

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO SANTOS Y GARCIA ALSO KNOWN AS OLE, ACCUSED-APPELLANT.*G.R. No. 127846. October 18, 2000*

Ponente: BELLOSILLO, J.

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ROLANDO SANTOS Y GARCIA also known as Ole was charged with rape under Art. 335, par. (3), of The Revised Penal Code in a Complaint filed with the Regional Trial Court of Manila alleging that on or about 10 May 1992 the accused by means of force or intimidation succeeded in having carnal knowledge of Cindy de la Cruz, a minor eight (8) years of age, against her will and consent.[1]

Cindy de la Cruz was born on 21 November 1983 to Ricardo and Myrna de la Cruz. At the time Cindy was allegedly sexually abused, she was only eight (8) years, five (5) months and nineteen (19) days old.

On 10 May 1992, at around noon, Cindy was watching television at the ground floor of their house together with the accused. Unexpectedly, Rolando casually lifted Cindy and brought her to the bathroom upstairs. Once inside the bathroom he undressed her and touched her private parts as the innocent girl lay helplessly on the floor. Unsatiated yet he placed himself on top of her, covered her mouth with his hand, inserted his sex organ into hers and started to pump into her in "horselike" fashion. Cindy felt pain but as her mouth was covered she found it difficult to scream for help. Only a knock on the bathroom door by Cindy's older sister interrupted Rolando's sexual assault. He hurriedly put on his clothes; she followed suit. As soon as Cindy came out of the bathroom, she went straight to the house of her aunt, Norma Nepomuceno, to report her traumatic experience. She narrated how the accused molested her not only that afternoon but several instances in the past. According to Cindy, she had long wanted to report the accused to her parents but was intimidated by his bulging eyes[2] and penetrating looks. Norma wasted no time in informing Cindy's parents, who had just arrived from the Antipolo church, of the anguish that their daughter had suffered. Forthwith, her parents accompanied Cindy to the National Bureau of Investigation (NBI) and were advised to take her to the Medico Legal Officer for a physical and genital examination.[3]

Dr. Marcial Ceñido testified that he examined Cindy de la Cruz upon request of the General Assignment Division of the Western Police District (WPD) and his findings were: (a) hymen was circular in shape, thick and intact, and (b) there was marked reddening of the hyper-hymenal tissue.[4] Dr. Ceñido explained that the reddening could have been the result of some traumatic condition like pressure of an object, possibly a penis or a finger, upon the opening of the genitalia. On cross-examination, the defense would elicit from the medico-legal officer that his findings indicated no prior sexual intercourse on the part of Cindy. But Dr. Ceñido was quick to add that the term sexual intercourse ordinarily meant complete penetration, and it would only be in this context that Cindy could not have had sexual intercourse.[5]

The accused denied having raped Cindy de la Cruz. His being charged of this serious crime could only be attributed to the vengeful motive of her mother, Myrna de la Cruz. He narrated that sometime in March 1992 she

caught her husband embracing him in their bedroom so she hurled invectives at him prompting him to run away.

On cross-examination, the accused further testified that the de la Cruz spouses were engaged in the hog business and he was employed by them as a hog scaler. Whenever the shipment of hogs would arrive, he would weigh them before being paid for by Myrna. In this job he was able to gain the trust of the couple such that he was allowed to stay freely with the family.

The accused informed the court that Myrna de la Cruz also filed a similar complaint for rape against a neighbor, Michael Centeno, with Cindy's older sister as the alleged victim. But the prosecution replied that in fact there was already issued a warrant for the arrest of Michael. The accused in an obvious effort to discredit Myrna de la Cruz testified that she even offered to settle the case against him for P200,000.00.[6]

Of course, Myrna de la Cruz vehemently denied the unholy imputations against her by the accused. She assured the court when she testified in 1993 that her husband could not be the homosexual that Rolando portrayed him to be as they had been engaged for six (6) years before they got married, and they were married seventeen (17) years ago, producing four (4) children as a result of their marriage. Myrna denied categorically having asked money from the accused and asserted, on the other hand, that it was the family of the accused that went to their house a number of times offering money in exchange for their withdrawal of the charges.[7]

The trial court convicted the accused of rape under Art. 335, par. (3) of The Revised Penal Code as amended and sentenced him to reclusion perpetua. The Decision relied mainly on the testimony of the victim which the court considered clear and unobscure, in contrast with that of the accused which it described as erratic and evasive.[8]

In his brief, accused-appellant assails the credibility of Cindy de la Cruz particularly with respect to her claim that she had been raped five (5), ten (10) or twenty (20) times. The thrust of his argument is that if the tale of the several rapes was true, Cindy's hymen would not have remained thin and intact. More importantly, he claimed that the canard narrated by Cindy would also strongly contradict the finding of the doctor that she had no prior sexual experience.[9]

We find no merit in the contention of accused-appellant. Dr. Ceñido thoroughly discussed these intriguing hymenal qualities, but accused-appellant would, understandably so, pretend to find the whole concept as obscure. He said that, as a general rule, a hymen that is intact would negate prior sexual intercourse but that the rule was not absolute as penetration can happen with or without rupturing the hymen. He confirmed that there were women whose hymens remained intact even after giving birth owing to the fact that their hymens must be very elastic. But in the case of Cindy, Dr. Ceñido said that no further examination was done to determine the elasticity of her hymen, for to do so might only cause injury and prove counter-productive considering that it was still intact.[10]

The doctor's conclusions do not establish a novice medical nor legal theory. Our jurisprudence is replete with cases which would easily lay waste any attempt by accused-appellant to dent the credibility of the victim. The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. Rape can be consummated even with the slightest penetration. It is enough that there is proof of entrance of the male organ into the labia or pudendum of the female organ,[11] or a penetration, however slight of the external genitalia.[12]

Accused-appellant would magnify the significance of Cindy's failure to state with accuracy the number of times she had been raped.[13] But these perceived discrepancies are inconsequential. Inconsistencies of this nature can be expected of a young girl whose harrowing experience she is called upon to recall. They tend to buttress, rather than weaken, her credibility since they indicate that her testimony was not contrived. On this point, the trial court supplied us with sufficient explanation[14]-

Neither is her affirmative reply, when asked if she was raped by the accused, more than five, more than ten or more than twenty times with penile penetration, yet with her hymen remaining intact after all those incidents, even if not considered true at all twenty times, would altogether cast doubt as to the truthfulness of her narration in open court as similarly reflected in her sworn affidavit that indeed accused sexually molested her on May 10, 1992, the date which she vividly remembers. The questions were not only cunningly framed as to naturally incite the young girl in answering in the affirmative, but are also provocative, suggesting and fishing from her an answer which necessarily would not depart from her unforgettable experience x x x

Accused-appellant also finds it unfathomable that when Cindy opened the door for her sister, it was at once an opportunity for her to report the matter but Cindy did not. The argument fails to persuade us. Why Cindy failed to find an ally in her sister at that precise moment can only admit an obvious explanation, i.e., Rolando intimidated her into silence that she had altogether dismissed the idea of informing her sister, at least while in the presence of her tormentor. The next best thing to do was to get as far away as possible from her attacker and report the outrage to an adult, in this case, her aunt, equipped with the wisdom and equanimity demanded by the circumstances.

Accused-appellant argues that if indeed Cindy was raped inside the bathroom, then her sister should have at least noticed something unusual when she saw Cindy. But this argument overlooks the fact that Cindy had just been abused and was certainly still in shock. It is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons.[15] Cindy was too traumatized to project any noticeable emotion. Fear would oftentimes overwhelm the victim or stupefy her into inaction.[16]

Furthermore, both parties admitted that accused-appellant enjoyed some degree of confidence and trust from the de la Cruz family that allowed him to stay in their home as he pleased. It then did not probably seem strange to Cindy's sister that accused-appellant and the victim were locked up in the bathroom since anyway, the door was opened as soon as she knocked on it. Besides, it may be that Cindy's sister was herself preoccupied with whatever business she intended to do inside the bathroom that she failed to notice that there was something wrong with Cindy.

Accused-appellant also faults the victim for keeping silent throughout the twenty (20) or so times that she was raped considering that he was not always beside her to make good his alleged threats. But her vacillation was justified and should not diminish the veracity of her accusation. Although accused-appellant was not always within her sight, the grim memory of his bestiality constantly lurked in her mind. Although a man lays no hand on a woman, if by an array of physical forces he overpowers her mind that she does not resist, or she ceases resistance through fear of a greater harm, the consummation of the sexual act is recognized in jurisprudence as rape.[17]

Finally, accused-appellant's assertion that the homosexual affair between him and Myrna's husband had incited her to accuse Rolando of rape borders on depravity and despair. For even if gender was dubious, it was highly improbable that the controversy would provoke Myrna to go to court and forever corrupt the chastity of her own daughter. She has not been proved to be insane or unfit as a mother to forever tarnish the innocence of her daughter if only to seek requital for a wrong supposedly committed by her husband and the accused. To correlate the discovery of the supposed homosexual affair between him and Ricardo with Myrna's impure motives betrays a devious mind churning warped logic. If indeed as accused related that Myrna discovered her husband embracing him while he was asleep, why then did she not vent her ire on her husband instead; after all accused was sleeping and was unaware of Ricardo's lascivious conduct. The only conceivable reason then for her filing the charge of rape was to seek justice for Cindy and let Rolando's conviction mitigate her pain and the agony of her child.

In a last ditch effort to extricate himself, the accused laments that if the alleged homosexual affair did not impel Myrna to file the case, her husband's failure to rebut this in court has weakened their position.

We disagree. Rebuttal evidence is that which is given to explain, repel, counteract or disprove facts given in evidence by the adverse party. It is also defined as evidence in denial of some affirmative fact which the adverse party has attempted to prove. Myrna as the mother of the victim and wife of Ricardo was properly called to the witness stand to rebut all damaging insinuations pertaining to Rolando's homosexuality. The issue is not really on the gender of her husband but whether its probable implications are sufficient for her to withstand the rigors of public trial, perjure herself and subject her own daughter and her whole family to distress and public humiliation. By testifying in rebuttal, Myrna is in effect commenting that the homosexual affair, whether true or imagined, was not the real basis for the filing of the rape charge. Even more apparent is that whatever rebuttal statement could have been evoked from Ricardo would merely be corroborative since Myrna had said and denied in her rebuttal all that was necessary to turn this case in their favor.

Accused-appellant's defense hinges primarily on denial. This is inherently a weak defense and cannot prevail over the positive identification of the complainant. Cindy knew and trusted Rolando since he was considered part of her family. She positively identified him as the person who raped her that May afternoon.

The rape took place on 10 May 1992, which was before the effectivity of RA 7659. Hence, the pertinent provisions of The Revised Penal Code shall apply -

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) By using force or intimidation; (2) When a woman is deprived of reason or is otherwise unconscious; and, (3) 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 x x x The crime of rape shall be punished by reclusion perpetua x x x [18]

WHEREFORE, the appealed judgment of the Regional Trial Court of Manila convicting accused-appellant ROLANDO SANTOS Y GARCIA of rape under Art. 335 of The Revised Penal Code, par. (3), and sentencing him to reclusion perpetua with the accessory penalties provided by law is AFFIRMED. Accused-appellant is further ORDERED to pay the private complainant Cindy de la Cruz the sum of P75,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Mendoza, Quisumbing, Buena and De leon, Jr., JJ., concur.

[1] Records, p. 1.

[2] "Nanlalaki ang mata."

[3] TSN, 15 January 1993, p. 5.

[4] TSN, 12 May 1993, pp. 2-7.

[5] Id., pp. 10-13.

[6] TSN, 19 January 1995, pp. 3-12.

[7] TSN, 26 July 1995, pp. 4-13.

[8] Decision penned by Judge Rosmari Carandang, RTC-Br. 12, Manila.

[9] Rollo, pp. 44-53.

[10] See Note 5.

[11] *People v. Gajo*, G.R. No. 127749, 9 March 2000 citing *People v. Sacapaño*, G.R. No. 130525, 3 September 1999.

[12] *People v. Gabayron*, G.R. No. 102018, 21 August 1997, 278 SCRA 78; *People v. Castronero*, G.R. No. 118992, 9 October 1997, 280 SCRA 421; *People v. Campuhan*, G.R. No. 129433, 30 March 2000.

[13] Rollo, pp. 44-53.

[14] *Id.*, p. 23.

[15] *People v. Razonable*, G.R. Nos. 128085-87, 12 April 2000.

[16] See Note 11, citing *People v. Tabion*, G.R. No. 132715, 20 October 1999.

[17] *People v. Abalde*, G.R. No. 123113, 31 March 2000, citing *People v. Sagun*, G.R. No. 110554, 19 February 1999, 303 SCRA 282.

[18] Art. 335. The Revised Penal Code. - RA 8353 "The Anti-Rape Law of 1997," approved on 30 September 1997, has classified rape as a crime against persons. It mandated the incorporation of Chapter Three on Rape into Title Eight of the Revised Penal Code. Thus, the crime of rape is now governed by Arts. 266-A, 266-B, 266-C and 266-D.

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