

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. POTENCIANO ARCO, ACCUSED-APPELLANT.

G.R. No. 132062. August 14, 2000

Ponente: VITUG, J.

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VITUG, J.:

POTENCIANO ARCO appeals from the decision, dated 11 March 1997, of the Regional Trial Court ("RTC") in Kabankalan, Negros Occidental, Branch 61, in Criminal Case No. 1299 finding him guilty beyond reasonable doubt of the crime of rape.

The Information that charged accused-appellant with the crime read:

"The undersigned Provincial Prosecutor accuses Potenciano Arco of the crime of RAPE, committed as follows:

"That on or about the 14th day of July, 1993, in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of one ROSEMARIE MAGNO y MONTERO, a minor, 10 years of age, against her will.

"CONTRARY TO LAW."[1]

At his arraignment, the accused pled "not guilty."

The case for the prosecution. -

Rosemarie Magno, the victim, then 10 years old and a grade IV pupil at San Jose Villa Elementary School, was requested by her mother after school to gather banana trunks for the pigs being raised by the family. It was around 5:30 in the afternoon of 14 July 1993 when she proceeded towards Barangay Dancalan, Ilog, Negros Occidental, in obedience to the mother's request. She was alone. The place was along a deserted trail or pathway about 300 meters away from their house.[2]

Potenciano Arco, then 30 years of age, coming from nowhere held Rosemarie's hands and told her not to shout "or she would be killed." She knew the appellant quite well. He carried her and laid her on top of a big rock, took off his pair of pants and underwear, raised her skirt and removed her panty, and finally had sexual intercourse with her. Rosemarie felt pain, she tried to free herself but her hands were being held by him and his legs were pinning her down. After about 10 minutes of coition, appellant put on his pants and ran towards the direction of the river. Rosemarie noticed a white substance oozing from her private part. Her vagina was bleeding. She put on her panty and went home.[3] Upon reaching home, she told her grandmother of the incident who, in turn, promptly informed Rosemarie's mother.

The next morning, Rosemarie was brought by her mother to Dr. Ricardo Garrido, the Rural Health Physician of the Municipality of Ilog, to examine the child. Dr. Garrido found a fresh irregular laceration of the hymen which, he said, could have been caused by sexual intercourse, and possibly occurring within 24 hours prior to the

examination.[4]

The case for the defense. -

The defense theory was basically one of alibi. Presented to buttress accused-appellant's alibi were Jimmy Tadoy and Alberto Tadoy. According to the defense, on 14 July 1993, appellant, together with six others, Jimmy Tadoy (cousin of appellant), Alberto Tadoy (brother of Jimmy), Silverio Tadoy, a.k.a. Silving, Roger Nagarito, Samson Tagapan, a.k.a. Bebot, and Leonido Arco, were hired by Alberto Tadoy to work on his farm. The group started working at six o'clock in the morning on Alberto Tadoy's 1.5-hectare farm and stopped at around 8:30 a.m. Work on the farm resumed after lunch, at about two o'clock in the afternoon, until 5:30 that afternoon. From the farm, they all proceeded to the house of Alberto Tadoy to drink tuba and partake of supper. Accused-appellant went home with Jimmy Tadoy at past seven o'clock in the evening. He said he was completely taken aback when he was informed the next morning that he had been accused of rape by Rosemarie.

In a decision, dated 11 March 1997, the trial court, presided by Judge Rodolfo Layumas, convicted the accused; it held:

"WHEREFORE, this Court finds the accused Potenciano Arco GUILTY beyond reasonable doubt of the crime of STATUTORY RAPE and hereby sentences him to suffer the penalty of reclusion perpetua; to pay the victim the amount of Fifty Thousand (P50,000.00) Pesos moral damages without subsidiary imprisonment in case of insolvency and to pay the costs." [5]

Accused-appellant was pronounced guilty of statutory rape under Article 335(3) of the Revised Penal Code since the victim was only 10 years of age at the time of the commission of the crime.

In his appeal, accused-appellant would insist that -

"THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE." [6]

Accused-appellant invokes the case of *Tuazon vs. Court of Appeals*, [7] where the Supreme Court has said:

"Judges should not at once look with disfavor at the defense of alibi. Alibi should be considered in the light of all the evidence on record for it can tilt the scales of justice in favor of the accused. In *People vs. Omega* (76 SCRA 262) we held:

"Although alibi is known to be the weakest of all defenses for it is easy to concoct and difficult to disprove, nevertheless, where the evidence for the prosecution is weak and betrays lack of concreteness on the question of whether or not the accused committed the crime charged, the defense of alibi assumes importance."

"The case at bench reminds us of the warning that judges seem disposed more readily to credit the veracity and reliability of eyewitnesses than any amount of contrary evidence by or on behalf of the accused, whether by way of alibi, insufficient identification, or other testimony. (supra, *Borchard, Convicting the Innocent*, p. 1230) They are unmindful that in some cases the emotional balance of the eyewitness is disturbed by her experience that her powers of perception becomes distorted and her identification is frequently most untrustworthy. Into the identification, enter other motives, not necessarily stimulated originally by the accused personally-the desire to requite a crime, to find a scapegoat, or to support, consciously or unconsciously, an identification already made by another." [8]

Accused-appellant bewails the testimony of 10-year old Rosemarie Magno for lacking in such details as "whether they knew each other, whether they were friends or acquaintances, whether their families knew each other, whether they were related, whether they lived near each other," and the like. Accused-appellant would thus insist that there is no sufficient basis to say that his identity (as being the culprit) has been established.

Contrary to accused-appellant's claim, however, the testimony of Rosemarie Magno, particularly as regards his identity, was direct, clear and positive. She testified:

"Q : Who was this person, who held your hands and told you that you will be killed, if you will tell somebody?

"A : Potenciano Arco, sir.

"Q : This person, whom you said Potenciano Arco, if he is here in Court, could you point to him?

"A : Yes, sir.

"Q : Will you please point him out?

"INTERPRETER : The witness pointed to the person sitting, who stood up and when asked his name, identified himself as Potenciano Arco.

"ASST. PROV. PROS : Before July 14, 1993, do you know this Potenciano Arco already?

"A : Yes, sir.

"Q : Why?

"A : Because I usually see him, sir."[9]

The rape took place at daytime (5:30 in the afternoon) where Rosemarie had a clear view of her attacker.

When conditions of visibility are not unfavorable, and the rape victim does not appear to be biased, her assertion on the identity of the malefactor is normally accepted. It is not required that the victim should yet give details about the culprit, i.e., whether he is a friend, and acquaintance, a neighbor or a relative. It is enough that the witness is able to pinpoint the perpetrator and no other.

Rosemarie's candid and straightforward narration of the criminal act committed against her by appellant, unpolished by her innocence and immaturity, bears the earmark of credibility that is more than enough to sustain accused-appellant's conviction.[10]

"Q : After taking hold of your hands and telling you that if you shout, I will kill you, what else did Potenciano Arco do?

"A : He carried me and put me on a big stone.

"Q : After putting you on a big stone, what did he do?

"A : He took off his pants.

"Q : Has he any under pants or brief after taking off his pants?

"A : Yes, sir.

"Q : What did he do with his under pants?

"A : He also took off his under pants, sir.

"Q : What did you notice after he took off his under pants?

"A : I saw his penis.

"Q : What was the condition of his penis when you saw it?

"A : It was standing, sir.

"Q : Then what did he do after he took off his pants and under pants?

"A : He took off my pants, also.

"Q : What was your attire at that time?

"A : I was wearing a white [blouse] and a pencil cut skirt.

"Q : Were you wearing a bra at that time?

"A : No, sir.

"Q : What about panty?

"A : Yes, sir.

"Q : You said he undressed you, what clothing did he undressed you?

"A : My panty, sir.

"Q : What about your skirt, what did he do with it?

"A : He just raised it, sir.

"Q : After raising off your skirt and took off your panty, what did he do with your blouse?

"A : No, sir, he did not take off my blouse.

"Q : So, what did he do after raising your skirt and taking off your panty?

"A : He had sexual intercourse with me.

"Q : Was his penis able to enter your vagina?

"A : Yes, sir.

"Q : What did you feel, when his penis entered your vagina?

"A : I experienced pain.

"Q : Did you try to get away from him?

"A : Yes, sir.

"Q : Were you able to get away from him?

"A : No, sir, because he held my hands.

"Q : Were you or how long did he sexually abuse you, if you can estimate the time?

"A : Around ten (10) minutes, sir.

"Q : After 10 minutes, what did he do?

"A : He put on his pants.

"Q : After putting on his pants, what did he do?

"A : He ran away to the river.

"Q : What did you notice about your vagina after being sexually abused?

"A : There was an oozing white substance.

"Q ,. : Did your vagina bleed?

"A : Yes, sir." [11]

And on cross-examination, she remained consistent, committing no serious flaws in her narration of the incident.

"Q : Now, you said that the accused have sexual intercourse with you, can you describe how he inserted to your vagina his penis?

"A : He held his penis.

"Q : With what hand did he hold his penis?

"A : Right hand, sir.

"Q : Did he kiss you, while inserting his penis?

"A : Yes, sir.

"Q : What part of your body did he kiss you?

"A : Only my face, sir.

"Q : You did not move your lips towards his lips and bite him?

"A : No, sir.

"Q : Naturally, you were angry because it was an assault to your womanhood?

"A : Yes, sir.

"Q : You did not bite him?

"A : I did not bite him because I was afraid, sir, that he might kill me.

"Q : How high is that stone wherein he laid you?

"A : Not so high, it is around two (2) feet from the ground.

"Q : And you said that during the sexual intercourse, he removed his pants and his brief?

"A : Yes, sir.

"Q : While your skirt was only raised up?

"A : Yes, sir.

"Q : It was not removed?

"A : Yes, sir.

"Q : Now, in removing your panty, did he use his two (2) hands?

"A : Yes, sir.

"Q : And when he removed your panty, you also raised your legs?

"A : No, sir.

"Q : You just raised a little your legs so that the accused could remove your panty?

“ASST. PROV. PROS. : Objected to, Your Honor.

“COURT : She said, she did not.

Sustain.

“ATTY. GARRUCHA : You said that he removed your panty with his hands-left and right hands, naturally, you were released from being held by the accused?

“A : But his two (2) feet were also controlling or pinning down my feet.

“Q : And he was able to remove your panty?

“A : Yes, sir.

“Q : And naturally, when he started removing your panty, he started kissing your lips?

“A : No, sir.

“Q : He started caressing your legs?

“A : Yes, sir.

“Q : By the way, where did he put your panty?

“A : Just beside there.

“Q : And then he removed his pants and his brief also?

“ASST. PROV. PROS. : I think, your Honor, the accused removed first his dress.

“COURT : Reform.

“ATTY. GARRUCHA : After removing your panty and putting it aside, the accused removed his pants also?

“A : Yes, sir.

“Q : Was he using a belt?

“A : No, sir.

“Q : He was on a hurry in removing his zipper?

“ASST. PROV. PROS. : Your Honor, there was no testimony whether he has a buttoned or zippered trousers.

“COURT : Lay the basis.

“ATTY. GARRUCHA : And while the accused was removing his pants, you just lay there naked?

“A : I stood up with the intention to run away.

“Q : Was your panty being used removed by the accused?

“A : Yes, sir, he said, If I will not keep still, he will kill me.

“Q : Now, when you said he inserted his penis, did you feel his penis entered your vagina?

“A : Yes, sir.

“Q : How long did it take for him to insert his penis inside your vagina?

“A : Around ten (10) minutes, sir.”[12]

Not only was accused-appellant's alibi weak, it also did not rule out the possibility of his having committed the crime. The trial court observed:

"The Court notes that the distance from the scene of the incident to the place, where the accused were allegedly working can be negotiated by walking for only twenty (20) minutes according to defense witness Alberto Tadoy. (court's notes). It was not physically impossible, therefore, for the accused to be at the crime scene; rape the victim and go back to his work." [13]

In sum, the Court is convinced that the trial court did not err in finding accused-appellant Potenciano Arco guilty of the sexual assault committed on 14 July 1993 against Rosemarie Magno.

Article 335 of the Revised Penal Code provides:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

"2. When the victim is under the custody of the police or military authorities.

"3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (As amended by Sec. 11, Ra 7659.)"

Rosemarie Magno was only 10 years old at the time of the commission of the crime; thus, the conviction for statutory rape was consistent with the law.

In addition to the award of P50,000.00 moral damages to the victim,[14] accused-appellant must likewise be ordered to pay P50,000.00 by way of civil indemnity conformably with recent pronouncements,[15] the latter being based on different jural foundations and assessed by courts in the exercise of sound discretion.

WHEREFORE, the decision of the Regional Trial Court, Branch 61, of Kabankalan, Negros Occidental, in Criminal Case No. 1299 is AFFIRMED with the modification that accused-appellant Potenciano Arco is likewise ordered to pay the additional amount of P50,000.00 to the victim by way of civil indemnity.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 11.

[2] TSN, 26 September 1995, pp. 4-15.

[3] TSN, 26 September 1995, pp. 5-11.

[4] Ibid., pp. 9-10.

[5] Rollo, p. 17.

[6] Rollo, p. 61.

[7] 241 SCRA 695.

[8] At pp. 707-708.

[9] TSN, 26 September 1995, pp. 6-7.

[10] People vs. Medina, 300 SCRA 98.

[11] TSN, 26 September 1995, 7-10.

[12] TSN, 26 September 1995, pp. 15-20.

[13] Rollo, p. 15.

[14] People vs. Medina, 300 SCRA 98; People vs. Bugayong, 299 SCRA 528; People vs. Villamor, 297 SCRA 262.

[15] People vs. Ignacio, 294 SCRA 542; People vs. Prades, 293 SCRA 411, People vs. Marabillas, 303 SCRA 352.

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