

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO LOZANO, ACCUSED-APPELLANT.

G.R. No. 126149. December 07, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant was charged with rape of his twelve-year old neighbor in the early morning of August 29, 1993. The Information filed against him reads:

That on or about the 29[th] day of August 1993, in the municipality of Tagudin, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one Cynthia L. Lardizabal, a twelve (12) year old girl, by means of force and intimidation and against the latter's will and consent.

Contrary to law.[1]

Upon arraignment, accused-appellant pleaded not guilty to the charge. After trial, judgment was rendered against the accused-appellant, the dispositive portion of which reads:

Hence accused is sentenced to suffer the penalty of reclusion perpetua or imprisonment for life and to indemnify the victim in the following amounts:

1. Fifty Thousand (P50,000.00) Pesos for the crime committed against the victim;
2. Fifty Thousand (P50,000.00) Pesos as moral damages;
3. Fifty Thousand (P50,000.00) Pesos for counsel of victim.

SO ORDERED.[2]

The facts:

The victim, Cynthia L. Lardizabal, then twelve years old, was living under the care of her grandmother, Emilia Lardizabal, in Barangay Ligdong, Tagudin, Ilocos Sur. Her mother, Dolores Lardizabal, was a single parent who worked as an overseas contract worker in Riyadh, Saudi Arabia.

On August 29, 1993, at about 7:00 in the morning, Cynthia Lardizabal woke up and found accused-appellant on top of her. Accused-appellant threatened her not to shout or he would kill her family. Cynthia was shocked and she cried, but she heeded accused-appellant's warning because of fear.

After accused-appellant satisfied his lust, he left Cynthia crying in the bedroom. Before leaving, he threatened to kill Cynthia's entire family if she would reveal what happened to her.

Cynthia went down the house to wash her bloodstained panties. Her grandparents saw her crying and asked her what was wrong. She told them that accused-appellant had been inside her room and sexually molested her by

inserting his middle finger and penis into her vagina. Her grandparents saw the blood-stained water with which Cynthia was washing her panties.

On September 8, 1993, Cynthia was examined by Dr. Maria May Grace Doromal of the Baguio General Hospital, who found old healed lacerations of the hymen at 6:00, 8:00 and 11:00 positions. Cynthia was also found to be in a non-virgin state.

Accused-appellant raised the defense of denial and alibi. He alleged that on August 29, 1993, between 5:00 and 8:00 in the morning, he was shoveling gravel and sand along the seashore in Libtong, Tagudin, Ilocos Sur. In this appeal, he raised the following alleged errors:

I

THE LOWER COURT ERRED IN DISREGARDING THE DEFENSE OF DENIAL AND ALIBI RAISED BY THE ACCUSED.

II

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE CREDIBILITY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES THAT HIGHLY DEFY HUMAN EXPERIENCE.[3]

Rape is committed by having carnal knowledge of a woman by force or intimidation, or when the woman is deprived of reason or is unconscious, or when the woman is under 12 years of age.[4] If the child is below 12 years of age, sexual congress alone without proof of force or intimidation suffices for conviction. In the case at bar, the Information alleged that the victim was 12 years old at the time of the rape. Hence, the element of force or lack of consent must be proven. This, the prosecution was able to do. The victim herself testified as follows:

Q

And why were you crying at the time?

A

Because he came on top of me, sir.

Q

Did you not shout, Madam witness?

A

I did not, sir.

Q

Why not?

A

Because he threatened me that if ever I shout he will kill the entire family and I know that he has a gun, sir.

x x x x x x x x

Q

Where did he insert his right forefinger?

A

Inside my vagina, sir.

Q

And what did you feel at that time, madam witness?

A

It was painful, sir.

Q

After that, what happened next, madam witness? After the accused inserted his forefinger, what else did he do, if he did any?

A

After he inserted his forefinger inside my vagina, he inserted his penis, sir.

Court: Inside my vagina

Interpreter: Inside my vagina

Prosecutor: And what did you feel at that time, Madam witness?

A

It was painful, sir.

Q

Now what happened after that, madam witness?

A

He immediately had sexual intercourse on me, sir.[5]

The foregoing testimony clearly shows that accused-appellant led Cynthia to believe that he was armed with a gun, and that he threatened to kill Cynthia and her family if she should shout. While the victim cowered in fear, accused-appellant succeeded in consummating his bestial acts on her.

The degree of force or intimidation required for the act to constitute rape is relative, and must be viewed in the light of the victim's perception and judgment at the time of the commission of the offense.[6] What is vital is that such force or intimidation be sufficient to consummate the purpose that accused had in mind.[7] Being a child who grew up without a father and who lived away from her mother, it is not far-fetched that the threats made by accused-appellant produced fear in Cynthia's mind which forced her to give in to his sexual advances. The force applied in rape may be constructive[8] and need not be irresistible.[9] What is necessary is that the force or intimidation is of such degree as to compel the unprotected and vulnerable victim to bow into submission. Moreover, intimidation is addressed to the mind of the victim.[10]

Accused-appellant makes capital of the laboratory findings that no sperm cells were found in Cynthia's vagina and that her hymenal lacerations were old. However, the absence of spermatozoa in the victim's genitalia does not negate rape, the slightest penetration even without emission being sufficient to constitute and consummate the offense.[11] The mere touching of the woman's labia of the pudendum or lips of the female organ by the male sexual organ consummates the act.[12] Where the victim is a child, the fact that there was no deep penetration of

her vagina and that her hymen was still intact does not negate the commission of rape.[13] On the other hand, the absence of fresh lacerations in the hymen is no indication that she was not raped.[14] Hymenal lacerations are not an element of rape.

As in most rape cases, the ultimate issue in this case is credibility. On this score, the findings and assessment of the trial court are binding on the appellate court considering that after a thorough review, no facts and circumstances were shown to have been overlooked or disregarded below which if considered would affect the outcome of the case.[15] Denial and alibi are inherently weak and unreliable defenses[16] which cannot overcome the positive identification of the accused by the victim herself.[17] Such negative declarations cannot prevail over the affirmative testimony of the victim,[18] especially where the victim harbored no ill motive against the accused.[19]

Denial can easily be fabricated. In order to deserve acquittal, accused-appellant must show clearly and convincingly that he did not commit the rape. Accused-appellant failed to discharge this burden. Moreover, we cannot sustain accused-appellant's alibi inasmuch as the place where accused-appellant went to shovel gravel and sand that morning was located in the same municipality as the victim's house, where she was raped. Even if accused-appellant proved that he was somewhere else at the time of commission of the rape, he failed to show that it was physically impossible for him to have been at the scene of the crime when it was committed.[20]

In addition to Cynthia's clear and categorical narrative, the prosecution presented the corroborating testimony of her granduncle, to the effect that he saw accused-appellant putting on his briefs with his penis still erect right after the sexual assault on Cynthia. Moreover, he saw her crying and heard her utter the word, "annayko," meaning that she was in pain. Although the victim's testimony by itself is sufficient to convict, nonetheless, the corroborating testimony of the granduncle as to certain portions of the act strengthens the prosecution's case against accused-appellant.

Accused-appellant argues that the testimony of Cynthia's granduncle was incredible because, although he saw accused-appellant putting on his briefs, he did not rush to help his grandniece but, instead, went out to sell vegetables. It bears stressing that different people react differently. There is no standard behavior for persons confronted with a shocking incident, and the workings of the human mind when placed under emotional stress are unpredictable and cause different reactions in men.[21]

Hence, the trial court was correct in convicting accused-appellant of the crime charged. However, it erred when it imposed the penalty of "reclusion perpetua or imprisonment for life." Article 335 of the Revised Penal Code, in pertinent part, provides:

ART. 335. When and how rape is committed. - Rape is committed by 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; and
- When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

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With respect to the monetary award, the amount of P50,000.00 awarded by the trial court "for the crime committed against the victim," or civil indemnity, as well as the amount of P50,000.00 as moral damages, were

proper. These damages are automatically awarded without need of further proof. Moral damages are separate and distinct from civil indemnity.[22] However, the trial court erred in awarding the sum of P50,000.00 "for the counsel of victim." The same should be deleted for lack of legal basis.

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Tagudin, Ilocos Sur, Branch 25, in Criminal Case No. 469-T, finding accused-appellant guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the victim, Cynthia L. Lardizabal, the sums of P50,000.00 as civil indemnity and P50,000.00 as moral damages, is AFFIRMED with the MODIFICATION that the award of "P50,000.00 for counsel of victim" is DELETED for lack of legal basis.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, p. 13.

[2] Decision dated April 2, 1996, penned by Judge Herminia M. Pascua; Rollo, p. 42.

[3] Rollo, p. 62.

[4] *People v. de Lara*, 334 SCRA 414 (2000).

[5] TSN, April 27, 1995, pp. 11-14.

[6] *People v. Corea*, 336 Phil. 72 (1997); *People v. Edualino*, 337 Phil. 639 (1997).

[7] *People v. Antonio*, 233 SCRA 283 (1994).

[8] *People v. Rosare*, 332 Phil. 435 (1996); *People v. Duranan*, G.R. Nos. 134074-75, January 16, 2001.

[9] *People v. Prades*, 355 Phil. 150 (1998).

[10] *People v. Alfeche*, 355 Phil. 776 (1998).

[11] *People v. Diasanta*, 335 SCRA 218 (2000).

[12] *People v. Ulgasan*, 335 SCRA 441 (2000) citing *People v. Castromero*, 280 SCRA 421 (1997).

[13] *People v. Palicte*, 257 SCRA 543 (1996) cited in *People v. Santos*, 334 SCRA 655 (2000).

[14] *People v. Tongson*, 194 SCRA 257 (1991); *People v. Generalao, Jr.*, 213 SCRA 380 (1992); *People v. Dabon*, 216 SCRA 656 (1992); *People v. Yambao*, 193 SCRA 571 (1991).

[15] *People v. Malunes*, 247 SCRA 317 (1995); *People v. Pamor*, 237 SCRA 462 (1994).

[16] *People v. Cortes*, 226 SCRA 91 (1993).

[17] *People v. San Agustin*, G.R. Nos. 135560-61, January 24, 2001; *People v. Daraman*, 355 Phil. 453 (1998).

[18] *People v. Ramirez*, 266 SCRA 335 (1997); *People v. Francisco*, 258 SCRA 558 (1996); *People v. Atop*, 286 SCRA 157 (1998).

[19] *People v. Sta. Ana*, 291 SCRA 188 (1998); *People v. Aliviano*, 335 SCRA 371 (2000).

[20] *People v. Mendoza*, 354 Phil. 177 (1998).

[21] *People v. Alarcon*, 335 SCRA 457 (2000) citing *People v. Dones*, 254 SCRA 696 (1996); *People v. Gomez*, 251 SCRA 455 (1995); *People v. Layaguin*, 262 SCRA 207 (1996).

[22] *People v. Mendez*, 335 SCRA 147 (2000) citing *People v. Garigadi*, 317 SCRA 399 (1999); see also *People v. Garces, Jr.*, 322 SCRA 834 (2000); *People v. Penaso*, 326 SCRA 311 (2000).

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