

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMIL BABERA Y RABANERA, ACCUSED-APPELLANT.

G.R. No. 130609. May 30, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the judgment promulgated on February 27, 1997, by the Regional Trial Court of Lingayen, Pangasinan, Branch 69 , in Criminal Case Nos. L-5469 and 5470,[1] convicting accused Emil Babera of two counts of rape committed against Imelda Mangonon; the dispositive portion of the decision reads as follows:[2]

"WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused EMIL BABERA , guilty beyond reasonable doubt of the crime of RAPE on two (2) counts under Crim. Case Nos. L-5469-5470.

Pursuant to Article 335 of the Revised Penal Code as amended, in relation to Art. 63 paragraph 2 No. 2 of the same Code, the accused is hereby sentenced in each of these cases to suffer the penalty of Reclusion Perpetua. The accused is also ordered:

1. To indemnify the private complainant Imelda Mangonon the sum of P50,000.00 as moral damages;
2. To recognize complainant's offspring as his natural child and to support the latter in accordance with Art. 283 of the New Civil Code and Art. 345 of the Revised Penal Code respectively.

Cost against accused.

SO ORDERED."

Accused-appellant Emil Babera y Rabanera was charged with the crime of rape on two (2) counts under the following informations:[3]

In Criminal Case No. L-5469

"That on or about the month of March , 1995 in barangay Buenlag, municipality of Binmaley, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge with Imelda Mangonon, against her will, to her damage and prejudice.

Contrary to Art. 335 of the Revised Penal Code."

In Criminal Case No. L-5470

"That on or about the month of March , 1995 in barangay Buenlag, municipality of Binmaley, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge for the

second time with Imelda Mangonon, against her will, to her damage and prejudice.

Contrary to Art. 335 of the Revised Penal Code."

Upon his arraignment, accused duly assisted by counsel pleaded not guilty to the charges of two (2) counts of rape.[4]

The facts are as follows:

Sometime in June 1995, Joselito Caronongan, uncle of seventeen (17) year old Imelda Mangonon and under whose custody she had been for the past six (6) years, noticed that Imelda's stomach was bulging.[5] Upon his query, Imelda told him that somebody forcibly dragged her along the seashore and went on top of her.[6] Immediately thereafter, Caronongan together with his wife brought Imelda to the barangay captain of Buenlag, Binmaley, Pangasinan, Joselito Esguerra, and reported to him that Imelda was raped. Sometime later, Imelda was subjected to a test to determine if she was pregnant and the test yielded positive results.[7]

Barangay captain Joselito Esguerra then investigated Imelda who told him that she was impregnated by a fisherman with curly hair from Lingayen who usually fetched water in the shallow well of Fernando Cantong which was just beside their (Imelda's) place.[8] As Imelda could not give the name of her molester, barangay captain Esguerra told Caronongan to simply wait for the fisherman to return to the place.[9]

On April 19, 1996, Caronongan's wife went back to barangay captain Esguerra and reported to him that they saw the person who raped Imelda.[10] Esguerra accompanied by his five barangay tanods, Imelda and her uncle Joselito Caronongan proceeded to the seashore of Binmaley Beach. In the presence of about twenty five (25) fishermen,[11] Esguerra asked Imelda to pinpoint the person who raped her and Imelda pointed to accused Emil Babera.[12] Esguerra then invited the accused for investigation after which he reported the matter to the police of Binmaley, Pangasinan where he later executed a sworn statement on the same day, April 16, 1996.[13]

At the trial, Imelda Mangonon testified that one morning in March 1995, while she was picking up small fish at the seashore of Buenlag, Binmaley, Pangasinan, accused approached her, poked a knife at the left side of her body and dragged her to a nearby hut. Thereafter he laid her down and went on top of her and then inserted his penis and made a push and pull movement.[14] He told her not to report the incident to anybody.[15]

The following morning, Imelda was again by the seashore gathering small fish when the accused forcibly dragged her to the same hut and raped her for the second time. In both instances, Imelda tried to resist by fighting but accused held her hands and when she tried to shout, accused covered her mouth.[16] As a result of the rape incidents, she became pregnant and later gave birth to a baby girl.

On November 12, 1996, Joan M. Jarata, a psychologist at the Department of the Social Welfare and Development (DSWD), Lingap Center, Lingayen, Pangasinan, to whom Imelda Mangonon was referred for mental evaluation, conducted a question and answer type of test known as the Slosson Intelligence Test on Imelda. The test revealed that Imelda had an I.Q. of 32, with an estimated mental age of 5 years and 7 months, and an intellect classified as "moderate retardation".[17]

For his defense, accused-appellant interposed denial and alibi. He claims that from the first week of February 1995 to the first week of July 1995, he, together with his common-law spouse Chona Flores and their three (3) children lived in the house of his sister, Teresita Babera, in Lucap, Alaminos, Pangasinan.[18] Accused had been re-hired by Mr. Ruben Ong, his former employer, as a stay-in houseboy in New East Street, Lingayen Pangasinan where he stayed from the first week of July 1995 to December 25, 1995.[19] Thereafter, accused and his family lived in the house of Catalina Gonzales, (cousin of Chona's mother) in Casulming II, Lingayen, Pangasinan up to

April 19, 1996.[20] He became a fisherman (managkalokor) in Buenlag, Binmaley, Pangasinan in January 1996. He intimated that the first time he saw Imelda was on April 19, 1996, when she pointed to him while he was fishing in Binmaley and accused him of raping her.[21] He denied complainant's accusation of rape with the use of a "balisong".[22] He claimed that he was in Lucap, Alaminos, Pangasinan during the month when the alleged rape took place.[23]

Teresita Babera, sister of the accused, corroborated the testimony of the accused that he and his family lived with her in their deceased parents' house in Lucap, Alaminos, Pangasinan in February 1995 and up to July 1995.[24] She also testified that it would not take more than two hours by mini bus from Alaminos to reach Lingayen or Binmaley, Pangasinan and that there are many vehicles coming from Alaminos to Binmaley and vice versa.[25]

Catalina Gonzales, aunt of the accused's live-in partner Chona Flores, also corroborated the testimony of accused that he and his family lived with her from July 1995 to April 16, 1996 [26] and that he worked as a houseboy of Mr. Ong in New Street East, Lingayen, Pangasinan.[27]

After trial, the court rendered its decision dated February 27, 1997, the dispositive portion of which was quoted earlier.

The accused has appealed on the issue of whether or not the trial court erred in affording credence to the testimony of the victim, Imelda Mangonon.

Accused-appellant contends that in rape cases, the trial court gives credence to the complainant on the theory that the victim would not deliberately expose herself to public ridicule and to searching questions about her embarrassing ordeal if she is not telling the truth; however, the Constitution also mandates a presumption of innocence which can only be overcome by clear and convincing evidence establishing the guilt of the accused. He alleges that contrary to the trial court's findings that the victim Imelda gave frank, sincere, straightforward and intelligible answers, the victim's testimony in the preliminary examination and in the direct examination differed and was inconsistent in material points. He points out on the following alleged inconsistencies:

"During the preliminary examination conducted on the 7th day of May 1996 before honorable Judge Ignacio R. Concepcion, the victim testified that the alleged sexual abuse happened in their house in the presence of the victim's uncle Jose and his wife Lyn, thus:

Q. But you have seen this Emil Babera?

A. Yes, sir.

Q. Where did you see Emil Babera?

A. I saw him because he fetched water in the house.

Q. In March, 1995, did you see this Emil Babera

A. Yes sir.

Q. Where did you see Emil Babera?

A. In our house fetching water, sir

Q. And in that March 1995 when you saw Emil Babera do you have companion in the house?

A. Yes, sir

Q. Who were your companions in the house?

A. My companions were my uncle Jose and his wife Lyn.

Q. And in that March 1995, when you saw Emil Babera in your house was there any unusual incident that happened?

A. Yes, sir.

Q. What did Emil Babera did (sic) to you madam witness?

A. He removed entirely my clothes and went on top of me.(Exhibit "1-A', p.1)

xxx xxx xxx

Q. And when was the second time that Emil Babera sexually abused you?

A. The following day, sir

Q. In that March 1995?

A. Yes, sir

However, during the direct examination conducted by prosecutor Bustamante on November 21, 1996, she testified:

Q. Sometime in March 1995, do you remember if the accused Emil Babera which you have pointed did something to you?

A. Yes sir

Q. Will you tell the court what did Emil do to you?

A. He dragged me to a hut near the seashore, sir.

Q. What did he do to you when he dragged you to the hut near the seashore?

A. He dragged me near the seashore and he laid me down after that he went on top of me and inserted his penis and made push and pull movement and told me that I will not report to anybody.

xxx xxx xxx

Q. Now the second time that Emil Babera dragged you to the hut what did he do again to you?

A. He dragged me and laid me down and went on top of me and inserted his penis and told me that I will not report the incident, sir.

Q. Where were you the second time when Emil Babera dragged you to the hut?

A. I was again picking fishes, sir"[28]

Accused appellant claims that Imelda's answers were inconsistent and such inconsistencies refer to material points which the prosecution failed to reconcile or explain, and which affected the credibility of Imelda's testimony.

Appellant's argument does not persuade us.

In a prosecution for rape, the complainant's credibility becomes the single most important issue.[29] Rape is generally unwitnessed and very often the victim is left to testify for herself. Her testimony is most vital and must be received with the utmost caution. Since the participants are usually the only witnesses in crimes of this nature,

the conviction or acquittal of the accused would virtually depend on the credibility of the complainant's testimony.[30] If found credible, the lone declaration of facts given by the offended party would be sufficient to sustain a conviction.[31]

We have gone over the records and we find no reason to disturb the trial court's observation that the victim testified on the rape incidents in a "frank, sincere and straightforward" manner. She positively identified accused-appellant as the person who raped her on two occasions. She was consistent in her narration of how she was dragged by accused-appellant to a hut near the seashore, laid her down, removed her clothes and then went on top of her, inserted his penis to her vagina and after which she felt so much pain. The same thing happened to her the following day.

The trial court found credible Imelda's testimony recounting how she was sexually abused by the accused-appellant. The court observed that Imelda positively identified Emil Babera four times: The first time was on April 19, 1996 when accused-appellant went to fetch water in the well of Fernando Cantong near the house of Joselito Caronongan where the complainant lives; the second time took place when complainant identified the accused-appellant from a group of 20 to 25 fishermen in the seashore in the presence of the Barangay Captain; the third and fourth identifications were made in court.[32]

The doctrinally accepted rule is that the trial court's assessment of the credibility of the witnesses is accorded great respect and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated, which if properly taken into account may alter the outcome of the case.[33] Factual findings of the trial court are generally sustained on appeal unless arbitrary or baseless.[34] We find that the trial court properly accorded due weight and credence to Cristina's testimony.

We do not agree with accused-appellant's contention that the testimony of Imelda during the preliminary examination was inconsistent with her testimony on direct examination. A reading of the complete transcript of Imelda's testimony, and not merely the portion cited by accused-appellant, which was taken during the preliminary examination before MTC Judge Ignacio Concepcion would negate the claim that Imelda testified that she was raped in the presence of her uncle and his wife. At the preliminary examination, Imelda said -

"xxx xxx xxx

Q. In what part of the house were you and Emil Babera were at the time, madam witness?

A. Just near the seashore, sir.

Q. So, you were brought by Emil Babera near the seashore, is that correct?

A. In the nipa hut, sir.

Q. And when Emil Babera removed your clothes or dress and panty and went on top of you what did Emil Babera did (sic) to you, madam witness.

A. He inserted his penis inside my vagina, sir.

Q. What did you feel when Emil Babera inserted his penis inside your vagina, madam witness?

A. Painful, sir."[35]

Imelda, both in her preliminary examination and in her direct examination during the trial of this case, was consistent in her testimony that she was raped by the appellant and the incident happened in a nipa hut near the seashore. We quote with approval the trial court's disquisition in this wise:

"The defense invited the attention of the Court on the inconsistencies in the testimony of the complainant and the other prosecution witnesses. Confronted with this invitation, the Court endeavored to determine if these ratiocinations merit judicial approval. In this regard, the Court compared the narration of the complainant on the witness stand, with her statement before the police (Exh. "E" and Exhibit "2") and her testimony in the preliminary examination conducted by the Municipal Trial Court. The Court was extra careful in assaying her story, but despite this caution, the Court found no reason to justify setting aside her testimony as wholly unbelievable. They are substantially the same in regard to the incidents of rape. If ever there are inconsistencies in her testimony, the same do not impair her credibility, for it has been held that witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details. (PP. vs. Miranda 235 SCRA 201-213-214).

Thus, before the police, she stated that accused raped her twice in Barangay Buenlag, Binmaley, Pangasinan near the beach. She did not report the sexual assault because of the threat of the accused to her life. She was then alone near the beach when accused pulled a knife and poked it at her back. She was made to lay down and her panty was removed. Then the accused inserted his penis in her vagina and made a push and pull movement.

In the preliminary examination, she amplified her statement she gave to the police (Exh. "E") stating that she was brought to the nipa hut near the beach. The transcript of the testimony of the complainant in the preliminary examination (Exh. "1"), contains the following statements of the complaint.

Q- So you were brought by Emil Babera near the seashore, is that correct?

A- In the nipa hut, sir.

There is nothing incredible or unnatural in her narration as to foreclose the commission of rape. There is nothing inconsistent with ordinary human experience on how she was sexually abused as narrated by her. Her testimony is therefore credible as evidence (People vs. Baquiran 20 SCRA 451).

The inconsistencies in complainant's testimony, are due, as noted by the Court, on how the questions propounded to her were framed. Moreover, her answers were not followed up which should have been done to enable her to explain her answers further. For example, on direct-examination, complainant testified that accused inserted his penis

The prosecutor did not follow up to find out where the penis of the accused was inserted. It was the Court that clarified this matter and the complainant answered it was inserted in her vagina pointing to it."

Accused-appellant also claims that the trial court erred in concluding that he was positively identified by the victim on April 19, 1996, which was the date when appellant went to fetch water in the well of a certain Fernando Cantong, near the house of Joselito Caronongan where Imelda lives, since nowhere in Imelda's testimony was a referral to said date made.

We do not agree.

Imelda's failure to remember the dates and months of the year would not affect her credibility. In fact, despite her mental deficiency which the trial court found to be mainly because of the misfortune of either having a low I.Q. or of her being unschooled, she was able to recall the details of her ordeal and positively identified the accused-appellant when he saw him again on April 19, 1996. Contrary to the appellant's contention that April 19, 1996, the date Imelda positively identified him, was not borne out by the records, the testimony of both Barangay Captain Joselito Esguerra and no less than the accused himself showed that Imelda positively identified the appellant on that date.

Barangay Captain Esguerra testified that on April 19, 1996, Joselito Caronongan, Imelda's uncle, and his wife Lyn reported to him that they saw the man who raped Imelda. He together with his five (5) tanods went to the seashore of Binmaley where about twenty five (25) fishermen were present. Imelda who was then with her uncle pointed to the appellant as the one who raped her. Esguerra investigated the accused and later brought him to the police authorities. Esguerra executed before the police his sworn statement dated April 19, 1996 regarding his investigation of Imelda's complaint.[36]

Appellant himself corroborated Esguerra's testimony, he said-

"xxx xxx xxx

Q. You know the complainant in this case, Imelda Mangonon?

A. I only know her when she pointed me and filed a case against me, sir.

Q. When was that when Imelda Mangonon pointed you on April 19, 1996?

A. She was fishing sir, in Binmaley.

Q. By the way, when was the first time did you see Imelda Mangonon in your life?

A. April 19, 1996, sir.

Q. And when did you see Imelda Mangonon for the first time last April 19, 1996?

A. When she pointed at me while I was fishing, sir.

Court:

Where were you fishing?

A. At Binmaley, Pangasinan, sir.

Court :

From where in Binmaley?

A. Barangay Buenlag, Binmaley, sir."[37]

Appellant next contends that full faith and credence should not be given to the testimony of barangay captain Esguerra that Imelda was able to identify him among the other twenty five (25) fishermen along the seashore of Binmaley Beach; it was pointed out that Esguerra testified that the complainant informed him of the rape incident in 1994 which was even prior to the commission of the rape in March 1995.

The argument deserves scant consideration.

The mistake committed by Esguerra refers to a minor matter which does not destroy his credibility. Moreover, as we noted earlier, his testimony as to the date when Imelda pointed to the appellant as her rapist, was corroborated by the appellant himself. More important, Esguerra's testimony does not refer to the actual commission of rape on Imelda, and is not indispensable considering that Imelda had positively identified the appellant and her testimony alone which we found to be credible, is sufficient to sustain a conviction.

Appellant raised the defense of denial and alibi. He alleges that he was in Lucap, Alaminos, Pangasinan at the time the crime of rape was committed. The trial court rejected appellant's defense of alibi in this wise:

"The accused admitted that from Alaminos, Pangasinan to Lingayen, Pangasinan is a one (1) hour ride. This Court

should take judicial notice of the fact that the distance from Lingayen, Pangasinan to the place of the incident in Buenlag, Binmaley, Pangasinan, which is an adjoining town of Lingayen, is a 20 to 30 minute ride. So from Alaminos, Pangasinan where accused allegedly stayed from the first week of February 1995 to June 30, 1995, it was not physically impossible for the accused to be in Buenlag, Binmaley, Pangasinan where the complainant was sexually abused twice."

We find no cogent reason to reject the above finding. We have ruled often enough that alibi is the weakest defense and may not overcome the positive identification made by the victim herself. We note that accused-appellant has not even ascribed any ill-motive on the part of Imelda in filing the rape charge against him, if only to countervail the positive identification of him as the perpetrator.[38] 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 crime, the testimony is worthy of full faith and credit.[39]

Notably, the observation made by the trial court that the face of the child looks like the accused, at least insofar as facial resemblance is concerned, cannot be ignored to bolster the fact that Imelda indeed positively identified the appellant as the person who raped her. We accordingly agree with the trial court that the evidence for the prosecution has established beyond reasonable doubt the guilt of the accused-appellant for the crimes charged.

Article 335 of the Revised Penal Code, as amended by RA 7659, provides that the crime of rape is committed when the offender has carnal knowledge of a woman by using force or intimidation. The penalty for simple rape is reclusion perpetua.

The trial court granted P50,000.00 as moral damages in favor of the victim. However, moral damages are separate and distinct from the civil indemnity awarded to a rape victim. In accordance with recent jurisprudence, an award of P50,000.00 should be given to the victim by way of civil indemnity, in addition to the P50,000.00 moral damages awarded by the trial court.

WHEREFORE, the decision of the trial court is **AFFIRMED**, with **MODIFICATION** that accused-appellant is further ordered to pay Imelda Mangonon the additional amount of P50,000.00 as civil indemnity.

SO ORDERED.

Melo, (Chairman), Vitug, and Purisima, JJ., concur.

Panganiban, J., on leave.

[1] Penned by Judge Emilio V. Angeles.

[2] Rollo, pp 97-98; Records, pp.149-150.

[3] Rollo, pp. 11-12.

[4] Records, p.33.

[5] TSN, October 21, 1996, p.4.

[6] Ibid, p.6.

[7] Ibid, p.7.

[8] TSN, October 15, 1996, p.4.

[9] Ibid.

- [10] Ibid, p.5.
- [11] Ibid.
- [12] Ibid, p 6.
- [13] Ibid, p 7; Exhibit "A".
- [14] November 21, 1996, pp. 5-6.
- [15] Ibid.
- [16] Ibid, p. 13.
- [17] TSN, November 28, 1996, p.5; Exhibit "C ".
- [18] TSN, December 5, 1996, pp. 3-4.
- [19] Ibid, p.5.
- [20] Ibid, p.6.
- [21] Ibid, p.8.
- [22] Ibid, p.9.
- [23] Ibid.
- [24] TSN, December 17, 1996, p. 5.
- [25] Ibid, p.10.
- [26] TSN, January 6, 1997, p. 5.
- [27] Ibid, p. 6.
- [28] Rollo, pp. 76-79.
- [29] People vs. Dacoba, 289 SCRA 265; People vs. Gagto, 253 SCRA 455.
- [30] People vs. Gallo, 284 SCRA 590 citing People vs. Rivera, 242 SCRA 26.
- [31] People vs. Gapasan, 243 SCRA 53; People vs. Bulaybulay, 248 SCRA 601.
- [32] Rollo, pp.92-93, RTC decision pp.8-9.
- [33] People vs. Perez, 307 SCRA 276 citing People vs. Ramos, 240 SCRA 191; People vs. Nicolas, 241 SCRA 67; People vs. Marinas, 248 SCRA 165; People vs. Ramirez, 266 SCRA 135; People vs. Teodoro, 280 SCRA 384.
- [34] People vs. Perez, supra citing People vs. Talingting, 281 SCRA 91.
- [35] Records, Exhibit "1".
- [36] TSN, October 15, 1996, pp. 5-8.
- [37] TSN, December 5, 1996 pp. 7-8.
- [38] People vs. Limon, 306 SCRA 367.
- [39] People vs. Limon, supra citing People vs. Ferrer, 295 SCRA 190.

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