PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAULINO LEONAR ALIAS INOY, ACCUSED-APPELLANT.

G.R. No. 130628. November 22, 2001

Ponente: BUENA, J.

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BUENA, J.:

Before this Court is an appeal from the joint Decision[1] dated July 3, 1997, of the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41,[2] in Criminal Case Nos. P-5553 and P-5554, finding accused-appellant Paulino Leonar alias "Inoy" guilty beyond reasonable doubt of two (2) counts of rape committed against his 10-year-old step-granddaughter, Jereline Pineda, and sentencing him to suffer the penalty of two (2) terms of reclusion perpetua and to pay the sum of P100,000.00 as moral damages.

The two (2) informations charging accused-appellant with rape committed on two (2) different instances, identically worded except for the dates involved, read as follows:

> "That sometime in the month of January, 1996,[3] at barangay Cacawan, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, while armed with a bladed instrument and by means of force, threat and intimidation, did, then and there wilfully, unlawfully and feloniously lay with and have carnal knowledge with one Jereline Pineda, against her will and without her consent, to the damage and prejudice of the latter.
>
> "CONTRARY TO LAW."[4]

When arraigned, accused-appellant pleaded not guilty to both charges.[5] After pre-trial, trial ensued. The prosecution presented as witnesses: private complainant, Jereline Pineda; her grandmother, Enriquita Malarayat Seda; police investigator, Kimye Kong; and Dra. Rosalinda Baldos, municipal health officer of Pinamalayan, Oriental Mindoro. The defense, on the other hand, presented as its lone witness, accused-appellant himself.

The prosecution's evidence, based on the testimony of private complainant, reveals that in February 1995, private complainant resided in the house of her grandmother, Enriquita Malarayat Seda, with the said grandmother, her step-grandfather (accused-appellant in this case) and her aunt, Edith. At around 7 p.m., on February 24, 1995, she was left in the said house with accused-appellant while her grandmother went to her aunt's house, located about ten arms length away, to bring some vegetables to her aunt.[6] While crying in open court, private complainant revealed that she was then raped for the first time by accused-appellant. According to private complainant, accused-appellant poked a double-bladed instrument at the middle part of her neck and threatened to kill them if she told anyone of the incident,[7] undressed her while pinning her legs with his knees and holding her hands at the back of her head.[8] Accused-appellant inserted his penis into her vagina (iniyot po nya ako).[9] Afterwards, private complainant felt pain in her vagina.[10] Accused-appellant threatened her not to tell anyone about the incident otherwise he would kill them.[11] Private complainant continued to testify that she was raped for the second time by accused-appellant on January 1996 and on that occasion, she also felt pain in her vagina.[12] In

both instances, private complainant informed her grandmother of her ordeal. After informing her grandmother of the sexual assault on February 1995, her grandmother told her to "let the time heal this;" and after she was raped for the second time by accused-appellant, her grandmother then informed her mother who was then working in Calapan, her Nanay Meling, other relatives, the righthand man of RGV and the former barangay captain.[13] Thereafter, private complainant's mother brought her to the Department of Social Welfare and Development (DSWD) office where she submitted herself to a medical examination with the assistance of Dr. Rosalinda Baldos.[14] On cross-examination, private complainant further revealed that on February 24, 1995, her grandmother actually came upon them while accused-appellant was sexually molesting her.[15] Her grandmother repeatedly boxed accused-appellant and quarreled with him. When private complainant was raped for the second time, her grandmother was then in Manila. While her grandmother was in Manila, private complainant was entrusted to the care of her aunt, Cory Ediza.[16] On re-direct examination, she went on to disclose that while entrusted to the care of her aunt Cory, she went to her grandmother's house, without any companion, to collect her clothes. It was then that she was raped for the second time by accused-appellant.[17]

Enriquita Malarayat Seda, private complainant's grandmother, testified that accused-appellant is her common-law husband while private complainant is her granddaughter;[18] and that the three (3) of them resided at Pamana Village in Cacawan, Pinamalayan. Private complainant was ten years old when the first sexual assault happened.[19] On February 24, 1995, at around 7 p.m., Seda brought some vegetables to her daughter's house. When she returned back to their house, she noticed that the door was closed. Upon opening the door, she saw accused-appellant lying on top of private complainant, both of whom were undressed.[20] Private complainant's hands were both raised and trembling; and she was crying. She asked accused-appellant what he did to private complainant. Accused-appellant kneeled before her and promised not to do it anymore.[21] Private complainant had already ran away when accused-appellant asked her forgiveness. Afterwards, Seda asked private complainant about what happened, and the latter told her that she was raped by her Lolo. Thereafter, Seda repeatedly boxed accused-appellant and quarreled with him.[22]

Dr. Rosalinda Baldos, municipal health officer of the Regional Health Office No. IV, Department of Health (DOH) in Pinamalayan, Oriental Mindoro, conducted the medical examination on private complainant on October 3, 1996 and found private complainant to be "ambulatory, coherent and cooperative."[23] Dr. Baldos' examination revealed the following findings:

> "INJURIES:
>
> "VAGINAL EXAM[INATION]:
>
> "1. Vaginal orifice admits one finger easily but patient complained of pain.
>
> "2. Hyperenia at the right and middle portion of the external genitalia lateral to the hymen.
>
> "3. Healed lacerations at 5, 7, 11 o'clock of the hymen."[24]

According to Dr. Baldos, the healed lacerations found in the hymen of private complainant could have been caused by any hard object, possibly a hard penis or a finger "passing through" the vagina.[25]

In his defense, accused-appellant denied the charges hurled against him, claiming that at his advanced age of 65 years, he could not have a penile erection anymore. According to accused-appellant, he did not have any sexual intercourse with his common-law wife, Enriquita in the years 1995 and 1996 because his penis was no longer capable of erection.[26] His penis allegedly stopped erecting in 1994 when he got afflicted with asthma.[27] Accused-appellant also tried to ascribe an ill-motive on the part of his common-law wife, Enriquita in fabricating serious charges against him, claiming that "[e]very time that Enriquita drink (sic) "tuba" and got drank (sic), she

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will (sic) utter a word in tagalog `umalis ka ng matanda ka dito sa pamamahay na ito sapagka't hikain ka'y wala ka ng silbi'."[28]

On July 10, 1997, the trial court promulgated a joint Decision[29] dated July 3, 1997, finding accused-appellant guilty of two (2) counts of rape, and sentencing him to suffer the penalty of two (2) terms of reclusion perpetua and to pay the sum of P100,000.00 as moral damages.

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

> "THE TRIAL COURT MANIFESTLY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED IN CRIMINAL CASES NOS. P-5553 AND P[-]5554 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[30]

The appeal is unmeritorious.

Clearly, the core issue raised is factual and involves the credibility of the testimonies of witnesses. Accused-appellant contends that he could not have easily taken off private complainant's clothes since one of his hands was allegedly holding a bladed weapon against the neck of private complainant; that it was not established that he was in a position to hold and guide his penis into private complainant's vagina; and that he is incapable of engaging in sexual intercourse because he is impotent.

The contentions are untenable.

Well-settled to the point of being elementary is the doctrine that on the issue of credibility of witnesses, appellate courts will not disturb the findings arrived at by the trial court, which was certainly in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial. This rule stands absent any showing that certain facts and circumstances of weight and value have been overlooked, misinterpreted or misapplied by the trial court which, if considered, would affect the result or outcome of the case.[31]

Indeed, we have carefully reviewed the records of this case, particularly the testimonies of the witnesses, and we find that the prosecution has presented the required quantum of proof to establish that accused-appellant is indeed guilty as charged.

As aptly observed by the trial court, private complainant's testimony is "worthy of judicial acceptance."[32] The trial court judiciously stated that:

> "xxx. The manner she [private complainant] testified in court bears the earmarks of credibility. On the witness stand, she did not exhibit [any] manifestation indicative of insincerity or falsehood. The [trial] court has observed her (sic) that she did not show hesitancy in pointing to the accused as the perpetrator of the dastardly deeds. She was so depressed that while narrating the tragic incidents and her harrowing experience in the hands of her `lolo,' she could not help but cry. xxx."[33]

Citing People vs. Gecomo,[34] the trial court properly concluded that "[t]he crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born of human nature and experience."[35] Furthermore, we agree with the trial court that it is "...hard to believe that Jereline [private complainant] would fabricate a story of defloration, allow [a] gynecologic examination and open herself to public trial if it were not true that she was raped by her [step] grandfather. It would be preposterous on the part of Jereline [private complainant] to concoct a rape complaint against the accused for no palpable nor hidden evil motive at all."[36]

And significantly, private complainant's testimony is convincingly supported by the physical evidence and the

separate testimony of the medico-legal officer who conducted the medical examination, and thereby found healed hymenal lacerations on private complainant.[37]

Furthermore, private complainant's averment that she was raped by accused-appellant on February 24, 1995, is corroborated by her grandmother, Enriquita Malarayat Seda's testimony that she came upon private complainant and accused-appellant who were both undressed, while accused-appellant was on top of private complainant, sexually molesting her.[38]

Accused-appellant's arguments, as we shall now discuss, have failed to rebut the conclusion that the prosecution has proved his guilt beyond reasonable doubt.

First, the Court is in agreement with the Solicitor General that there is nothing improbable in accused-appellant's ability to take off private complainant's clothes with the use of only one (1) hand, given the severe disparity between the ages, physical strength and superiority of accused-appellant and private complainant. As perceptively observed by the Solicitor General, there was a great disparity between the physical build of the parties. Jereline was a young 10-year old while accused-appellant was a 64-year old with a much bigger and sturdier build.

Second, with regard to accused-appellant's claim that it would be improbable, if not impossible on his part to have sexual intercourse with private complainant considering that at his advanced age of 65 years and the fact that he is afflicted with asthma, he is no longer capable of penile erection, the trial court, which had the singular advantage of observing accused-appellant's deportment and manner of testifying, taking full use of all aids to arrive at a more accurate assessment of his credibility, declared that:

> "xxx. While impotency is generally recognized as a good defense in a criminal prosecution for rape, however, the records of the case is bereft of any evidence to show that the accused is incapable of performing [a] sexual act other than his bare assertion. The accused is a farmer, a barangay tanod and from his appearance he does not look like a sick man. xxx."[39]

Accused-appellant's testimony to the effect that he is no longer capable of erection is, at most, self-serving. Despite the seriousness of the charges against him, accused-appellant has failed to submit any proof to substantiate his claim of impotency.

Finally, accused-appellant alleges that the "unreasonable delay" in reporting the sexual assault "creates doubt as to its veracity," rendering the same to be "unworthy of credit and belief."[40] Again, we are not persuaded. Private complainant's delay in reporting the sexual assault should not be taken against her because accused-appellant threatened to kill her if she told anybody about it. It is important to note that delay in reporting rape does not by itself undermine the charge, where the delay is grounded on death threats from the accused.[41] In fact, the transcripts reveal that private complainant, indeed, immediately reported both incidents of sexual assault to her grandmother, who far from being unnatural and highly suspect, was initially intimidated by the threats, ascendancy and influence of accused-appellant; but later, particularly after the second sexual assault, she mustered enough courage to report the sexual assault to the authorities. It has been held in a number of cases that delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. Fear of reprisal, social humiliation, familial considerations and economic reasons have been considered as sufficient explanations.[42] In the instant case, private complainant's grandmother has adequately explained the reasons for her delay in reporting the sexual assaults to the authorities, i.e., accused-appellant's threats and because accused-appellant was a barangay tanod, she was ashamed to reveal the incident.[43]

Based on prevailing jurisprudence,[44] private complainant is entitled to an indemnity of P75,000.00 for each count of rape. She can also recover moral damages pursuant to Article 2219(3) and exemplary damages, if the

commission of the crime was attended by one or more aggravating circumstances pursuant to Article 2230, both of the Civil Code. Under the circumstances in this case, we deem fit to additionally award moral damages in the amount of P100,000 and exemplary damages in the amount of P50,000.00.

WHEREFORE, the appealed decision finding appellant Paulino Leonar guilty beyond reasonable doubt of two (2) counts of rape and sentencing him to suffer the penalty of two (2) terms of reclusion perpetua and to pay the victim Jerlina Pineda the total amount of P100,000.00 as moral damages, is hereby AFFIRMED, with the MODIFICATION that accused-appellant Paulino Leonar is ordered to indemnify Jereline Pineda in the amount of P75,000.00 for each of the two (2) counts of rape and, additionally, to pay her the amount of P25,000.00 as exemplary damages in each case.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 13-25.

[2] Presided by Judge Normelito J. Ballocanag.

[3] In Criminal Case No. P-5554, the date of commission of the crime is February 24, 1995. Rollo, p. 6.

[4] Rollo, pp. 4, 6.

[5] Records, p. 18.

[6] TSN, February 27, 1997, p. 4.

[7] Ibid., p. 11.

[8] Ibid., p. 7.

[9] Ibid., p. 8.

[10] Ibid., p. 8.

[11] Ibid., p. 8.

[12] Ibid., p. 9.

[13] Ibid., p. 10.

[14] Ibid., p. 10.

[15] Ibid., p. 16.

[16] Ibid., pp. 19-20.

[17] Ibid., pp. 22-23.

[18] Private complainant's mother is Seda's daughter by her first husband.

[19] TSN, January 24, 1997, p. 3.

[20] Ibid., p. 4.

[21] Ibid., p. 4.

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[22] Ibid., p. 5.

[23] TSN, March 13, 1997, p. 3.

[24] Exhibit "D," Records, p. 7.

[25] TSN, March 13, 1997, p. 4.

[26] TSN, May 23, 1997, pp. 5-6.

[27] Ibid., pp. 6-7.

[28] Ibid., p. 9.

[29] Rollo, pp. 13-25.

[30] Ibid. at p. 49.

[31] People vs. Lacatan, 295 SCRA 203, 210-211[1998].

[32] Rollo, p. 21.

[33] Ibid. at pp. 21-22.

[34] 254 SCRA 82, 96 [1996].

[35] Rollo, p. 23.

[36] Ibid.

[37] TSN, March 13, 1997, pp. 3-4.

[38] TSN, January 24, 1997, p. 4.

[39] Rollo, p. 24.

[40] Ibid. at p. 53.

[41] People vs. Sta. Ana, 291 SCRA 188, 212 [1998].

[42] People vs. Lusa, 288 SCRA 296, 305 [1998].

[43] TSN, January 24, 1997, p. 6.

[44] People vs. Victor, 292 SCRA 186, 200-201 [1998].

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