

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETRONILLO CASTILLO, ACCUSED-APPELLANT.

G.R. No. 130205. July 05, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a case of a 9-year old child who was not believed by her mother that she was raped by the latter's second live-in partner, appellant herein. This notwithstanding, appellant was charged,[1] convicted and sentenced to suffer reclusion perpetua by the trial court.[2]

The facts narrated in the People's Brief are as follows:

At the time of the commission of the rape, complainant, Michelle Robles, was nine years old, having been born on December 21, 1981. She was then living with her mother, Olivia Flores, in Medalva Village, Phase II, Angono, Rizal. Appellant Petronillo Castillo was the common-law husband of Michelle's mother. Michelle has two (2) siblings by her mother's previous relationship.

On the night of May 1991, Michelle was sleeping in the sala of their home. Her mother and two sisters were sleeping in the bedroom. Momentarily, Michelle was awakened when she felt someone tugging at her panty. She was shocked and was about to scream upon seeing her stepfather, herein appellant, removing her panty. Appellant, however, promptly covered her mouth with the palm of his hand. He then poked a knife at her and threatened to kill her two sisters if she raised a fuss or told anyone. Thereafter, he placed himself on top of Michelle and inserted his penis into her vagina. Michelle felt intense excruciating pain. After a while, appellant stood up and left.

Subsequently, Michelle informed her mother what appellant did to her. Her mother refused to believe her and even accused Michelle of fabricating a story. Frustrated, Michelle informed her aunt, Maria Corazon Flores, about the incident when the latter came to visit at their house. Maria Corazon told her sister the deplorable act committed by appellant against Michelle. Still Michelle's mother refused to believe. Finally, Maria Corazon decided to bring Michelle to the Philippine National Police Headquarters in Camp Crame, Quezon City, for medical examination.

Dr. Vladimir V.

Villaseñor, PNP Medico-Legal Officer, Camp Crame, examined the victim. Dr.

Villaseñor issued a Medico-Legal Report stating, to wit:

FINDINGS

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and tight.

GENITAL:

There is absence of growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown

labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type and congested hymen, with shallow healed lacerations at 4 and 8 o'clock. External vaginal orifice admits the tip of the examining index finger.

x x x xxx x x x

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."[3]

In this appeal, appellant raises a lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE.

The appellant contends that the testimony of private complainant "reveals glaring inconsistencies and allegations that are improbable and contrary to human experience, resulting in the failure of her case to meet the test of moral certainty and guilt of the accused beyond reasonable doubt." According to appellant, complainant testified that he got a knife which he allegedly used to threaten her from telling anybody about the incident, whereas she did not mention about a knife in her affidavit of complaint.

Appellant's contention lacks merit. Although she did not mention a knife in her affidavit, such omission did not diminish or affect her credibility as a witness. Notably, ex-parte affidavits are generally considered incomplete and inaccurate and will thus not prevail over a witness' statements on the stand.[4]

The gravamen of the evil act of rape, at the time of the commission of the crime, is the sexual congress of a woman by force and without her consent.[5] Mere contact by the male's sex organ of the female's sex organ consummates rape. However, if the victim is below twelve years of age at the time her honor was violated, proof of force, intimidation or consent is absolutely unnecessary,[6] not only because force is not an element of statutory rape, but the absence of free consent is conclusively presumed when the woman is below the age of twelve.

From the victim's own testimony, she openly narrated in court her nightmare in the maniacal hands of appellant:

FISCAL SANTOS:

Q

You stated that you resided at Medalva Village, Phase II, Angono, Rizal. With whom did you reside during that time on May 1991, Ms. Robles?

A

With my mother, sir.

Q

You stated you resided with your Mama, what is the name of your Mama?

A

Maria Olivia Flores, sir.

Q

Will you please tell this court if your Mama was living with somebody else during that time, Michelle?

A

Yes, sir.

Q

And who was that person with whom your mother was living with, is he presently in court and can you identify him?

A

Yes, sir.

Q

Will you please look around and see and point to him?

(The witness is pointing to a man wearing a white t-shirt and long pants who when asked by the Court identified himself as Petronillo Castillo).

Q

Now, Michelle, on the night of May 1991, do you remember of any unusual event that happened?

A

My stepfather removed my blanket.

Q

Now, you stated that your stepfather removed your blanket. After your stepfather removed your blanket, what else, if any, transpired, Michelle?

A

He also removed my pants and panty, sir.

Q

Now, after your step-father Petronillo Castillo has (sic) removed your pants and panty, what else, if any, transpired?

A

He placed himself on top of me, sir.

Q

After Castillo placed himself on top of you, what if any, did Castillo do afterwards?

FISCAL SANTOS:

May we place on record, Your Honor, that the witness is crying.

Q

Again, Michelle, may I repeat the questions. After Castillo had placed himself on your top, what, if any, did he do?

A

He got a knife, sir and he told me not to tell this to anybody.

Q

When you stated that Castillo got a knife and told you not to tell anyone, what happened when Castillo did not want anybody to know about it, Michelle?

A

He raped me, sir, and he threatened to kill me and my two sisters.

Q

You stated that Castillo raped you, in what manner did Castillo rape you?

A

He inserted his penis inside my vagina.

Q

When Castillo inserted his penis inside your private organ, what if any, did you feel, Michelle?

A

It was painful, sir.

Q

And how long did Castillo remain on your top during that time, Michelle?

A

Just for a short while, sir.

Q

And did you inform anybody of this incident, Michelle?

A

My mother, sir.

Q

And what did your Mama do if ever your Mama did anything about the incident?

A

She did not believe me, sir, because she thought I was just lying.

Q

Aside from your mother, Michelle, did you inform anybody about this incident?

A

My aunt, sir.

Q

You said your aunt, what is the name of your aunt, Michelle?

A

Maria Corazon Flores, sir.

Q

Where and when did you inform your aunt about the incident?

A

In our house, in front of my mother.

Q

When your aunt was informed of this incident, what, if any, did your aunt do about it?

A

My aunt told my mother about it but my mother did not also believe her, so my aunt decided that I would be sent for a medical examination.[7]

Subjected to questioning by the trial court, the victim did not retract from her testimony:

COURT:

And while on top of you, what did the accused do to you?

A

He inserted his sex organ into my sex organ.

Q

You claimed that the accused inserted his penis into your vagina because you felt pain in your vagina?

A

Yes, Sir.

Q

But it could be, that could be a finger instead of his penis that he inserted in your vagina, is that correct?

A

No, sir.

x x x x x x x x

COURT:

Then after he inserted his sex organ to your sex organ what did the accused do?

A

He stood up afterward.

COURT:

You mean to say, when he inserted his sex organ you did not do anything?

A

He threatened me, sir.[8]

It is clear from the foregoing that there was sexual intercourse. The victim could not cry for help because her mouth was covered and she was threatened with a knife which impelled her into submission. It has been held that the act of holding a knife by itself is strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring the woman to submission.[9] At any rate, force or intimidation is immaterial in statutory rape.

The victim's testimony that appellant inserted his organ into her vagina is further corroborated by the medical findings of the Medico-Legal Officer who examined her, to wit:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and tight.

GENITAL:

There is absence growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minor presenting in between. On separating the same is disclosed an elastic fleshy-type and congested hymen, with shallow healed lacerations at 4 and 8 o'clock. External vaginal orifice admits the tip of the examining index finger.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."^[10]

The absence of spermatozoa in the victim's vagina is not fatal to her cause. Her credible testimony alone suffices to establish appellant's guilt. Besides, in rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ^[11] and the slightest penetration is considered as equivalent to consummated sexual intercourse.^[12] In fact, the mere touching by the male's organ or instrument of sex of the labia of the pudendum of the female's private parts is sufficient to consummate rape.^[13]

Appellant further contends that he could not have possibly raped the victim because the place where the crime occurred is small and there were at least 20 persons therein. Against such contention, however, the Court had consistently ruled that rape can be committed even in places where people congregate, in parks along the roadside, in school premises, in a house where there are other occupants,^[14] in the same room where other members of the family are also sleeping^[15] and even in places which to many would appear unlikely and high-risk venues for its commission.^[16] There is no rule that rape can be committed only in seclusion.^[17]

Appellant argues that the information is "too general in terms" since it alleges that the crime occurred "sometime in May 1991," whereas in the victim's sworn statement the sexual violation continued until February 1992."^[18]

The argument is likewise without merit. The information charges only one offense - that committed in May 1991. Besides, there is no variance between the time proved and the time alleged in the information. It cannot be said that appellant was deprived of the opportunity to prepare for his defense.^[19] The information alleged that the crime occurred in May 1991, only that the victim cannot remember the exact day of the month when it happened. It is sufficient if the time averred is near the actual date as the information of the prosecuting officer will permit, and since that was done in this case, it was not shown that the time proved did not surprise or substantially prejudice the defense.^[20] Besides, in a rape case, the date or time is not an essential element of the crime and therefore need not be accurately stated.^[21] Assuming that there were several rapes committed between May 1991 up to February 1992, appellant was only charged and convicted of one crime of rape. He is not, as he cannot, be convicted of other rapes of which he was not charged even if the same were proven during trial, otherwise, it would violate his right to be informed of the nature and cause of the accusation against him.

Finally, the issue boils down to credibility of witness. Time and again, this Court has repeatedly ruled that matters affecting credibility are best left to the trial court because of its unique opportunity of having observed that elusive

and incommunicable evidence of the witness's deportment on the stand while testifying, an opportunity denied to the appellate courts[22] which usually rely on the cold pages of the silent records of the case.

In the case at bar, it was not convincingly shown that the court a quo had overlooked or disregarded significant facts and circumstances which when considered would have affected the outcome of the case[23] or justify a departure from the assessments and findings of the court below. The absence of any improper or ill-motive on the part of the principal witness for the prosecution all the more strengthens the conclusion that no such motive exists.[24] Besides, the tender age of complainant when she was raped (9 years old), and at the time she testified (12 years old), further lends to her credibility.[25] Apparent in this Court's decision in rape cases where the offended parties are young and immature girls from the ages of twelve to sixteen is the considerable receptivity on the part of this Tribunal to lend credence to their vision of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a gruelling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control.[26]

The avalanche of revelation, notwithstanding the threats on her life and that against her half-siblings, did not deter the victim from revealing to her mother what appellant did to her. The most painful part of her agony is that she was not believed by no less than her own mother but she was lucky to have an aunt who came to her rescue. Rape victims would usually first seek help from their own mothers before they call on other relatives. Unfortunately for complainant, she was not believed by her mother whom she expected to be the first to come to her aid.

Statutory rape committed in 1991 is punishable by reclusion perpetua.[27] Although under the present law, the rape of a child below 18 years old with the offender being a common law spouse of the parent of the victim carries the mandatory penalty of death, the same cannot be applied to appellant because its retroactive application would be unfavorable to him.[28] On the civil indemnity, the award of P50,000.00 given by the trial court is proper. However, in addition thereto, victims of rape are also entitled to moral damages of P50,000.00 without need of proof other than the fact of rape, and exemplary damages of P20,000.00.[29]

WHEREFORE, the decision of the Regional Trial Court of Binangonan, Rizal, Branch 70 in Criminal Case No. 1780-B, convicting appellant of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** subject to the **MODIFICATION** that in **ADDITION** to the P50,000.00 indemnity awarded by the trial court, appellant is also ordered to pay the complainant moral damages in the amount of P50,000.00 plus exemplary damages of P20,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1]

"On the basis of the Affidavit/Complaint, signed by the complainant Michelle Robles and assisted by her guardian Corazon S. Flores, the undersigned hereby accuses Petronillo Castillo of the crime of RAPE, committed as follows:

That sometime in the month of May, 1991, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Michelle Robles, a girl 10 years of age, inside their house, against the latter's will and consent.

Contrary to law."(Records, p. 1).

[2] WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape of her (sic) step-daughter below 12 years of age as defined and penalized in Article 335, par. 3, Chapter two of the Revised Penal Code, the accused Petronillo Castillo is sentenced to suffer the penalty of reclusion perpetua; to indemnify the offended party in the sum of P50,000.00; and to pay the costs.

SO ORDERED. (Decision dated February 24, 1997 of RTC Binangonan, Rizal penned by Judge Herculano Tech, p. 6; Rollo, 21)

[3] Rollo, pp. 88-90.

[4] *People v. Salazar*, 277 SCRA 67, August 11, 1997.

[5] *People v. Philip Tan, Jr.*, 264 SCRA 425 (1996)

[6] *People v. Lagrosa, Jr.*, 230 SCRA 298 (1994); *People v. Andres*, 253 SCRA 751 (1996)

[7] Transcript of Stenographic Notes (TSN), December 12, 1994, pp. 4-9.

[8] TSN, January 25, 1995, p. 11.

[9] *People v. Reynaldo*, 191 SCRA 701 (1990)

[10] Medico-Legal Report No. M-0866-92 of Dr. Vladimir V. Villaseñor completed 1130H, May 19, 1992, Records, p. 223.

[11] *People v. Galleno*, 291 SCRA 761 (1998)

[12] See *People v. Ligotan*, 331 Phil. 98 (1996); *People v. Lazaro*, 249 SCRA 234 (1995)

[13] *People v. Mahinay*, 302 SCRA 455 (1999)

[14] *People v. Ulili*, 44 SCAD 213; *People v. Viray*, 164 SCRA 135 (1988) cited in *People v. Tan, Jr.*, 332 Phil. 465 (1996)

[15] *People v. Villorente*, 10 SCRA 647 (1964)

[16] *People v. Dado*, 314 Phil. 635 (1995); *People v. Rafanan*, 182 SCRA 811 (1990)

[17] *People v. Papa Talaboc*, 326 Phil. 451 (1996)

[18] Appellant's Brief, p. 7; Rollo, p. 46.

[19] *U.S. v. Bongasil*, 34 Phil. 835 (1916)

[20] *U.S. v. Dichao*, 27 Phil. 421 (1914)

[21] *People v. Pagpaguitan*, G.R. No. 116599, September 27, 1999; *People v. Garcia*, 346 Phil. 475 (1997)

[22] *People v. Mahinay*, 302 SCRA 455 (1999) citing *People v. Tan, Jr.*, 264 SCRA 425 (1996)

[23] *People v. Dio*, 44 SCAD 559; *People v. Matrimonio*, 215 SCRA 613 (1992)

[24] *People v. Ravanes*, 284 SCRA 634 (1998)

[25] *People v. Tan, Jr.*, 332 Phil. 465 (1996)

[26] *People v. Molina*, 53 SCRA 495 (1973) reiterated in *People v. Egot*, 130 SCRA 134 (1984) and in *People v.*

Quidilla, 166 SCRA 778 (1988)

[27] Article 335 of the Revised Penal Code (RPC) before its amendment by R.A. 8353.

[28] Article 22, RPC. R.A. No. 7659 took effect on December 31, 1993.

[29] People v. Batoon, G.R. No. 134194, October 26, 1999.

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