PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO CALANG MACOSTA, ALIAS “DODONG.” ACCUSED-APPELLANT.

G.R. No. 126954. December 14, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1], dated August 20, 1996, of the Regional Trial Court, Branch 32, of Surigao City, finding accused-appellant Fernando "Dodong" Calang Macosta (MACOSTA) guilty of rape and sentencing him to reclusion perpetua. Accused-appellant was further ordered to indemnify the complainant, Anagen Dobluis, P50,000.00, and to pay the costs.

In a Complaint[2] dated August 4, 1995, Anagen Dobluis (ANAGEN) charged MACOSTA with the crime of rape committed as follows:

> "That on or about June 13, 1995 at 10:00 o'clock in the morning, at the side of Magpayang River, near lake Mainit, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused invited herein complainant to catch more shrimps and when they were at the side of the Magpayang River she was invited to disembark to see his friend beyond the uninhabited place with thick bushes, but while they crossed the said lonely place, the accused did then and there willfully, unlawfully, criminally and feloniously abuse the womanhood of the complainant by embracing, kissing, touching her private parts, and when the complainant struggled hard to extricate herself from him at the same time shouted for help, he all the more strongly held her to lay down and he took off his trouser then he took off her panty and while the complainant was in a lying position he immediately placed himself on top of her and placed his penis in her vagina but once the penis was in the mouth of her vagina she felt the pain so she pleaded for his mercy not to deflower her and she continued crying and pushed him hard with her two hands thus she was able to be free from his hold.
>
> CONTRARY TO LAW."

After a prima facie case against MACOSTA was certified and approved by Provincial Prosecutor Faustino H. Paraguya, the Complaint was filed as the Information on September 4, 1995, and docketed as Criminal Case No. 4569.

MACOSTA pleaded "not guilty" to the charge.[3] Hence, trial proceeded in due course.

The trial court summarized the version of the prosecution as follows:

> "x x x, the complainant, Anagen Dobluis, is a minor of 16, a high school student and a resident of barangay San Juan, Alegria, Surigao del Norte, where she lives with her parents, Sofronio and Apolonia Dobluis. In the morning of June 13, 1995, Anagen and her father, Sofronio Dobluis, proceeded in a paddle boat, locally known as "baroto", to the floating house in the lake where the accused was staying.
>
> It appeared that the previous day, Anagen was tending the "sari-sari" store owned by her family when a boy named Junjun arrived and told her that Fernando Macosta was inviting her and her parents to his birthday party

at the floating house in Lake Mainit. The accused also ordered on credit some bottles of soft drinks, beer and wine from the store. The drinks were delivered later to the floating house.

The complainant declared that she came to know the accused sometime during the first week of June 1995 when she and some female companions went on a picnic in the lake. They saw a floating house near the shore. When they went to the floating house, they were told that the accused stayed in it to watch his fishing business. The floating house in question consisted of a big raft made of bamboo with a hut in the center.

Since she already knew the accused, Anagen and Sofronio Dobluis accepted the invitation of the accused to his birthday party. Her mother was left in the house to tend their store. When they arrived at the floating house, they saw the accused and other persons. The accused offered some drinks and conversed with Anagen and her father.

Later in the afternoon, Fernando Macosta invited Anagen to go with him to gather some shrimps from his traps. He asked permission from Sofronio Dobluis to bring along Anagen with him. Sofronio gave his consent since the purpose was to get shrimps for food. Anagen inquired where they were going and the accused pointed to a place in the lake. They got in a small boat with the accused paddling at one end and the complainant at the other end.

When they reached the designated place about 300 meters away from the raft, the accused continued to paddle to another place further along the Magpayang river. Anagen protested that the place was lonely and they could no longer see the floating house because of some trees. The accused told her not to worry as there were houses beyond the trees. He told her that he wanted to see a female acquaintance living nearby.

The accused landed the boat on the shore and brought the girl to a grassy place. Suddenly he grabbed the startled girl and embraced her tightly. Anagen struggled and succeeded in freeing herself. She ran away and shouted for help but nobody came as the place was not inhabited. The accused ran after the girl and he was able to catch her. He again embraced and kissed Anagen and held her waist and neck. Then the accused totally undressed Anagen by removing her pants and shirt as well as her panties even as the girl struggled and resisted him.

After removing his shirt, Fernando Macosta placed himself on top of the crying girl and inserted his penis into her vagina. Because of the shock and sudden pain that she felt in her vagina, Anagen pushed back her assailant. She cried and pleaded for mercy and asked the accused to let her go. The accused merely replied: "Later as I am not yet satisfied with you." He remained on top of the complainant and placed his penis between her thighs. He continued to kiss and embrace the girl.

After some time, Anagen Dobluis again pleaded to be allowed to go home. This time the accused released her. She put on her clothes and walked back to the boat followed by the accused. She estimated the time to be past four o'clock in the afternoon as the sun was already in the west.

Upon reaching the floating house, Anagen saw that her father was very drunk including the other guests. She decided not to tell her father about the incident as she was afraid he would start a fight. Instead she asked him that they will go home. After much urging from her, he agreed and they finally went home. When they reached their house, Anagen fell asleep as she felt so tired and confused after what happened to her.

The following morning upon waking up, Anagen told her mother what the accused did to her. Her mother cried and they decided to file charges for rape against Fernando Macosta. x x x ."[4]

On the other hand, the trial court summarized the version of the defense as follows:

"On June 13, 1995, the complainant, Anagen Dobluis, arrived at the floating house with her father and a boy named Loloy. They brought with them the bottles of softdrinks, beer and Tanduay ordered on credit from the Dobluis store. The accused claimed that he had met Anagen about three times already. The first time was

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> during a picnic at the lake shore where he and the girl fell in love.
>
> At the floating house, they ate "Kinilaw", drank rum and enjoyed themselves. Fernando Macosta declared that it was not a birthday party as his birth date is September 10. The occasion was purely for their enjoyment.
>
> Later, the accused asked Anagen's father to bring her with him to get some shrimps from his trap locally known as "bantak". The father agreed and Anagen and Macosta rode on a paddleboat with her at the prow while the accused paddled at the rear of the boat. They conversed and told stories to each other on the way to the trap. They were able to gather only a few shrimps so they decided to return to the floating house. The accused claimed that they left the floating house at about one o'clock in the afternoon and returned to it at about three o'clock.
>
> By way of rebuttal, Fernando Macosta maintained that nothing untoward happened between him and Anagen Dobluis during the entire boat trip. Among other things, he denied that he embraced and kissed the complainant or that he forcibly undressed and raped her at the lakeshore as she claimed. She was even laughing on the way back to the floating house and invited him to visit her at her house.
>
> When they reached the floating house, Anagen's father and the others were still drinking and making merry as there were some drinks left. After a while they told the accused they were going home. So he brought Anagen, her father, two women, a man and a boy back to the shore in the pumpboat owned by his employer, Arnolfo Mayordo."[5]

The trial court found MACOSTA guilty as charged and sentenced him as follows:

> "Wherefore, premises considered, the Court finds the accused, Fernando Macosta Calang, alias Dodong, guilty beyond reasonable doubt as a principal in the crime of rape by means of force and intimidation under Article 335, of the Revised Penal Code, and there being no modifying circumstance to consider, hereby sentences him to reclusion perpetua and its accessory penalties; and to pay the costs.
>
> The accused is ordered to indemnify the victim, Anagen Dobluis, in the amount of P50,000.00.
>
> SO ORDERED."[6]

In convicting MACOSTA, the trial court relied primarily on the testimony of ANAGEN. The trial court assessed ANAGEN's testimony as follows:

> "In the case at bench, the charge of rape is based on the sole testimony of the complainant in the absence of any eye-witness to the commission of the crime itself. Nevertheless, the Court was impressed by the apparent candidness and sincerity in the testimony of Anagen Dobluis, a comely high school student of barely sixteen. From her demeanor and deportment while testifying in court, it is indeed difficult to believe that she would tell a story of rape in a public trial and allow her private parts to be examined unless she was solely motivated to bring the culprit before the bar of justice."[7]

In this appeal, MACOSTA faults the trial court for finding him guilty of the crime of rape and for giving weight and credence to the testimony of ANAGEN. According to MACOSTA, the following circumstances render the testimony of ANAGEN that she was raped incredible: 1) ANAGEN went with MACOSTA unchaperoned to gather shrimps at the lake from 1:00 to about 4:00 in the afternoon; 2) ANAGEN uttered "this place is very lonely" to MACOSTA when they reached the shore of the lake; 3) the father of ANAGEN attended the birthday party of MACOSTA despite the former's claim that he did not know the latter; 4) ANAGEN's mother sold the drinks to MACOSTA on credit even if the former supposedly did not know him.[8] MACOSTA then attempts to impress upon this Court that the aforementioned circumstances show that ANAGEN and MACOSTA were sweethearts.[9] Lastly, MACOSTA contends that the rape is belied by the medical findings of Dr. Jessie Umipig-Aguilera, Municipal Health Officer of the Regional Health Office of the Department of Health, who

conducted the physical examination on June 14, 1995 or a day after the alleged incident.[10] Dr. Jessie Umipig-Aguilera testified and confirmed the results of ANAGEN's physical examination[11]as contained in the report which reads as follows:

> "HEAD: Linear abrasion 1.5 cm at the lateral corner of the Left Eye
>
> GENITAL ORGAN: Pinkish perineum, no hematoma, no labial lacerations, hymenal membrane intact, sticky whitish vaginal discharge."[12]

We find the aforementioned protestations devoid of merit. First of all, the above-mentioned circumstances pointed out by MACOSTA do not have the effect of diminishing ANAGEN's credibility. These circumstances, if at all, are inconsequential considering they refer to trivial details which have nothing to do with the essential fact in the commission of the crime of rape, that is carnal knowledge through force or intimidation. Second, were we to believe that the said circumstances establish that they were sweethearts, it is nevertheless well-settled that being sweethearts does not negate the commission of rape because such fact does not give the accused license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape.[13] Being sweethearts does not prove consent by complainant to the sexual act.[14] Indeed, it is perplexing how MACOSTA could vigorously deny that the alleged incident ever took place and in the same breath argue that if anything untoward happened it was because they were sweethearts. Third, it is also well-settled that for a conviction of rape, medical findings of injuries in the victim's genitalia are not essential.[15] The presence of lacerations in the victim's vagina is not necessary to prove rape; neither is a broken hymen an essential element of the crime.[16] This Court has also ruled that a medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that a conviction of rape is proper.[17] It is worth mentioning that in rape cases, the prosecution is not required to establish penile penetration because even the slightest touching of the female genitalia, or mere introduction of the male organ into the labia of the pudendum constitutes carnal knowledge.[18]

Rape is committed by having carnal knowledge of a woman with the use of force or intimidation.[19] ANAGEN's candid and detailed account of how MACOSTA raped her more than convinces us that the crime was committed. Parts of that account are reproduced below:

> Q: When the boat was landed on the shore, what else did he do?
>
> A: Then he said let us get out of the boat.
>
> Q: And what happened after that?
>
> A: I said, "this place is very lonely".
>
> Q: And what did he answer?
>
> A: He said, "don't worry as there were houses beyond the bushes."
>
> Q: What else did he tell you if any?
>
> A: He said he just wants to see a lady friend.

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Q: Then what happened next?

A: Since it was not true as he brought me to a grassy and lonely place.

Q:

And what happened next when you were already in that lonely place?

A: Then he embraced me.

Q: What else aside from embracing you?

A: Then he kept on kissing me.

Q: What else?

A: Embracing me.

Q: What happened after that?

A: I struggled to free myself.

Q: Were you able to extricate yourself?

A: While struggling I was able to extricate myself.

Q:

Then after you extricate yourself what else did you do?

A: I was able to run.

Q: When you were running what happened next?

A: Then I shouted for help.

Q: Were there people who came for help?

A: Nobody.

Q: So what happened next?

A: Then he was able to catch me again.

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Q: What did he do after he caught you?

A: He continued what he has done to me.

Q:

What was he done to you?

A: He embraced and kissed me.

Q: What else?

A: He kept on touching my whole body.

Q: In what part of your whole body?

A: My waist and my neck.

Q: Then what happened next?

A: Then he undressed me.

Q: After you were undressed, what happened next?

A: He also undressed.

COURT:

Q: What did he undress?

A: His shirt, your honor.

COURT:

Go ahead.

PROV'L. PROS. PARAGUYA:

Q: While he removed his shirt, what did you do?

A: I was shocked I started crying.

Q: Did you not run away?

A: No more. I was setting(sic) and trembling.

Q:

While you were setting(sic) and trembling what did he do to you?

A: Then he placed himself on top of me and we were lying down.

Q: While you were lying down and he was on top of you, what happened next?

A: I cried and he continued kissing.

Q: What else did he do?

A: He kissed my body then he wanted to rape me. He inserted his penis to my vagina but it was very painful.

Q: When you felt that it was very painful, what did you do?

A: I was shocked.

Q: So what did you do?

A: I pushed him away. I was able to extricate myself as I struggled.

Q:

After you extricate yourself, what did you do?

A: I continued crying.

Q: Then after that, what happened next?

A: He did not insert but continued kissing me.

Q: What is that he wanted to insert?

A: His penis. Then he lay himself on top of me and continued kissing me.

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Q: Then while he continued kissing, embracing you, what happened next?

A: After that begged mercy for him to return me.

Q: Did he accede to your request?

A: He said "Later as I am not satisfied with you".

Q:

So, what did he do next?

A: He continued kissing on top and I was crying.

Q: What about his penis, what did he do with his penis?

A: He placed his penis between my thighs.

Q: Without touching your vagina?

A: No, he did not.

Q: Then, what happened after that?

A: After that I cried and requested him to return me.

Q: And in that second time that you were impleaded to him, what did he do?

A: He continued kissing on top of me and said he was not satisfied.

Q:

Then what happened after that?

A: I just cried as I could not do anything.

Q: Then, after that what happened next?

A: I pleaded to let me go home.

Q: After that, what happened next?

A: Then he said "Alright let's go home".[20]

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During her cross-examination, ANAGEN testified:

Q: Now you said when you where there in the shore you were embraced by Dodong Macosta, what were you doing when he embraced and kissed you?

A: I struggled so that what he wanted to do to me could not be done.

Q: Was there any object that was in the possession of Dodong Macosta, if you can remember?

A: No, sir.

COURT:

Q: Miss Dobluis, did you wear your panties at that time?

A: Yes, sir.

Q: Where were your panties during the incident?

A: I was wearing it, your honor.

Q:

After the incident what happened to your panty?

A: When he was kissing me and embracing me, he undressed me totally, your honor.

Q: How about your panty, what did he do?

A: He placed my panties beside me, your honor.

COURT:

Go ahead.

ATTY. BENANING:

Q: What will you doing then when Dodong Macosta also undressed himself?

A: I just cried.

Q:

At the time you were crying you were totally naked?

A: Yes, sir. I was naked.

Q: While Dodong Macosta was removing his clothes you were seeing at him or just stay back at him?

A: I was sitting, crying and begging for mercy.

Q: How far were you from your dress?

A: He placed it near me.

Q: When you said your dress were beside you can easily pick it up, it can be reached by your hands. Is that correct?

A: Yes sir. I got my clothes and placed it to cover my body.

Q:

During that time that this Dodong Macosta was removing his clothes, it did not occur to your mind to run away?

A: I wanted to run away, but he could easily catch me. Beside the place was surrounded by river and I don't know how to swim.

Q: Because you are not accustomed of swimming there at lake Mainit?

A: No, sir.

Q: That was the first time to have that picnic?

A: That was the second time when I met him.

Q: By the way, you were wearing a pants at that time?

A: Yes, sir.

Q: You were wearing a maong pants?

A: A cotton, sir.

Q:

A tight pants?

A: No, sir.

Q: With a t-shirt?

A: A closed long sleeve.

Q: No opening here in front?

A: None.

Q: What were you doing then when he was removing your pants and your panty?

A: I was crying thinking that he will rape me.

Q: Despite of the fact that you thought of being raped by Dodong Macosta you never run away?

COURT:

Already answered.

ATTY. BENANING:

Q: Was there any mat that was placed when Dodong Macosta was on top of you?

A: None, sir.

Q: You mean the place where you were brought by Dodong Macosta was a grassy or swampy one?

A: Somewhat muddy and grassy area.

Q: And you were not injured by the grasses when you were lying down?

A: Only the leave of grass.

Q: And you did not put your pants on the ground before you lie down?

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A: No sir. I was even struggling.

Q:

So when you said this penis of Dodong Macosta was inserted to your vagina, have you seen the penis of Dodong Macosta before the insertion?

A: No sir. I did not see.

Q: What were you doing at that time?

A: I was feeling bad.

Q: How did you know then or why is it that your conclusion that the penis of Dodong Macosta was inserted?

A: Because he was on top of me.

Q: And therefore when Dodong Macosta was on top of you you concluded that the penis was inserted to your vagina?

A: Yes, sir.

Q:

You said you felt pain, where did the pain come from?

A: From my vagina as he tried to insert his penis, but I was shocked and I pushed him.

Q: So therefore you are now impressing the Honorable Court that when Dodong Macosta was about to insert his penis to your vagina you pushed him and you felt pain. Is that correct?

PROV'L. PROS. PARAGUYA:

I object to the question, your honor, misleading.

COURT:

That is for the Court to conclude.

ATTY. BENANING:

Q: Now if you can remember Anagen, how many times that this Dodong Macosta pushed up with the use of his penis to your vagina?

A: Only once, after that I begged for mercy. Later he placed his penis between my thighs.

Q: Now while Dodong Macosta placing his penis on your thighs you did not complain?

A: No sir. I just cried. He did not do it again to me."[21]

ANAGEN's account of the incident, delivered straightforwardly, was narrated in a manner that is typical of young victims of rape.[22] In her testimony, ANAGEN recounted how she resisted MACOSTA's advances to no avail. The use of force was corroborated by the medical findings of Dr. Jessie Umipig-Aguilera who found a "[l]inear abrasion 1.5 cm at the lateral corner of the [l]eft [e]ye" which the doctor opined may have been caused by a blunt object.[23] The resistance put up by ANAGEN need not have reached the point of her sustaining severe physical injuries at his hands. All that is necessary is that force or intimidation against the victim enabled the assailant to effect sexual penetration.[24]

Moreover, there is no evidence to show any improper motive on the part of ANAGEN to falsely charge MACOSTA in the commission of the crime and to testify against him, hence, the logical conclusion is that her testimony is worthy of full faith and credence.[25] ANAGEN was only sixteen years old and a high school student from the province when the incident happened. She was not shown to possess the shrewdness and callousness of a woman who would concoct a story of rape and endure physical examination and public trial if her story were untrue.

All told, MACOSTA has failed to show any reversible error, and this Court finds no cogent reason to reverse the decision of the trial court. However in line with current jurisprudence, the complainant is entitled to, in addition to the P50,000.00 civil indemnity granted by the trial court, and irrespective of proof thereof, moral damages of P50,000.00.[26]

WHEREFORE, the appeal is hereby DENIED. The assailed judgment is AFFIRMED with the MODIFICATION that in addition to the P50,000.00 civil indemnity, FERNANDO CALANG MACOSTA is also ordered to pay ANAGEN DOBLUIS P50,000.00 as moral damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Per Judge Diomedes M. Eviota; Rollo, pp. 17-28.

[2] Rollo, pp. 5-6.

[3] Order dated September 21, 1995, Original Records, p. 33.

[4] Rollo, pp. 53-55.

[5] Rollo, pp. 56-57.

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[6] Rollo, p. 63.

[7] Rollo p. 59.

[8] Rollo, p. 54.

[9] Ibid.

[10] Rollo, p. 54.

[11] TSN dated November 27, 1995, pp. 2-13.

[12] Original Records, p. 16.

[13] People vs. Travero, 276 SCRA 301 (1997).

[14] People vs. Corea, 269 SCRA 76 (1997).

[15] People vs. Zaballero, 274 SCRA 627 (1997).

[16] People vs. Devilleres, 269 SCRA 716 (1997).

[17] Ibid.

[18] People vs. De la Peña, 276 SCRA 558 (1997).

[19] Article 335 (1), Revised Penal Code.

[20] TSN dated October 11, 1995, pp. 8-11.

[21] TSN dated October 11, 1995, pp. 27-32.

[22] People vs. Cabilan, 267 SCRA 258 (1997).

[23] TSN dated November 27, 1995, p. 12.

[24] People vs. Corea, 269 SCRA 76 (1997).

[25] People vs. Malabago, 271 SCRA 464 (1997).

[26] People vs. Perez, G.R. No. 124366-67, May 19, 1999.

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