

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL YABUT Y GAPOS, ACCUSED-APPELLANT.

G.R. No. 133186. July 28, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

This is an appeal from the February 11, 1998 decision of the Regional Trial Court of Urdaneta, Pangasinan finding accused-appellant Noel Yabut y Gapos guilty of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay his victim the amount of P50,000.00 as indemnity.

On October 6, 1997, accused-appellant was charged with having committed the crime of rape, as follows:

That on or about the midnight of September 9, 1997, at Poblacion municipality of Pozorrubio, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused entered the room of Krystal Kay T. Salcedo and once inside by means of force and intimidation, did then and there wilfully, unlawfully and feloniously (sic) have sexual intercourse with said Krystal Kay T. Salcedo, a minor ten (10) years old, against her will and without her consent, to her damage and prejudice.

Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659.[1]

Upon arraignment, accused-appellant entered a plea of not guilty. Trial on the merits subsequently ensued, with the prosecution presenting as its witnesses the victim, Krystal Kay Salcedo, her father Conrado, the doctor who examined Krystal, and the police officer who investigated Krystal's complaint. On the other hand, the defense presented only one witness-Krystal's father.

The evidence for the prosecution shows the following:

Krystal Kay Salcedo is a ten-year old child, having been born on January 4, 1987. She is the daughter of Conrado and Anabelle Salcedo, the eldest of four daughters. On the night of September 8, 1997, Krystal and her three sisters were alone in their house, as their father had been invited to a neighborhood party and their mother was working in Malaysia. The four went to sleep, as was their wont, side by side on a bed inside their room, which was located on the ground floor of their house. At around midnight, Krystal woke up to find a person reeking of liquor moving up and down on top of her. She recognized this person to be accused-appellant, the latter being a nearby neighbor whom she often saw drinking with her father. Krystal did not shout or wake her sisters up for fear that accused-appellant would kill her. Accused-appellant then undressed himself as well as Krystal. She testified seeing his penis.

Again mounting Krystal, accused-appellant tried to insert his penis inside her. Krystal felt pain while accused-appellant was doing so. She testified seeing whitish fluid seeping out of the accused-appellant's penis.

Accused-appellant then dressed and left. Krystal turned on the light and wiped herself clean. After a few minutes, accused-appellant came back to look for his driver's license, and soon left. Krystal's father arrived minutes later but she did not report the incident for fear that the latter would kill accused-appellant. Next morning, however,

Krystal related her experience to her classmates in school.

That night, Krystal, upon the prodding of an aunt, related what had transpired the previous evening. Upon learning what happened, her uncles informed her father, who rushed out in search of accused-appellant. He was, however, intercepted by the barangay captain, who advised them to file a complaint with the police. Upon filing the complaint, the police required them to have Krystal examined by a doctor.

On cross-examination, Krystal testified that, before sleeping, she had locked the door to their room which had a hook-and-eye fastener attached. While sleeping between two of her sisters, she awoke to find accused-appellant on top of her. Krystal likewise admitted that the lights were off when she awoke. She did not cry or shout while accused-appellant was on top of her. When asked how she recognized accused-appellant, she testified that her room was illuminated by a nearby street lamp. There was also a street lamp in front of her window, which was, however, not yet operational at the time of the incident. Lastly, she said that when her father arrived and asked why she was still awake, she replied that she was putting up a mosquito net and her father did not notice anything unusual.

Dr. Francisco Llamas, the Chief of the Pozorrubio Community Hospital who conducted the medical examination of Krystal, reported that there was presence of hyperemia at the whole vaginal introitus, including the labia minora, as well as a fresh laceration at the six o'clock position. Krystal, however, tested negative for spermatozoa. On direct examination, Dr. Llamas explained that hyperemia at the whole vagina introitus meant redness of the opening of the vagina. He attributed the same to contact with a blunt instrument, possibly an erect penis. The doctor likewise clarified that the laceration was located at the opening of the vagina and that it was fresh, i.e. less than 24-hours old. Again, he attributed the same to forcible contact with a blunt instrument.

On cross-examination, Dr. Llamas testified that the redness and the laceration could have been caused by the insertion of a finger or by scratching. Likewise, he testified that Krystal was still a virgin and that her hymen was intact.

The testimony of Conrado Salcedo, Krystal's father, as well as that of the investigating police officer substantially corroborate the narration of Krystal as to the events that transpired from the time she told her aunt about the incident up to the time of the filing of the complaint with the police.

In his defense, accused-appellant presented the father of Krystal as his sole but hostile witness. On direct examination, Conrado Salcedo testified that the room where Krystal and her sister slept in was located twelve to fourteen meters away from the basketball court. Likewise, Conrado testified that the room had no lock.

After considering the evidence presented during the trial, the court a quo, on February 11, 1998, found accused-appellant guilty of the crime of rape. The dispositive portion of the judgment reads:

WHEREFORE, JUDGMENT is rendered convicting NOEL YABUT y GAPOS of the crime of SIMPLE RAPE, an act punishable by Article 335 of the Revised Penal Code as amended by Republic Act 7659. The Court hereby sentences Noel Yabut y Gapos to suffer the penalty of Reclusion Perpetua, ordering Noel Yabut to pay Krystal Kay Salcedo the sum of P50,000.00 for damages.

The Branch Clerk of Court is hereby ordered to prepare the mittimus.

SO ORDERED.[2]

Aggrieved by the decision of the trial court, accused-appellant now appeals his conviction to this Court, pointing to the following circumstances as indicative of his innocence: First, in Krystal's statement to the police, she said she was awakened by a man pulling down her panties, while in court, she said she was awakened by a man

making an up-and-down movement on top of her; Second, accused-appellant claims that it was improbable for Krystal to have recognized him as her assailant since her room was very dark; Third, he declares to be bizarre Krystal's account of his return to look for a driver's license; Fourth, accused-appellant doubts whether the alleged rape incident really occurred since Krystal's father did not notice any fear or anxiety in Krystal upon his arrival that night; Fifth, accused-appellant points to the medico-legal report finding Krystal negative for spermatozoa as indicative that the rape did not occur; Sixth, accused-appellant claims it was unlikely for him to have raped Krystal as the latter was sleeping with her three other sisters in one bed at the time of the alleged rape incident; and lastly, accused-appellant claims that the contradictory statements of Conrado and Krystal as to the presence or absence of a lock on the room door raises doubts on the prosecution's evidence.

We shall discuss the above-mentioned points seriatim.

Firstly, accused-appellant assails Krystal's credibility by referring to the inconsistency between her testimony and her sworn statement as to the reason why she woke up. In her statement before the police, Krystal stated that she woke up when she felt her panties being pulled down her leg. In open court, however, she testified that she woke up when she felt a man making an up-and-down movement on top of her.

This inconsistency does not, and cannot, in any way affect the credibility of Krystal, the same merely referring to a minor matter which is in no way connected to the elements of rape or to the identification of accused-appellant by the former.[3] Moreover, we consider Krystal's testimony in court to be superior to her extrajudicial statements. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, ex parte statements usually being incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent.[4] This rule gains more significance in the case at bar, inasmuch as Krystal, the affiant concerned, was only ten years old at the time of the taking of her testimony. In fine, the discrepancy between Krystal's statements before the police and her testimony on the witness stand do not affect her credibility as a witness.

Secondly, accused-appellant claims it was impossible for Krystal to identify him as her assailant, as her room could not have been illuminated by a street lamp located fifteen to twenty meters away which was pointed away from her house. Accused-appellant also cites the presence of two trees between the street lamp and the window, as well as the small size of the window, to belie Krystal's claim that she was able to identify him through the light filtering in from the street lamp outside. He likewise points to the construction by the Sangguniang Kabataan of a street lamp directly in front of Krystal's window as proof that the light coming from the street lamp located at the basketball court was insufficient to illuminate the roadway in front of the window, not to speak of the interior of Krystal's room.

Accused-appellant's arguments are untenable. The room may have been unlit, and the lamp post located fifteen to twenty meters away, with intervening trees, but this does not mean that there was total darkness in the area as to preclude Krystal from identifying her assailant. We do not consider the circumstance of nighttime as a hindrance to Krystal's identification of accused-appellant as her attacker, considering that he was a neighbor quite familiar to her. During a rape incident, the couple is as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[5]

Moreover, Krystal testified that when accused-appellant came back to look for his driver's license, she had already turned on the light, thus enabling her to take a good look at the physical features of accused-appellant. There is,

thus, no doubt as to Krystal's identification of accused-appellant as her assailant.

Accused-appellant would, however, characterize as bizarre Krystal's narration that he went back to her room to look for his driver's license. He declares it incredible for a criminal to go back to the scene of the crime to expose himself and be identified. This contention is without merit. It is not uncommon for criminals to be careless or to even intentionally reveal their identities to their victims. The failure by a criminal to conceal his identity would not make the commission of the crime any less credible. Braggadocio among criminals is not unexpected. Very often too, they are secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities.[6]

Likewise, accused-appellant points to the fact that Krystal's father did not notice any fear, sadness, nervousness, or anxiety in her demeanor or countenance when he arrived later that fateful night. Accused-appellant argues that the absence of signs that Krystal had undergone a traumatic experience indicate that no rape incident ever occurred.

Accused-appellant's brand of logic is preposterous. While Krystal's behavior after the sexual assault may be atypical, it is well-settled that different people react differently to a given type of situation, there being no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[7] Likewise, Krystal's failure to immediately report the incident to her father cannot be held against her, this Court having ruled time and again that the failure of a complainant to immediately report the rape to the immediate members of her family or to the police authorities does not detract from her credibility.[8]

Then too, accused-appellant harps on the fact that Krystal tested negative for spermatozoa, allegedly disproving that he raped the latter. The absence of spermatozoa in or around the vagina does not negate the commission of rape,[9] for in rape, it is not ejaculation, but penetration that consummates the sexual act.[10]

Moreover, the fact that the rape incident took place is amply supported by Krystal's testimony:

Q: What was he doing on top of you?

A: He is removing (sic) up and down to (sic) me, sir.

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Q: After that, what else did he do?

A: Then he undress (sic) and he undress (sic) me also, sir.

Q: After undressing you, what else did he do?

A: He again went on top of me sir.

Q: And when he again went on top of you, what did he do?

A: He again moved up and down (kinot-kinotan), sir.

Q: You said before he went on top of you again, what do you mean by he undress (sic) himself?

A: He removed his short pant and his brief, sir.

Q: And he was naked?

A: Yes sir.

Q: How big it is (sic)?

A: Witness demonstrating the size to about the size of her wrist which is about 1 1/2 inches in diameter.

Q: You said you saw his penis, what did he do with his penis?

A:

He is inserting his penis to my vagina, sir.

Q: How did you feel when he was inserting his penis to your vagina which is 1 1/2 in diameter?

A: It is painful sir.

This testimony is buttressed by the result of the medical examination conducted on Krystal showing the presence of a fresh laceration at the six o'clock position, as well as hyperemia at the whole vaginal introitus, including the labia minora.

As in other rape cases, appellant raises the threadbare argument that rape could not have happened because Krystal was sleeping between her sisters when the alleged rape was committed. It is common experience that rapists are not deterred from committing their odious act by the presence of people nearby. As revealed in our review of rape cases, rape can be committed in a house where there are other occupants,[11] rape being no respecter of time and place.[12]

As to the alleged inconsistency in the testimony of the prosecution witnesses as to the presence or absence of a lock on the door of the room where the incident occurred, the same is a minor matter which does not, in any way, detract from Krystal's direct and categorical testimony that accused-appellant had carnal knowledge of her.

Moreover, it is highly improbable for Krystal to subject and expose herself to the humiliation of a rape trial unless the imputation of rape was true.[13] "Veritas simplex oration est, the language of truth is simple; it can come from the mouth of a child and the lips of the poor, simple and unlettered.: It is highly inconceivable for a ten-year old to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation if her motive was other than a potent desire to seek justice for the wrong committed against her.[14]

Under Art. 335 of the Revised Penal Code, as amended by R.A. 7659,[15] statutory rape is punishable by reclusion perpetua. Its two elements are: 1) that the accused had carnal knowledge of a woman; and 2) that the woman is below twelve years of age. The prosecution has more than adequately proven that accused-appellant had carnal knowledge of ten-year old Krystal. Consequently, the trial court was correct in convicting

accused-appellant and imposing upon him the penalty of reclusion perpetua. Likewise, he is ordered to pay the amount of P50,000.00 as civil indemnity ex delicto and an additional amount of P50,000.00 as moral damages.

WHEREFORE, premises considered, the judgment of the trial court dated February 11, 1998 imposing the penalty of reclusion perpetua upon accused-appellant Noel Yabut y Gapos is hereby **AFFIRMED**, with the **MODIFICATION** that accused-appellant should indemnify the victim, ROWENA LOSANO, in the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.

Vitug, Panganiban, Purisima, and Gonzaga-Reyes JJ., concur.

[1] Original Records, p. 1.

[2] Ibid., p.125.

[3] People v. Ramos, G.R. No. 129439, September 25, 1998.

[4] People v. Traverro, 276 SCRA 301 (1997).

[5] People v. Castañeda, 252 SCRA 247 (1996).

[6] People v. Segundo, 228 SCRA 691 (1993).

[7] People v. Roncal, 272 SCRA 242 (1997).

[8] See People v. Montefalcon, G.R. No. 116741-43, March 25, 1999.

[9] People v. Montefalcon, *supra*.

[10] People v. Abierra, 222 SCRA 378 (1993).

[11] People v. Ramos, *supra*.

[12] People v. Ambray, G.R. No. 127177, February 25, 1999.

[13] People v. Lapinoso, G.R. No. 122507, February 25, 1999.

[14] Ibid.

[15] At the time of the commission of the offense, R.A. No. 8353, otherwise known as the "Anti-Rape Law of 1997," had not yet taken effect, having been approved only on September 30, 1997.

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