PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLINARIO GEROMO, ACCUSED-APPELLANT.

G.R. No. 126169. December 21, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Accused-appellant Apolinario Geromo (hereafter APOLINARIO) appeals from the decision[1] of the Regional Trial Court of Dumaguete City, Branch 44, in Criminal Case No. 941-G, finding him guilty of the crime of rape. The dispositive portion thereof reads as follows:

> FOREGOING CONSIDERED, accused Apolinario Geromo is found guilty beyond reasonable doubt of the commission of the crime of rape and is hereby sentenced to suffer the penalty of Reclusion Perpetua and all its accessory penalties. He is also ordered to pay the amount of P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.

An information[2]was filed on 17 September 1993, charging APOLINARIO with the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, which was allegedly committed as follows:

> That on or about 10:00 o'clock in the morning of May 20, 1992 at Sitio Tolingon, Barangay Binobohan, Guihulngan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused armed with a hunting knife, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his stepdaughter Marlyn Calago, daughter of herein complainant Crispina Geromo y Calago, against her will and to her damage and prejudice.

APOLINARIO pleaded not guilty to the charge.[3]

The evidence for the prosecution established the following facts:

Marlyn Calago (herafter MARLYN) had been living with her mother, Crispina Calago Geromo, and stepfather APOLINARIO since 5 July 1988, when the latter married Crispina. On 20 May 1992, at around 10:00 a.m., when she was already thirteen years old, while her mother was out of their house in Sitio Tolingan, Barangay Binobohan, Guihulngan, Negros Oriental, and her younger siblings (the children of Crispina and APOLINARIO) were still asleep, MARLYN was awakened by the feel of cold steel on her neck. She saw APOLINARIO pointing a hunting knife at her. She tried to resist when he started to remove her clothes, but he was very strong; besides, he still had the knife in his hand. Then he undressed her and had carnal knowledge of her. She yelled when she felt the pain of his entry, but their nearest neighbor lived about half a kilometer away. Her sisters, who were 4 and 2 years old at the time, continued to sleep. Before the day was over, APOLINARIO had abused her five times. But MARLYN did not dare tell her mother or anybody for that matter about her ordeal. APOLINARIO made it clear to MARLYN that he would kill her if she did. On 14 December 1992, however, MARLYN suffered a hemorrhage due to involuntary abortion. Upon questioning, she confided to her mother that she was pregnant and that the father of the child was APOLINARIO. At that point, death threats notwithstanding, she had no choice but

to relate to Crispina her harrowing experience on 20 May 1992 at the hands of APOLINARIO.[4]

Crispina was not able to immediately confront APOLINARIO because he left their house on 23 September 1992 and returned only on 23 December of that year.[5]

On 18 December 1992, MARLYN was admitted at the Guihulngan District Hospital. The attending physician, Dr. Edgar P. Pialago, confirmed that, indeed, she had been pregnant and that she had had an abortion five days earlier.[6]

Eventually, on 21 December 1992, APOLINARIO was formally charged with rape before the Municipal Trial Court of Guihulngan, Negros Oriental.

As expected, APOLINARIO denied the accusation. He set up the defense of alibi and claimed that he was not in Binobohan, Guihulngan, Negros Oriental, on 20 May 1992, but in Labangon, Cebu City. He left for that place on 2 April 1992 with a certain Danilo Alcosero to seek employment so that he could augment the family's income. Since then, the only time he went home was on 3 April 1993. On that day, he even had an altercation with Crispina, who hinted that he had another girl in Cebu City because of the insufficient money he had been sending her. This, he believed, was the reason why Crispina falsely testified against him. APOLINARIO added that MARLYN had always stayed with her grandparents at Sitio Tolingon, Barangay Binobohan, about six kilometers from his residence. [7]

On cross-examination, APOLINARIO stood by his statement that he was in Cebu City on 20 May 1992 and that he never went home prior to April 1993. He admitted, however, that he was in Guihulngan to vote in the May 1992 elections.[8]

After trial on the merits, the trial court found the evidence of the prosecution credible and sufficient to establish beyond reasonable doubt the guilt of APOLINARIO for the crime of rape. According to the court, MARLYN was a typical barrio girl, timid and self-effacing; on the other hand, APOLINARIO had a selective memory. It concluded that his alibi, apart from being unconvincing, is replete with falsehood, as when he testified that he never was in Binobohan, Guihulngan, from April 1992 to April 1993, yet, on cross-examination, he admitted that he voted therein in the May 1992 elections.

The trial court further held that in the case of People v. Pasco,[9] we ruled that a young, decent Filipino woman would not publicly admit that she was criminally ravished unless that is the truth, for her natural instinct is to protect her honor. In addition, it cited People v. Rejano,[10] where we held that a thirteen-year old complainant cannot be considered sophisticated enough to falsely and maliciously attribute the crime of rape to her cousin-in-law, and to weave such an intricate and richly detailed story to support it. Lastly, in People v. Ignacio,[11] we concluded that the victim's mother would not have filed the complaint out of sheer malice, knowing that it could expose her own daughter to humiliation and public curiosity, and send the father of her two children to prison for the rest of his life.

APOLINARIO seasonably appealed to us from the judgment.

In his Appellant's Brief,[12] APOLINARIO claims that the trial court committed grave error in giving credence to the lone, uncorroborated testimony of MARLYN, notwithstanding it's glaring inconsistencies, and in convicting him despite the weakness of the prosecution's evidence.

Anent the first assigned error, APOLINARIO brands the testimony of Crispina Geromo as hearsay, considering that she was not actually present when the alleged rape was committed. He also makes an issue of the alleged absence of any medical finding to support MARLYN's claim that she had been raped. He asserts that assuming

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the charge to be true, it was impossible to consummate the rape inside a one-room shack where his two children were also sleeping. Finally, he wonders why MARLYN revealed that she had been raped only after she had a miscarriage. Surely, when he left on 23 September 1992, as claimed by MARLYN and her mother, there was no more threat to her life.

As to the second assigned error, APOLINARIO relies on the alleged inconsistency between the date of the commission of the rape stated in Crispina's sworn complaint, that is, 23 September 1992, and the date she mentioned in her affidavit, which is 20 May 1992. He also cites the inherent impossibility of how a mother of four could miss the telltale signs of MARLYN's alleged pregnancy, as well as her indifference to her husband's abandonment of his family.

We find no merit in this appeal.

The guiding rule is that in rape cases, the lone testimony of the victim, if credible, is enough to sustain a conviction.[13] The trial court found MARLYN's testimony to be untainted by any malicious motive. We find no reason to overturn the factual findings of the trial court in the absence of any showing that the trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case. His assessment of the credibility of the witnesses must, therefore, be respected.[14]

Furthermore, APOLINARIO's alibi deserves scant consideration. In order for the defense of alibi to prosper, it is not enough to prove that he was somewhere else when the offense was committed; it must likewise be demonstrated that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[15] APOLINARIO miserably failed to satisfy these requisites. He admitted having returned to Guihulngan, Negros Oriental, to vote in the May 1992 elections. He was unable to show when he left again for Cebu City. Besides, he was positively identified by MARLYN as her rapist on 20 May 1992. Alibi cannot prevail over and is worthless in the face of the positive identification by credible witnesses that the accused perpetrated the crime.[16]

As to the lack of any medical finding to support the charge of rape, jurisprudence has established that no law requires a medical examination for the successful prosecution of rape. The testimony of the rape victim standing alone, even without any medical examination, is sufficient to convict.[17]

Neither are we impressed with APOLINARIO's argument that it was impossible for him to commit the rape inside a one-room shack and in the presence of his two sleeping children. We have long adhered to the rule that it is not indispensable for rape to be committed in an isolated place; rapists bear no respect for place and time when they carry out their evil deed.[18] In People v. Ignacio,[19] we took judicial notice of the fact that among poor couples with big families living in cramped quarters, the presence of other people is not necessarily a deterrent to the commission of rape.

APOLINARIO likewise questions the seven-month delay before MARLYN divulged the assault on her virtue. This fact, however, does not impair the credibility of her testimony. Delay in revealing the commission of rape is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapist, for they prefer to silently bear the ignominy and pain, rather than reveal their shame to the world or risk the offender's making good on his threats.[20] This is understandable, considering the inbred modesty of Filipinas and their aversion to the public disclosure of matters affecting their honor. It is inconceivable that MARLYN would admit and make public the ignominy she had undergone if it were not true.[21] Then, too, it should not be forgotten that MARLYN was threatened by APOLINARIO. The threat on the life of a 13-year old girl cannot be easily ignored. In People v. Matrimonio,[22] we held that intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough

that the intimidation produces a fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment, or even thereafter, as when she is threatened with death if she should report the incident. MARLYN, the young lass that she was, actually believed that APOLINARIO would kill her even if he was not around, considering his moral ascendancy over her and the fear that he had successfully implanted in her pubescent mind at the time he ravished her.

As regards APOLINARIO's claim of non-flight, suffice it to say that such fact does not ipso facto indicate innocence. At any rate, there is no law holding that non-flight is conclusive proof of innocence, especially when weighed against the definite and positive identification of the accused as the rapist.[23]

APOLINARIO's second assigned error is equally bereft of merit.

A clarificatory hearing was held on 3 September 1993 to verify the true and correct date when the alleged crime was committed. On said date, MARLYN and Crispina testified that the date of the commission of the crime was 20 May 1992, not 23 September 1992 or 22 May 1992. Thus, the Resolution of the Inquest Judge contained the true date and truthful recollection of the events, which was adopted by the investigator, as shown in the ensuing Information.[24]

Neither are we persuaded by the claim that it was impossible for Crispina, a mother of four, not to notice the obvious signs of pregnancy well on its third trimester. First pregnancies are generally smaller than later ones. If this circumstance was to be considered in light of the established fact that Crispina was busy taking care of two toddlers, aged 4 and 2, and often left the house to sell onions in the market, MARLYN's pregnant state could have eluded Crispina's eyes.

Finally, the ulterior motive attributed to Crispina only existed in the mind of APOLINARIO. It has been held that no mother would stoop so low as to subject her own daughter to the hardships and shame concomitant to a prosecution for rape just to assuage her own hurt feelings. Certainly, a mother would not sacrifice her daughter's honor to satisfy a grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her for life. Neither would she subject her daughter to a public trial with its accompanying stigma on her as a victim of rape, if said charge is not true.[25]

Despite MARLYN's claim that she had been raped five times on 20 May 1992, APOLINARIO could only be convicted for one count of rape, considering that the information charged a single offense. Consistent with the constitutional right of the accused to be informed of the nature and cause of the accusation against him, APOLINARIO cannot be held liable for more than what he was indicted for.[26]

The trial court imposed the penalty of reclusion perpetua without discussing how it arrived at that conclusion. The information alleged, and it is undisputed, that APOLINARIO carried out his misdeed with the use of a hunting knife. Such an instrument can be considered a "deadly weapon" within the purview of Article 335 of the Revised Penal Code for the purpose of qualifying the crime of rape and justifying the imposition of the penalty of reclusion perpetua to death. However, at the time APOLINARIO committed the rape in question, the death penalty cannot be imposed pursuant to Section 19(1) of Article III of the Constitution. The trial court, therefore, correctly imposed the penalty of reclusion perpetua.

The award of moral damages was correct. It is now settled that moral damages may be awarded pursuant to Article 2219(3) in relation to Article 2217 of the Civil Code notwithstanding the absence of proof of the basis therefor, it being assumed that the victim suffered moral injuries entitling her to such an award.[27]

Finally, we note that the trial court failed to award any civil indemnity arising from the commission of the felony. Conformably with current case law, the amount of P50,000 should be awarded to MARLYN.

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WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of the Regional Trial Court of Dumaguete City, Branch 44, in Criminal Case No. 941-G, finding accused-appellant APOLINARIO GEROMO guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and pay the offended party, Marlyn Calago, the amount of P50,000 as moral damages, is hereby AFFIRMED, with the sole MODIFICATION that accused-appellant is further ordered to pay Marlyn Calago the sum of P50,000 as indemnity.

Costs against accused-appellant.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 139-146; Rollo, 27-34. Per Judge Alvin L. Tan.

[2] OR, 1; Rollo, 9.

[3] OR, 47.

[4] TSN, 1 September 1994, 5-19.

[5] Id., 26-29; TSN, 12 May 1994, 15-16; TSN, 7 July 1994, 24-28.

[6] TSN, 14 February 1995, 7-10; Exhibit "B," OR, 22.

[7] TSN, 9 August 1995, 8-22; 9 October 1995, 4-9.

[8] TSN, 29 November 1995, 4-6.

[9] 181 SCRA 233 [1989].

[10] 237 SCRA 627 [1994].

[11] 233 SCRA 1 [1994].

[12] Rollo, 65-87.

[13] People v. Villanueva, 254 SCRA 203 [1996]; People v. Antonio, 233 SCRA 283 [1994]; People v. Lascuna, 225 SCRA 386 [1993].

[14] People v. Leoterio, 264 SCRA 608, 617 [1996]; People v. Barera, 262 SCRA 64 [1996].

[15] People v. Alshaika, 261 SCRA 637 [1996]; People v. Laurente, 255 SCRA 543, 565 [1996]; People v. Maqueda, 242 SCRA 565 [1995].

[16] People v. Lee, 204 SCRA 900 [1991]; People v. Florida, 214 SCRA 227 [1992].

[17] People v. Venerable, 290 SCRA 17 [1998]; People v. Julian, 270 SCRA 735 [1997]; People v. Delovino, 247 SCRA 637, 650 [1995].

[18] People v. Talaboc, 256 SCRA 441 [1996]; People v. Gecomo, 254 SCRA 85 [1996].

[19] Supra note 11.

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[20] Supra note 16.

[21] People v. Grefiel, 215 SCRA 596 [1992].

[22] 215 SCRA 596, 608-609 [1992]; People v. Grefiel, supra note 21.

[23] People v. Faigano, 254 SCRA 11 [1996].

[24] OR, 5-7.

[25] Supra note 16; Pedro v. Liquiran, 228 SCRA 62 [1993].

[26] People v. Guzman, 265 SCRA 228 [1996].

[27] People v. Prades, 293 SCRA 411 [1998]; People v. Mosqueda, G.R. No. 131830-34, 3 September 1999.

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