

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS LAGUERTA Y CORDERO, ACCUSED-APPELLANT.

G.R. No. 132783. October 30, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For automatic review is the decision[1] of the Regional Trial Court of Pasig City, Branch 163, finding accused-appellant Carlos Laguerta y Cordero guilty of rape pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, sentencing him to death and ordering him to pay the victim, Haidie Ecleo, over whom he acts as guardian, the amount of P300,000.00 as moral damages.

In an Amended Information, dated February 12, 1997, it was alleged:

That during the period from September and October 8, 1996, in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, with lewd designs and by force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Haidie Ecleo, an eight year old child, against her will and consent.

CONTRARY TO LAW.[2]

Accused-appellant pleaded not guilty to the charge. During trial, the prosecution presented the complainant victim, Haidie Ecleo, as witness, together with the PNP Crime Laboratory Physician, Dr. Anthony Joselito Llamas, who examined Haidie. On the other hand, the defense presented three (3) witnesses, accused-appellant included.

On November 12, 1997, the trial court rendered judgment as follows:

WHEREFORE, foregoing premises considered, this Court finds accused Carlos Laguerta y Cordero guilty beyond reasonable doubt of the crime of rape as principal and imposes upon him the supreme penalty of death. Accused is also ordered to indemnify Haidie Ecleo the sum of P300,000.00 as moral damages.

SO ORDERED.[3]

In view of the penalty imposed, the records were elevated to this Court for automatic review pursuant to Article 47 of the Revised Penal Code, as amended, and Rule 122, Section 10 of the Rules of Court.

Accused-appellant seeks the reversal of his conviction on the following grounds:

I

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF STATUTORY RAPE.

II

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY THE EXCESSIVE AMOUNT OF THREE HUNDRED THOUSAND PESOS (P300,000.00) AS MORAL DAMAGES TO PRIVATE COMPLAINANT.[4]

In support of his first assigned error, accused-appellant argues that the age of the victim has not been sufficiently established. We agree that the prosecution failed to establish that the age of Haidie was indeed below twelve - one of the essential elements of the crime of statutory rape.

No birth or baptismal certificate was presented below to prove the age of Haidie. Neither was there a showing that said documents were lost or destroyed to justify their non-presentation. In view of this, appellant cannot be convicted of statutory rape. Moreover, the testimony of Haidie as to how the alleged rape happened was full of inconsistencies and lacking in detail. While this was not raised as an issue by accused-appellant, the filing of an appeal in criminal cases throws open the entire case for review and it becomes the duty of the appellate court to correct any error, as may be found in the appealed judgment, whether assigned as an error or not.[5]

It bears stressing that in rape cases, courts must be guided by the basic rule that the prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense. The prosecution must demonstrate the culpability of the accused beyond reasonable doubt, for accusation is not synonymous with guilt. Only when the requisite quantum of proof necessary for conviction exists that the liberty, or even the life, of an accused may be declared forfeit. Correlatively, we must examine with extreme caution the evidence for the state to determine its sufficiency. If the evidence fails to live up to the moral conviction of guilt, the verdict must be one of acquittal, for in favor of the accused stands the constitutional presumption of innocence; so it must be in this prosecution for rape.[6]

The records show that Haidie repeatedly denied the entry of accused-appellant's penis into her vagina. On direct testimony, Haidie testified as follows:

Q:

What was that unusual thing that was done to you by Carlos Laguesta?

A:

He kissed me on my lips.

Q:

Other than that what else was Laguerta doing to you?

A:

He was sucking my nipple.

Q:

Other than that?

A:

He held my breast.

Q:

Other than holding your breast, what other portion of your body did Carlos Laguerta touch?

A:

He is kissing my sex organ.

Q:

After kissing your sex organ what else did he do in your sex organ?

A:

He was fingering me.

Q:

What else did Carlos Laguerta place inside your sex organ other than his finger?

A:

He is kissing my feet.

COURT:

Q:

Aside from the finger what else has been inserted in your vagina.

A:

No more, Your Honor.[7] (Emphasis added.)

This direct denial was repeated when Haidie once more testified, to wit:

Q:

Do you know the meaning of rape?

A:

Yes, Ma'am.

Q:

What is your understanding of "rape"?

A:

No answer.

COURT:

Q:

Is that the act of inserting a man's penis into a woman's vagina?

A:

Yes, Your Honor.

Q:

Has Carlos Laguerta inserted his penis in your vagina?

A:

No, Your Honor.[8] (Emphasis added.)

On cross-examination, Haidie again confirmed that she was not raped by accused-appellant. She testified:

Q:

And during this period, as you earlier testified, during your direct examination, there was no occasion wherein you were raped by Carlos Laguesta, the accused in this case?

A:

Yes, sir.

Q:

As claimed by you, you were just kissed and hugged by this person, Carlos Laguesta, on several occasion(s)?

A:

Yes, sir.[9]

Apart from twice denying that accused-appellant inserted his penis into her vagina, and confirming this on cross-examination, Haidie also testified that both she and accused-appellant had clothes on when the latter was kissing and touching her private parts, thereby effectively ruling out any rape. Her testimony is as follows:

Q:

In all these instances that Carlos Laguerta is fingering your sex organ and the kissing of your breast, what, if any, did he tell you while he was doing that act?

A:

He said "pahawak".

Q:

Did he ever threaten you?

A:

No, Ma'am.

Q:

During all those instances, all those times that Laguerta was doing these things, was Laguerta wearing anything at that time?

A: He had his clothes.

Q: What about you?

A: I was also with my clothes.[10]

Not only did Haidie categorically deny the entry of accused-appellant's penis into her vagina, she also failed to narrate just how the alleged rape took place. Indeed, while she repeatedly talked about the kissing and touching of her private parts, Haidie said nothing at all about how accused-appellant raped her.

We have carefully gone over the transcript of stenographic notes and have found nothing therein narrating, no matter how brief, the incident of rape. The only testimony of Haidie on direct examination stating that accused-appellant raped her have been curt responses to leading questions propounded by the trial court itself, to wit:

COURT:

Q:

When you were in the Signal he inserted his penis?

A: Yes, Your Honor, when I was sleeping.

x x x

x x x

x x x

Q: Who was the first to insert his penis, your Papa or your Kuya?

A:

My Papa.[11] On cross examination, Haidie still had no story to share regarding the rape. Her testimony pointing to accused-appellant as having raped her is merely as follows:

ATTY. VERA:

Q:

So, it is very clear, Ms. Witness, that during the time you were still residing in Mandaluyong City you were never raped by Carlos Laguesta?

A:

I was raped, sir. Q: Where were you raped? A: Signal Village, sir.

x x x

x x x

x x x

Q:

Ms. Witness, when you testified on direct examination you told the Court that the accused inserted his penis into your vagina only once, will you tell the Court when was that?

A:

At Signal Village, Taguig.

Q:

When did this happen?

A:

I cannot recall anymore, sir.

Q:

You also stated that it was your uncle, Carlos Laguesta, who first inserted his penis into your vagina, is that correct?

A:

Yes, sir.[12]

These generalized statements as to the rape fail to convince us of the truth of Haidie's charge of rape against accused-appellant. While it is true that the accused may be convicted on the basis of the lone uncorroborated testimony of the rape victim, such testimony must be clear, positive, convincing, and otherwise consistent with human nature and the normal course of things. Mere accusation is not enough to convict.[13]

Haidie's testimony against accused-appellant is lacking in detail. There is nothing on record to show how the alleged rape took place. There is not even the slightest hint as to how accused-appellant approached her, what time of day the rape occurred, whether or not he threatened her, what he said to her, which part of the house he raped her (if inside the house), what she was doing before she was raped, what happened after she was raped, how she reacted while being raped, whether she saw his penis. These are details that would validate her charge that there was sexual intercourse.

As it is, the bare statements of Haidie that accused-appellant raped her cannot suffice to establish a moral certainty as to the guilt of accused-appellant. Her statements fall short of the requirement of the law on the quantum of evidence required in the prosecution of criminal cases. Haidie's testimony is replete with inconsistencies and lacks specific details on how the rape was committed. Her bare statements that she was raped are clearly inadequate and grossly insufficient to establish the guilt of accused-appellant.[14]

Rape is undoubtedly a vicious crime, and it is rendered more loathsome in this case where the victim is a minor

and the accused is a person whom she perceives as a figure of authority. However, our sympathy for the victim and our disgust at the bestial criminal act cannot prevail over our primordial role as interpreters of the law and dispensers of justice.

The Constitution enshrines in the Bill of Rights the right of the accused to be presumed innocent until the contrary is proved, and to overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. If the prosecution fails to discharge its burden, as in the instant case, then it is not only the accused's right to be freed; it is, even more, the court's constitutional duty to acquit him.[15]

Notwithstanding the prosecution's failure to establish accused-appellant's guilt for rape, we find grounds to convict him of the lesser crime of acts of lasciviousness, based on the evidence presented below. The records clearly show that accused-appellant kissed Haidie on the lips; sucked her nipple; held her breast; kissed her sex organ; inserted his finger in her genitals; and kissed her feet. From the foregoing acts, the lewd design of petitioner is evident. Thus, although the information filed was for the crime of rape, accused-appellant can be convicted of acts of lasciviousness because the latter is necessarily included in rape.[16] Rule 120, Section 4 of the Rules of Court states:

When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or the offense charged included in that which is proved.

Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is prision correccional. There being neither aggravating nor mitigating circumstances, the penalty shall be imposed in its medium period.[17] Applying the Indeterminate Sentence Law, accused-appellant is hereby sentenced to suffer the penalty of five (5) months and ten (10) days of arresto mayor, as minimum to four (4) years and two (2) months of prision correccional, as maximum.

Finally, we find merit in accused-appellant's contention that the award of moral damages is excessive. Conformably with our ruling in *People v. Larin*,[18] we reduce the award of moral damages to P50,000.00.

WHEREFORE, the decision of the Regional Trial Court is MODIFIED. Accused-appellant is found GUILTY beyond reasonable doubt of acts of lasciviousness, as defined in Article 336 of the Revised Penal Code, and is sentenced to suffer the indeterminate penalty of five (5) months and ten (10) days of arresto mayor, as minimum to four (4) years and two (2) months of prision correccional, as maximum. Further, accused-appellant is ordered to pay the victim, Haidie Ecleo, moral damages in the sum of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Kapunan, J., on leave.

[1] In Criminal Case No. 111007-H, dated November 12, 1997 and penned by Judge Aurelio C. Trampe.

[2] Records, Criminal Case No. 111007-H, p. 6.

[3] *Ibid.*, at p. 8; Records, p. 22.

[4] Brief for the Accused-Appellant, p. 1; Rollo, p. 40.

[5] People v. Balacano, G.R. No. 127156, 31 July 2000, citing People v. Reñola, 308 SCRA 145 (1999) and People v. Medina, 300 SCRA 98 (1998).

[6] People v. Ladrillo, G.R. No. 124342, 8 December 1999.

[7] TSN, 4 December 1996, pp. 4-5.

[8] Ibid., at pp. 8-9.

[9] TSN, 20 January 1997, pp. 3-4.

[10] TSN, 4 December 1996, p. 6.

[11] Ibid., at pp. 10-11.

[12] TSN, 4 December 1996, at pp. 5-7.

[13] People v. Abuan, G.R. No. 111710, 284 SCRA 46 [1998].

[14] People v. De Leon, G.R. No. 130985, 3 December 1999.

[15] People v. San Juan, G.R. No. 130969, 29 February 2000.

[16] Dulla v. Court of Appeals, G.R. No. 123164, 18 February 2000.

[17] Revised Penal Code, Art. 64 (1).

[18] 297 SCRA 309, 330-331 (1998).

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