

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LIBERATO CABIGTING Y SARMIENTO, ACCUSED-APPELLANT.

G.R. No. 131806. October 20, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal filed by accused Liberato Cabigting y Sarmiento from the decision of the Regional Trial Court, Bulacan Branch 19, Malolos convicting him of rape, sentencing him to reclusion perpetua and to indemnify Sheryl M. de Ocampo in the sum of fifty thousand (P50,000.00) pesos as moral damages and fifty thousand (P50,000.00) pesos as exemplary damages, and to pay costs of suit.[1]

On April 23, 1996, Sheryl M. de Ocampo, with the assistance of her mother, filed with the Regional Trial Court, Bulacan, Malolos, a criminal complaint alleging, to wit:

"That on or about the 23rd day of November, 1995, in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with lewd designs have carnal knowledge of one Sheryl M. de Ocampo, against her will and without her consent.

"Contrary to law."[2]

At the arraignment on February 25, 1997, accused Liberato S. Cabigting pleaded not guilty to the crime charged.[3] Thereafter, trial ensued.

The facts are as follows:

Sheryl M. de Ocampo, eleven years old at the time of the incident, was a Grade 4 student of accused Liberato S. Cabigting in Tigbe Elementary School, Norzagaray, Bulacan.

In the morning of November 23, 1995, Sheryl, together with her classmates, Janet C. Gojo Cruz and Zemonette[4] C. Valenzuela went to the house of their teacher, accused Liberato Cabigting, to clean his house. Upon their arrival, the three children saw accused Cabigting outside his house. They approached him and asked what they were supposed to do. He instructed Janet and Zemonette to clean the front yard of the house while Sheryl would clean inside.

When Sheryl entered the house, accused Cabigting asked her to go inside a room. Sheryl proceeded to a room on the ground floor. The room was about 3 to 4 meters in length and 2 meters in width. Accused Cabigting followed Sheryl and closed the door and the window of the room. He took off her sando, t-shirt, panty, and skirt. Sheryl did not move. Then, accused Cabigting took off his polo shirt, shorts and brief. He told her to kiss and hug him. She refused. He kissed and hugged her. Then, he pushed her to a bed, spread her thighs and went on top of her. She tried to kick him but he continued to stay on top of her. Accused Cabigting held her two hands with his two hands. Later, he held his penis and inserted it into her sex organ. She felt pain in her sex organ.[5]

Suddenly, Janet and Zemonette knocked on the door. Accused Cabigting got off Sheryl and dressed quickly. Sheryl also put on her clothes. Accused Cabigting opened the door and led Sheryl out of the room. They all went to school. Sheryl attended morning and afternoon classes. She did not reveal to her friends what had occurred that morning.[6]

Sheryl claimed that she found bloodstain on her panty after the incident.[7] She felt pain for about three days.

On November 27, 1995, five days after the incident, Sheryl refused to go to school. Antonia de Ocampo, Sheryl's mother, wrote the accused Cabigting to inform him that Sheryl had LBM and would not be able to attend classes that day. Sheryl, accompanied by her sister, Victoria de Ocampo went to Dr. San Pedro at Sapang Palay Emergency Hospital for treatment of the LBM. The doctor, after examination, advised Sheryl to go to the National Bureau of Investigation to report the rape incident.[8]

The following day, Dr. Eduardo T. Vargas, Jr., medico-legal officer of the National Bureau of Investigation, conducted a medico genital examination of Sheryl and issued an official report, stating his conclusions as follows:

"1) No evident sign of extra-genital physical injuries noted on the body of the subject at the time of examination.

"2) Hymen intact and its orifice wall (2.0 cm. in diameter) as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury."[9]

Dr. Vargas testified in court that "there was no destruction on the hymen" and that there was "no laceration".[10] However, he did not discount the possibility that there could have been inter-labial insertion even if there was no full penetration of the organ of the male.[11] He noted that the examination took place five days after the reported incident and that a contusion in the vaginal canal heals after four days.[12]

Accused Liberato S. Cabigting[13] denies ever asking Sheryl and her two classmates, Janet and Zemonette, to clean his house in the morning of November 23, 1995. He admits, however, that his pupils normally come to his house, which is 100 yards from the school, to watch television, to fetch him or to bring his things to school. Accused Cabigting alleged that at 7:00 in the morning of November 23, 1995, he left his house to walk to school with his daughter, who was also going to school. Ten minutes later, he reached the school. He signed the attendance logbook at the office of the Head Teacher and then prepared his lesson for the day's classes. Later, he proceeded to the playground to attend flag ceremony with his class, consisting of fifty students. Afterwards, he returned to the classroom for morning classes. Sheryl and the two other girls were present in school at that time. Lunch break came at 11:45, then classes resumed at 1:00 in the afternoon. Sheryl and her two classmates also attended the afternoon classes. Classes ended at 4:30 or 4:45 in the afternoon.

Accused Cabigting avers that he has been a teacher for 23 years in Malolos, Bulacan, and in Bayabas, Norzagaray, Bulacan and that he has never been charged with any offense. He does not know of any reason why his student, Sheryl M. de Ocampo, would testify falsely and impute such a crime against him.

Teresita Lo, head teacher of Tigbe Elementary School, testified that accused Cabigting signed in the attendance logbook at 7:15 in the morning of November 23, 1995.[14]

Janette C. Gojo Cruz and Zemonette C. Valenzuela testified that they went to the house of accused Cabigting at around 7:00 in the morning of November 23, 1995.[15] Janet stated that while she was cleaning the front yard of the house with Zemonette, accused Cabigting was cleaning the pigpen.[16]

Michael Bayumbong, another student of accused Cabigting, testified that he, together with Jonjon Hernandez and Ronald Hernandez, accompanied Sheryl, Janet and Zemonette to the house of accused Cabigting on November

23, 1995, at around 7:00 in the morning. The three boys stayed in the backyard near the pigpen of the house to pick up dried leaves and plastics. Thereafter, they left for school, leaving Sheryl, Janet and Zemonette behind.[17]

On October 3, 1997, the trial court rendered a decision,[18] the dispositive portion of which reads as follows:

"WHEREFORE, BASED ON THE FOREGOING, this Court finds accused LIBERATO S. CABIGTING guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer an imprisonment of RECLUSION PERPETUA and to indemnify the victim, Sheryl de Ocampo, in the amount of P50,000.00 as moral damages and P50,000.00 as exemplary damages and to pay costs of suit.

"SO ORDERED.

"Malolos, Bulacan, 3 October 1997.

"RENATO C. FRANCISCO

Presiding Judge"[19]

Hence, this appeal.[20]

Accused-appellant Cabigting questions the credibility of Sheryl M. de Ocampo, citing inconsistencies in her statements and lack of evidence to support her assertions.

The appeal lacks merit.

It is settled doctrine that evaluation of testimonial evidence by the trial court is accorded great respect by this Court because the trial court is in the advantageous position of personally observing the demeanor of witnesses. Absent any showing that certain facts of substance and significance have been plainly overlooked or that the trial court's findings are clearly arbitrary, the conclusions reached by the trial court must be respected.[21]

Accused-appellant contends that Sheryl was inconsistent regarding the actual time when the rape took place. According to Sheryl, she went to the house of accused-appellant Cabigting at around 8:00 in the morning of November 23, 1995. However, her classmates testified that they went there at around 7:00 in the morning.

The precise time of the commission of the crime is not an essential element of rape and it has no bearing on its commission.[22] The important thing is, it was established that Sheryl went to the house of accused-appellant on the date reported and this allegation was corroborated by the classmates of Sheryl who went there with her.

Inconsistencies in the testimony of the victim does not necessarily render such testimony incredible. In fact, minor inconsistencies strengthen the credibility of the witness and the testimony, because of a showing that such charges are not fabricated. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.[23]

Accused-appellant likewise contends that the prosecution failed to establish beyond reasonable doubt the occurrence of carnal knowledge of the victim. Medical findings were inconclusive as to the finding of rape. No sign of violence or any form of injury was detected on the body of the victim.

However, it is undisputed that the victim underwent medical examination five days after the incident, by which time, any form of slight contusion in the vaginal canal may have healed already. The absence of any external sign or physical injury does not necessarily negate the occurrence of rape, proof of injury not being an essential

element of that crime.[24] Lack of lacerated wounds does not negate sexual intercourse.[25] Even the slightest touching of the female genitalia, or mere introduction of the male organ into the labia of the pudendum constitutes carnal knowledge.[26]

Moreover, when a woman, in this case a girl barely in her teens, says she has been raped, she in effect says all that is necessary to show that she has been raped, provided her testimony is credible.[27] It is highly inconceivable that a young girl of eleven years would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[28]

Accused-appellant contends that any incident occurring within the house would have been noticed by the classmates of the victim, who were just outside the house at that time.

The fact that Sheryl's friends were outside the house and she was inside the house does not remove the possibility for the rape to occur. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping, for lust is no respecter of time and place.[29]

At least four children, excluding Sheryl M. de Ocampo, confirmed that accused-appellant was at home that morning of November 23, 1993. Mere denial cannot overcome such positive testimony.

Although accused-appellant presented the head teacher in charge of the attendance logbook to declare that she saw accused-appellant signing in the logbook at 7:15 that morning, said witness could not account for the time of accused-appellant afterwards.

With the positive testimony of the victim, Sheryl M. de Ocampo, accused-appellant is liable for rape under Article 335 (3) of the Revised Penal Code, in effect at the time the crime was committed, for the carnal knowledge of a girl under twelve years of age.

Regarding the amount of damages awarded by the trial court, the Court notes that the trial court awarded moral damages in favor of the victim and failed to award civil indemnity. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of the offense and is separate and distinct from moral damages.[30] Hence, in addition to the fifty thousand pesos (P50,000.00) awarded as moral damages, accused-appellant must be sentenced to pay an additional amount of fifty thousand pesos (P50,000.00) as civil indemnity.

The award for exemplary damages is deleted as no aggravating circumstance has been proved to have attended the commission of the crime.[31] Exemplary damages, under Article 2230 of the Civil Code, may be imposed only when the crime is committed with one or more aggravating circumstances.[32]

WHEREFORE, the Court AFFIRMS the judgment of the Regional Trial Court, Malolos, Bulacan, Branch 19, convicting Liberato Cabigting y Sarmiento of rape and sentencing him to reclusion perpetua, with the modification that he shall indemnify the victim, Sheryl M. de Ocampo, in the amount of fifty thousand (P50,000.00) pesos as civil indemnity, not as exemplary damages, and fifty thousand (P50,000.00) pesos as moral damages, and costs.

SO ORDERED.

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

- [1] RTC Decision, dated October 3, 1997, Judge Renato C. Francisco, presiding, Rollo, pp. 22-41.
- [2] Criminal Complaint, Rollo, pp. 5-6.
- [3] Original Record, Certificate of Arraignment, p. 194.
- [4] As spelled in her affidavit. Her name is spelled "Simonette" in the transcript of stenographic notes.
- [5] Testimony of Sheryl M. de Ocampo, TSN, June 11, 1996, pp. 14-16.
- [6] Ibid., pp. 16-18.
- [7] TSN, June 11, 1996, p. 28.
- [8] Testimony of Antonia de Ocampo, TSN, July 1, 1996, pp. 31-33.
- [9] Original Record, Medico-Legal Report, p. 214.
- [10] TSN, June 11, 1996, p. 37.
- [11] Ibid., pp. 41-45.
- [12] Ibid., p. 40.
- [13] Testimony of Liberato Cabigting, TSN, August 13, 1996, pp. 8-20.
- [14] TSN, November 25, 1995, pp. 32-46.
- [15] Testimony of Janet C. Gojo Cruz, TSN, February 25, 1997, pp. 6-11; Testimony of Zemonette Valenzuela, TSN, March 3, 1997, pp. 4-16.
- [16] TSN, February 25, 1997, p. 11.
- [17] Testimony of Michael Bayumbong, TSN, July 1, 1997, p. 10-23.
- [18] Original Record, pp. 249-268.
- [19] Original Record, at p. 268.
- [20] Original Record, Notice of Appeal, p. 271.
- [21] *People v. Ramos*, G. R. No. 120280, April 12, 2000; *People v. Jose*, 307 SCRA 571 (1999).
- [22] *People v. Alvero*, G. R. Nos. 134536-38, April 5, 2000.
- [23] *People v. Bernaldez*, 294 SCRA 317 (1998).
- [24] *People v. Abella*, G. R. No. 131847, September 22, 1999.
- [25] *People v. Balora*, G. R. No. 124976, May 31, 2000.
- [26] *People v. Macosta*, G. R. No. 126954, December 14, 1999; *People v. Garigadi*, G. R. No. 110111, October 26, 1999, citing *People v. De la Peña*, 276 SCRA 558 (1997).
- [27] *People v. Licanda*, G. R. No. 134084, May 4, 2000.
- [28] *People v. Bañago*, 309 SCRA 417 (1999).
- [29] *People v. Manggasin*, 306 SCRA 228 (1999).

[30] People v. Larena, 309 SCRA 305 (1999).

[31] People v. Quinagoran, G. R. No. 105327, September 30, 1999.

[32] People v. Sagaysay, 308 SCRA 455 (1999).

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