THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARMELO LACABA @ MELOY, ACCUSED-APPELLANT.

G.R. No. 130591. November 17, 1999

Ponente: MELO, J.

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MELO, J.:

Of all the so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation, and disgust than incestuous rape. Worse yet, if the offense is against a 22-year old paraplegic lass, whose mobility is limited to crawling.

Carmelo Lacaba was charged with two counts of rape committed on two separate occasions against his niece Beverly T. Lacaba. The accusatory portion of the amended complaint dated July 11, 1996 in Criminal Case No. 9687 reads as follows:

> Criminal Case No. 9687
>
> The undersigned offended party, after having been duly sworn to in accordance with law, accuses Carmelo Lacaba alias Meloy of Agsoso, Loon, Bohol of the crime of RAPE, committed as follows:
>
> That on or about the 15th day of March, 1996 at barangay Agsoso, municipality of Loon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, an uncle of the undersigned offended party, taking advantage of the fact that the undersigned is a cripple, with lewd designs, and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously embrace the offended party and thereafter, after removing her panty, forced her to bend over exposing her buttocks and insert his erect penis into her vagina, thus the said accused succeeded in having carnal knowledge with the said victim Beverly Lacaba without her consent and against her will; to the damage and prejudice of the said offended party.
>
> Acts committed contrary to law.
>
> (p. 18, Rollo.)

The second complaint, which contained the same allegations, docketed as Criminal Case No. 9686, charged accused-appellant with rape committed sometime in February, 1995. The cases were consolidated to which accused-appellant pleaded not guilty and stood trial, resulting in a judgment of conviction, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court is convinced that the prosecution has proven the guilt of the accused beyond reasonable doubt, hereby sentences the accused Carmelo Lacaba the penalty of DEATH for the two (2) counts of rape.
>
> The Court likewise orders the accused to pay the amount of P50,000.00 for each case as indemnity.
>
> SO ORDERED.

(p. 9, Rollo.)

The prosecution's version of the events is based principally on the testimony of victim Beverly Lacaba and her paternal grandmother, Crispina Lacaba. The Solicitor General summarized the same in this wise:

> Private complainant Beverly Lacaba is a 24-year old paraplegic suffering from "congenital spastic paralysis of lower extremities" (p. 15, TSN, Jan. 21, 1997). Abandoned by her biological mother since she was one (1) year old, Beverly was raised by her paternal grandparents Bernardo and Crispina Lacaba in Brgy. Agsoso, Loon, Bohol (pp. 3-4, TSN, Jan. 22, 1997). Since then Beverly has been staying with her grandparents and her uncle, accused-appellant Carmelo Lacaba (p. 3, ibid.). Carmelo Lacaba is a 43 year old pedicab driver (p. 3, TSN, Feb. 12, 1997).
>
> Sometime in the afternoon of February 1995, while Beverly's grandparents were at the farm, accused-appellant approached her and poked a knife at her, ordered her to bend and removed her panty (p. 16, Jan. 15, 1997). Accused-appellant, then inserted his penis to her vagina and made a push and pull movement (pp. 16-17, ibid.). Beverly informed her grandmother about the incident and they reported the incident to the police (p. 5, TSN, Jan. 21, 1997). She was then accompanied by her grandmother to a doctor in Loon, Bohol for a medico-legal examination (p. 37, Jan. 15, 1997). The medico-legal examination revealed a negative finding of spermatozoa, thus Beverly was dissuaded by the police to push through with her complaint, due to the said finding (p. 38, TSN, Jan. 15, 1997).
>
> Despite of what happened, Beverly continued living with her grandparents and accused-appellant (ibid.). On March 15, 1996 at around 8:00 A.M., while her grandparents were at the farm, Beverly was peeling cassava when accused-appellant approached and poked a knife on her, removed her panty, inserted his penis into her vagina and made a push and pull motion (pp. 8-9, TSN, ibid.). Accused-appellant then returned to his room (p. 11, ibid.).
>
> At around 9:00 A.M., Crispina Lacaba (Beverly's grandmother) returned from the farm (p. 7, TSN, Jan. 22, 1997). She saw Beverly trembling and crying in the kitchen (ibid.). Beverly informed her grandmother that she was raped by her uncle (ibid.). Crispina brought Beverly to the house of her younger sister in Brgy. Badbad, Loon, Bohol and asked her to stay there (ibid.). Crispina then proceeded to the police station and reported the incident (ibid.).
>
> (pp. 60-62, Rollo.)

The defense is based on the testimony of its sole witness, accused-appellant. He interposed the defense of denial, and his version of the facts runs:

> . . . sometime in September 1996, the accused was arrested by a certain policeman, Joe Palma, in connection with a complaint for rape he allegedly committed in February, 1995. He was detained for the purpose of asking him regarding the complaint filed. He was however released the following day and was informed that there was no evidence that he really committed the crime.
>
> On March 15, 1996, an altercation happened between the accused and the complainant. The accused got mad when he saw that the complainant disarranged his personal belongings. He was not able to control himself then that's why he scolded and whipped her. One day while he was feeding the pigs, a certain Marcos Huaton with a companion named Cesar told him that he was being invited to a party. Excited, the accused immediately dressed up. However, he was brought to the police station instead and was detained there for seven (7) months.
>
> (pp. 37-38, Rollo.)

The trial court gave full faith and credence to the testimony of Beverly and rejected accused-appellant's defense of denial. It ruled that victim Beverly was not shown to have any deep reason to falsely testify against accused-appellant. Solely, it was justice which she sought to achieve, and that her imputations were not tainted

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with evil motive and, thus, indeed were true.

Accused-appellant is now before us insisting on his innocence and pleading for acquittal on the ground of reasonable doubt. He imputes to the trial court the error of finding him guilty beyond reasonable doubt of the crimes charged because according to him the evidence presented by the prosecution is not enough to overcome the presumption of innocence in his favor. In his bid to exculpate himself, accused-appellant assails the credibility of the prosecution witnesses, particularly, Beverly and Crispina. He posits that both are lying about him having raped Beverly - the first occasion in 1995 and the second time on March 16, 1996. He contends that even as Beverly was able to narrate every detail of the alleged incidents including the position and the manner in which she was assaulted, ironically, she could not recall the month in 1995 when the first rape allegedly happened. This indicates, so says accused-appellant, that Beverly is not telling the truth. Accordingly, when accused-appellant was arrested in connection with the rape committed in 1995, he was advised by the investigating officer to just go home because there was no evidence that he indeed committed rape. And verily, Beverly did not pursue that case against him. Accused-appellant adds that the admission of Beverly and Crispina that they have a long standing grudge against him taints their testimony, for which reason, the same cannot be the basis of his conviction. Thus, the accusations against him must be rejected, and he must be acquitted, so he maintains (pp. 6-12, Brief for the Accused-Appellant).

Accused-appellant's assertions must certainly come to naught.

In a prosecution for rape, the complainant's credibility becomes the single most important issue. If her testimony meets the test of credibility, the accused may be convicted on the basis thereof (People vs. Cragto, 253 SCRA 455 [1996]). Even in the absence of corroborative testimony of other witnesses, the categorical and candid testimony of the complainant suffices as rape is usually committed in a place where only the aggressor and the victim are present (People vs. dela Cruz, 276 SCRA [1197]).

In the instant case, the trial court, in finding accused-appellant guilty of two counts of rape, relied ponderously on the testimony of Beverly which it found worthy of belief. Held thus the trial court:

> . . . In the instant case, the court after observing keenly the demeanor and actions of the complainant when she testified, is fully convinced that she is telling the truth. Her straightforward manner of testifying and her facial expression during the direct and cross-examination, shows that indeed, the imputations are true. Being a shy and a physically handicapped individual, her only purpose is for the vindication of her crampled womanhood and integrity. In coming out from the open and divulging her sad plight, the complainant was given strength to avoid further molestation or perhaps to avoid the conception of an unwanted child.
>
> (p. 19, Rollo.)

Doctrinally, findings of fact of trial courts are accorded the highest respect and weight. They are normally sustained except where there are substantial facts and circumstances which have been overlooked (Marco vs. CA, 273 SCRA 276 [1997]), or where the disputed decision is based on a misapprehension of facts (People vs. Banwar, 262 SCRA 325 [1996]). The case before us does not fall under any of these exceptions, and in view of accused-appellant's failure to present any substantial evidence that would alter the outcome of the case, the facts as found by the trial court should not be disturbed, and thus, must be sustained.

After examining the testimony of Beverly, the Court finds it hard to believe that Beverly would reveal and admit the ignominy she had undergone if this were not true. It would be highly improbable for Beverly, against whom no proof of sexual perversity or loose morality had been shown, to fabricate the charges.

During the preliminary examination of the instant case, the Investigating Judge manifested her observation of

Beverly's physical condition, thus:

> COURT:
>
> The Investigating Judge observed that this young woman is inflicted with muscular sickness which is characterized by failure to maintain a standing position, in fact when she came into the chambers she was crawling on the floor and to all appearances, she is quite helpless. She is paralytic of some sort.
>
> (p. 9, III Record.)

When trial came, Beverly was subjected to a very humiliating, if not degrading form of cross-examination, the pertinent portions of which are reproduced hereunder:

> Q.
>
> Is it true that you are really a crippled?
>
> FISCAL UCAT:
>
> That would not be asked, may I request the Honorable Court to make an observation, probably, counsel had not seen the situation of the victim.
>
> COURT:
>
> That can be seen.
>
> ATTY. TRABAJO:
>
> Reform Your Honor, sorry Your Honor.
>
> Q
>
> Considering that it was really a finding of the doctor that you are a crippled one, we admit that you are a crippled and I am sorry that I have stated that question, and being a cripple you cannot walk, you only used your hands to crawl, is that correct?
>
> A
>
> That is right, Sir.
>
> Q
>
> As a matter of fact, only your left hand can move freely?
>
> A

That is right, Sir.

Q

Although, your right hand can move but it is weak because it is paralyzed, it is correct?

A

Yes, Sir.

Q

And it was a findings that your two legs are also paralyzed?

A

Yes, Sir.

Q

As a matter of fact, your legs cannot be spread?

A

That is right, Sir.

Q

And you cannot lay or lie on the ground with your legs, they are stretch with your face up?

A

My legs cannot be stretched when I am lying.

ATTY. TRABAJO:

Can you demonstrate?

FISCAL UCAT:

We will exclude the public, Your Honor.

COURT:

With the help of the grandmother the witness is told to lie down, face up.

INTERPRETER:

Witness demonstrating herself by lying down. The Court observes that the witness cannot even stretch her legs.

FISCAL UCAT:

Also, may I request Your Honor that she be allowed to lie face down so that we can also determine the position.

INTERPRETER:

Witness is now lying face down on the floor of the court.

ATTY. TRABAJO:

You admitted that your legs cannot be stretched and observed as we demonstrated is true that your legs cannot

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be spread.

INTERPRETER:

The witness could not spread her legs by her own while she was lying face down on the floor of the court covered by the newspaper.

ATTY. TRABAJO:

How about if we try to spread?

FISCAL UCAT:

But this is out of the position Your Honor because of her disease, that she is crippled even if the aid of the third person the legs cannot be spread. Anyway, we are presenting the doctor. If we are too interrogative I think it is too humiliated on her part, the rape is very humiliated and we are adding insult and injury by spreading the legs of the people concerned.

(pp. 27-29, tsn, Jan. 15, 1997).

The Court usually gives credence to the testimony of a woman who is a victim of sexual assault because ordinarily, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice (People vs. Adora, 275 SCRA 441 [1997]), more so if she were physically handicapped. In the instant case, Beverly positively identified her uncle Carmelo as the one responsible for sexually molesting her. She recounted the painful details of the sexual assault she suffered in the hands of accused-appellant. Even the very humiliating and demeaning cross-examination by the defense did not yield any inconsistency on Beverly's testimony.

In flashback, Beverly's first incestuous encounter with her uncle, as revealed by the record, occurred in February, 1995. Accused-appellant brandished his knife, stripped Beverly of her underwear, bent her face-down on the floor, and satisfied his eroticism and libidinal urges, after which he left her and proceeded to his room. Despite the intimidation and Beverly's physical disadvantage, she audaciously intimated the sexual attacks she experienced to her grandmother which led them to report her grievance to the proper authorities. However, the police officer investigating the incident did not initiate the filing of rape charges against accused-appellant because Beverly tested negative for the presence of spermatozoa. Beverly did not persevere because she was deterred by the police authorities, due to, as they had put it, lack of evidence.

Accused-appellant endeavors to discredit Beverly in light of these circumstances, and also because Beverly could not even recall the month in 1995 when she was first raped. These importunings are too meager and thin to diminish in any way the weight accorded to the credibility of Beverly. Restrained, she cannot be expected to have the physical bent and the needed intelligence to seek any more justice for her pain and misery when to her unsophisticated mind it would seem futile to do so, hence, the abandonment of her first complaint. Moreover, the failure of Beverly to state the exact date of the commission of rape is a minor matter and can be expected when a witness is recounting the details of a very humiliating experience which is painful and difficult to recall in open court, and in the presence of other people. The date of the commission of the rape is not an essential element of the crime and it has no substantial bearing on its commission, especially since in this case, the month of the commission of the crime in 1995 is not material to the defense of accused-appellant (People vs. Bugarin, 273 SCRA 384 [1997]), which is a mere denial that he did not commit the acts imputed to him. It is when the testimony appears totally flawless that a court should have some misgivings on its veracity. In fact, certain minor variances in the details of a witness' account, more frequently than not, can be badges of truth rather than indicia of falsehood, and they often bolster the probative value of testimony (People vs. Talledo, 262 SCRA 544 [1996]).

Again in flashback, on March 15, 1996 at around 9 o'clock in the morning, Beverly was once more ravished. In the kitchen where she was peeling cassava, she was plagued by accused-appellant's sexual hunger. He removed his short pants, stripped her, bent her face-down on the floor. While poking a knife at her, he made a push and pull movement until his beastly sexual yearnings were satisfied, and then he left her. Still in the kitchen, Beverly was found by her grandmother Crispina in agony. This prompted Crispina to report the misfortune Beverly again suffered. But at that point, despite the negative findings also of the presence of spermatozoa, Beverly never lost faith and proceeded to seek justice which was once out of reach.

Prosecution witness, Dra. Jacinta Lasco, testified that the life span of sperm cells is only 48 hours. According to her, if a rape victim is examined two days after the rape, the examination certainly would yield a negative result. Beverly, in this case, was examined several days after she was raped.

Then too, it must be stressed, the Court in a number of cases, has declared that the absence of spermatozoa in the victim's sex organ does not disprove rape (People vs. Dones, 254 SCRA 696 [1996]; People vs. Soriano, 272 SCRA 760 [1997]; People vs. Caballes, 274 SCRA 83 [1997]). It could be that the victim before her examination washed or could have urinated, which may well explain the absence of spermatozoa. It is sufficient to establish the essential requisite of carnal knowledge as indicated by the physician's findings of penetration which corroborates the testimony of the victim that accused-appellant's organ was inserted into hers (People vs. de la Peña, 276 SCRA 558 [1997].

Dra. Lasco, on this last point, testified:

> Q
>
> So, in this case Doctor, where you findings "introitus admits two fingers" can you conclude that the patient had sexual intercourse prior to the examination?
>
> A
>
> Yes.
>
> (p. 16, tsn, Jan. 21, 1997).

To be sure, notwithstanding such examination and findings, it is well-settled that a medical examination of the victim is not indispensable in a prosecution for rape (People vs. Salazar, 258 S. 55 [1996]), and no law requires a medical examination for the successful prosecution thereof (People vs. Julian, 270 SCRA 733 [1997]). In the instant case, it cannot be said that the prosecution relied solely on the hymenal lacerations of or the presence of spermatozoa in the victim's organ as evidence of rape but on the testimony of the victim herself which, standing alone and even without medical examination, is sufficient to convict (People vs. Tepaguen, 269 SCRA 601 [1997]).

Accused-appellant consistently denies the charges leveled against him and tries desperately to impress upon the Court that said charges were instituted to avenge the cruelty which Beverly suffered from him when he scolded and whipped her for allegedly stealing his T-shirt, and the resentment his mother Crispina had against him because he never helped her shoulder the expenses she incurred in their household when he still had a job, and because later, he became jobless and, consequently, depended for his subsistence on his parents.

The arguments are feeble at the very least. Beverly's honesty in admitting to having a grudge against accused-appellant because the latter physically and sexually abused her should be considered in her favor (People vs. Ramos, 260 SCRA 402 [1996]). Beverly was raped several times. Accused-appellant never showed remorse for what he had done, such that he still had to beat and whip Beverly. Beverly, having been subjected to

accused-appellant's sexual perversion and physical violence, it is but natural and even more believable and within the realm of human experience that she should feel damaged and show animosity against accused-appellant. What is more, accused-appellant is her own uncle with whom she shared the same house and who certainly exercised moral ascendancy over her. After what accused-appellant's had done to her, whatever respect was due him could but turn to disgust and loathing.

Anent Crispina's testimony, even in these trying times of poverty and greed, it is absurd to believe that Crispina would allow Beverly, who is already burdened by physical impairment, to be subjected to the ordeal and embarrassment of a public trial and to allow her private parts to be exposed to examination just to relieve her of the burden of feeding accused-appellant. No grandmother would stoop so low, no matter the poverty, and no matter the lack of education, to subject her own granddaughter who grew up in her love and care to the hardships concomitant to a rape prosecution just to salvage her own hurt feelings. Even when consumed with revenge, it takes a certain amount of psychological depravity for a mother to concoct a story and implicate her own son in a charge as grave as incestuous rape which she knows is penalized by death.

All told, in crimes of rape, conviction or acquittal virtually depends entirely on the credibility of the victim's testimony because of the fact that usually only the participant can testify to its occurrence (People vs. Fortich, 281 SCRA 600 [1997]).

In the case at bar, it is impeccably sound to sustain a conviction of rape based on the testimony of Beverly because her testimony is credible, natural, convincing, and free from serious contradiction, and her sincerity and candor, free from suspicion.

Inasmuch as the prosecution was able to amply prove two separate counts of rape with the use of a deadly weapon, the trial court correctly found accused-appellant to be liable therefor. However, the Court observes that the trial court erred in imposing the death penalty in convicting accused-appellant for the said crimes without any justification, even as it committed another error in imposing only one penalty for two separate crimes.

Under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the penalty for rape when committed with the use of a deadly weapon is reclusion perpetua to death. The absence of any aggravating circumstance in the commission thereof, would justify, even without any mitigating circumstance, the imposition of the lesser penalty of reclusion perpetua (People vs. Quiñanola, et al., G.R. No. 126148, May 5, 1999). More so, because the use of deadly weapon, although established during the trial was not expressly alleged in the complaint or indictment.

The Court is not unaware of the provisions of Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997", amending further Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which penalizes rape with death when the offender knew of the physical handicap of the victim at the time of the commission of the crime. However, the Act took effect only on October 22, 1997 and cannot, therefore, be given retroactive application so as to justify the imposition of death.

WHEREFORE, the judgment finding Carmelo Lacaba guilty beyond reasonable doubt of the crime of rape on two counts is AFFIRMED with the following modifications: (a) the penalty hereby imposed is reclusion perpetua for each count; and (b) for each count of rape, accused-appellant is ordered to pay Beverly Lacaba P50,000.00 as moral damages without need of proof other than his conviction, P50,000.00 as civil indemnity, and P20,000.00 as exemplary damages to deter other sex perverts from sexually molesting hapless women, especially their own kin. Costs against accused-appellant.

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SO ORDERED.

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

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