

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOVEN DAGANTA ALIAS “LOBEN,” APPELLANT.

G.R. No. 122339. August 04, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In prosecutions for rape, the testimony of the complainant is scrutinized with great caution, for the crime is usually known only to her and the rapist. Material lapses in the alleged victim's testimony create reasonable doubt that may lead to the acquittal of the accused. For conviction always rests on the strength of the evidence of the state, never on the weakness of the defense.

The Case

On August 11, 1992, an Information for rape[1] was filed against Loven Daganta, alias "Loben," before the Regional Trial Court of Olongapo City. The Information reads as follows:

"That on or about the 26th day of May 1992, at Brgy Calapandayan, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and threats, with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge of Melissa E. Wood, a girl of 9 years xxx against her will." [2]

When arraigned on November 16, 1992, appellant, assisted by counsel,[3] entered a plea of not guilty. Trial on the merits ensued, during which the presiding judge of the trial court was changed four times.[4] Judge Eliodoro G. Ubiadas, who had heard most of the evidence for the defense, penned the assailed six-page Decision dated July 25, 1995, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Loven Daganta alias "Loben" guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335, Sec. 3 of the Revised Penal Code, and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA, and to indemnify the victim Melissa Wood the amount of P50,000 as moral damages." [5]

In view of the penalty imposed, this appeal was lodged directly with this Court.[6]

The Facts

According to the Prosecution

The trial court summarized the prosecution's version of the facts as follows:

"The evidence for the prosecution consisted of the testimonies of the victim Melissa E. Wood, her mother Emerita Wood, her sister Lilibeth Wood and the [m]unicipal [h]ealth [o]fficer of Subic, Zambales, Dr. Rogelio N. Pizarro.

"From the testimonies of the prosecution witnesses, it appeared that sometime on May 26, 1992, at about one o'clock in the afternoon, the minor Melissa Wood, a girl of nine years old having been born on January 12, 1983 (Exhibit "A") was on her way to her grandmother when she was called by the accused Loven Daganta, a

neighbor whose house was just adjacent to the residence of the said minor. The latter obliged and [went] with the accused inside his room. Once inside the room, the accused kissed Melissa Wood on the [cheek], then on her lips and then sprayed insect repellent in her face, as a result of which Melissa Wood lost consciousness. When she woke up, she found accused Loven Daganta sitting outside the room. She was told not to inform anybody of what happened. Melissa Wood found her shirt and short pants and her panties [crumpled]. She felt something painful in the lower portion of her umbilicus, and when she urinated at their house, she felt pain in her private parts. That same afternoon, she informed her elder sister Lilibeth Wood that she felt pain when she urinated and that the accused Loven Daganta kissed her and raped her. The following day, Lilibeth Wood informed their mother, Emerita Wood of what happened to Melissa and the latter was shocked. They went near the fence and standing on the platform for the plants, called on the accused Loven Daganta and uttered the words "Putang-ina mo, Loven, bakit mo nagawa iyon sa aking anak." The accused Loven Daganta apologized to Emerita Wood, saying that he was sorry and promising not to repeat the same. On the same day, accompanied by her sister Editha Vergara, she took Melissa Wood to the Subic Municipal Health Officer, Dr. Rogelio Pizarro, who examined Melissa Wood. After examination, Dr. Rogelio Pizarro issued a medical certificate (Exhibit "D"), with the following findings: "Contusion, Hematoma (R) & (L) shoulder; hymenal laceration at five o' clock indicating that as a result [of] the entry of hard object inside the private part of Melissa Wood, the hymenal laceration was caused at five o' clock. The laceration as testified to by Dr. Rogelio Pizarro was an indication that considering the size of the penis which was of a diameter not less than the size of an old twenty-five centavo coin and the private parts of a child nine-years of age; laceration of the vagina was likely to have [been] caused since the inside of the vagina was tender and with mucous[-]like tissues. These findings are consistent with the view that a hard thing such as a male penis penetrated the private parts of Melissa Wood.

"A complaint for rape was filed by the Mother Emerita Wood (Exhibit "B") on May 28, 1992, which was sworn to before Judge Edilberto C. Fabunan.

"It also appeared from the testimony of the prosecution witnesses that Melissa Wood saw her panties with blood stains. But unaware that said blood stains would be necessary as evidence in this case, the mother Emerita Wood had the same laundered. Melissa Wood herself saw that her panties, aside from being crumpled, had blood stains after the incident, but saw it later, because she did not immediately examine her panties after the incident.["][7]

According to the Defense

In his nine-page Brief,[8] Appellant Daganta presented the following statement of facts:

"This is a complaint for rape filed by Melissa Wood assisted by her mother Emerita Wood as private complainant against the accused Loven Daganta. The initial testimonies of the complainant and her witnesses were taken by the Municipal Trial Judge of Subic, Zambales. A preliminary investigation was likewise conducted by the Office of the Provincial Prosecutor of Zambales and on July 30, 1992, 2nd Provincial Prosecutor Benjamin A. Fadera resolved that sufficient evidence exist[ed] to sustain a prima facie case of the crime of rape[;] hence, an information for the said offense was filed against the accused."[9]

The evidence for the accused was summarized by the trial court in this wise:

"The evidence for the accused consisted of his testimony and that of Dr. Richard Patilano.

"From the testimonies of the defense witnesses, it would appear that at about one o' clock of May 26, 1992, while the accused was in his house where he had been staying alone, the minor Melissa Wood climbed over the fence which separate[d] the residences of the complainant and the accused and when she was near the accused, she asked him to play with her and touched him at his left side, but he was not willing to oblige because he was doing some things, that he was cementing the house where he was staying upon instruction of his sister. Melissa Wood persisted. Irrked by what she was doing, the accused pushed Melissa Wood. The latter went

home to her mother and complained. It was on the following day that Mrs. Wood came to see him and uttered bad words and asked him why he pushed her daughter Melissa Wood. The accused also testified that on that occasion when Melissa Wood was in his room they stayed together for an hour. The accused denied having raped Melissa Wood. He admitted that there was no quarrel or differences between him and the mother and sister of Melissa Wood.

"The other witness for the accused, Dr. Richard Patilano, showed that if the medical examination by the victim was conducted two days later, the laceration that [would] be found inside the vagina of the victim would not be an old laceration but still a fresh laceration and the elements of the new laceration would still be present during that period." [10]

The Trial Court's Ruling

In finding the appellant guilty of rape, the trial court ratiocinated as follows:

"On the basis of the foregoing evidence, the Court finds that the minor Melissa Wood was invited by the accused Loven Daganta inside the latter's room, kissed her on the cheeks and lips and then sprayed insect spray on her face which resulted in the minor losing consciousness. After he was able to consummate his act, [he] told Melissa Wood not to tell anybody. Because Melissa Wood felt something painful in the lower portion of her umbilicus and inside her vagina when she urinated, she informed her sister about it and the latter informed their mother Emerita Wood the following day. This prompted Emerita Wood to have her daughter Melissa examined by Municipal Health Officer Dr. Rogelio Pizarro. After finding that her daughter was in fact raped, she filed this complaint.

"The denial of the accused Loven Daganta that he did not commit the crime of rape but merely pushed Melissa Wood cannot prevail over the positive testimony of Melissa Wood. The claim of the accused that he merely pushed Melissa Wood which made her complain to her mother cannot be believed. This claim is inconsistent with the testimony of the accused that Melissa Wood stayed in the room for one hour. Mere denial of the petitioner cannot prevail over positive evidence of the prosecution (*Mejia vs. Pamaran*, 160 SCRA 457). Between a positive testimony and categorical testimony which has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail (*People v. Mejia*, 168 SCRA 33)."

The Assigned Error

Appellant Loven Daganta ascribes the following sole error to the trial court:

"That the court a quo erred in finding the accused guilty of the offense charged."

Essentially, appellant questions the sufficiency of the prosecution evidence.

The Court's Ruling

The appeal is meritorious. The guilt of Appellant Loven Daganta has not been proven beyond reasonable doubt. Thus, he must be acquitted.

Main Issue:

Sufficiency of Prosecution Evidence

In the review of rape cases, jurisprudence has laid down the following guiding principles:

"(a)

an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge;

(b)

considering that, in the nature of things, only two (2) persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and

(c)

the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense." [11]

In convicting appellant, the trial court relied primarily on the testimony of the victim and the Medico-Legal Report of the physician who examined her two days after the alleged incident. The prosecution sought to establish appellant's (1) criminal actions and (2) sexual congress with the victim. After carefully scrutinizing the records, the Court finds the prosecution evidence insufficient to prove appellant's guilt beyond reasonable doubt.

Appellant's Actions

Complainant Melissa Wood testified that she knew Appellant Loven Daganta, because he was a neighbor. [12] On May 26, 1992, appellant allegedly induced her to go to his house. He then brought her to his room where he kissed her. Thereafter, appellant allegedly sprayed something on her face, which made her unconscious. She testified:

"Q Were you able to reach the house of your grandmother that particular May 26, 1992, immediately after lunch when you went down?

A No, sir.

Q At that particular time, immediately after lunch, did you see accused Loben Daganta?

A Yes, sir.

Q Where did you see him?

A At his house, sir.

Q And did he hail for you? xxx

A Yes, sir.

xxx xxx xxx

A He called for me. He told me that he was going to give me something.

Q

And therefore you approached him?

A Yes, sir.

xxx xxx xxx

Q Where did he bring you? Where was this that he brought [you] after he told you that he was going to give you something?

A To a room. In a room.

xxx xxx xxx

A In his room.

xxx xxx xxx

Q What happened when you were already inside the room?

A He kissed me, sir.

Q You said he kissed you, where?

A On the cheek.

Q How about the lips?

A Yes, sir.

Q Other than that, did he do anything to you?

A I could no longer remember.

Q Did he spray something to you, or did he ask you to drink something?

A He sprayed.

xxx xxx xxx

Q After that, did you fall asleep?

A Yes, sir.

Q So that after[wards], you could not tell the Court what actually happened in the room?

A I could no longer remember because I was asleep."[13]

The foregoing testimony does not prove that appellant in fact raped the victim. Significantly, it fails to give a picture of what happened during the alleged rape. While the alleged victim positively testified that appellant kissed her moments before she had lost consciousness, this fact alone does not establish with moral certitude that rape occurred.

Furthermore, although complainant reported to her sister that appellant kissed her, the former did not mention at all that she had been raped.

"ATTY. ORTIZ

Q When you left the house of Loben Daganta, what did you do afterwards?

A I ran, ma'am.

Q And what happened after that?

A The following day I told my sister.

xxx xxx xxx

Q And what did you tell your sister?

A I told her that Loben kissed me. (Hinalikhalikan ako.)

Q Aside from that did you mention anything to your sister?

A That he kissed me on my cheek and on my lips.

Q And no other thing?

A No more, ma'am."[14]

True, the victim averred that appellant "raped" her. For her, however, "rape" was the same as kissing; she was not referring to carnal knowledge of a woman that is penalized under the Revised Penal Code. This was evident in her answers to the questions of the trial court:

"COURT

Q If you say `rape', what was done to you?

A He kissed me.

Q What else?

A In my lips, sir.

Q What other?

A No more, sir, other than kissing my lips."[15]

Later, she again revealed her misunderstanding of rape:

"Q

Have you observed a dog commit sexual intercourse, a male dog to a female dog?

A Yes, sir.

Q Was the rape you are saying like that?

A

Yes, sir.

xxx xxx xxx

ATTY. ORTIZ

Q Was this done to you?

A Yes, ma'am.

Q How?

A He kissed me on my cheek and my lips."[16]

The charge of rape is whittled away even more by her testimony that right after she regained consciousness, nothing seemed to be amiss. She did not feel any pain in her vagina and there was no bleeding. Her clothes, although crumpled, had not been removed from her body.

"COURT

Q When you left the house of the accused ... before you left the house of the accused, did you not ask the

accused what happened to you?

A No, sir.

Q What was your feeling when you left the room?

A

None, sir.[17]

xxx xxx xxx

Q When your senses returned, meaning, you became conscious again, did you examine your body?

A Yes, sir.

Q What part of your body did you examine?

A xxx [M]y dress.

Q What else?

A

My shorts.

Q Did you also examine your vagina?

A No more sir.

Q Now, on the short[s], what did you find on your shorts?

A None, sir.

Q No blood?

A None, sir.

Q No stains?

A None sir.

Q Now, when you found your shorts, where was your shorts?

A I was wearing my shorts already.

Q All right, were you the one ... were you wearing your shorts before you became unconscious?

A

Yes, sir.

Q Now, when your senses returned, were your shorts still in place?

A

Yes, sir.

Q

Were you wearing panties at that time?

A Yes, sir.

Q Were your panties also in place when you became conscious?

A

Yes, sir."[18]

In assessing complainant's testimony, we take into account the fact that she was merely nine years old at the time she was allegedly raped. In this light, we note that the trial judge's questions were couched in simple terms. Nonetheless, the complainant's testimony failed to prove the most crucial fact -- that appellant "raped" her in the sense the term is defined in the Revised Penal Code.

Sexual Congress

In rape cases, the prosecution is not required to establish penile penetration because even the slightest touching of the female genitalia by an erect penis consummates the crime.[19] Hence, as a general rule, there is no need to show that the hymen has been ruptured. Indeed, jurisprudence holds that the testimony of the victim that she has been sexually assaulted, if credible, is sufficient to convict the accused.[20]

In the present case, the testimony of the victim contained no statement that appellant had sexually assaulted her. Thus, the prosecution anchored its claim that there was sexual congress on the following grounds: (1) the testimonies of the victim, her sister and her mother that there was bleeding in her private part; and (2) the examining physician's report of hymenal laceration. The pieces of prosecution evidence on this point, however, are conflicting and unconvincing.

Melissa testified that after she returned home that afternoon, she felt pain while urinating and found blood in her private part. She then reported the matter to her older sister Lilibeth. The complainant testified in this wise:

"Q And what did you see when you urinated?

A My private part was painful.

Q And you said that you felt pain in your vagina[;] what did you do?

A I reported the matter to my older sister.

Q When did you ... when you felt pain in your vagina, did you find out why it was painful?

A No, sir.

Q You did not find any unusual thing around your vagina? ... the surface?

A There was blood.

xxx xxx xxx

A

The following day, my sister reported the matter to my mother. It was my sister who informed my mother."[21]

Melissa was examined by Dr. Rogelio Pizarro on May 28, 1992, two days after the alleged rape. His Medico-Legal Report reads as follows:

"Medico-Legal Report

Name : Melissa Wood

Age : 9 y.o.

Address : Calapandayan, Subic, Zambales

Nature of incident : Alleged Rape

Place of incident : Calapandayan, Subic, Manila

Date and time of incident : May 26, 1992, 1:00 p.m.

Findings:

Contusion, Hematoma, (R) and (L) shoulder, Hymenal laceration at 5:00"[22]

When questioned on his findings, Dr. Pizarro testified that the laceration was old.

"Q

You were .. before this case was filed in court, Mr. Witness, you were investigated by the municipal judge of Subic, Zambales as requisite in court, is it not?

A Yes, ma'am.

Q

And xxx you answered [...] in the course of the preliminary investigation you were asked by the judge xxx I quote: "In your examination of the hymen of the child, was that laceration fresh or old laceration?"

Your answer:

"It is an old laceration."

Will you affirm your testimony during the preliminary investigation of the municipal trial court of Subic, Zambales?

xxx xxx xxx

A Yes, sir. Old laceration."[23]

Dr. Pizarro's testimony contradicted the claim of Emelita, Lilibeth and Melissa that the latter's vagina was bleeding a day after the rape. A bleeding wound cannot, a day later, be deemed an old laceration. In fact, a forensic expert had written that the remaining pieces of the hymen of a rape victim would heal only a week after the assault.[24] This statement was echoed by Dr. Richard Patilano, an expert witness presented by the defense, who testified as follows:

"Q. So Doctor, if a patient was raped today and an examination was conducted after two days, is it possible that the laceration will be considered as old laceration?"

A. No, ma'am. In fact, the elements of new lacerations are still present within those days."[25]

Clearly, the prosecution evidence that appellant had carnal knowledge of the victim is far from convincing.

It is true that as a general rule, the trial court's assessment of the credibility of witnesses is not disturbed on appeal, because the judge had the opportunity to observe them and the manner in which they testified. This rule, however, does not apply to the present appeal because different judges handled the case in the trial court.[26] The ponente of the assailed Decision, Judge Eliodoro G. Ubiadas, was able to hear only the evidence for the defense; it was Judge Jaime Dujillo who had heard the prosecution evidence. Thus, in arriving at its conclusion, the Court meticulously examined the records of the case.

In the Appellee's Brief, the Office of the Solicitor General remarks that this appeal should not have merited any consideration at all, because the Appellant's Brief for the appellant failed to comply with the requirements laid down in Section 13, Rule 44 of the 1997 Rules of Court.[27] Concededly, the Brief is defective because it lacks a subject index, a statement of the case and sufficient references to the record. While we do not condone such disregard for the established rules, we cannot on that basis alone convict the accused. In the greater interest of justice, we pored over the records. Sadly, we found in the prosecution's evidence no moral certainty sufficient to uphold the guilt of Appellant Daganta.

All in all, the prosecution's evidence is hazy and contradictory sorely lacking as it is in material details.

Admittedly, a conviction can be based on circumstantial evidence. In the present case, however, the chain of circumstances does not show a coherent and consistent story that would give rise to a certitude sufficient to convince this Court to impose on appellant the very grave penalty of reclusion perpetua. His own defense is admittedly weak. But conviction is never founded on the weakness of the defense. Rather, it always rests on the strength of the prosecution's evidence.

WHEREFORE, the appealed Decision of the Regional Trial Court of Olongapo City is hereby REVERSED and SET ASIDE. On reasonable doubt, Appellant Loven Daganta is hereby ACQUITTED. The director of the Bureau of Corrections is hereby directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten days from notice. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Dated July 30, 1992 and signed by Second Assistant Provincial Prosecutor Benjamin A. Fadera.

[2] Records, p. 2.

[3] Atty. Romeo Alinea; records, p. 17.

[4] Judge Amado M. Costales handled the appellant's arraignment; Judge Jaime P. Dojillo heard the evidence for the prosecution; and Judge Alicia L. Santos, who was the OIC after Judge Obillo's retirement, did not preside over the case at all.

[5] RTC Decision, pp. 5-6; rollo, pp. 37-38.

[6] The case was deemed submitted for decision on June 19, 1998, when this Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted by the appellant within the reglementary period.

[7] RTC Decision, pp. 1-3; rollo, pp. 33-35.

[8] Dated September 23, 1997, and signed by Atty. Alruela M. Bundang-Ortiz.

[9] Appellant's Brief, p.1; rollo, p. 47.

[10] RTC Decision, pp. 3-4; rollo, pp. 57-58.

[11] As quoted in *People v. Sta. Ana*, 291 SCRA 188, June 26, 1998, per Panganiban, J.; *People v. Ramirez*, 266 SCRA 335, January 20, 1997; *People v. Teves*, 246 SCRA 236, July 14, 1995; *People v. Guamos*, 241 SCRA 528, February 21, 1995; *People v. Casinillo*, 213 SCRA 777, September 11, 1992.

[12] She testified:

"Q A while ago, you testified and you pointed to accused Loben Daganta[;] why do you know him, is he your neighbor?

A Yes, sir." (TSN, August 2, 1993, p. 11.)

[13] TSN, August 2, 1993, pp. 12-16.

[14] *Ibid.* pp. 26-28.

[15] Ibid. p. 11.

[16] Ibid. p. 16.

[17] Ibid. p. 25.

[18] Ibid. pp. 17-19.

[19] Article 335 of the Revised Penal Code defines rape as "having carnal knowledge of a woman under any of the following circumstances:

- by using force or intimidation;
- when the woman is deprived of reason or otherwise unconscious;
- when the woman is under twelve years of age even though neither of the two circumstances mentioned in the two next preceding paragraph shall be present."

[20] *People v. Tismo*, 204 SCRA 535, December 4, 1991; *People v. Barcelona*, 191 SCRA 100, October 31, 1990; *People v. Dalinog*, 183 SCRA 88, March 12, 1990.

[21] TSN, August 2, 1993, pp. 20-22.

[22] Exh. "D," RTC Records, p. 7.

[23] TSN, July 12, 1993, pp. 26-27, 29.

[24] "When a virgin has her first intercourse, the hymen is most often torn either posteriorly or in the midline. The remaining pieces of hymen, red and bleeding, retract toward the hymenal ring as swollen, tender nubs of tissues. These edges, healing within a week or 10 days, depending upon how extensive the tear, are called *carunculae myrtiformes* or *carunculae hymenales*." (C.G. Tedeschi et al., *Forensic Medicine*, vol. 11, 1977, p. 948.)

[25] TSN, March 24, 1995, p. 7.

[26] *People v. Daraman*, GR No. 126946, August 7, 1998; *People v. Llaguno*, 285 SCRA 124, January 28, 1998.

[27] Brief for the Appellee, p. 7. Signed by Assist. Sol. Gen. Carlos N. Ortega and Associate Sol. Romeo S. Buenaventura.

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