

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANITO MONTERON Y PANTORAS, ACCUSED-APPELLANT.

G.R. No. 130709. March 06, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Davao City, Branch 15, dated May 28, 1997 in Criminal Cases Nos. 36,564-96, convicting accused-appellant Marianito Monteron of the crime of rape. The dispositive portion of the appealed decision reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, Marianito Monteron is hereby sentenced to reclusion perpetua and to indemnify Mary Ann Martinez the sum of Fifty Thousand Pesos (P50,000.00).[1]

The factual antecedents are as follows:

On March 7, 1996, at 12:10 p.m., fifteen year-old Mary Ann Martinez was walking home from Wangan National Agricultural School, Davao City. While she was walking on a secluded portion of the road, Mary Ann was hit on the head by a slingshot. She turned to see where the stone came from, she was hit again on the mouth. She fell down unconscious.[2]

When Mary Ann came to, she found herself lying on the grass naked. Accused-appellant was lying on top of her, also naked. She struggled but accused-appellant, who was stronger, restrained her.[3] He placed his penis on top of her vagina, which caused her to feel pain. She frantically grabbed his erect penis and pushed it away from her. This caused accused-appellant to stand up in pain. Mary Ann ran towards the road while putting on her clothes.

Mary Ann's cousin, Arnel Arat, witnessed the whole incident as he was then walking to Wangan Agricultural School. He met Mary Ann while the latter was running away and brought her home. When they got home, Mary Ann told her uncle what happened. Her uncle, in turn, told her mother.

That afternoon, upon complaint of Mary Ann, the Calinan Police Precinct arrested accused-appellant.

The following morning, Mary Ann was brought to the City Health Office of Davao City where she was examined by Dr. Danilo P. Ledesma. The latter found that Mary Ann's hymen was intact and had no laceration, but her labia minora was coaptated and her labia majora was gaping.[4]

On March 12, 1996, accused-appellant was formally charged with rape. At his arraignment, accused-appellant entered a plea of not guilty.[5] After trial, the lower court convicted him of the crime of rape.

Accused-appellant is now before us on appeal on a lone assigned error:

DUE TO REASONABLE DOUBT, THE REGIONAL TRIAL COURT IN DAVAO CITY, BRANCH 15 HAS COMMITTED AN ERROR IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION.[6]

Accused-appellant argues that his negative plea to the information filed against him; his filing of the notice of appeal; and his denial of the rape charge against him during trial indicate his innocence.[7]

We are not persuaded.

Constitutional due process demands that the accused in a criminal case should be informed of the nature and cause of the accusation against him. The rationale behind this constitutional guarantee are: First, to furnish the accused with the description of the charge against him as will enable him to make his defense; second, to avail himself of his conviction or acquittal, for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.[8]

In fulfillment of the aforesaid constitutional guarantee, Rule 116, Section 1 (a) of the Rules of Court mandates that an accused be arraigned in open court and asked to enter a plea of guilty or not guilty of the crime charged. The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.[9] Consequently, when accused-appellant entered a negative plea during his arraignment, the same was not binding on the court as an indication of his innocence. Rather, it is a general denial of the charges impugned against him and an exercise of his right to be heard of his plea.

Neither is accused-appellant's filing of a notice of appeal[10] indicative of his innocence. On the contrary, accused-appellant's appeal was necessitated by the judgment of conviction rendered against him by the trial court. At the very least, the judgment below constituted a preliminary finding of accused-appellant's guilt.

On the whole, accused-appellant denies having abused and raped Mary Ann. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserves more credence and entitled to greater evidentiary weight.[11] Moreover, positive identification of the accused by prosecution witnesses as to his participation in the crime cannot be overcome by his denial of participation.[12]

In the case at bar, Mary Ann Martinez positively identified accused-appellant as her molester in this wise:

Q:

Did you see the person who hit you with a sling shot?

A:

Yes, sir.

Q:

Whom did you see?

A:

(Witness pointing to a person wearing maong pants, white T-shirt and when asked his name he answered that he is Marianito Monteron.)

Q:

What happened next?

A:

I lost consciousness and when I regained consciousness, I was surprised because I was already at the grassy area.

Q:

This person that you saw who hit you with a sling shot, do you know him?

A:

Yes, sir.

Q:

Why do you know him?

A:

Because he is my neighbor, sir.

Q:

How long?

A:

Very long time, sir.

Q:

What happened when you were brought to the grassy place?

A:

When I regained my consciousness I was already stripped naked and he was on top of me.

Q:

What was he doing?

A:

His penis was on top of my vagina, sir.

Q:

What else happened?

A:

I felt pain in my vagina.

Q:

What did you do?

A:

I grabbed his penis and so he felt pain and stood up.

Q:

You said earlier that you saw the person who hit you with a sling shot?

A:

Yes, sir.

Q:

You recognized him?

A:

Yes, sir.

Q:

You saw a person on top of you later on the grassy place?

A:

Yes, sir.

Q:

Who is this person that you saw in the grassy place?

A:

The same person, sir.

(Witness pointing to Mr. Monteron the accused).

(Emphasis provided) [13]

Mary Ann's testimony pointing to accused-appellant as the author of the crime is corroborated by her cousin Arnel Arat, viz:

Q:

What did you see?

A:

(Witness pointing to a person wearing a white T-shirt) I saw Marianito Monteron, the accused.

Q:

Did you recognize him that time?

A:

Yes, sir.

Q:

Why do you know him?

A:

Because we played basketball together.

Q:

What was he doing that time?

A:

He was on top of Mary Ann. (Emphasis provided)[14]

It is axiomatic that negative assertions cannot prevail over the positive testimonies of credible witnesses.[15] Thus, the accused-appellant's denial, not being substantiated by clear and convincing evidence, is negative and self-serving evidence bearing no weight in law.[16] Moreover, the defense of denial is inherently weak and has always been viewed with disfavor by the courts due to the facility with which they can be concocted.[17]

Accused-appellant challenges the testimony of Arnel Arat, saying that he was a biased witness because he is Mary Ann's cousin.[18] It is a basic precept that relationship per se of a witness with the victim does not necessarily mean that he is biased.[19] On the contrary, relatives have more interest in telling the truth for they want the real culprits to be meted their punishment.[20] To be sure, there is no law disqualifying a person from testifying in a criminal case in which his relative is involved if the former was at the scene of the crime and witnessed the execution of the crime.[21] Thus, the relationship of Arnel Arat to Mary Ann does not impair the credibility of his testimony, especially so when the same was given in a clear, convincing and straightforward manner.

Accused-appellant further posits that Mary Ann's charge against him was prompted by ill-will or grudge harbored by the Martinez family against the Monterons. More specifically, accused-appellant narrated that his father and Mary Ann's father quarreled in a cockpit.[22] This, however, cannot be considered as a motive strong enough to falsely accuse accused-appellant of so grave a crime as rape. Not a few accused in rape cases have attributed the charges brought against them to family feud, resentment, or revenge. But such alleged motives have never swayed this Court from lending full credence to the testimony of the complainant where she remains steadfast in her direct and cross examination.[23] Besides, no parent would expose his or her own daughter to the

shame and scandal of having undergone such debasing defilement of her chastity if the charges were not true.[24] It is unnatural for a parent to use his own offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma.[25]

Accused-appellant also contends that it was unlikely for him to strip naked and commit rape in broad daylight.[26] In this connection, suffice it to say that lust is no respecter of time and place. It is known to happen in the most unlikely places such as parks, along roadsides, within school premises or even occupied rooms.[27] Rape has also been committed on a passageway and at noontime.[28]

While accused-appellant is guilty of rape, the same was committed only in its attempted stage. Mary Ann clearly testified that accused-appellant only placed his penis on top of her vagina. In fact, she was able to grab it and push it away from her, causing accused-appellant to stand up. The pain she felt may have been caused by accused-appellant's attempts to insert his organ into hers. However, the fact remains, based on Mary Ann's own narrative, that accused-appellant's penis was merely on top of her vagina and has not actually entered the same. Accused-appellant has commenced the commission of the rape directly by overt acts, i.e., that of undressing himself and the victim and lying on top of her, but he did not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the case at bar, it was Mary Ann's violent resistance which prevented the insertion of accused-appellant's penis in her vagina.

The foregoing conclusion is supported by the medical findings of Dr. Danilo P. Ledesma that Mary Ann's hymen was intact and had no laceration.[29]

In *People v. Campuhan*,[30] we held that the labia majora of the victim must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[31]

Consummated rape is punishable by reclusion perpetua.[32] For attempted rape, the penalty two degrees lower shall be imposed,[33] i.e., prision mayor.

During his direct examination, accused-appellant testified that he was born on December 3, 1979.[34] Consequently, when the crime was committed on March 7, 1996, accused-appellant was only seventeen years old. We have held that the claim of minority by an accused will be upheld by the court even without any proof to corroborate his testimony, especially so when coupled by the fact that prosecution failed to present contradictory evidence thereto.[35]

Therefore, considering the privileged mitigating circumstance of minority, the penalty to be imposed on accused-appellant should be lowered by one more degree,[36] i.e., prision correccional. There being no more aggravating or mitigating circumstances, the same shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty to be imposed should be four (4) months and one (1) day of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.

The trial court correctly ordered accused-appellant to indemnify the victim, Mary Ann Martinez, in the amount of P50,000.00. Moral damages may also be awarded without necessity for pleading or proof thereof. In cases of attempted rape, the amount of moral damages is P25,000.00.[37]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Davao City, Branch 15, in

Criminal Case No. 36,564-96, is MODIFIED. Accused-appellant Marianito Monteron y Pantoras is found guilty beyond reasonable doubt of the crime of Attempted Rape and is sentenced to an indeterminate penalty of four (4) months and one (1) day of arresto mayor, as minimum, to four (4) years and two (2) months of prison correccional, as maximum. Further, accused-appellant is ordered to pay the victim, Mary Ann Martinez, the sums of P50,000.00 as civil indemnity and P25,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

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

[1] Record, pp. 53-54; penned by Judge Jesus V. Quitain.

[2] TSN, June 4, 1996, p. 4.

[3] Record, p. 4.

[4] TSN, June 5, 1996, p. 41.

[5] Record, p. 14.

[6] Rollo, p. 44.

[7] Rollo, pp. 48-49.

[8] *People v. Manalili*, 294 SCRA 220, 258 (1998).

[9] *Borja v. Mendoza*, 77 SCRA 422, 426 (1977).

[10] Rollo, p. 16.

[11] *Tecson v. Sandiganbayan*, 318 SCRA 80, 92 (1999).

[12] *People v. Chavez*, 117 SCRA 221, 227 (1982).

[13] TSN, June 4, 1996, pp. 4-7.

[14] TSN, June 5, 1996, p. 50.

[15] *People v. Catampongan*, 318 SCRA 674 (1999); *People v. Perez*, 319 SCRA 622 (1999).

[16] *People v. Javier*, 269 SCRA 181, 195 (1997).

[17] *People v. Bantilan*, 314 SCRA 380, 396 (1999).

[18] *Ibid.*

[19] *People v. Mendoza*, 301 SCRA 66, 79 (1999).

[20] *People v. Ramos*, 309 SCRA 643, 657 (1999).

[21] *People v. Andales*, 312 SCRA 738, 745 (1999).

[22] TSN, August 7, 1996, p. 67.

[23] *People v. Dacoba*, 289 SCRA 265, 272 (1998).

[24] People v. Batoon, 317 SCRA 545, 554 (1999).

[25] People v. Perez, 319 SCRA 622, 642 (1999).

[26] Rollo, p. 51.

[27] People v. Ramon, 320 SCRA 775, 789 (1999).

[28] People v. Avanzado, Sr., 158 SCRA 427, 436 (1988).

[29] TSN, June 5, 1996, p. 41.

[30] 329 SCRA 270 [2000].

[31] Supra, at 280-281.

[32] Revised Penal Code, Art. 266-B, as amended by R.A. 8353.

[33] Revised Penal Code, Art. 51.

[34] TSN, August 7, 1996, p. 62.

[35] People v. Joemarie Chua, 339 SCRA 426 [2000].

[36] Revised Penal Code, Art. 68.

[37] People v. Dimapilis, 343 SCRA 565 [2000].

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