PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODRIGO LOTEYRO AGUINALDO, ACCUSED-APPELLANT.

G.R. No. 130784. October 13, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an automatic review of the Decision imposing the death penalty on Rodrigo Loteyro Aguinaldo for committing the crime of rape.[1]

The Information against appellant Aguinaldo reads:

> "That on or about the 24th day of June, 1995, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with the use of force, violence and intimidation, to wit: by then and there pointing a pointed object at the side of one Jeannette Aguinaldo y Yap and threatening to kill her, have carnal knowledge of said Jeannette Aguinaldo y Yap, a minor, 17 years of age, without her consent and against her will.
>
> CONTRARY TO LAW."

Appellant, who is complainant's father, waived his right to a pre-trial and pleaded not guilty to the crime charged.[2] The trial court initially subpoenaed the complainant Jeannette[3] on October 8, 1996 as the prosecution's first witness.[4] She failed to appear and the case was reset to November 20, 1996.[5]

On November 20, 1996, Jeannette appeared and answered questions relating to her personal circumstances, i.e., she is a 17-year-old resident of 2541 Sulu St., Blumentritt, Sta. Cruz, Manila; she is called Net; she graduated from high school and appellant is her father. She claimed that at 10:00 p.m. of June 24, 1995, something happened while she was sleeping at home. Asked what happened, Jeannette hedged. The trial judge encouraged her to answer but she kept silent. She was on the verge of tears. The trial judge inquired if she wanted the appellant to leave the courtroom. She agreed.

After the appellant left the courtroom, Jeannette was again queried why she woke from her sleep that night. Still, Jeannette stayed as silent as a sphinx. This prompted the defense counsel de oficio[6] to move for the dismissal of the case. The trial judge asked Jeannette if she wanted the case dismissed and if she would like to pardon the appellant. Failing to elicit a response from her, the trial judge ordered the prosecutor to talk to Jeannette. The prosecutor then asked Jeannette if she executed a statement to the police[7] and Jeannette responded positively. She acknowledged her signature on the statement and affirmed its truthfulness. The prosecution then adapted her sworn statement as her direct testimony. Her sworn statement narrated how she was forced to have sexual intercourse with the appellant.

On cross-examination, Jeannette claimed that her parents had long been separated. She, her elder brother and younger sister stayed with their father. On the night she was allegedly raped, she slept with her father in a room upstairs while her brother slept downstairs. Her sister was not around at that time. She confided to Tita Nelia, a

family friend, that her father raped her. However, she could not tell when she revealed the incident to Tita Nelia. She admitted that she did not immediately undergo any physical examination after the incident.[8]

On redirect examination on November 27, 1996, the prosecutor asked Jeannette what woke her up on the night she was allegedly raped. She did not answer but merely muttered, "I'm afraid. . ." She alleged it was only on February 24, 1996 that she divulged the incident to her tatay-tatayan, a neighbor, because appellant again mauled her. She stated that she understood the term "ginahasa" in her sworn statement to be the Tagalog word for "rape." When asked what appellant did that prompted her to execute a sworn statement using the term "ginahasa," she did not again respond.

On recross-examination, Jeannette admitted that she was mad at her father for mauling her. However, she denied she filed the rape charge because of her maltreatment.[9]

The prosecution was obviously disappointed with the timid testimony of Jeannette. At the trial on December 3, 1996, it manifested that Jeannette was willing to narrate the details on how she was raped. In the interest of justice, the trial court allowed the prosecution to recall Jeannette as a witness. She declared that she woke up when she felt appellant lying down beside her. He placed a blanket over her but in the process, held her breast and touched her private part. She asked him why he did that and he explained that he was just "putting blanket" over her. He then turned off the light and they continued to sleep. She woke up for the second time when she felt someone was licking her face. She thought it was her dog but found out that it was appellant doing it. She asked, "Bakit po, Pa?" Appellant told her to keep quiet, mounted her and held her shoulder as she pushed him away. He mashed her breast and threatened to kill her. Then he "penetrated" her with his organ. She was wearing a T-shirt and shorts when she slept but when he started raping her, she found that appellant had removed her shorts. She said she felt pain as appellant raped her. Her efforts to resist proved futile. His lust sated, appellant slept while she cried until the morning. Appellant was drunk that night.[10]

On February 25, 1996, Senior Inspector Eliseo I. Canares, Jr. of the Western Police District Command requested the NBI Medico-Legal Officer to conduct a physical examination on Jeannette.[11] In his report for Living Case No. MG-96-308,[12] NBI Medico-Legal Officer Valentin T. Bernales made the following findings:

> "EXTRAGENITAL PHYSICAL INJURIES:
>
> Contusions, light blue: nipple, right, upper-outer quadrant, 3.0 x 2.5 cm.; leg, right, upper third, anterior aspect, 4.0 x 4.0 cm.
>
> Abrasions, healing, with black scab formation; linear; back, scapular and supra-scapular areas, both sides, multiple, sizes ranging from 2.0 cm. to 4.0 cm; arm, left, middle third, postero-lateral aspect, multiple, whitish, sizes ranging from 4.0 cm to 7.0 cm; with tenderness' thigh, right, middle third, anterior aspect, linear, 3.0 cm.

GENITAL EXAMINATION:

> Pubic hair, short, fine and scanty. Labia majora, gaping and minora, coaptated. Fourchette, tense. Vestibule, pinkish. Hymen, short, thick and intact. Hymenal orifice, admits a tube of 1.0 cm. in diameter with marked resistance. Vagina walls, and rugosities cannot be reached by an examining finger.

CONCLUSIONS:

> 1. The above described physical injuries were noted on the body of the subject at the time of examination.
>
> 2. Hymen, intact."

Dr. Bernales opined that there was no penetration of the complainant's hymen as it was intact and that

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complainant was physically a virgin. He explained that the complainant's hymen could not admit a tube with 1.0 cm. diameter, which implied that the opening was "too small for a complete previous penetration."

With respect to the extragenital physical injuries sustained by the complainant, Dr. Bernales declared that these could have been produced by direct contact of the skin with a hard object. The injuries could also be produced by a rough surface and these would have been inflicted "a week or two before" the examination on February 25, 1996.[13]

The defense interposed denial. Appellant, a commercial artist and barangay official in-charge of twenty five (25) tanods, branded as a lie his daughter's accusation. He admitted he was in their house at 10:00 p.m. of June 24, 1995. He said if he had no drinking session, he would sleep before 9:00 p.m., wake up at 12:00 midnight to check on the attendance and the equipment of the barangay tanods on duty and would be back home before sunrise. He denied he was drunk that fateful night because he did not have money except for the "allowance for the house."

On cross-examination, appellant stated that he lived in his house with his three children. His house had two stories with two bedrooms upstairs. As he was renting out one of the rooms, he and his son slept downstairs while his daughters slept in the vacant room. In the evening of June 24, 1995, his son slept on the sofa while he slept on the floor downstairs. He admitted beating up Jeannette because of "her attitude" of going out in the morning and coming home only at night. She would also go out at night without any permission but their neighbors would always tell on her.

On redirect examination, appellant charged that Jeannette had a "split personality" - one time she would be sweet to him and her siblings and then, for no reason at all, she would be mad at all of them. He claimed that he could not understand her although he knew that she was intelligent (matalino siyang masyado). Jeannette stopped schooling in 1995 because she spent her enrollment money.

Appellant's eldest child, Boy (Roy) Aguinaldo testified in his favor. He stated he slept between 11:00 and 12:00 midnight on June 24, 1995 at the ground floor of their house with his father and a friend. According to him, his sister Jeannette "is a very good person but once in a while she is irritable" (may sumpong). He opined that she could file an unfounded rape case against their father because his sister is a "100% liar."[14]

On August 7, 1997, the trial court[15] rendered a 3-page Decision finding appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to death. Holding that a broken hymen is not an essential element in rape, it concluded that the complainant's testimony was "strong enough to overcome the presumption of innocence of the accused and establish his guilt." It held further that it was "unthinkable and unnatural" for the complainant to "invent" a story and charge her own father with rape. The trial court convicted appellant of the crime under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which imposes the death penalty on an accused who is the parent of a complainant below eighteen years of age. It disposed of Criminal Case No. 96-147936 as follows:

> "WHEREFORE, this Court finds the accused guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code as amended by Section 11 of R. A. No. 7659, and he is sentenced to suffer the severe penalty of death by lethal injection and the accessory penalties provided by law and to pay the costs. On the civil liability of the accused, he is further sentenced to pay the complainant moral, nominal and exemplary damages in respective sums of P50,000.00, P100,000.00 and P30,000.00.
>
> SO ORDERED."

Before this Court, appellant contends:

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"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE UNCORROBORATED, DOUBTFUL, UNRELIABLE AND CONTRADICTORY STATEMENTS OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE TESTIMONIAL EVIDENCE RENDERED BY DR. VALENTIN BERNALES, NBI MEDICO-LEGAL OFFICER, FAVORABLE TO THE ACCUSED-APPELLANT."

To start with, the trial court wrongly imposed on appellant the death penalty considering the nature of the crime charged in the information. The information charged the appellant with the crime of simple rape. It did not qualify that appellant is the father of the complainant or that complainant is the daughter of appellant. This qualification is very material in determining the nature of the crime for which the accused should be held liable and the corresponding penalty under the law. Thus, in People v. Ilao,[16] a rape case where the relationship between the minor complainant and the accused was not alleged in the information, this Court ruled:

> "Adopting our pronouncements in People v. Ramos, we perforce have to rule that appellant can only be convicted of simple statutory rape and cannot be held liable for qualified rape for want of the allegation of relationship in the present information. Even if relationship was duly proved during the trial, still such proof cannot be considered to convict appellant of qualified rape and to consequently impose on him the death penalty since he would thereby be denied his constitutional and statutory right to be informed of the nature and the cause of accusation against him.
>
> To emphasize such substantial and procedural irregularity in simple terms of dialectics, to charge appellant with rape in one of its simple forms and then try and convict him of rape in one of its qualified forms would be a prosecution which leads to a trial and conviction without a valid accusation.
>
> We repeat, therefore, that the attendant circumstances introduced by Republic Act No. 7659 must be specifically pleaded in an information for rape in order that the same may correctly qualify the crime and to justify the penalty prescribed by the law. If it is the prosecution's goal to have appellant adjudged guilty of raping his minor daughter, such conviction is not possible under the wordings of the information herein. With the failure of the information to state the qualifying circumstance of relationship between appellant and Jonalyn, the death penalty cannot be imposed upon appellant, just as in People v. Ramos."

For this reason alone, the trial court should not have imposed the death penalty on the appellant. But this is not all the error of the trial court. In reviewing rape cases, this Court has always been guided by three principles: First, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. Second, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. Third, the disposition of rape cases are governed by the following guidelines: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense.[17]

Prescinding from these principles, we acquit the appellant. As correctly pointed out by appellant's counsel, the complainant's conduct on the witness stand did not evince truthfulness.[18] Instead of being straightforward, she

hesitated, and even refused, not only once but twice, to give testimony on the alleged rape. The records show that she failed to appear in court the first time the case was set for hearing. On the re-scheduled hearing where she was presented as the first witness, she balked, flatly refused to answer the questions propounded by the prosecutor as well as the questions of the trial court on the alleged sexual assault by the appellant. This led the trial court to strongly admonish and mildly berate her for her uncharacteristic silence on a critical point in the prosecution's case. Instead of dismissing the case as suggested by the defense, the trial court encouraged further the prosecution and hence, complainant was made to affirm her sworn statement that served as her direct testimony. At the next date for redirect examination, complainant once again refused to answer the prosecutor's questions notwithstanding the trial court's effort encouraging her to talk. It was only on December 3, 1996 that complainant broke her silence on the witness stand. This hesitance of the complainant to testify on the very meat of her case against appellant certainly evokes disbelief in her sworn statement. More so because her testimony is a mere parroting of her sworn statement.

The Solicitor General justifies complainant's hedging as natural for a "naive barrio lass" who is "incapable of hatching such a devious scheme" against her own father.[19] The records show, however, that complainant is a city-bred teenage girl who grew up in the Sta. Cruz district in the heart of Manila, the country's capital where, as in any other city, both progress and decadence exist. She is a high school graduate and already seventeen (17) years of age at the time the alleged crime was committed. That she was less than lily white in virtues was testified to by her brother who charged her as a "100% liar." Such negative testimony from a brother who is naturally expected to throw his support to his own sister but did not, says much about her character and raises serious doubts as to the truthfulness of her testimony.

Moreover, evidence of her wayward ways demonstrated by complainant's leaving home without her father's permission, nocturnal escapades and joyrides with jeepney drivers that elicited harsh disciplinary action from appellant has remained unrebutted. Hence, the Solicitor General's conclusion that "the moral ascendancy of appellant as a father of private complainant while on the witness stand all the more instilled fear in the latter" is not appropriate in this case.[20] Appellant's moral ascendancy or influence as a father is negated by proof of complainant's notoriously defiant and recalcitrant behavior towards him.

It is true that in rape cases, the accused may be convicted solely on the testimony of the complaining witness provided such testimony is credible, convincing and consistent with human nature and the course of things.[21] In the case at bar, however, the complainant lacked candor and spontaneity as a witness. Her demeanor, composure and manner of testifying revealed heavy traces of insincerity and falsehood even to one who is simply reading the transcripts of her testimony. Thus, complainant alleged in her sworn statement that she bled after her private part was fully penetrated during the sexual assault, viz:

> "x x x. Hinawakan niya ako sa balikat at pinapatungan, pero itinutulak ko siyang palayo sa akin, hanggang sa manghina ako at natatakot sa sinasabi niyang papatayin ako. Hanggang sa naipasok na niya ang titi niya sa puki ko. Nasaktan po ako. Gumalaw-galaw siya at nilalamas niya ang suso ko. Tapos, tumigil siya at inalis niya ang titi niya at nahiga na siya uli at natulog. Ako naman ay umiyak hanggang umaga. Noong bigla akong tumayo, may biglang may tumulo pero hindi ko na tiningnan, pero ang alam ko dugo dahil hanggang kinabukasan ay may dugo ako. x x x."[22] (Underscoring supplied.)

Complainant affirmed her sworn statement during direct examination as follows:

> "PROSECUTOR EDAD TO WITNESS:
>
> x x x
>
> Q: What else did he do aside from mashing your breasts?

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A: He penetrated me with his penis.

x x x

Q: What are you doing at the time or how did you feel at the time that you father inserted his organ on (sic) you?

A: It was painful.

x x x

Q: How did you know that it was his penis that was inserted to your vagina?

A: I felt it."[23] (Underscoring supplied.)

On the witness stand, complainant never testified as to her having bled after that sexual intercourse. More importantly, her claim in her sworn statement that she bled because of full penetration of her sex organ is belied by the medical record which revealed that her hymen was "short, thick and intact," that the hymenal orifice could admit a tube with 1.0 cm. in diameter only with "marked resistance" and that the vaginal walls and rugosities "cannot be reached by an examining finger."[24] Fortifying his report, Dr. Valentin T. Bernales, NBI medico-legal officer, testified as follows:

"Q: Doctor, is it possible that the hymen remain intact despite (stop) is it possible that the hymen shall remain intact despite the penetration of an object on (sic) the vagina?

x x x

A: It is possible that the hymen is still intact but there would be difference upon examination that it could be shown or be noted that the hymen could not admit a tube of 1.0 cm. in diameter that this opening is too small for a complete previous penetration (sic).

Q: So there was no complete penetration that could not have happen base on your (sic) (interrupted)

A: Examination.

x x x

Q: There could have not been a complete penetration?

A: Yes.

x x x

Q: If there is a penetration only of a portion of the head of the penis that would not have cause(d) the break up of the hymen of the victim?

A: That is possible, Your Honor.[25]

x x x

Q: So in this particular case it was possible for the victim to have a sexual intercourse even her hymen is intact? (sic)

A: No, Your Honor. In this particular case, it admit (stop) the hymen, the opening of the hymen only admits a 1.0 cm. tube.

THE COURT:

> Yes.
>
> A: That is a very small compared to 2.5 average size penis (sic). So it only shows that there is no previous contact or no previous sexual intercourse because the orifice or the opening remain to 1 cm. (sic)"

Needless to state, complainant's claim that she bled implies that there must have been laceration of her sex organ. Unless there is evidence that she underwent "cosmetic" surgery to restore the hymen's virginal state[26] before the NBI medico-legal officer examined her, complainant's claim of bleeding is a manifest falsehood. When physical evidence runs counter to testimonial evidence, conclusions as to physical evidence must prevail. Physical evidence is that mute but eloquent manifestation of truth which rate high in our hierarchy of trustworthy evidence.[27] The inevitable conclusion therefore is that complainant was lying through her teeth when she swore that appellant's organ penetrated hers and that she felt pain and was bleeding even until the morning. That material lapse in her testimony destroys her credibility.

The other bruises and contusions her body sustained could have been the result of maltreatment by her father. However, that matter is completely divorced from her allegation of rape. The medico-legal officer affirmed that complainant's injuries were new and could not have been sustained simultaneously with the alleged rape that was committed eight (8) months before she was physically examined.

As a rule, delay in the reporting of a rape incident is treated leniently by the courts in view of the ill effects that forcible defloration usually brings upon both the accused and the accuser. Such delay may become even longer when the rape committed is incestuous for the reason that our culture shields from the public embarrassing intrafamilial sexual incidents. Thus, the court shall not discredit the victim as a witness simply because it took her months to report her having been the victim of sexual abuse considering her tender age, the moral ascendancy of the accused and his threats against the victim.[28]

In this case, however, complainant's delay in reporting the alleged rape incident tolls negatively on her credibility. If indeed appellant ravished her, she would not have lost time to reveal the incident to her brother, her other relatives, her neighbors and the police. It is worth noting that she could not even tell when she related the alleged incestuous coitus to her Tita Nelia or to her tatay-tatayan (surrogate father). Complainant waited eight (8) months before she reported the rape and only as an obvious afterthought to the maltreatment by appellant.

Indeed, complainant's motive for charging appellant with the crime of rape is suspect. From the unrebutted testimonies of appellant and complainant's brother, she had an axe to grind against her father. It appears that the mauling incident before her physical examination triggered the complaint. Having suffered contusions and abrasions on different parts of her body, she went to the authorities to report the maltreatment and, in addition, the alleged rape incident that took place eight (8) months before or on June 24, 1995. Fed up with physical abuse, complainant had a reason to exact revenge from a father she perceived as cruel. That complainant was actually motivated by anger and revenge, rather than the call for justice, in reporting the alleged rape is buttressed by her brother's testimony that she was a 100% liar and that her charge of rape against their father was a mere fabrication.

In sum, complainant's version of the alleged incident cannot withstand objective scrutiny. This Court will not affirm a conviction for any crime, much more one for which the death penalty may be imposed, on an account that permits the entertainment of a reasonable doubt as to the culpability of the accused. A reasonable doubt as to appellant's guilt having been created by an appraisal of the prosecution evidence alone, a detailed examination of appellant's defense is rendered unnecessary.[29]

IN VIEW WHEREOF, the Decision in Criminal Case No. 96-147936 of the Regional Trial Court of Manila, Branch XVIII, is REVERSED and appellant Rodrigo Aguinaldo y Loteyro is ACQUITTED for failure of the

prosecution to prove beyond reasonable doubt that he committed the crime of rape. No costs.

The Director of the NBP is required to report to this Court the proper implementation of this Decision within ten (10) days from its receipt.

SO ORDERED.

Melo, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes and Ynarez-Santiago JJ., concur.

Davide, Jr., C.J., Bellosillo, and Kapunan, JJ., on official business abroad.

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[1] Docketed as Criminal Case No. 96-147936.

[2] Record, p. 18.

[3] Together with Dr. Alberto M. Reyes of the Medico Legal Division of the NBI.

[4] Ibid., pp. 24 & 27.

[5] Ibid., p. 29.

[6] Atty. Abdulkalim A. Askali.

[7] Exh. "A".

[8] TSN, November 20, 1996. pp. 3-7.

[9] TSN, November 27, 1996, pp. 2-6.

[10] TSN, December 3, 1996, pp. 17-27.

[11] Exh. "B."

[12] Exh. "D."

[13] TSN, December 3, 1996, pp. 8-16.

[14] TSN, January 15, 1997, pp. 3-21.

[15] Presided by Judge Perfecto A.S. Laguio, Jr.

[16] G.R. No. 129529, September 29, 1998.

[17] People v. Burgos, 345 Phil. 205, 213-214 (1997).

[18] Appellant's Brief, pp. 7-9.

[19] Appellant's Brief, pp. 7 & 15.

[20] Ibid., p. 15.

[21] People v. Pasayan, 330 Phil. 275, 289 (1996) citing People v. Junio, G.R. No. 110990, October 28, 1994, 237 SCRA 826 (1994).

[22] Exh. "A."

[23] TSN, December 3, 1996, pp. 21, 22 & 40.

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[24] Exh. "D."

[25] TSN, December 3, 1996, pp. 9-12.

[26] "x x x. The strength and dilability of the hymen are variable; it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue. Conception does not always imply penetration of the hymen, since pregnancies have been reported in women in whom the hymen was intact or had merely a pinpoint aperture in the membrane. Normally, after intercourse, the hymen is found stretched or lacerated, and subsequent to this, access to the vagina is simplified. During the first coitus, tearing occurs at several points, usually in the posterior portion. The edges soon heal, and the hymen then becomes permanently divided into two or three points separated by narrow slits extending down to the base. Although the vasculature at the base of the hymen is rather extensive, the hymen itself is a relatively avascular structure. Thus, in rupture during first coitus, a few drops of blood may exude but heavy bleeding is rare" (1 TEDESCHI ECKERT TEDECHI, FORENSIC MEDICINE, A STUDY IN TRAUMA AND ENVIRONMENTAL HAZARDS 245 (1977 ed.) (Italics supplied.)

[27] People v. Vasquez, G.R. No. 102366, October 3, 1997, 280 SCRA 160, 175 citing People v. Uycoque (Villanueva), 316 Phil. 930, 942 (1995).

[28] People v. Abad, 335 Phil. 712, 722 (1997).

[29] People v. Tarlac, G.R. No. 47280, August 20, 1990, 188 SCRA 607, 612.

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