

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO BERSABE, ACCUSED-APPELLANT.

G.R. No. 122768. April 27, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

No woman, particularly a six-year old child, would concoct a story of rape, allow an examination of her private parts and subject herself to the embarrassment and humiliation of a public trial if she has not, in fact, been a victim of defloration.

The Case

This Court reiterates this holding in denying this appeal from the Decision[1] of the Regional Trial Court of Naic, Cavite, Branch 15, finding Appellant Gregorio Bersabe guilty of rape and sentencing him to reclusion perpetua.

On June 19, 1984, Precita R. Ramos, on behalf of her six-year-old sister, Arlyn[2] R. Ramos, filed before the First Municipal Circuit Trial Court of Maragondon-Ternate[3] a complaint for rape[4] against Appellant Gregorio Bersabe. Finding probable cause, the said court forwarded the records of the case to the Office of the Provincial Fiscal for the filing of appropriate criminal information.[5] Accordingly, on November 25, 1985, Assistant Provincial Fiscal Simeon R. Jajalla submitted before the court a quo the Information charging the accused as follows:

“That on or about [the] 11th day of June 1984, in the Municipality of Maragondon, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force, violence and intimidation, with lewd design, forced one Arlyn Ramos a six (6) year old girl, to lay [sic] down, embrace[d], kiss[ed] and touch[ed] her private parts and while in that condition, did, then and there, wilfully, unlawfully and feloniously, have carnal knowledge and rape her against her will and without her consent, to her damage and prejudice.”[6]

When arraigned, the accused entered a plea of not guilty.[7] After due trial, the lower court rendered its assailed Decision,[8] which disposed as follows:

“Wherefore, this Court finds the accused, Gregorio Bersabe, guilty of the crime of rape beyond reasonable doubt under Art. 335 of the Revised Penal Code and hereby sentences him [to] the penalty of [r]eclusion [p]erpetua and to indemnify the victim [in] the sum of P50,000.00. Plus cost[s].”[9]

Hence, this appeal.[10]

The Facts

Version of the Prosecution

The prosecution presented four witnesses, namely: (1) Pat. Ramiro Ilagan, the investigating officer; (2) Dr.

Gregoria Camilo who examined the victim; (3) Precita Ramos, the victim's elder sister; and (4) Arlyn Ramos, the victim. Their testimonies were condensed in the Brief for the Appellee,[11] the pertinent portions of which are as follows:

"In the morning of June 11, 1984, Arlene Ramos, a six-year old girl who resided with her mother at Naic, Cavite, went to the house of Aida Bersabe at Bukal III, Maragondon, Cavite. Arlene was with her elder sister, Milagros Ramos, wife of appellant's brother, Bernardo Bersabe. They went to Maragondon because it was the feast day of that place. Aida Bersabe is the wife of appellant's other brother whose name is not indicated in the case record [TSN, August 5, 1986, pp. 7, 13; TSN, August 19, 1986, pp. 4-5].

At Aida's house, Arlene met appellant. With nobody else in the house, Arlene and appellant played a game which she described as "kilikilitian" inside Aida's room. In the process, appellant gave her four (4) pieces of caramel candy and 50 centavos. Then appellant pushed Arlene, causing her to lie down on the bed. While in that position, appellant removed Arlene's short[s], underwear and undershirt (sando) while also undressing himself. With Arlene lying naked on the bed, appellant inserted his finger into her sexual organ. Then he inserted his sexual organ into hers. He did that four times. Arlene's sexual organ bled. Although crying, Arlene did not shout because of appellant's threat that he would kill her. Then appellant put Arlene's clothing back on. Thereafter, he also put on his own clothes. Then appellant brought Arlene to the house of Kakang Pila, which was about two (2) meters away from Aida's house, to watch the making of the float for the fiesta (TSN, August 5, 1986, pp. 12-13; TSN, August 19, 1986, pp. 4-13).

On June 14, 1984, about 6:00 to 7:00 p.m., Precita Ramos, Arlene's elder sister, came to fetch Arlene at Bukal III, Maragondon, Cavite. Arlene was at appellant's house, which was just beside Aida's house. Precita was with Merlita, their eldest sister, who however did not go to appellant's house but stayed in the tricycle they were riding on. They came to fetch Arlene to bring her back to Naic, Cavite, since classes had already started. Arlene, however, did not want to go home and acted as if she was afraid of something. Precita had to drag her by the right hand for her to ride the tricycle with them. Upon reaching home, Precita asked Arlene why she did not want to go with them. Arlene replied that appellant inserted his finger and sexual organ into hers and that she did not reveal the same to her Ate Milagros out of fear that appellant would kill her (TSN, August 5, 1986, pp. 7-9, 14-16).

The following day, June 15, 1984, at 10:45 a.m., Arlene, accompanied by Precita, went to the police station at Maragondon, Cavite, and filed a complaint for rape against appellant with Chief Investigator Pat. Ramiro Ilagan. The complaint for rape committed on June 11, 1984, was entered in the blotter as Entry No. 18-76, appearing on page 119 thereof (TSN, February 28, 1986, pp. 3-5; TSN, August 5, 1986, p. 2).

On June 16, 1984, Dr. Gregoria Camilo, the Municipal Health Officer of Naic, Cavite, examined Arlene at the Rural Health Unit Center at Naic. After examination, her findings were: 'the vulva is congested and there are hymenal tears at 1:00 o'clock, 6:00 o'clock, and at 11:00 o'clock.' She described the vulva as reddish and had a slight swelling, and the laceration of the hymen as still fresh (TSN, May 20, 1986, pp. 3-5)."[12]

Version of the Defense

Raising the defenses of denial and alibi, appellant presented the following version of facts:[13]

"The accused denied the accusation against him. He declared that he did not sexually abuse the complaining witness, Arlene Ramos. In the afternoon of June 11, 1984 he went to the show. He attended the show from 1:00 o'clock to 3:30 in the afternoon. When he arrived in his house after the show, his parents and brothers were in the house. He saw Arlene Ramos playing with the boys and girls in the house on said date on the occasion of the town fiesta. There was a misunderstanding between the family of the Ramos[es] and the Bersabe[s] (TSN, pp. 3-10, July 14, 1994)."

The Trial Court's Ruling

In convicting the appellant, the trial court rejected the defenses raised. The court also ruled that the young complainant had no motive to testify falsely against Appellant Bersabe and that the medical findings of Dr. Gregoria Camilo corroborated the victim's testimony.

Assignment of Error

In his Brief, appellant imputes to the trial court this sole error:

“The Court a quo erred in rendering a verdict of conviction despite the fact that appellant's guilt was not proved beyond reasonable doubt.”[14]

In the main, Appellant Bersabe assails the trial court's assessment of the credibility of the victim. He also argues that his culpability, if any, should only be for lascivious acts and not for rape.

This Court's Ruling

The appeal is without merit.

Credibility of Witness

It is axiomatic that findings of trial courts on the credibility of witnesses are accorded with respect and will not be disturbed on appeal, in the absence of any showing that some facts or circumstances of weight or substance have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[15] Truly, the trial court is in a better position to assess the credibility of witnesses and their testimonies, as it has the opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude while on the witness stand.[16]

In this case, the trial court accorded full faith and credence to the testimony of the six-year old victim. After a careful perusal of the records, this Court finds no reason to overturn or modify such assessment.

In a straightforward, clear and convincing manner, Arlyn testified how appellant perpetrated the sexual assault upon her:

“Q After that candies and money were received by you, what else was done to you by Gorio, the accused Bersabe?

A He lied [sic] me down on the bed.

Q How did he make you lie down on the bed? By force, or by what?

A Yes, sir.

Q After. . .

COURT

Q How did Gorio force you to lie down on the bed?

A He made me lied [sic] down.

COURT:

Q How did he make you lied [sic] down?

A I was pushed.

FISCAL AÑONUEVO:

Q Who pushed you, Gorio?

A Yes, sir.

Q When you were already lying down on bed, what did he do?

A He removed my short, my panty and my undershirt (sando).

Q When you said he, you are referring to Gorio, the accused?

A Yes, sir.

COURT:

Q What were you wearing at that time?

A 'Sando po.'

Q And you had a short?

A Yes, your Honor.

Q And your panty?

A Yes, your Honor.

Q Aside from those, you don't have any other apparel?

A No more, your Honor.

FISCAL AÑONUEVO:

Q Was he able to remove your short, your panty and sando?

A Yes, sir.

Q And you were then naked?

A Yes, sir.

Q Lying on the bed?

A Yes, sir.

COURT:

Q While Gorio was removing your short, panty and your sando, what were you doing?

A Gorio removed also his short, his brief and his clothing.

Q While Gorio was removing your short and your sando, did you resist?

A I resisted, your Honor.

FISCAL AÑONUEVO:

Q Did you make any cry? Did you cry?

A Yes, sir.

Q Did you make any outcry?

A No, sir.

Q Why did you not make any outcry?

A He said that he [was] going to kill me.

Q You were threaten[ed], in short?

A Yes, sir.

Q According to you, Gorio also removed his short, brief and shirt. After he ha[d] removed his short, brief and shirt, what did he do to you?

A He inserted his finger into my vagina.

Q After inserting his finger into your vagina or private organ, what else did he do?

A He inserted his penis into my vagina.

Q What did you feel when he inserted his penis into your vagina?

A I felt hurt.

COURT:

Q What was your position while the accused inserted his finger into your vagina? Were you still lying on that bed when Gorio inserted his finger into your vagina?

A Yes, your Honor.

Q How about when he inserted his penis into your sex organ, were you still lying on the bed?

A Yes, your Honor.

FISCAL AÑONUEVO:

Q Can you tell the Court how many times did he insert his penis into your sex organ? If you can.

A Four times.

Q Did you make an outcry when he was inserting his penis into your sex organ?

A No, sir.

Q Why did you not make any outcry?

A He [was] going to kill me.

COURT:

Q Who said that he was going to kill you?

A Gorio.

Q What did he actually say, the exact word?

A “Huwag daw po akong sisigaw.” (I was told not to shout)

FISCAL AÑONUEVO:

Q Were you crying at that time?

A Yes, sir.

Q After Gorio, the accused in this case had done all those you have narrated before this Court, what happened next?

A ([T]he witness cannot answer[.])

FISCAL AÑONUEVO:

Q That Gorio who, according to you, fingered your sex organ and inserted his sex organ, will you please point to him if he is here in court?

A That one (witness is pointing to the accused).

Q After you were fingered by the accused and his penis was inserted [in]to your sex organ, did you remain lying on the bed?

A No, sir.

Q What did you do?

A I put on my clothing.

Q Were you the one who put on your clothing?

A He was the one who put on my clothing.

Q You are referring to Gorio, the accused whom you have identified?

A Yes, sir.

Q How about Gorio, did you see him dressed [sic] himself also?

A Yes, sir.”[17]

Such candid and straightforward narration of the sexual assault unmistakably deserves credence.[18] No woman, especially 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 fact, been a victim of rape and impassioned to seek justice for the wrong done to her being.[19]

The foregoing testimony was corroborated by her elder sister Precita Ramos:

“Q Upon meeting her[,] did you talk to her?

A Yes, sir.

Q What was the conversation between you and your sister Arlene?

A She does not want to go home that is why I dragged her in her right hand in riding inside the honda. [sic]

Q What do you mean honda?

A Tricycle, sir.

Q You are referring to your sister Arlene [whom] you dragged?

A Yes, sir.

Q Upon reaching home [w]hat happened?

A I asked her.

Q What did you ask her?

A I asked her why she [did] not like to go home as if she [was] afraid.

Q What did she tell you?

A She told me that Gorio did something bad to her.

Q Did you ask her what something bad was done to [her] by accused Gregorio Bersabe?

A Yes, sir.

Q What, did she tell you?

A My sister Arlene told me that she was fingered by Gregorio Bersabe and after that Gorio inserted his penis into the vagina of Arlene. And I asked Arlene why she did not tell that incident to my sister Milagros and Arlene told me that Gregorio Bersabe told her not to tell anybody[;] if so he would kill Arlene.

Q What else?

A I later on asked what Gorio gave her and she told me that she was given candy and money.

Q Did you ask her whether she accepted that money and candy?

A Yes, sir.”[20]

The defense did not present any evidence to prove that the prosecution witnesses had any ill motive to testify falsely against him. And normally, no member of the victim’s family would subject the victim to the stigma and embarrassment concomitant with a rape trial if he or she were not motivated solely by an honest desire to have the malefactor punished.[21]

Moreover, the physical evidence supports the testimony of the victim that she had been raped. Dr. Gregoria A. Camilo,[22] who examined the victim, arrived at the following findings:

“1. The vulva is congested.

2. There are hymenal tears at 1:00 o’clock, 6 o’clock, and at 11 o’clock.”[23]

Appellant maintains that the locus criminis discredited the complainant’s account. Because there were a lot of people around the place then, there being a town fiesta, it was hard to believe that nobody noticed the alleged rape or, at least, became suspicious. Appellant’s contention is not persuasive. This Court has steadfastly ruled that lust is no respecter of time and place.[24] Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping.[25]

Moreover, the appellant threatened the victim with death. Easily intimidated, the child did not scream for help. The workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.[26] In *People vs. Galas*,[27] this Court ruled that “fear has been known to render people immobile, if not useless x x x.”

Appellant also assails the credibility of the account of the victim, because she allegedly comported herself after

the alleged rape without any indicium of shock, trauma or fear. This is without basis. When the elder sister of the victim fetched the child, the former noted that she was pale and shuddering. Fear was etched on her face. The child refused to go home not because she enjoyed appellant's company, but because she feared that he would carry out his threat to kill her.

Rape or Acts of Lasciviousness?

Appellant contends that, if at all, he should be convicted only of acts of lasciviousness. He maintains that the prosecution proved only that he had inserted his finger into the sex organ of the victim. This is totally puerile. Appellant committed rape, not acts of lasciviousness. During cross-examination, the victim graphically testified that appellant inserted his penis into her vagina, as follows:

“ATTY. LEGAYADA:

Q Then after both of you were naked, what happened?

A He inserted one of his fingers into my vagina, sir.

Q Did you feel pain at the moment one of his fingers was entered into your vagina?

A Yes, sir.

Q But [was] the finger able to penetrate into the vagina?

A Yes, sir.

Q Did you feel whether your private parts bled after the finger was forced into the vagina?

A It bled, sir.

Q How long did the finger stay inside your vagina, Miss Witness?

A I do not know, sir.

ATTY. LEGAYADA:

Q While the finger was inside your vagina, what else did Mang Gorio do at the same time?

A He inserted his penis into my vagina, sir.

Q Did the penis penetrate into your vagina, Miss Witness?

A Yes, sir.

Q How big was the penis, if you could remember?

A I do not know, sir.

Q Are you sure it was the penis of Gorio which entered your vagina?

A Yes, sir.

x x x x x x x x

Q Now, at the time the penis of Mang Gorio was allegedly inside your vagina, what was Mang Gorio doing?

A He inserted one of his fingers, sir.

Q Miss Witness, could you tell the difference whether it is a finger that was inside your vagina or a penis as the

case may be?

A No, sir.

COURT:

Q [Are] the penis of Mang Gorio and his finger different?

A Yes, your Honor.

Q What is the difference?

A I do not know, your Honor.

Q Take for instance your interpreter, where is the finger of your interpreter?

(The witness remains silent)

Q Do you have a finger, Miss Witness?

A Yes, your Honor.

Q Where is your finger?

(Witness showing the fingers by stretching her palm open)

Q You also have your private parts, Miss Witness?

A Yes, your Honor.

Q That you called kiki?

A Yes, your Honor.

Q Where is your kiki?

A Here, your Honor. (Witness is pointing to the portion where her private part is situated)

Q I have my own fingers too?

A Yes, your Honor.

Q Where is my private part? Where is my titi? Look at me. Where is my private part?

A There, your Honor. (Witness is pointing to the portion of the body of the Presiding Judge where his private organ is situated)"[28] (Underscoring supplied.)

The prosecution clearly proved that appellant had carnal knowledge of the victim, who was below twelve years of age. Paragraph 3 of Article 335 of the Revised Penal Code is very clear: Rape is committed by one who has carnal knowledge of a woman under twelve years of age.[29] Accordingly, appellant was rightly convicted of statutory rape.

WHEREFORE, the appeal is hereby DENIED and the Decision of the trial court convicting Gregorio Bersabe is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] Penned by Judge Enrique M. Almario; Rollo, pp. 15-24.

[2] Her name is sometimes spelled as “Arlene” or “Arleen” in the TSN. Arlyn is the spelling used in the information.

[3] Presided by Judge Ricardo M. Magtibay.

[4] An amended complaint was later filed by Trinidad R. Ramos, mother of the victim, on January 4, 1985. (Records, pp. 1-2.)

[5] Records, pp. 22-23.

[6] Rollo, p. 3.

[7] Order of the RTC dated January 13, 1986; records, p. 29.

[8] Rollo, pp. 15-24.

[9] Decision, p. 10; Rollo, p. 24.

[10] The case was deemed submitted for resolution on October 1, 1997 upon the submission of the Appellee’s Brief. In a Manifestation dated November 18, 1997, appellant waived the filing of a reply brief.

[11] Rollo, pp. 74-96. This was signed by Assistant Solicitor General Romeo C. de la Cruz, Assistant Solicitor General Mariano M. Martinez and Solicitor Fay Garcia.

[12] Brief for the Appellee, pp. 3-7; Rollo, pp. 79-83.

[13] Brief for the Appellant, p. 4; Rollo, p. 46. This was signed by Public Attorney IV Arceli Rubin, Public Attorney II Bartolome Reus, and Public Attorney II Maximo Usita, Jr.

[14] Brief for the Appellee, p. 1; Rollo, p. 43.

[15] People vs. Adora, GR No. 116528-31, July 24, 1997; People vs. Caballes, GR No. 102723-24, June 19, 1997; and, People vs. Alimon, 257 SCRA 658, 669, June 28, 1996.

[16] People vs. Castromero, GR No. 118992, October 9, 1997, pp. 9-10.

[17] TSN, August 19, 1986, pp. 8-12.

[18] People vs. Gecomo, 254 SCRA 82, 96, February 23, 1996; People vs. Umali, 242 SCRA 17, 22, March 1, 1995; People vs. Guibao, 217 SCRA 64, 73, January 15, 1993.

[19] People vs. Ramirez, 266 SCRA 335, 352, January 20, 1997.

[20] TSN, August 5, 1986, pp. 8-9.

[21] People vs. Dela Cruz, 251 SCRA 77, 85, December 8, 1995; People vs. Padre-e, 249 SCRA 422, 429, October 24, 1995; People vs. Tabao, 240 SCRA 758, 771, January 30, 1995; People vs. Ching, 240 SCRA 267, 282, January 19, 1995.

[22] Municipal Health Officer of Naic, Cavite.

[23] Records, p. 3.

[24] People vs. Talaboc, 256 SCRA 441, 449, April 23, 1996; People vs. Gecomo, 254 SCRA 82, 102. February 23, 1996; People vs. Dabon, 216 SCRA 656, 668, December 16, 1992; and People vs. Codilla, 224 SCRA 104, 120, June 30, 1993.

[25] People vs. Gecomo, 254 SCRA 82, 102, February 23, 1996.

[26] People vs. Oarga, 259 SCRA 90, 95-96, July 17, 1996.

[27] 262 SCRA 381, 393, September 24, 1996, per Davide, Jr., J.

[28] TSN, April 6, 1987, pp. 8-10.

[29] It was proven that Arlyn was under twelve years old when she was raped on June 11, 1984. She was born on December 28, 1977, as stated in her birth certificate. (See records, p. 49.)

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