,[13] as their house was demolished[14] by his father and uncles. At the time of the twin sexual assaults, Francisca's vagina bled.[15]

Moreover, as part of its documentary evidence, the prosecution submitted a Physical Injuries Report,[16] dated 15 December 1992, prepared by Dr. Ema Cheryl Rosalado of the Calbayog District Hospital, the physician who conducted the medical examination on Francisca. However, as Dr. Rosalado was then attending a six-month Radiology service training in Manila, the prosecution presented instead the testimony of Dr. Jose V. Ong, Officer-in Charge of the said hospital.

In opposition, the defense presented the testimonies of four (4) witnesses to lend basis to its theory of denial: accused-appellant Domingo Dawisan, 21-year-old-farmer; Eufrecina Dawisan, mother of Domingo; Vilma Dawisan, eight-year-old-sister of Domingo; and Gregoria Romano, neighbor of the Dawisans.

In his testimony, Domingo, although admitting his presence in the bedroom with the complainant, denied having sexually assaulted Francisca. Thus, according to accused-appellant, he was hired by one Banny Flor to plow the field on 12 December 1992 from 7 A.M. to 10 A.M. after which he went home to eat and rest. Upon reaching their house, Domingo lay on a hammock and slept inside the bedroom as he was exhausted from work in the field. He was only doused from slumber when someone sat beside him on the hammock--Francisca Catalan. Thereafter without any warning, Maria Catalan barged into the room and upon seeing Domingo and Francisca beside each other, immediately struck accused-appellant with a piece of wood which caused him injuries. Domingo underwent a medical examination conducted by Dr. Jean Manoza of the Calbayog District Hospital upon which a corresponding Physical Injuries Report[17] was issued. Records show that Domingo was physically examined six (6) days after the infliction of the injury.[18]

On the stand, accused-appellant averred that the rape case was filed against him inasmuch as Maria Catalan sensed that he was pressing charges as a result of the physical injuries she inflicted on him (Domingo) by her. Further, accused-appellant saw nothing wrong in the act of Francisca sitting beside him on the hammock.

In the course of trial, Eufrecina Dawisan corroborated the narration of her son Domingo. Eufrecina testified that at the time of the commission of the crime, she was feeding the hogs at their backyard when Francisca arrived and upon her permission - entered the kitchen and got the bolo.[19] Thereafter, Francisca went inside the room where Domingo was lying on a hammock.

According to Eufrecina, she eventually saw Maria Catalan enter the room. Then from the stairway,[20] Eufrecina

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heard a commotion occurring inside the room; she "learned that (her) son was struck by Maria."[21]

On cross-examination, Eufrecina thought of no reason why her son would be charged with so grave an offense; she alleged that prior to the 12 December incident, she and Maria Catalan treated each other as sisters and good friends.

The respective testimonies of Domingo and Eufrecina were further corroborated by the recollection of eight-year-old Vilma Dawisan who testified that she saw Francisca go "to the kitchen to get the bolo", enter the room and sit on the hammock where Domingo was resting.[22]

On 27 March 1995, the trial court rendered its judgment of conviction, the decretal part of which reads:

> "WHEREFORE, as sustained by the evidence, the Court finds the accused GUILTY beyond reasonable doubt of the crime of rape as charged in the complaint and as punished under Article 335 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties under the law, and to pay the costs. The accused is further ordered to indemnify the offended party the sum of P50,000.00.
>
> "SO ORDERED."

In this appeal, the defense ascribed to the trial court the following errors:

> "I.
>
> The lower court erred in finding that the accused-appellant had carnal knowledge of the offended party.
>
> "II.
>
> The lower court erred in convicting the accused-appellant as the testimonial and documentary evidence presented are insufficient to prove that the accused-appellant was guilty beyond reasonable doubt."

The appeal is without merit; the verdict of conviction necessarily stands. Through the collective testimony of its witnesses, the prosecution indubitably established - with moral certainty - not only the commission of the felony but also the precise culpability and identity of the perpetrator thereof -- accused-appellant Domingo Dawisan.

In the course of trial, victim Francisca Catalan narrated the rueful ordeal that transpired on 12 December 1992 where accused-appellant dragged her inside the bedroom and succeeded in having carnal knowledge of her under circumstances of force.

Jurisprudence is crystalline that penile invasion entails contact with the labia and even the briefest of the contact under circumstances of force, intimidation or unconsciousness, even without rapture of the hymen, consummates the crime of rape.[23] To be sure, the gravamen of the offense of rape is sexual intercourse without consent.[24]

Thus, Francisca on the witness stand recounted the rape:[25]

> "A:
>
> X X X He pressed my thighs forcefully with his hands so that he will be able to insert his organ successfully and he was already in the act of sexual intercourse moving up and down.
>
> "X X X
>
> "Q:

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And he was able to do a sexual intercourse with you holding your mouth (with) his hand and the other one is holding your thighs?

"A:

Yes.

"X X X

"Q:

But of course you were resisting?

"A:

Yes.

"Q:

Why did you not bite his hand?

"A:

I did but he was strong.

"X X X

"Q:

The accused [was] succeeded in inserting his organ into your organ?

"A:

Yes his genital organ was inside my vagina.

"Q:

All the entire penis was inserted in your organ?

"A:

Yes and he did not make any excretion.

"X X X

"Q:

While he (was) doing the act of having sexual intercourse with you, your mother arrived, is that correct?

"A:

Yes, he was caught and his body was on top of me.

"X X X

"Q:

And what did your mother do?

"A:

My mother surprised him by saying `What are you doing to my daughter,' immediately he disengaged himself

away from me.

"X X X

"A:

He disengaged himself away from me rolling at my side.

"Court:

Meaning, that he turned his body and lie (sic) face up?

"A:

Yes." (Emphasis Ours)

In this specie of offense, the lone testimony of the complainant - if credible, straightforward, convincing and otherwise consistent with human nature and the ordinary course of things - may stand as the robust pillar of conviction. Stated differently, the complainant's credibility in an indictment for rape partakes outmost significance and assumes consideration in its primary sense.

Corollarily, the testimony of a rape victim as to who abused her is credible where she had no motive to testify against the accused.[26] As borne by the records, Francisca, prior to the incident, looked up to Domingo as if he were her elder brother.[27] In like manner, accused-appellant Domingo admitted that he treated Francisca as a sister.[28] Moreover, it defies logic and reason that a victim of rape and her family would publicly disclose the incident and thus sully their honor and reputation in the community unless it is true.[29] To our mind, victim Francisca Catalan, in mustering courage to reveal the dastardly act of her ravisher, spoke only one language — that which justice knows and speaks — the truth.

Of greater importance is that during trial, Francisca unwavered in positively identifying accused-appellant as the assailant of her person and honor and the devious author of the sexual incursion. Even further on cross-examination, she clung tenaciously to her story of woe and withstood the artillery of queries unleashed by the defense. Worth stressing too is the fact that the recollection of Maria Catalan corroborated the testimony of the victim that accused-appellant indeed had carnal knowledge of Francisca inside the bedroom of Dawisan's residence.

As to the witnesses' deportment, conduct and manner of testifying, the trial court articulated this observation[30]:

> "X X X The candid narration of the incident by the complainant reveals that (she) was really sexually abused. She would not have submitted to the indignities of physical examination of her private parts, undergo public trial and narrate the details of the incident if she (were) not in fact raped. The testimony of Maria Catalan was direct and clear--that when she went up (to) the house of the accused she overtook (sic) the accused on top of her daughter and having sexual intercourse with the latter; that the accused was naked and his male organ exposed, and that when she uttered `What are you doing to my daughter?', the accused immediately disengaged from her daughter and that she (Maria) struck the accused with a piece of wood.
>
> "On the other hand, the testimonies of the accused and his witnesses are not worth believing. The testimony of the accused was incredible. The Court observed (that) Gregoria Romano (was) not an eyewitness to the incident. Portions of the testimony of Eufrecina Dawisan were biased and not credible. Vilma Dawisan's testimony was clearly shown to be coached and rehearsed. Several questions asked though simple, were unanswered by her. The Court thus holds and as sustained by jurisprudence, that as between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence and weight X X X"

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True enough, the testimonies of defense witnesses who did not actually see the commission of the offense cannot prevail over the positive testimony of the complainant that she was raped by the accused.[31]

The defense further posits that no rape occurred considering that the medico-legal report disclosed "no findings of any fresh contusion, injury, wound or laceration in any part of the offended party's body (i.e., wrist, hand, arms, mouth, thighs) including her genital organ."

On this matter, our pronouncement in People vs. Gabayron[32] takes fore, to wit:

> " X X X For rape to be consummated, rupture of the hymen is not necessary, nor is it necessary that the vagina sustained a laceration X X X. Presence of a laceration in the vagina is not an essential prerequisite to prove that a victim has been raped. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact many cases of pregnancy have been reported in women with unruptured hymen. Entry of the labia or lips of the female organ merely, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction X X X."

Under these circumstances, the absence of fresh lacerations on Francisca's vagina does not prove that she was not raped. Thus, in People vs. Sapurco,[33] where as in the case before us, the medical examination of the victim was conducted a day after the sexual assault, we upheld the conviction of accused-appellant Marciano Sapurco fully cognizant of the principle that it is possible to consummate the crime of rape without the infliction of lacerations in the female organ. Similarly in People vs. Ngo,[34] this Court, in affirming the conviction of accused-appellant Rodolfo Ngo, ratiocinated that notwithstanding the fact that lacerations on the complainant's vagina were no longer bleeding when she was examined the day after the commission of the crime charged does not preclude a finding that she was raped in the manner testified to by her;[35] the absence of any external signs or physical injuries does not negate the commission of the rape.[36] (Emphasis Ours)

Beyond this, even absent a medical examination, the accused can still be convicted of rape provided that the testimony of the complainant meets the test of credibility[37] and inexorably points to the accused as the author of the despicable offense. A medical certificate after all is not indispensable to prove the commission of rape.[38]

As to the 06 December 1992 incident, we firmly hold that accused-appellant may not be convicted therefor without violating Domingo's rights protected by no less than the fundamental law itself. Consistent with the constitutional right to be informed of the nature and cause of accusation against him, an accused cannot be held liable for more than what he was charged.[39] There can only be one conviction for rape if the information charges only one offense, even if the evidence shows that more than one was in fact committed. The right of a person to be informed of the nature and cause of accusation against him cannot be waived for reasons of public policy. Complainant's tale on the alleged rape not charged in the information may be taken only as proof of specific intent, knowledge, plan, system or scheme.[40]

In line with current jurisprudence,[41] we agree with the trial court in imposing the sum of P50,000.00 as civil indemnity without need of proof other than the fact of the commission of the offense. Still, this Court awards the payment of P50,000.00 as moral damages taking into consideration that Francisca was a minor of seventeen (17) years at the time of the rape[42] and considering too the immeasurable havoc on her feminine psyche[43] as a result of this odious crime.

WHEREFORE, in view of the foregoing, the judgment appealed from is hereby AFFIRMED, with the modification that an additional sum of P50,000.000 is awarded to the victim as moral damages. With costs.

SO ORDERED.

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

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[1] Rollo, pp. 18-26.

[2] The distance between the Catalan residence and the Dawisan house is around five (5) meters.

[3] TSN, 17 March 1993, p.8.

[4] Ibid., p.5.

[5] "Accused-appellant was naked up to his knees.", TSN, 13 April 1994, p. 54.

[6] TSN, 18 March 1993, p.12.

[7] " His (Domingo's) genital organ entered into mine", TSN 17 March 1993, p. 9.

[8] "Francisca's right hand was afflicted with polio.", Ibid., p.20.

[9] TSN, 13 April 1994, p.30.

[10] Ibid., p.41.

[11] TSN, 18 March 1993, p.20.

[12] TSN, 18 March 1993, p.8.

[13] TSN, 18 March 1993, p.20.

[14] TSN, 13 April 1994, p.49.

[15] TSN, 18 March 18, 1993, p. 18.

[16] Exhibit "A".

[17] Exhibit "3".

[18] TSN, 29 August 1994, p.55.

[19] TSN, 25 July 1994, p.10.

[20] Ibid., p.12.

[21] Ibid.

[22] Ibid., p.38.

[23] People vs. Evangelista, 282 SCRA 37 [1997].

[24] People vs. Tan, Jr. 264 SCRA 425 [1996].

[25] TSN, 18 March 1993 pp. 12-16.

[26] People vs. De la Torre, 272 SCRA 615 [1997].

[27] TSN, 18 March 1993, p.22.

[28] TSN, 29 August 1994, p. 64.

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[29] People vs. Travero, 276 SCRA 301 [1997].

[30] Rollo, p. 25.

[31] People vs. Balisnomo, 265 SCRA 98 [1996].

[32] 278 SCRA 78 [1997].

[33] 245 SCRA 519 [1995].

[34] 202 SCRA 549 [1991].

[35] People vs. Julian, 270 SCRA 733 [1997].

[36] People vs. Alimon, 257 SCRA 658 [1996].

[37] People vs. Rabosa, 273 SCRA 142 [1997].

[38] People vs. Quiamco, 268 SCRA 516 [1997].

[39] People vs. De Guzman, 265 SCRA 228 [1997].

[40] People vs. Antido, 278 SCRA 425 [1997]; Rules of Court, Section 34, Rule 130.

[41] People vs. Caballes, 274 SCRA 83 [1997]; People vs. Adora, 275 SCRA 441 [1997].

[42] People vs. Tabalesma, 277 SCRA 536, [1997] "The Supreme Court has awarded moral damages of P50,000.00 in the rape of young girls with ages ranging from thirteen to nineteen years X X X."

[43] People vs. Erese, 281 SCRA 316 [1997].

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