

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZALINO P. REBOSE, ACCUSED-APPELLANT.

G.R. No. 131104. June 17, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Appellant Rizalino Rebose was charged with the crime of rape in Criminal Case No. 95-12116 before the Regional Trial Court[1] of Antipolo, Rizal, Branch 72, under an information[2] dated April 25, 1995, which reads as follows:

"That on or about the 17th day of April, 1995 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, while armed with a gun, did then and there willfully, unlawfully and feloniously have carnal knowledge of the person of one Lorena B. Rizalte, twelve (12) years of age, against her will and consent.

CONTRARY TO LAW."

When arraigned on June 6, 1995,[3] the accused, accompanied by his counsel de oficio, Atty. Danilo Leyble, entered a plea of not guilty.

The prosecution sought to prove the following facts:

Lourdes Rizalte, 64 years old, a resident of Sitio San Jose, Antipolo, Rizal, and grandmother of the victim, Lorena Rizalte, testified that at around 9:00 o'clock in the morning of April 17, 1995, she asked Lorena to look after her parents' house which is just 15 meters away, to which request the latter acceded. Upon her return, Lourdes became suspicious as Lorena, with apparent kiss marks on her neck, acted incoherently. Lorena kept silent on the incident, but, after relentless questioning, she confessed to have been sexually violated by appellant Rebose. Forthwith, Lorena was brought to Camp Crame for examination where the findings revealed that she was physically no longer in a virgin state.[4]

Medico-legal officer Owen Lebaquin of the Philippine National Police Crime Laboratory, Quezon City, narrated that the examination conducted on April 19, 1995 revealed an ecchymosis or "kiss mark" on her neck and noted healed lacerations on Lorena's private organ as compatible with the allegation of sexual assault.

Lorena Rizalte testified that on April 17, 1995, her grandmother Lourdes, told her to check their house at Sitio Panusugin. Arriving thereat, she saw appellant, accompanied by Alex Feliciano and two other unidentified persons, who immediately accosted her allegedly for the wrong done by her father, Ricardo Rizalte, and grandfather, Lorenzo Rizalte. At this juncture, appellant started to kiss her. Alex, being the godson of Lorena's grandfather, dissuaded appellant from his amorous advances but the attempt was repulsed by threats upon his person. Thereupon, Alex and his two other companions left. Alone with the frightened victim, appellant pulled out his gun and ordered her to go inside the house where she was made to undress or else she would be killed. After the sexual congress, Lorena was allowed to leave only after being sternly warned not to reveal the incident to

anybody. Upon returning to her grandmother's house, she was interrogated with regard to her kiss marks. Though she tried to conceal the fact of sexual violation even in the presence of the barangay officials, after the result of her examination at Camp Crame was released, however, she admitted that appellant Rebose was the culprit.

The defense, on the other hand, presented Alex Feliciano, Virgilio Pose,[5] Evelina Olaez, Myrna Liwan and the appellant himself.

Alex Feliciano, a construction worker and resident of Sitio Painaan, Brgy. Pinugay, Baras, Rizal, refuted the allegations of the victim that he was with the appellant and two others in Sitio Panusugin on April 17, 1995. On the contrary, he declared that, on such day, he was at the construction site at No. 176 Wilson Street, San Juan, Manila, from 8:00 a.m. to 5:00 p.m. as evidenced by a photocopy of his daily time record which original copy is being kept by Virgilio Pose in his capacity as timekeeper of the construction business. Alex further testified that he has known the appellant for three months, having been introduced to him by his godfather Lorenzo Rizalte, as pastor of a religious group or sect.

Virgilio Pose, on the other hand, presented to the court the payroll record as proof that Alex was indeed at the construction site on the day the alleged rape was committed. To further bolster his point, he avers that no other document is maintained by their establishment as the said payroll record is their only basis for the granting of wages. In other words, if a certain worker's name is not logged thereon on a working day, it necessarily follows that he has not rendered services on such a day and, therefore, is not entitled to any wage.

Evelina Olaez and Myrna Liwan, both missionaries, testified that on April 16, 1995, appellant briefly attended one of their Sunday worships in Bontoc, Mountain Province. In corroboration, they attested that appellant was asking the people in attendance the whereabouts of his two friends from Bontoc. After the church fellowship, he was invited to have lunch with them along with other members of the congregation. At around 1:00 p.m., he allegedly left for Sagada, Mountain Province.

In his defense, appellant Rebose testified that he is a minister of a Born Again Charismatic group since 1992. In 1995, he established a congregation in Antipolo, Rizal, as a result of which he came to know the Rizalte family who consequently became members thereof. He contended that a misunderstanding arose between them when a Korean missionary donated \$1,000.00 as seed money for building a church. Instead of entrusting the said amount to the appellant as pastor of the sect, the same was handed over to the Rizalte spouses as the lot upon which the church is to be built belongs to them. During the construction of the church, however, appellant borrowed P3,000.00 from the Rizaltes purportedly sourced from the amount donated but the latter allegedly made it appear that he stole it from them. After confronting the Rizaltes concerning their malicious imputation, he was charged with the crime of rape against their granddaughter Lorena Rizalte.

In a decision dated June 23, 1997, the trial court found the accused guilty beyond reasonable doubt of the crime charged, the decretal portion of which reads:

"WHEREFORE, premises considered, the Court finds accused Rizalino P. Rebose GUILTY BEYOND REASONABLE DOUBT of the crime of Rape and he is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to indemnify the victim Lorena Rizalte the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) by way of moral damages.

SO ORDERED."[6]

Appellant proffered three assigned errors which, in the main, is founded on the failure of the prosecution to overcome the requisite quantum of evidence necessary for appellant's conviction.

Appellant's alibi that he was in Bontoc, Mountain Province at the time of the alleged rape is unconvincing in light

of his positive identification by the victim, Lorena Rizalte. Lorena, a mere 12-year old lass, was candid and straightforward in her testimony. It is unthinkable that as a means of getting back at the appellant for the misunderstanding he had with her grandparents, she would concoct such a grave charge against appellant Rebose, considering all its attendant scandal and publicity just because of a supposed dispute over a measly sum of P3,000.00. It would be highly improbable for a girl of her age to fabricate a charge so humiliating to herself and her family, as well, had she not been truly subjected to the pain and harrowing experience of sexual abuse.[7]

Upon cross-examination,[8] the accused-appellant narrated that his purpose in visiting Bontoc, Mountain Province was to look for his former classmates, Edgar Garcia and Rose Koreano, who, by virtue of their familiarity with the place, could help him find a lodging house for his girlfriend, Francisca Ananayo. What is ironic, however, is that when asked where Francisca hails from, appellant averred that she is also from the same province. Thus, by such declaration, appellant's alibi is rendered unworthy of credence for how could he secure a lodging house for his girlfriend who herself lives in the same place? Furthermore, when pressed for details regarding her exact location in Bontoc, appellant failed to adduce any as he was, surprisingly, unaware of her address. To rebut the prosecution's line of questioning, appellant could only mutter in his defense that they only had a mutual understanding and that Francisca allegedly failed to disclose her address in Bontoc, Mountain Province, as the semester was about to end, thus, denying them the opportunity to know each other better.

Appellant likewise faults the trial court's findings as contrary to the medical report of Dr. Lebaquin. In his brief, appellant contended that when asked whether Lorena's laceration is compatible with the rape charge, Dr. Lebaquin allegedly "equivocated and vaguely stated that it all depends on the healing process of the laceration." [9] Thus:

"Q:

Now it says here deep healed laceration, from the time the offense was perpetrated in April 17 up to the examination April 19, 1995, would you say that the injury is compatible with the commission of the offense?

ATTY. DE LEON:

Objection, Your Honor there is no mention as to the injury.

PROSECUTOR:

Can you say there is an injury?

A: On the genital organ, it would accord 4 to 5 days." [10]

It must be noted that Dr. Lebaquin's response is tangential to the question asked. What is clear, however, is that the injury on the genital organ of the victim is estimated to take 4 to 5 days to heal, depending on the degree of laceration inflicted. Thus, it may be inferred therefrom that the healing process may take such number of days or even less. Had appellant read the transcript of stenographic notes further on, he would have found out that a similar question of the same import was reiterated, giving Dr. Lebaquin the opportunity to elaborate on his

previous answer, thus:

"PROSECUTOR GONZALEZ:

Could this laceration be compatible with the insertion of a sexual organ of a male person?

A: Yes, sir.

Q: Why?

A: Because of the measurement of laceration it could be possible."[11]

Notwithstanding appellant's arguments, "it cannot be said that the prosecution relied solely on the hymenal laceration of the victim as evidence of rape but on the testimonies of complainants themselves which standing alone and even without medical examination were sufficient to convict." [12] Insofar as the evidentiary weight of a medical examination is concerned, *People v. Devilleres* [13] categorically states that a medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that a conviction for rape is proper.

The defensive arguments raised by Alex Feliciano and Virgilio Pose must likewise fail. On this score, we subscribe to the findings of the trial court, viz:

"Firstly, the defense failed to establish that the witness it presented is the same Alex Feliciano referred to by the victim. Secondly, even if he is the same Alex Feliciano, the evidence that he was in his place of work in San Juan, Metro Manila at the exact time the incident took place is not conclusive. With the availability of motorized transport, a distance of thirty (30) kilometers can easily be negotiated in less than an hour. Hence, there was no physical impossibility for him to surreptitiously leave his workplace and be back within the day's scheduled workshift. The Court cannot repose much reliance on the testimony of defense witness. Virgilio Pose whose duty as timekeeper is to keep a record of the exact time a worker comes in and out of the worksite but who is not in a position to categorically state that a worker or in this case Alex Feliciano never left the worksite in between the workshift hours." [14]

The two elements that must be established to hold the accused guilty of statutory rape are: (1) that the accused had carnal knowledge of a woman, and (2) that the woman is below twelve years of age. [15] Thus, the age of the victim, as an essential element for the conviction thereof, must unquestionably be proved by the prosecution. In the absence of proof, therefore, appellant Rebose cannot be convicted of statutory rape. However, appellant could still be held liable for the crime of rape under Article 335 (1) of the Revised Penal Code which reads:

"Art. 335. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

In the case at bar, the evidence for the prosecution amply established that appellant employed force and intimidation in sexually abusing Lorena.

In a desperate bid to exculpate himself from liability, appellant contended that, assuming Lorena Rizalte was

indeed raped, her failure to shout for help or even attempt to run away when she had several opportunities to do so, is fatal to the crime charged. Appellant's contention is grossly misplaced. In *People v. Quiamco*,^[16] it was held that physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety. In the instant case, Lorena failed to make an outcry as she was threatened with death by the appellant if she refused to accede to his evil desire, "for indeed, how can a 12-year old lass resist against a 31-year old man armed with a gun?"^[17] In the recent case of *People v. Luzorata*,^[18] the Court held that intimidation was addressed to the mind of the victim and therefore subjective, and its presence could not be tested by any hard-and-fast rule but must be viewed in light of the victim's perception and judgment at the time of the crime. Thus, when a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently, her failure to immediately take advantage of the early opportunity to escape does not automatically vitiate the credibility of her account.^[19] Thus, where accused was positively identified by the victim of the rape herself who harbored no ill motive against the accused, the defense of alibi must fail.^[20]

WHEREFORE, in view of the foregoing, the appeal is DISMISSED and the decision of the trial court finding accused-appellant Rizalino Rebose guilty beyond reasonable doubt of the crime charged is hereby AFFIRMED with the MODIFICATION that he be ordered to indemnify the victim the amount of P50,000.00 ex delicto and that the award of moral damages be reduced to P50,000.00. Costs against accused-appellant.

SO ORDERED.

Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.
Panganiban, J., on leave.

[1] Presided by Judge Rogelio L. Angeles.

[2] Records, p. 1.

[3] Records, p. 14.

[4] TSN, July 3, 1995, p. 12.

[5] Sometimes referred to as Virgilio Boseng.

[6] Rollo, p. 24.

[7] *People v. Cabillan* 267 SCRA 258 (1997).

[8] TSN, July 29, 1996.

[9] Rollo, p. 47.

[10] TSN, August 31, 1995, p. 5.

[11] *Id.*

[12] *People v. Topaguen*, 269 SCRA 601 (1997).

[13] 269 SCRA 716 (1997).

[14] Rollo, p. 23.

[15] *People v. Andres*, 253 SCRA 751 (1996).

[16] 268 SCRA 516 (1997), reiterated in *People v. Rabosa*, 273 SCRA 142 (1997).

[17] Appellee's Brief, p. 10.

[18] 286 SCRA 487 (1998).

[19] *People v. Pili*, 289 SCRA 118 (1998).

[20] *People v. Cañada*, 253 SCRA 277 (1996).

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