PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTOS LOR, ACCUSED-APPELLANT.

G.R. No. 133190. July 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us for automatic review is the November 27, 1997 Decision[1] of the Regional Trial Court of Hilongos, Leyte, Branch 18, finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of death and to indemnify the victim the amount of P50,000.00 as moral damages.

Accused-appellant was originally charged with the crimes of rape and attempted rape in Criminal Case Nos. H-713 and H-714, respectively. In its decision, the trial court convicted accused-appellant in the rape case but made no disposition whatsoever as to the case for attempted rape. On January 29, 1998, acting on the motion for reconsideration filed by accused-appellant, the trial court dismissed Criminal Case No. H-714 for attempted rape.[2] Hence, the instant review is limited to Criminal Case No. H-713 for rape, allegedly committed as follows:

> That on or about the month of November 1995, at around 12:00 o'clock in the afternoon, in the municipality of Hilongos, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused uncle of the victim, DAISY MALBAS by means of force and intimidation willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge with (sic) Daisy Malbas, a minor of 13 years old against her will in a secluded area covered with dried banana leaves.
>
> CONTRARY TO LAW.[3]

At his arraignment on July 31, 1996, accused-appellant pleaded not guilty.[4] Thereafter, trial on the merits ensued.

The prosecution presented three witnesses, namely: Daisy Malbas, Salome Mendez, and Dr. Antonia Igana-Ladion. Their testimonies may be summarized as follows:

Thirteen-year old Daisy Malbas, complainant in the instant case, was then residing at Barangay Concepcion, Hilongos, Leyte, under the care of her uncle, Cipriano Malbas, and the latter's wife. At the time the rape at bar was perpetrated, Daisy was a Grade V pupil at the Concepcion Elementary School, which is approximately 200 meters from her residence.[5]

Sometime in the early part of November 1995, Daisy went to school, and as was her usual practice, took a short-cut trail in going home at 12:00 o'clock noon, passing the cacao and banana plantation owned by accused-appellant. This shorter route enabled her to go back to school in time for the afternoon session. While she was unsuspectingly walking along the trail, Daisy was suddenly grabbed by accused-appellant. She easily recognized accused-appellant Santos Lor, as he was the husband of her auntie, forthwith pulled her by the wrist and dragged her three meters from the trail where she was forced to lie on the ground. Daisy was so overcome with fear that she was not able to do anything. As she lay on the ground, accused-appellant removed her panties

and inserted his penis into her vagina, causing her to feel pain. After satisfying his lust, accused-appellant stood up and ran. Whereupon, Daisy shouted that she will tell her father about the dastardly act of accused-appellant, to which the latter replied, "tell your father and I will kill you including your father." Bearing that threat in mind, Daisy went home but kept her harrowing experience to herself.[6]

On February 26, 1996, Daisy, due to time constraint, again took the same route going home for lunch after her morning classes. On her way, accused-appellant suddenly appeared, pulled her by the wrist and dragged her toward a make shift fence which was about three meters away from the trail. He then made Daisy lie on the ground, knelt over her and pulled her skirt upwards. Daisy, however, managed to keep her legs together. Accused-appellant tried to kiss her but she slapped him. On accused-appellant's second attempt to kiss Daisy, the latter's cousin, Salome Mendez, who happened to be walking along the short-cut trail, saw them. Salome then shouted: "hoy, what [a]re you doing there?" Accused-appellant scampered away.[7]

Daisy revealed to Salome what accused-appellant did to her including the rape incident that took place in the early part of November 1995. This led to the filing of rape and attempted rape cases against accused-appellant.

On March 14, 1996, Daisy was examined by Dr. Antonia Igana-Ladion. The examination yielded the following results:

> "x x x x x x x x x
>
> 2. Pelvic exam shows no erythema around vulva. There are old hymenal lacerations at 3, 6 and 9 o'clock positions. Vagina admits 2 examining fingers without eliciting pain from patient."
>
> No vagina smear done (incident occurred one week ago)."[8]

The examining physician declared that the lacerations on the victim's hymen must have been inflicted 4 or 3 months earlier, consistent with the claim of rape in November 1995.[9]

Accused-appellant, on the other hand, vehemently denied the charges against him. He claimed that in the month of November 1995, he was in his cacao plantation. While he said that there is indeed a short-cut trail in the said plantation going to the house of complainant, he however, stressed that there was never an instance when he and the complainant were together in the month of November 1995. Regarding the alleged February 26, 1996 incident, he said that in the morning of that day, he worked in his cacao plantation until 9:00 am. Thereafter, he proceeded to the store of Salome Mendez and stayed for a while to watch those who were playing billiards. At noontime, he went back to his cacao plantation. He admitted that while he was working thereon, complainant passed by, but denied having raped her. He likewise denied seeing Salome Mendez at around such time.[10]

On November 27, 1997, the court found the version of the prosecution credible and rendered a judgment of conviction. The dispositive portion thereof reads:

> WHEREFORE, premises considered, the Court finds the accused SANTOS LOR GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, paragraph 6, No. 1, as amended by R.A. No. 7659 and hereby SENTENCES him to suffer the penalty of Death.
>
> In addition, accused SANTOS LOR shall indemnify the offended party DAISY MALBAS and/or her parents the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, as moral damages.
>
> Costs taxed against the accused.
>
> SO ORDERED.[11]

In this automatic review, accused-appellant contends that:

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I.

THE TRIAL COURT ERRED IN NOT FINDING THAT THE COMPLAINANT DID NOT OFFER ANY RESISTANCE OR VOCAL PROTESTATION AGAINST THE ALLEGED SEXUAL ASSAULT.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED.[12]

Accused-appellant argued that there can be no rape committed considering that the complainant offered no resistance or vocal protestation against the sexual assault on her dignity. The evidence shows that accused-appellant had to pull and drag Daisy, which are indication of her resistance under the circumstances. As correctly pointed out by the Solicitor General, Daisy is a thirteen-year old sexually inexperienced provincial lass, not a sophisticated grown woman whose inaction may properly be interpreted as consent. Moreover, accused-appellant is recognized by the victim as her uncle. Thus, it is clear that accused-appellant's physical and moral ascendancy over Daisy are enough to cow her into submission to his sexual desires. As testified by her "I have not done anything [because] I was afraid of him."[13]

At any rate, different people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. One person's spontaneous, unthinking, or even instinctive response to a horrid and repulsive stimulus may be aggression, while another person's reaction may be cold indifference.[14] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected under the circumstances from mature people. The range of emotion shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims.[15]

The fact that after the rape incident in November 1995, Daisy still passed the route near the place where she was raped, should not be taken against the truthfulness of her rape story. As explained by her, she was fearful of her safety, but she found it necessary to sometimes pass by said short-cut trail in order to be back to school on time. Thus -

x x x x x x x x x

ATTY. VITERBO:

x x x x x x x x x

Q.

Did it not occur to your mind to stop passing the short cut and passed (sic) by the big road?

FISCAL RUBIO:

It calls for an opinion, Your Honor.

COURT:

Witness may answer.

A.

Will I not pass this way when I am already very hungry and I have to go back by 1:00 o'clock?

Q.

In other words, there was no fear in you to pass by in this road?

A.

I am afraid, sir, but everytime I passed this road I have to look left and right.

Q.

And when you passed by that road looking left and right you were walking slowly?

A.

Not exactly slow I have to make it fast a little also.

Q.

Just be honest, how many times have you met Santos Lor in that banana plantation?

A.

That was only one time sir that was on the month of November when he raped me. (The witness again as can be seen is back again to her noncomposure by crying heavily and again using her handkerchief to wipe her tears).[16]

Accused-appellant next argues that the school and houses near the place where the alleged crime was perpetrated render the commission of the rape highly improbable. The records, however, disclose that the place where Daisy was raped was a secluded area near the short-cut trail passing through cacao and banana plantations. Besides, even if there were indeed nearby houses and a school in the area, such would not render the commission of the rape impossible. The settled rule is that, the scene of rape is not always nor necessarily isolated or secluded. It can be committed in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping.[17]

So also, Daisy's failure to remember the precise date when she was raped is not fatal to the prosecution. The exact date when the victim was sexually abused is not an essential element of the offense of rape.[18] Then too, rape victims are not expected to cherish in their memories an accurate account of the dates, number of times and manner they were violated.[19]

The fact that Daisy did not immediately divulge the rape incident should not undermine her credibility. Time honored is the rule that the silence of the victim of rape, or her failure to disclose her state without loss of time to persons close to her and to report the matter promptly to the authorities, will not perforce warrant the conclusion that she was not sexually molested or that her charge against the accused is baseless, untrue, and fabricated.[20] This is especially true in the case of Daisy who obviously cannot be expected to act like an adult or a mature experienced woman who would have the courage and intelligence to disregard the threat to her life and complain immediately that she had been sexually assaulted.[21]

In a desperate attempt to exculpate himself from liability, accused-appellant belittles the probative value of the results of the medical examination, as well as the testimony of the examining physician. Much emphasis is given by accused-appellant on the absence of a test to determine the presence of spermatozoa in the genitalia of the victim. Accused-appellant, however, totally misses the point. The absence of spermatozoa in the victim's private part does not negate the commission of rape. The reason is simple - the mere touching of the pudenda by the male organ is already considered as consummated rape.[22] Hence, accused-appellant's argument should not at all merit this Court's consideration.

Contrary to the claim of accused-appellant, the medical findings at bar even reinforced the veracity of the rape charge. Undeniably, the lacerations in the hymen of the victim at 3, 6, and 9:00 o'clock positions which were

estimated to have been sustained by Daisy three or four months earlier, coincides with the commission of rape in the early part of November 1995.

In sum, the defense of denial as well as the points advanced by the accused-appellant miserably failed to cast even a scintilla of doubt on his culpability. The Court finds no reason to deviate from the long standing rule that when a woman cries rape, more so if she is a minor, she is saying in effect all that is necessary to show that rape was indeed committed.[23] This rule applies with more vigor in the case under scrutiny where Daisy could not help but cry during the direct and cross-examinations. The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[24]

Indeed, the trial court which had the unparalleled opportunity to observe the demeanor of Daisy on the witness stand did not err in giving full faith and credence to her testimony. As observed by the trial court -

> x x x When testifying on how she was raped Daisy cried heavily on several occasions, indicating that she took very seriously the merciless assault on her honor and womanhood. The Court noted that through out her testimony, the declarations of Daisy Malbas carried a ring of sincerity and all the indicia of truth. x x x[25]

Finding no facts and circumstances of weight and significance that had been overlooked by the trial court, and which, if considered would otherwise warrant a different conclusion, the Court accords finality to findings of the trial court.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides in pertinent part -

> 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;

The circumstances of minority and relationship mentioned in the aforecited provision are special qualifying circumstances that must be alleged in the information and duly proven by the prosecution in order to warrant the imposition of the death penalty. In this case, while accused-appellant admitted that Daisy is his wife's niece (and therefore a relative by affinity within the third civil degree), the prosecution did not present evidence, not even Daisy's birth certificate nor her testimony to prove her age. There is thus no sufficient evidence of her minority.[26] Hence, accused-appellant should be held liable only for simple rape, punishable by reclusion perpetua.

Anent the civil liability of accused-appellant, the Court, in People v. Victor,[27] citing People v. Gementiza,[28] explained that the indemnity authorized by our criminal law as civil indemnity ex delicto for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. Said civil indemnity is mandatory upon finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound judicial discretion. Accordingly, the P50,000.00 award of the trial court should be treated as civil indemnity. In addition, another P50,000.00 should be awarded to the victim by way of moral damages which is awarded to rape victims without need of pleading or proof of the basis thereof.[29]

WHEREFORE, the Decision of the Regional Trial Court of Hilongos, Leyte, Branch 18, finding accused-appellant Santos Lor guilty beyond reasonable doubt of the crime of rape is AFFIRMED with the MODIFICATION that he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay private

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complainant Daisy Malbas the sum of P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Buena, Gozaga-Reyes, and De Leon, Jr., JJ., concur.
Quisumbing J., out of town, on official business.
Sandoval-Gutierrez, J., on leave.

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[1] Penned by Judge Abraham B. Apostol.

[2] Records, pp. 208-210.

[3] Rollo, p. 6.

[4] Records, p. 63.

[5] TSN, November 6, 1996, pp. 6-8.

[6] TSN, November 6, 1996, pp. 9-15; August 13, 1997, pp. 7-8.

[7] TSN, November 7, 1996, pp. 3-6; July 22, 1997, pp. 9-10.

[8] Records, p. 4.

[9] TSN, August 29, 1996, pp. 7-8.

[10] TSN, August 13, 1997, pp. 7-13 and pp. 15-18.

[11] Rollo, p. 18.

[12] Rollo, p. 28.

[13] TSN, November 6, 1996, p. 12.

[14] People v. Roncal, 272 SCRA 242, 248-249 [1997]; citing People v. Villanueva, 254 SCRA 202 [1996]; and People v. Gecomo, 254 SCRA 82 [1996].

[15] People v. Tadulan, 271 SCRA 233, 244 [1997]; citing People v. Remoto, 244 SCRA 506 [1995].

[16] TSN, November 6, 1996, pp. 27-28.

[17] People v. Velasquez, G.R. Nos. 132635 & 143872-75, February 21, 2001.

[18] People v. Ocampo, 206 SCRA 223, 232 [1992]; citing People v. Puedan, 196 SCRA 388, 393 [1991].

[19] People v. Zaballero, 274 SCRA 627, 640 [1997]; citing People v. Sabellina, 238 SCRA 492 [1994]

[20] People v. Sagun, 303 SCRA 382, 397 [1999].

[21] People v. Manahan, 315 SCRA 476, 486 [1999].

[22] People v. Rondero, 320 SCRA 383, 401-402 [1999].

[23] People v. Vitor, 245 SCRA 392, 402 [1995]; citing People v. Repollo, 237 SCRA 476 [1994].

[24] People v. Alquizalas, 305 SCRA 367, 374 [1999]; citing People v. Gecomo, 254 SCRA 82 [1996].

[25] Decision, Rollo, p. 16.

[26] People v. Sayao, Jr., G.R. No. 124297, February 21, 2001.

[27] 292 SCRA 186, 200 [1998].

[28] 285 SCRA 478, 492 [1998].

[29] People v. De los Santos, 295 SCRA 583, 605 [1998]; citing People v. Prades, 293 SCRA 411, 430 [1998].

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