

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FERNANDO DIASANTA Y VILLANUEVA, ACCUSED-APPELLANT.

G.R. No. 128108. July 06, 2000

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PER CURIAM:

Appellant Fernando Diasanta was indicted for the crime of Rape, defined and penalized under paragraph 3, Article 335 of the Revised Penal Code, in relation to Section 11 of Republic Act No. 7659, under an Information filed on the basis of the Complaint of the victim's grandmother, alleging:

"That on or about 8:30 o'clock in the evening of October 28, 1995 at Sitio Naboongan, Purok 5, Barangay Daguit, Municipality of Labo, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by his bestial lust and taking advantage of his parental authority unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with his own daughter Andrea Diasanta, a minor below 12 years old to her damage and prejudice.

CONTRARY TO LAW."

Upon arraignment thereunder on March 27, 1996, with the assistance of counsel, appellant entered a plea of not guilty to the charge. Pre-trial having been waived, trial ensued.

On November 29, 1996, the trial court came out with its decision finding appellant guilty and disposing as follows:

"WHEREFORE, IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding accused FERNANDO DIASANTA Y VILLANUEVA guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under paragraph 3, Article 335 of the Revised Penal Code in relation to Section 11 of Republic Act. No. 7659 (Death Penalty Law) and accordingly sentencing him to suffer the supreme PENALTY OF DEATH and to pay to the victim the amount of P50,000 as moral damage pursuant to Article 2219 (3) in relation to Article 2217 of the Civil Code and P30,000.00 as exemplary damage; and to pay the costs.

SO ORDERED."

With the imposition of the death penalty, the case was elevated to this Court for automatic review.

Version of the prosecution:

Since the death of her mother, victim Andrea B. Diasanta lived in Capalonga, Camarines Norte, with her father, the herein appellant, and her younger brother. During the month of October, 1995, appellant worked in the construction of a dike in Barangay Daguit, Labo, Camarines Norte, such that the victim and her younger brother stayed in a room adjacent to the house of their aunt, Meriam Bacla, in Sitio Naboongan, Daguit, Labo, Camarines Norte.

At around 8:30 o'clock in the evening of October 28, 1995, the victim, then eleven years old, was dragged by the appellant to a space below the house of Meriam Bacla, and thereat, he forced the victim to lie down on her back,

removed her underwear, placed himself on top of her and thereafter, unleashed his bestial and incestuous desires. The victim neither resisted nor shouted for help because appellant threatened to kill her if she did. While appellant was sexually abusing her, she had a glimpse of her aunt, Meriam Bacla, peeping from the house above.

The said aunt of the victim testified that in the evening of October 28, 1995, she noticed that the victim was missing. As it was getting late, she started looking for her. When she peeked below the house, she was shocked to see the victim lying on her back with appellant on top of her. She (witness) then immediately left to call the uncle but when they returned, appellant and the victim were no longer around. When she confronted the victim after the incident, the latter told her that she was raped by appellant.

Also presented by the prosecution was Dr. Marcelito B. Abas, Medico-Legal officer of the Camarines Norte Provincial Hospital, who testified that on October 29, 1995, Andrea Diasanta, the victim, was brought to his clinic for genital examination. He found hymenal lacerations at the two o'clock, four o'clock, seven o'clock, and eleven o'clock positions which could have been caused by a forced penetration of a penis into her vagina. The findings were "negative" for sperm cells but according to the same medico-legal officer, the absence of sperms could have been due to movements by the victim, such as standing, walking and running, or the sperms could have been washed out by urinating or washing by the hands.

Lastly, in support of its allegation that the victim, Andrea Diasanta, was below twelve years old at the time the rape was committed on October 28, 1995, the prosecution duly presented in evidence the Certificate of Live Birth of Andrea Diasanta that she was born on December 1, 1983.[1]

The defense relied solely on appellant's testimony.

Appellant Fernando Diasanta, testifying for and on his behalf, theorized that on October 28, 1995, he was at a construction site near Barangay Daguit I, Labo, Camarines Norte, where he stayed until 8:30 o'clock in the evening. From there, he proceeded to the house of his sister-in-law at Sitio Naboongan, about three (3) kilometers away from the said construction site, arriving there at 9:00 o'clock. He was on his way to give money to his sister-in-law, when he was apprehended by two soldiers who informed him that he was accused of raping his own daughter.

On the basis of the testimonies of the victim, Andrea Diasanta, and her aunt, Meriam Bacla, the lower court convicted appellant of the crime of incestuous rape, as charged.

Appellant's Brief theorized that the guilt of appellant has not been proved beyond reasonable doubt and therefore, the trial court erred in convicting him.

In the review of rape cases, like this, the Court is always guided by the principle that: (a) an accusation of rape can be made with facility, is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the nature of the crime which usually involves only two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits; and cannot be allowed to draw strength from the weakness of the evidence for the defense.[2]

Rape is almost usually committed in seclusion, the fact of carnal knowledge being essentially known only to the victim and her abuser.[3] Usually, it is only the victim who can identify the assailant by the very nature of the crime which, almost always, is committed in seclusion.[4] More often than not, the courts are constrained to balance the evidentiary weight of the testimony of the victim as against the evidence for the defense. In the absence of other direct witnesses, it is possible for the judgment of conviction to be based solely on the testimony of the victim provided her testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.[5]

The case under scrutiny is one of incestuous rape. The trial court discharged its arduous task of weighing the affirmative testimony of the victim in the face of the vehement denial by the appellant.

The testimony of the victim appears categorical and straightforward. She definitively narrated the sexual ordeal she suffered in the hands of her very own father, thus:

Q:

Now, at around 8:30 o' clock in the evening of October 28, 1995, you said, you were in the house of your auntie Meriam Bacla, do you know of any unusual incident that happened to you on that date at around 8:30 o' clock in the evening?

A:

There was, sir.

Q:

What was that incident about?

A:

I was pulled under the house, sir.

Q:

Who pulled you?

A:

My papa, sir.

Q:

This Fernando Diasanta, the accused in this case?

A:

Yes, sir.

Q:

After you were pulled under the house by your father, the accused in this case, what did he do to you?

A:

"Pinagsamantalahan po ako", I was sexually abused, sir.

Q:

When you said "pinagsamantalahan", what do you mean?

A:

My father put himself on top of me, sir.

Q:

What did your father do, while he is on top of your body?

A:

His penis was inserted to mine and pushed and pulled it in my vagina, sir.

Q:

Now, by the way before your father went on top of your body, were you wearing a panty?

A:

There was none, sir.

Q:

Before your father went on top of your body were you wearing your panty?

A:

It was removed, sir.

Q:

Who removed it?

A:

My papa, sir.

Q:

The accused in this case?

A:

Yes, sir.

Q:

Now, at the time when your papa was on top of you and you said, it happened under the floor of your auntie Meriam Bacla, did you make any resistance or shout?

A:

No, sir.

Q:

Why were you not able to resist or shout?

A:

I was afraid, sir.

Q:

Why were you afraid at that time?

A:

He told me that I will be killed if I will shout, sir.

Q:

How many times were you sexually abused by your father at that time when you were under the floor of your auntie?

A:

Only once but on previous times, I was molested many times, sir.

Q:

Was there anybody who saw you while you and your father was under the house of your auntie that night of October 28, 1995?

A:

There ws (sic), sir.

Q:

Who was that person, if you know?

A:

Auntie Meriam Bacla, sir.[6]

Established is the rule that testimonies of rape victims, especially of child victims, are given full weight and credit.[7] In a long line of cases, this Court has applied the well-settled rule that when a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to prove that rape was committed.[8]

Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, and particularly in cases of incestuous rape, because no woman would be willing to undergo a public trial, along with the shame, humiliation and dishonor of exposing her own degradation, were it not to condemn an injustice and to have the offender apprehended and punished.[9]

The embarrassment and stigma of allowing an examination of her private parts and testifying at a public trial on the painfully intimate details of her violation effectively rule out the possibility of a false accusation of rape.[10]

In the case under consideration, the unflinching and resolute account by the victim, Andrea Diasanta, before the lower court on what was done to her by her own father, stands the test of credibility. Her testimony was duly corroborated by an eyewitness, her aunt Meriam Bacla, who testified on what she actually witnessed on that fateful night of October 28, 1995, to wit:

Q:

Now at around 8:30 o'clock on October 28, 1995, do you remember what happened to your house?

A:

There is, sir.

Q:

What was that incident about?

(At this juncture the witness is crying)

A:

"Wala si Andrea, " sir. I was seeking on (sic) the children on that evening of October 28, 1995 because it was already 8:30 o'clock in the evening and I saw Fernando Diasanta on top of Andrea Diasanta when I peeped under the house.

Q:

Who were the persons whom you saw?

A:

It was Fernando and the daughter, Andrea, sir.

Q:

What were the position of Fernando Diasanta and Andrea Diasanta at that time when you saw them?

A:

I saw them with Andrea lying down and the father Fernando was on top of the body of Andrea, sir.

Q:

Were you able to notice whether they have their clothes at that time?

A:

I cannot remember, sir.

Q:

When you saw your brother-in-law Fernando was on top of the body of his daughter, Andrea, what did you do?

A:

I called my uncle, sir.

Q:

What happened after that?

A:

When my uncle arrived at that place they were no longer there, sir.

Q:

Were you able to confront to your uncle that your niece Andrea when you saw her, her father was on top of her body? (sic)

A:

No, sir.

Q:

You said that you saw Fernando Diasanta was on top of the body of Andrea, can you tell the court what they were doing then at that time? (At this juncture witness crying and she was demonstrating the position of Fernando Diasanta while he was on top of the body of Andrea Diasanta.)

A:

Fernando Diasanta was on top of the body of Andrea, sir.

Q:

When you saw Andrea together with her father wherein his (sic) father was on top of her body, was Andrea lying on his (sic) back?

A:

Yes, sir.

Q:

How about this Fernando Diasanta, where was he facing?

A:

"Nakadapa po, " he was lying over the body of Andrea, sir.[11]

The foregoing testimony cannot be discounted. That the same is a mere fabrication is a hackneyed defense for it is unnatural and unbelievable for the aunt of the victim to concoct a story of rape of her own niece that would bring shame and scandal not only to her but to the entire family. Family relations are not so easily imperiled, with the father facing the risk of being imprisoned for banal and flimsy reasons, such as that theorized upon.[12]

Considering the categorical and unequivocal testimonies of the victim and an eyewitness, appellant's alibi and self-serving denial cannot prosper.

As held in a number of cases, a bare denial is a negative declaration which deserves no consideration and cannot prevail over the affirmative testimony of the victim which is corroborated by more evidence.[13] It cannot survive the positive identification of the malefactor by the victim. Affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness.[14]

Courts have looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but also because it can easily be fabricated. For alibi to serve as basis

for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission.[15]

Appellant claims that he was at the dike construction site when the rape complained of was committed, so that it was impossible for him to have perpetrated the crime. However, except for his own self-serving allegation, appellant introduced no other evidence to bolster his theory. If he was in fact at the construction site he theorized upon, he could have presented witnesses to attest that he was in fact there at the time of commission of the crime. But the defense having failed to do so, the trial court correctly gave greater weight to the positive evidence of the prosecution.

Furthermore, as a rule appellate courts will not disturb the findings by the trial court on the credibility of witnesses, for the trial court is in a better position to pass upon the same.[16] As succinctly explained in the case of *People vs. Atop*, the trial court has the valuable edge of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" --all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[17]

As a last minute desperate effort to disclaim authorship of the crime, appellant capitalized on the negative findings of the medico-legal officer as to the presence of sperm cells in the victim's reproductive organ and the absence of fresh lacerations in her hymen. This issue has been squarely ruled upon in the case of *People vs. Tongson*,[18] and in subsequent cases.[19] The absence of sperms in the genital organ does not negate rape, the slightest penetration even without emission being sufficient to constitute and consummate the offense. By the same token, the absence of fresh lacerations in the victim's hymen is no indication that she was not raped.

As regards the age of the victim which is an important element of this crime, the court finds the same sufficiently proved by the prosecution. As attested to by the duly certified true copy of Andrea Diasanta's Certificate of Live Birth aforementioned, she (victim) was born on December 1, 1983 and therefore, below twelve years old when she was raped on October 28, 1995.

This Court is, therefore, convinced that appellant is guilty of the crime charged. Since the applicable law is par. 3, Article 335 of the Revised Penal Code, as amended by Republic Act 7659, imposable therefor is the supreme penalty of death.

Although four members of the court maintain their adherence to the separate opinions expressed in *People vs. Echegaray*,[20] that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional, they nevertheless submit to the majority ruling that the law is constitutional and the death penalty prescribed thereunder has to be imposed.

WHEREFORE, the judgment of conviction under automatic review, finding appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of death, is hereby **AFFIRMED** with the **MODIFICATION** that the indemnity or compensatory damages awarded to the victim, Andrea Diasanta, is **INCREASED** to Seventy Five Thousand (P75,000.00) Pesos, following the ruling in *People of the Philippines vs. Esteban Victor y Penis*, promulgated on July 9, 1998.[21]

Upon the finality of this Decision, let certified true copies thereof, together with the records of the case, be forwarded, without delay, to the Office of the President for possible exercise of executive clemency, pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of R. A. No. 7659.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Records, p. 35.

[2] *People vs. Balmoria*, 287 SCRA 687, 698 citing: *People vs. Julian*, G.R. Nos. 113692-93, April 4, 1997; *People vs. Perez*, G.R. No. 118332, March 26, 1997; *People vs. Ramirez*, 266 SCRA 335, January 20, 1997; *People vs. Guamos*, 241 SCRA 528, February 21, 1995; *People vs. Casinillo*, 213 SCRA 777, September 11, 1992.

[3] *People vs. Ranido*, 288 SCRA 369, 377-378 citing: *People vs. de Guzman*, G.R. No. 117217, December 2, 1996, 265 SCRA 228; *People vs. Domingo, et. al.*, G.R. No. 97921, September 8, 1993, 226 SCRA 156.

[4] *People vs. Pacistol*, 284 SCRA 520, 529.

[5] *People vs. Gabayron*, 278 SCRA 78,96.

[6] TSN, A. Diasanta, April 29, 1996, pp. 5a-7.

[7] *People vs. Galimba*, 253 SCRA 722, 728; *People vs. Rosare*, 264 SCRA 398, 412; *People vs. Escobar*, 281 SCRA 498, 508; *People vs. Lusa*, 288 SCRA 296, 303.

[8] *People vs. Lusa*, supra citing: *People vs. Gabayron*, G.R. No. 102018, August 21, 1997; *People vs. Correa*, 269 SCRA 76, 89 citing: *People vs. Vitor*, 245 SCRA 392, June 27, 1995; *People vs. Biendo*, 216 SCRA 626, December 16, 1992; *People vs. Malabago*, 271 SCRA 464, 474.

[9] *People vs. Lusa*, supra; *People vs. Adora*, 275 SCRA 441, 467; *People vs. Junio*, 237 SCRA 826, 831; *People vs. Lagrosa, Jr.*, 230 SCRA 298; *People vs. Domingo*, 226 SCRA 156, 174.

[10] *People vs. Pontilar, Jr.*, 275 SCRA 338, 350 citing *People vs. Ramirez*, G.R. No. 97920, January 20, 1997; *People vs. Dela Cruz*, 251 SCRA 77, 85; *People vs. Sanchez*, 250 SCRA 14, 20.

[11] TSN, Meriam Bacla, May 23, 1996, pp. 6-8.

[12] *People vs. Perez*, 270 SCRA 526, 535.

[13] *People vs. Ranido*, supra; *People vs. Ramirez*, 266 SCRA 335; *People vs. Francisco*, 258 SCRA 558; *People vs. Atop*, 286 SCRA 157, 174; *People vs. Salison, Jr.*, 253 SCRA 768.

[14] *People vs. Ramirez*, supra; *People vs. Digno, Jr.*, 250 SCRA 237, 244.

[15] *People vs. Julian*, 270 SCRA 733, 753; *People vs. Cañada*, 253 SCRA 277, 286 citing: *People vs. Querido*, 229 SCRA 753, February 7, 1994.

[16] *People vs. De Guzman*, 188 SCRA 405, 410-411.

[17] *People vs. Atop*, supra citing: *People vs. Diaz*, 262 SCRA 723 and *People vs. Delovino*, 247 SCRA 637.

[18] 194 SCRA 257.

[19] *People vs. Generalao, Jr.*, 213 SCRA 380, 388; *People vs. Dabon*, 216 SCRA 656, 671; *People vs. Yambao*, 193 SCRA 571, 579.

[20] G.R. No. 17472, February 7, 1997.

[21] G.R. No. 127903.

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