

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ESTEBAN VICTOR Y PENIS, ACCUSED-APPELLANT.

G.R. No. 127903. July 09, 1998

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PER CURIAM:

Before the Court for automatic review is the judgment handed down in this case by the Regional Trial Court of Quezon City, Branch 95, on December 16, 1996 finding accused-appellant Esteban Victor y Penis guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer supreme penalty of death, as well as to pay the corresponding civil liability to the victim.[1]

Appellant was charged with rape in complaint dated August 8, 1996, which somewhat faultily but sufficiently alleges:

That sometime in June 1996 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully, and feloniously undress said Raquel Villanueva, a minor, 15 years of age, stepdaughter, and put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.[2]

At this arraignment, appellant, with the assistance of counsel, entered a plea of not guilty.[3] Thereafter, the trial of the case proceeded and, as already stated, a condemnatory decision was eventually rendered therein, with the following dispositive portion:

WHEREFORE, judgment is hereby rendered finding the accused, Esteban Victor y Penis, GUILTY beyond reasonable doubt of the crime of rape defined in and penalized by Article 335 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of DEATH. The accused is ordered to indemnify Raquel Villanueva (in) the amount of P50,000.00 as moral damages.

The accused is further ordered to pay the costs.

IT IS SO ORDERED.[4]

The evidence adduced by the prosecution successfully establishes that complainant Raquel Villanueva is the daughter of the common-law wife of herein appellant. Both the said complainant and appellant lived in the same house located at Phase IV, Urban 2, Payatas, Quezon City, since complainant's biological father was estranged from her mother. Sometime in June 1996, while the mother of Raquel was at work in the factory where she was employed, appellant entered Raquel's room while she was folding clothes and unceremoniously poked a fan knife ("balisong") at her. He ordered her to take off her clothes and lie on the floor. Out of fear, she complied.

Thereafter, appellant took off his clothes and placed himself on top of complainant. He then held her legs, spread them apart, inserted his penis into her genitalia and proceeded to make the pumping motions of the sexual act. The rape lasted for about ten minutes. Appellant warned Raquel not to tell her parents about ten minutes. Appellant warned Raquel not to tell her parents about the incident. Terrified by his threats and constant presence in the

house, since he was jobless and usually drunk, she maintained her silence. She was admittedly only fifteen years old then.[5]

However, after that sexual assault, appellant continued to take indecent liberties with the person of the victim in the following days, sometimes by touching her private parts. To put an end to such molestation, Raquel decided to work as a housemaid for one of their neighbors. It was only then that she finally gathered enough courage to report the incident to her employer who sympathetically accompanied her to the police station[6]

Raquel was referred on August 6, 1996 to the Philippine National Police (PNP) Crime Laboratory Services in Quezon City. She was initially interviewed and, thereafter, a medical and genital examination was conducted on her by Dr. Rosalyn O. Cosidon. This medicolegal officer later testified in this case and told the trial court that the victim was no longer a virgin when so examined. Dr. Cosidon attested that in her examination, she found a shallow, healed hymenal laceration at 2 o'clock and two deep, healed lacerations at 5 and 9 o'clock in the victim's genitalia[7]

Appellant, on the other hand, denied the accusations made against him. At first, he alleged that during the month of June 1996, and even about two years before that, Raquel was staying in the house of her aunt in Valenzuela, Metro Manila. He later corrected himself to admit that she was actually staying with him in their Quezon City residence for more than a year before June 1996. He averred that he could not do such a thing to Raquel since he considered and treated her as his stepdaughter. He claimed that, possibly, the case was filed against him as a sort of reprisal for the times when he reprimanded Raquel in the past, although such scoldings were "not grave." Aside from that, he could not give any other reason why she made this accusation against him since their "relationship" was "good." [8]

In this appellate review, appellant interposes a lone assignment of error, namely, that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape.[9] It is his contention that the evidence for the prosecution is replete with serious inconsistencies and his conviction should be reversed.

In an attempt to discredit the veracity of complaint's account of the incident, appellant contends that there is an inconsistency between her testimony at the trial and her declaration before the representatives of the Department of Social Welfare and Development (DSWD). He asserts that, in open court, the victim testified that she was raped only once but in her previous statement in the DSWD, she declared that she was repeatedly raped by appellant since she was twelve years old. Dr. Cosidon declared that in the interview in the DSWD, there were intimidations to this effect, but neither the prosecution nor the defense subsequently followed up this aspect, apparently because it arose from an informal interview of a young victim still erratic from the trauma of her experience. The imputed inconsistency is, therefore, more apparent than real.

A review of the records actually shows that the victims made no such declaration in the DSWD. Appellant's aforesaid argument is premised solely upon an unsigned and unidentified statement written in longhand on what appears to be a draft of a mimeographed form[10] appended to a request for laboratory/medical examination of the victims,[11] and stating: "Since patient was 12 y/o she was raped repeatedly by suspect." That handwritten phrase was neither made nor signed by the victim, hence she is not bound by it.[12] The authorship thereof was never established, thus it cannot be given any probative value nor used to impeach the victim. In fact, that form letter on which it is written contains many other writings and scribbling in different penmanship, with some of the writings having been either intercalated or subsequently canceled.

Further, even if those words be considered as a statement of the victim relayed to the writer, it will not only be hearsay but substantially it cannot discredit her testimony. Even an affidavit of a witness carries less weight than testimonial evidence of the same affiant at the trial, considering that such judicial declarations are more precise

and elaborate than those stated in extrajudicial statements which are often inaccurate and incomplete.[13] With much more reason should the cryptic and unidentified statement in question be disregarded.

The Solicitor General, on his part, posits that even assuming that the victim did make that statement in the DSWD, when she later declared in court that she was raped by appellant once in June 1996, she simply meant that the forcible sexual congress happened only once on said date. That statement in court cannot be extrapolated to mean that it was the only occasion when appellant raped her. Thus viewed, even indulging appellant in his postulation, there is actually no irreconcilable inconsistency. More importantly, all these quibblings are unavailing against and do not detract from the proven fact that appellant did rape the victim in June 1996.

Furthermore, appellant's posture was contradicted by the joint affidavit of two social workers of the DSWD, Remedios Jazmin and Hope Bernardes, who narrated therein how such sexual depredations of appellant were brought to the attention of the authorities. The pertinent parts of their declaration appear as follows:

2. Na, noong mga alas 10:00 ng umaga petsa 06 ng Agosto 1996, mayroon dinadala na dalawang mga dalagita na magkapatid na ang mga pangalan nila ay MARILYN VILLANUEVA, 13 taon gulang, at RAQUEL VILLANUEVA, 15 taong gulang, pawang mga nakatira sa Urban Poor, Phase 4, Payatas, Quezon City at ito ay dinala nila SPO4 AURORA VILLANUEVA, ng Station 6, Central Police District Command na isang personnel ng Womens Desk sa nasabing station.3. Na ayon sa policewoman na nagdala sa mga bata doon sa aming opisina, iyong bata ay pinagsamantalahan daw ng kanilang amain (stepfather) o ni rape sila kaya sila ay lumayas sa kanilang bahay.4. Na, dahil dito iyong nasabing mga bata ng aming tanungin kong ano ang totoo nangyari sa kanila, sinabi sa amin nang dalawang magkapatid na sila daw ay hinalay ng stepfather nila na ang pangalan ay ESTEBAN VICTOR at sila ay paulit-ulit daw hinihipuan sa kanilang maselang bahagi ng katawan, kong wala iyong kanilang Nanay sa loob ng bahay nila (Emphasis ours).[14]

Appellant also desperately claims that Raquel was being coached by someone in court when she was under cross-examination. That ascription is completely without bases. It was drawn solely from the fact that the defense counsel made this manifestation during the trial: "may I Make a manifestation that the witness is talking with somebody here in this Courtroom and is gazing (at) somebody." [15] As pointed out by the Solicitor general, That "somebody" whom Raquel was gazing at could have been appellant himself, as manifested by the public prosecutor on the same occasion.[16]

Of crucial importance in a rape case, especially when the life of an accused may be held forfeit, is the determination of the credibility both of the victim herself and her version as to how the crime charged was committed. For these, we must perforce repose almost total reliance on the finding and conclusions of the trial court. Additionally, we have jurisprudential guidelines distilled from judicial experience as touchstones for our own evaluation of the evidence which, *ex debito justitiae*, we analyze.

The finding of trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. In this connection, it is well entrenched that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth.[17]

The emphasis, gesture and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this Court has no assistance in the examination of the testimony and must, therefore, rely upon the good judgment of the lower court.[18] Thus, in the absence of any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[19]

Furthermore, it is a reputable precept that testimonies of rape victims who are young or of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit.[20] Courts usually lend credence to the testimony of young girl especially where the facts point to her having been a victim of sexual assault. For sure, the victim would not make public the offense, undergo the trouble and humiliation of a public trial and endure the ordeal of testifying to all its gory details if she had not in fact been raped, for no decent Filipina would publicly admit she had been raped unless it was the truth. As a rule, a victim of rape will not come out in the open if her motives were not to obtain justice.[21] The willingness of the complainant to face police investigators and to submit to physical examination is a mute but eloquent testimony of the truth of her complaint.[22]

With the foregoing teachings in mind, and in the context of the evidence of record, we are satisfied that the court a quo prudently and conscientiously discharged its duties as a trier of fact and an arbiter of law. We quote its pertinent findings with excerpts from the victim's testimony, which vividly illustrate that the mode of her presentation and the substance thereof justify our acceptance of the conclusion and verdict of the trial court, to wit:

Culled from the evidence and after a judicious and cursory examination of the evidence especially the testimony of Raquel, the Court firmly believes that the incident complained of as narrated by Raquel actually took place during the month of June 1996. The Court keenly observed the demeanor of Raquel while testifying and she testified in a straightforward and forthright manner, bereft of any artificialities that would impair her credibility. The spontaneous and categorical testimony of Raquel can easily be deduced from the portion of her testimony as follows:

"PROSECUTION: (to the witness)

Q

Madam Witness, do you know a person by the name of Esteban Victor?

A

Yes, sir.

Q

If said person is inside the courtroom, will you be able to point to him?

A

Yes, sir. He is the one.

(Witness pointed to a person wearing yellow T-shirt who, when asked of his name, answered Esteban Victor).

Q

Since when have you known him?

A

Long time ago because he and his three-year old son were living in our place at Phase IV, Urban 2, Payatas, Quezon City, sir.

Q

Will you kindly tell the Honorable Court why he and his son were living in your house?

A

Because my mother is the girlfriend of the accused, sir.

PROSECUTION: (to the witness)

Q

Are you aware if your mother and the accused were legally married?

A

They were not married, sir.

Q

Sometime in the month of June 1996, do you remember where you were at daytime?

A

Yes, sir I was inside our house folding clothes, sir.

Q

Was there any unusual incident that took place?

A

Yes, sir. We were three in the house at that time, Esteban Victor and his son Jobet w(ere) playing outside the room when Esteban Victor entered my room.

Q

When Esteban Victor entered your room, what happened next?

A

He ordered me to undress, sir.

Q

When so ordered by Esteban Victor to undress, what did you do?

A

I followed him because he (was) threatening me by pointing a bladed weapon at my neck, sir.

Q

After undressing what happened next, if any?

A

He also undress(ed) himself and he told me to lie on the floor, sir.

Q

Did you follow his order?

A

Yes, sir, because he was holding a bladed weapon.

Q

What else happened after that?

A

He held both my legs and spread them and went on top of me, sir.

Q

After he went on top of you, what happened next, if any?

A

He inserted his private organ into my private organ, sir.

Q

And as he inserted his private organ into your private organ, what happened next, if any?

A

I was trying to resist by pushing him away from me but I was not able to do so, sir.

Q

While he inserting his private organ into your private organ, what did you feel, if any?

A

I felt pain in my private organ, sir.

Q

When the accused successfully entered (sic) his private organ into your private organ, what movement did he do, if any?

A

(The witness answered by placing her right hand on top of her left hand upwards and downwards.)

Q

While the accused was on top of you, and inserted his private organ into your private organ making an upward and downward movement, what else was he doing?

A

He was mashing my breast and kissing my neck, sir.

Q

Madam Witness, would you be able to tell this Honorable Court how long a time in terms of minutes or hours was the accused on top of you?

A

More or less, ten minutes, sir.

Q

After that ten minutes, what happened next, if any?

A

He ordered me to wear my clothes and threatened me not to report the incident to father and mother, sir." [23]

In stark contrast to the convincing recital of facts in complainant's testimony is the evasive and illogical stance adopted by appellant who could offer only bare denials. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.[24] As between a categorical testimony which has a ring of truth on one hand, and a bare denial on the other, the former is generally held to prevail.[25] A mere denial constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[26] As against the positive identification by the private complainant, mere denials of the accused cannot prevail to overcome conviction by the trial court.[27]

Appellant also failed to establish any unworthy or ill motive which induced or impelled the victim to falsely accuse him of the capital offense of rape. There is nothing in the record which would lead us to conclude that she had any improper motive against appellant. It is settled that where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[28]

In imposing the capital punishment on appellant, the court below rationalized as follows:

The use of the accused of a bladed weapon in order to have carnal knowledge with Raquel is sufficient evidence to establish the presence of "force and intimidation," an essential element of the crime of rape. Added to this is the relationship of the accused and Raquel wherein the accused, by accused's own admission, is the stepfather of Raquel, and in light of the prevailing doctrine that relationship may substitute for "force and intimidation," as the stepfather exercises "moral ascendancy and influence" over the stepdaughter, the Court is overwhelmingly convinced that the prosecution was able to clearly establish that the carnal knowledge of June 1996 was without the consent of Raquel. x x x." [29]

Although he claimed otherwise, the lower court found that appellant was not legally married to complainant's mother and, strictly speaking, is not really the victim's stepfather. However, this does not, in principle, completely divest him of some degree of moral ascendancy over her. Be that as it may, the fact remains that the element of force or intimidation is nonetheless duly established and supplied by appellant's use of a deadly bladed weapon to threaten, coerce and compel submission to his satyric desires by the hapless complainant.

Along the same vein, the trial court justified the death sentence pursuant to the amendment introduced by Republic Act No. 7659 to Article 335 of the Revised Penal Code, which now further provides:

x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. (Italics supplied)

x x x x x x x x

The lower court, however, erred in categorizing the award of P50,000.00 to the offended party as being in the nature of moral damages. We have heretofore explained in *People vs. Gementiza*. [30] that the indemnity

authorized by our criminal law as civil liability *ex delicto* for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. It is not to be considered as moral damages thereunder, the latter being based on different jural foundations and assessed by the court in the exercise of sound discretion.

One other point of concern has to be addressed. Indictments for rape continue unabated and the legislative response has been in the form of higher penalties. The Court believes that, on like considerations, the jurisprudential path on the civil aspect should follow the same direction. Hence, starting with the case at bar, if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law,[31] the indemnity for the victim shall be in the increased amount of less than P75,000.00. This is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuation over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity.

From all the foregoing considerations, therefore, and the People having established the guilt of appellant beyond reasonable doubt, his conviction and the penalty imposed must be sustained. Four members of this Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; but they nevertheless submit to the ruling of the majority of the Court that the law is constitutional and the death penalty should be imposed in the case at bar.

WHEREFORE, The judgment of the trial court in Criminal Case No. Q-96-67321 imposing the death penalty on accused-appellant Esteban Victor y Penis is hereby AFFIRMED, with the modification that the amount awarded to the offended party should be increased to P75,000.00 and considered as actual, and not moral, damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Per Judge Diosdado Madarang Peralta.

[2] Original record, p. 1.

[3] *Ibid.*, p. 17.

[4] Rollo, pp. 11-19.

[5] TSN, September 30, 1996, pp.2-5.

[6] *Ibid.*, *id.*, pp. 9-11.

[7] *Ibid.*, September 27, 1996, pp. 2-6; Exhibit A, A-1, B, C to C-4.

[8] *Ibid.*, November 13, 1996, pp. 4-10.

[9] Appellant's Brief, p. 1; Rollo, p. 40.

[10] Exhibit B.

[11] Exhibit A.

[12] See *Palo-Palo vs. Intermediate Appellate Court*, G.R. No. 75584, October 19, 1992, 214 SCRA 673.

[13] *People vs. Sarellana*, G.R. Nos. 102056-57, June 8, 1994, 233 SCRA 31; *People vs. Leangsiri, et al.*, G.R. No. 112659, January 24, 1996, 252 SCRA 213; *People vs. Erardo*, G.R. No. 119368, August 18, 1997.

[14] Exhibit G.

[15] TSN, October 7, 1996, p. 13.

[16] *Ibid.*, id., p. 8.

[17] *People vs. Betonio*, G.R. No. 119165, September 26, 1997.

[18] *People vs. Pamor*, G.R. No 108599, October 7, 1994, 237 SCRA 467.

[19] *People vs. Taton*, G.R. Nos. 122757-61, November 28, 1997.

[20] *People vs. Taton*, G.R. No. 113345, February 9, 1996, 253 SCRA 455; *People vs. Garcia*, G.R. No. 120093, November 6, 1997.

[21] *People vs. Junio*, G.R. No. 110990, October 28, 1994, 237 SCRA 826.

[22] *People vs. Baculi*, G.R. No. 110591, July 26, 1995, 246 SCRA 756; *People vs. Fuensalida*, G.R. No. 119963, November 6, 1997.

[23] Original Record, pp. 63-66.

[24] *People vs. Macagaling*, G.R. 109131-33, October 3, 1994, 237 SCRA 299.

[25] *People vs. Abonada*, G.R. No. 50041, January 27, 1989, 169 SCRA 530; *People vs. Biago*, G.R. No 54411, February 21, 1990, 182 SCRA 411; *People vs. Bello, et al.*, G.R. No. 92597, October 4, 1994, 237 SCRA 347.

[26] *People vs. Rosalijos, et al.*, G.R. No. 98253, November 25, 1994, 238 SCRA 362.

[27] *People vs. Manuel*, G.R. Nos. 107732-33, September 19, 1994, 236 SCRA 545.

[28] *People vs. Pama*, G.R. Nos. 90297-98, December 11, 1992, 216 SCRA 385; *People vs. Alvero, Jr., et al.*, G.R. No 72319, June 30, 1993, 224 SCRA 16; *People vs. Evangelista*, G.R. No. 121627, November 17, 1997.

[29] Original Record, p. 68.

[30] G.R. No. 123151, January 29, 1998.

[31] For obvious reasons, the provisions of R. A. No. 8353, "The Anti-Rape Law of 1997," are not involved in this decision on a crime committed in 1994.

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