PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO BAYGAR Y ESCOBAR, ACCUSED-APPELLANT.

G.R. No. 132238. November 17, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Accused-appellant LITO BAYGAR y ESCOBAR (hereafter LITO) prays for a reversal of his conviction for RAPE decreed in the Decision[1] of 19 September 1997 of the Regional Trial Court of Antipolo, Rizal, Branch 73, in Criminal Case No. 93-10481.

A criminal complaint was filed by Joanna Kristin F. Nable (hereafter JOANNA) assisted by her parents, Emma F. Nable and Rolando Nable, accusing LITO of rape committed as follows:

> That on or about the 7th day of December, 1993, in the Municipality of Antipolo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, JOANNA KRISTIN F. NABLE, a minor 5 years of age, against her will and consent.
>
> Contrary to law."[2]

LITO pleaded not guilty upon arraignment. Trial ensued thereafter and the prosecution presented JOANNA; her mother Emma F. Nable; Dr. Jesusa Nieves Vergara, Medico-Legal Officer of PNP; and Dr. Rosauro Cabailo, consultant-surgeon of the V. Luna Hospital. Their testimonies, as summarized by the trial court, are as follows:

> The complainant minor after she was qualified as a competent witness testified that at the time of the incident she was only with the accused at their home. The accused asked her to let him see her "pipe" (vagina) which she complied. After she showed to him her "pipe" the accused removed his pants and showed her his "titi" (penis). The accused then asked her to hold his penis which she again complied. After that, the accused put on his pants. When asked if the penis of the accused touched her "pipe", the latter answered in the negative. But on the question whether the accused tried to put his penis inside her vagina, she answered in the affirmative. The complainant said that the accused put his penis twice inside her vagina during the night time while her panties was on. Although she felt pain, she did not cry. Instead, she let him do it. She saw urine came out of his penis the color of which she does not know but she described it as sticky. What happened to her was left to herself. However, the incident was discovered by her Mama Coring (grandmother) when she undressed the complainant who was about to sleep.
>
> On cross-examination, it was further adduced that when the incident happened her parents were away from their home. The persons left in their house were her Ate Maricel and Mama Coring (Cornelia Formentina, complainant's grandmother). It happened in the latter's room beside the room of her parents. The room has no lock. She confirmed that she was still wearing her panties when accused inserted his penis into her vagina. The sticky fluid which came out from accused's penis was placed outside her panty. After that incident, the accused just picked up his shorts and went to the sala which she also did.

> Mrs. Nable testified that the accused became her houseboy on August of 1993 but until December only because he was caught by her mother doing bad acts to her daughter. Her mother complained to her on December 8, 1993 that she saw the accused and the complainant inside the room. She saw her daughter lying on bed who immediately dressed up. Lito Baygar was on top of her who was covered by a thin blanket and immediately zippered his pants. When she learned this from her mother she hurriedly went back home and brought her daughter to the house of her brother whom she asked to follow them. At around 3:00 p.m. when her husband arrived she informed him of the incident and they brought their daughter to Lourdes Hospital and had her examined there. Afterwhich, they went home first and then proceeded to the barangay chairman of Cupang, Antipolo to file a complaint. What happened next was the arrest of the accused and the taking of statements of the complainant and her mother at the police station.
>
> Dra. Nieves Vergara testified that she examined the person of Joanna Kristin Nable on December 9, 1993 upon a letter request from officer on case of Antipolo Municipal Police Station and submitted a Medico-Legal Report No. M-1753-93. Her report on the genital of the complainant stated that:
> "There is absence of pubic hair. Labia majora are full, convex and coaptated with the congested labia minora presenting in between. On separating the same disclosed an elastic fleshy-type, congested and intact hymen. External vaginal orifice does not admit the tip of the examining index finger."

The congestion or redness on the said area could have been caused by application of pressure by any hard object such as fully erected penis.

Dr. Cabailo testified that she also examined the person of the complainant minor in coordination with the Bacteriologist and OB-Gyne of Lourdes Hospital on December 10, 1993. On said examination, they obtained pus on the vaginal discharge of the complainant, meaning that there was an infection on the genital area of the complainant where the smear was taken.[3]

LITO denied having raped JOANNA. He testified he was the houseboy of the Nables and that the case was filed against him because he tried to collect his unpaid salary in the amount of P5,000 to buy new clothes. Instead of paying him his salary, the parents of JOANNA threatened him and told him that he can be arrested at any time. He was subsequently arrested on 7 December 1993. Prior to the arrest he was left alone in their house as the couple and their children went out to work for money. He was told to guard the house while they were away. They left the house at 1:00 o'clock in the afternoon and returned at 8:00 o'clock in the evening. When they returned they were accompanied by a barangay tanod who arrested him. He was brought to the police headquarters and was subsequently detained.[4]

The trial court found it hard to believe LITO'S testimony that the complaint for rape was fabricated by his employers to evade payment of his salary. It noted that the amount of P5,000 was nothing compared to the trouble of having their daughter medically examined twice as well as going to court and advertising to the whole world that their daughter had been raped. It observed that the victim was only five years old when the incident occurred and it would be preposterous to assume that JOANNA could have concocted the grave charge of rape. Although it recognized that victim's testimony was characterized by inconsistencies, it decided that the categorical statement of the victim that LITO inserted his penis into her vagina prevails.

The trial court was convinced beyond reasonable doubt that LITO ravished JOANA, a five year old girl, and carnal knowledge of a girl below 12 years old is always rape under the law. Thus, in its decision of 17 September 1997[5]

> WHEREFORE, finding accused Lito Baygar y Escobar guilty beyond reasonable doubt of rape, under No. 3 of Article 335 of the Revised Penal Code, as charged, he is hereby sentenced to suffer the imprisonment of reclusion perpetua; to indemnify the victim in the amount of P50,000 and costs of suit.

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LITO seasonably appealed to us from the decision.

In his Appellant's Brief, LITO contends that the trial court gravely erred in convicting him of statutory rape despite failure of the prosecution to prove his guilt beyond reasonable doubt. He attacks the credibility of the victim by pointing out that no competent evidence was presented to prove her age and that her testimony was characterized by inconsistencies which the trial court even pointed out in its decision. He emphasizes that although JOANNA claimed that he put his penis in her vagina, she likewise claimed that his penis never touched her vagina and that after she held his penis, the latter put on his pants. He also points out the fact that JOANNA testified that she was wearing her panty when he put his penis inside her vagina and that his penis never touched her vagina.

LITO further highlights the testimony of Dr. Vergara that there was no laceration of JOANNA'S hymen, which means that her hymen is still intact. This fact alone merits his acquittal since every circumstance favoring his innocence must be taken into account. Finally he claims that Dr. Cabailo was not proven to be an expert witness, and his testimony does not show that JOANNA was indeed raped.

LITO thus concludes that the evidence against him falls short of that degree of proof necessary to engender moral certainty as to his guilt of the crime charged.

On the other hand, the Office of the Solicitor General (OSG) maintains that accused-appellant's contention is untenable and bereft of merit. The OSG submits that the defense of simple denial cannot prevail over the positive declaration of JOANNA and the physical evidence on record. The OSG maintains that in assessing contrary declarations and statements, greater weight must generally be accorded to the positive testimonies of witnesses than the denials of the defense. The OSG likewise points out that despite JOANNA'S very tender age, she testified in a fairly clear, straightforward manner, in harmony with ordinary human experience. Furthermore, it characterized his testimony as unworthy of belief particularly with respect to his claim that his employers were motivated in fabricating the accusation of rape against him to avoid paying him his accumulated salary in the amount of P5,000 which he was trying to collect from them. It recommended that the assailed decision be affirmed in toto.

At the heart of LITO's argument is the credibility of JOANNA. These three well-entrenched principles: (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 be allowed to draw strength from the weakness of the evidence for the defense. Time and again the Court has held that conclusions as to the credibility of witnesses in rape cases lie heavily on the sound judgment of the trial court. It is likewise settled that appellate courts will generally not disturb the factual findings of the trial court since the latter is in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying unless it is found that the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[6]

A careful review of the records herein yield no cause to reverse the factual findings of the trial court. Contrary to the allegations of appellant, JOANNA testified in a straightforward, clear and truthful manner. Given her tender years, her testimony acquires even more credibility in its utter simplicity and lack of embellishments. We reproduce pertinent portions of her testimony, thus:

> x x x
>
> Fiscal Clutario:

Do you know what "titi" or penis means Joanna?

Joanna: No.

Q

[Do you know what is called on the part of the body from where a person urine?]sic

A

No.

Q

What about the part of your body your urine [sic] comes out do you know what it is called?

A

Yes.

Q

What do you [called]sic that?

A

"Pipe" (vagina).

Q

Did Lito ask you to let him see your "pipe"?

A

Yes.

Q

And did you let him see your vagina?

A

Yes.

Q

After you showed to Lito your "pipe", what did he do?

A

He removed his pants.

Q

What happened after he removed his pants, what did he do?

A

He showed me his penis ("titi".)

Q

And Lito asked you to hold his penis?

A

Yes.

Q

Did you hold the penis of Lito?

A

Yes.

Q

What did Lito do after you held his penis?

A

He put on his pants.

Q

After Lito put on his pants, did the penis of Lito touch your "pipe"?

A

No.

Q

Did Lito try to put his penis inside your vagina?

A

He placed his penis inside my vagina.

Q

Did anybody see you when Lito was doing that?

A

None.

Q

When Lito tried to put his penis inside your vagina, did you feel any pain?

A

Yes.

Q

What did you do when you felt pain.

A

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I just let him do it.

Q

Did you cry out when you felt pain?

A

No.

Q

When Lito put his penis inside your vagina, did you feel anything [comes]sic out from the penis of Lito?

A

Yes.

Q

Did you see what came out of his penis?

A

Urine.

Q

What was the color of that urine?

A

I do not know.

Q

Was it sticky?

A

Yes.

Q

When Lito put his penis inside your vagina, you were not wearing any panty?

A

I was wearing my panty.

Q

How many times [happened]sic that Lito Baygar put his penis inside your vagina?

A

Two times.

Q

When he was doing that to you, was it during the night?

A

Yes.

Q

Did you tell anyone what happened between you and this Lito?

A

No.

Q

Do you know the name of your grandmother?

A

Yes, I [called]sic her Mama.

Q

Did you tell your Mama?

A

No.

Q

What about your Mommy, did you tell your Mommy?

A

No.

x x x[7]

The victim, JOANNA, was only five years old at the time of the rape. At such a tender age, she could not be expected to weave with uncanny recollection such a complicated tale as the sexual assault that LITO unconscionably perpetrated on her.[8] Even on cross-examination, JOANNA'S candor and honesty were evident; her language simple and spontaneous, consistent of and befitting someone her age testifying to such a horrible experience, to wit. Thus:

Atty. Wilfredo Linaac: Joanna, when Lito put his penis inside your vagina, where was your Mommy and Daddy?

Joanna: They left.

Q

Who was left at the house?

A

Ate Maricel and Mama Coring.

Q

How old is your Ate Maricel?

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A

I do not know.

Q

Where were they when the said Lito Baygar put his penis inside your vagina?

A

They were inside the room.

Q

And that Lito Baygar put his penis inside your vagina?

A

Yes.

Q

At the room where you are sleeping during the night and so with your Mama and Papa?

A

No.

Q

Whose room is that?

A

Ate Maricel and Ate Baby.

Q

You said that your Mama was at the other room, which room are you referring to? At the room which your Mama and Papa where sleeping?

A

Yes.

Q

And that two rooms were beside each other?

A

Yes.

Q

Was there any lock in that door when this Lito inserted his penis into your vagina?

A

None.

Q

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And that when Lito Baygar inserted his penis into your vagina you said that you felt pain, did you not shout being having felt the pain?

A

No.

Q

You said some sticky material coming from him, which part of his body which said liquid to be placed?

INTERPRETER: Witness pointing to her vagina.

Q

You mean to say you were still wearing panty when he inserted his penis into your vagina?

A

Yes.

Q

And that sticky fluid placed outside of your panty?

A

Yes.

Q

Outside of your panty?

A

Yes.

Q

You said that Lito inserted his penis two times into your vagina, after Lito doing that to you, what did he do after that?

A

He just picked up his pants.

Q

After that what did he do?

A

He went out to the sala.

Q

And that you also went out to the sala?

A

Yes.

Q

When did your parents discover that you were being raped by this Lito Baygar?

A

Mama Coring told them about it.

Q

You said in your direct examination you did not tell anybody even your Mama Coring, is that right?

A

Yes.

Q

Do you know how [hid]sic Mama Coring knew that Lito Baygar [do]sic this to you?

A

When Mama Coring undressed me.

Q

When was that?

A

When I went to sleep, she undressed me.

Q

That was after the time Lito inserted his penis into your vagina?

A

Yes.[9]

The victim has been consistent and positive in her testimony that LITO inserted his penis in her vagina and felt pain in the process. LITO has not successfully controverted this testimony. JOANNA's testimony that she had her panty on was not inconsistent with her testimony that LITO inserted his penis into her vagina. The fact that the victim was wearing a panty when the sexual assault was committed did not negate penetration.

Further, the fact of penetration, though incomplete, was collaborated by the testimony of the examining physician that there was a congestion or redness on the vaginal area of the victim which could have been caused by a fully erected penis.[10]

As for the intact hymen, such finding has no bearing on the fact of carnal knowledge. We have held that to sustain a conviction for rape, full penetration of the female genital organ is not required since mere entry by the penis into the lips of the said organ -- even without rupture or laceration of the hymen -- is sufficient. Thus, a finding that the victim's hymen is intact does not negate a finding that rape was committed.[11]

LITO's bare denial and self-serving assertions that the case stemmed from the desire of the victim's family to evade paying him his wages is unbelievable. No parent would expose his or her own daughter, specially a child of such tender age as JOANNA, to the shame and scandal of having undergone such a debasing defilement of her chastity if the charge filed were not true.[12] Moreover, it is hard to believe that a child would invent such a story

as the rape perpetrated by accused-appellant on her unless it were true. A girl of such age as the victim would not concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma, of a public trial, unless she was raped.[13] In fact, from a reading of JOANNA's testimony, it would appear that she, because of her tender age, did not quite grasp the enormity or gravity of the bestiality heaped upon her by LITO.

There is no doubt in our minds that the prosecution had established beyond reasonable doubt the fact that LITO had carnal knowledge of JOANNA. Considering JOANNA's age at the time of the crime, LITO committed statutory rape, and carnal knowledge alone of JOANNA is rape. It is not required that LITO use force or intimidation, or that JOANNA be deprived of reason or be otherwise unconscious.[14]

Finally, JOANNA is entitled to an award for moral damages which is hereby set at P50,000. The grant of moral damages is automatically made in rape cases without need of proof for it is assumed that the complainant has sustained mental, physical and psychological sufferings, thus entitling her to such award.[15]

WHEREFORE, judgment is hereby rendered AFFIRMING the decision of the Regional Trial Court of Antipolo, Rizal, Branch 73, in Criminal Case No. 93-10481 finding accused-appellant LITO BAYGAR y ESCOBAR guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335(3) of the Revised Penal Code, and imposing upon him the penalty of reclusion perpetua, with the modification, however, that in addition to the award of P50,000 as indemnity, accused-appellant is ordered to pay JOANNA KRISTIN F. NABLE the sum of P50,000 as moral damages.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Original Record (OR), 82-86; Rollo, 12-16. Per Judge Mauricio M. Rivera.

[2] OR, 1.

[3] OR, 82-84; Rollo, 12-14.

[4] TSN, 7 February 1996, 4-9.

[5] Supra note 1.5 it decreed:

[6] People v. Florida, 214 SCRA 227 [1992]; People v. Lorenzo, 240 SCRA 624, 635 [1995]; People v. Hubilla, Jr., 252 SCRA 471, 478 [1996]

[7] TSN, 26 April 1994, 8-11.

[8] People v. Sueta, 225 SCRA 219, 225 [1993].

[9] Rollo, 12-16.

[10] TSN, 30 May 1995, 4.

[11] People v. Gagto, 253 SCRA 455, 464 [1996].

[12] People v. Zaballero, 274 SCRA 627, 639 [1997]. See People v. Dela Cruz, 251 SCRA 77 [1995]; People v. Abao, 240 SCRA 758 [1995].

[13] See People v. Escober, 281 SCRA 498 [1997]; People v. Sanchez, 250 SCRA 14 [1995]; People v. Dado,

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244 SCRA 655 [1995].

[14] People v. Lagrosa, Jr., 230 SCRA 298, 305 [1994]; see People v. Diaz, 262 SCRA 723, 730 [1996].

[15] See People v. Prades, 293 SCRA 411, 431 [1998]; People v. Yabut, G.R. No. 13386, 28 July 1999.

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