

THE PEOPLE OF PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMMEL PINE y GARCIA, ACCUSED-APPELLANT.

G.R. No. 133441. November 29, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from a decision^[1] of the Regional Trial Court, Branch 163, Pasig City, finding accused-appellant Rommel Pine guilty of statutory rape and sentencing him to suffer the penalty of reclusion perpetua and to pay complainant Roxanne Pedro the amount of P200,000.00 as moral damages.

The information against accused-appellant alleged that:

On or about April 30, 1997, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Roxanne Pedro y Montemayor @ "Budick," a minor, ten (10) years of age, against her will and consent.

CONTRARY TO LAW. ^[2]

When arraigned, the accused-appellant pleaded not guilty,^[3] whereupon his trial ensued.

The prosecution presented evidence showing the following:

Complainant's mother, Ernita Montemayor, worked as a cook in a restaurant owned by Ms. Carmen Mesina. It would appear that the two stayed in the house of Ernita's employer at 101 A. Lake St., Barangay Balong Bato, San Juan, Metro Manila. The other household helps were a cook in the house, named Manang Piring, and accused-appellant Rommel Pine, alias Emil, who worked there as a houseboy.

On April 30, 1997, between 8:30 and 8:45 in the evening, complainant watched television with Manang Piring and accused-appellant in the playroom of Carmen Mesina's house. After a while, Manang Piring left the room and went to the kitchen, leaving accused-appellant Pine and Roxanne alone. Roxanne was sitting on a bed in the playroom when accused-appellant made her lie down. Roxanne tried to stand up, but accused-appellant held her down by the shoulder. Accused-appellant then pulled complainant's shorts and, after doing the same to his shorts, he succeeded in having sexual intercourse with her. Complainant tried to scream and kick accused-appellant but the latter covered her mouth with his hand. After he was through, accused-appellant warned her not to tell anyone about the incident.

Afraid that her mother would get angry, Roxanne kept quiet until her mother found her seated by the terrace with accused-appellant on May 17, 1997.^[4] When complainant stood up, her mother saw that she was naked from the waist down, her shorts having been pulled down to her knees. Angry at what she had seen, Ernita confronted accused-appellant and asked him why he molested her daughter, but accused-appellant denied the allegation. Roxanne did not say anything on that occasion, but the following day, May 18, 1997, she finally admitted to her mother that she had been raped by accused-appellant.^[5]

Dr. Dennis G. Bellin, a medico-legal officer of the Philippine National Police Crime Laboratory, conducted a physical examination of Roxanne on the same day and issued a report showing the following:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are undeveloped. Abdomen is flabby and soft.

GENITAL:

There is absence of pubic hair. Labora majora is full, convex and coaptated with the light brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed laceration at 6 o'clock position. External vaginal orifice offers strong resistance to the introduction of the examining index finger.

xxx xxx xxx

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.[6]

Dr. Bellin opined that the deep healed laceration found on the victim's vagina could have been caused by the introduction of a hard blunt object, such as an erect penis. He estimated that the laceration of the victim's hymen occurred around three weeks prior to the examination. However, he could not determine whether the victim resisted the sexual act or voluntarily submitted herself to it.[7] On cross-examination, Dr. Bellin admitted that it was possible that the laceration was caused by the insertion of a finger.[8]

After the prosecution had rested its case, accused-appellant Rommel Pine testified in his defense. He stated that he was 26 years old, married, and that he worked as a houseboy of Ms. Carmen Mesina at A. Lake St., Balong Bato, San Juan, Metro Manila. On April 30, 1997, at around 8:30 or 8:45 in the evening, he watched television in the playroom of his employer's house, together with a certain Manang Piring. At around 9:30 of that same evening, Roxanne joined them in the playroom. A few minutes later, Ernita Montemayor, the girl's mother, also entered the room. He claimed that at around 9:45 that evening, Roxanne and her mother left the playroom to go to sleep in their room, while Manang Piring went to the kitchen. Soon after, Emil also went to sleep in his room. He woke up at around 7:00 in the morning of the following day, May 1, 1997. Emil denied that he raped Roxanne. He stated that he had known Roxanne for a year prior to the alleged incident and described her as "malambing." He does not recall quarreling with Roxanne or her mother prior to April 30, 1997. [9]

On December 16, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court finds accused, Rommel Pine y Garcia, guilty beyond reasonable doubt as principal of the crime of rape and imposes upon him the penalty of reclusion perpetua; to indemnify Roxanne Pedro the sum of P200,000.00 as moral damages; and to pay the costs.

Any detention service rendered by the accused should be credited in his favor computed pursuant to Batas Pambansa Blg. 85.[10]

Hence, this appeal. Accused-appellant contends that:

I. THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE ALLEGED VICTIM'S CONFLICTING AND UNCERTAIN TESTIMONY.

II. THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[11]

First. This Court has laid down the following guidelines in the decision of rape cases, to wit: (a) a rape charge can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where generally only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its merits and cannot draw strength from the weakness of the evidence for the defense.[12]

The findings of fact of trial courts are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case. This is because the trial judge had the opportunity, not equally available to the appellate court, to observe the expression and demeanor of the witnesses under questioning.[13]

In this case, we agree with the trial court's finding that Roxanne's testimony is straightforward, credible, and convincing. Roxanne testified:

Q On April 30, 1997 at about 8:30 to 8:45 in the evening, do you recall where were you?

A I was in the playroom, Ma'am.

Q Where is that play room located?

A Inside the house, Ma'am.

....

Q So, when Manang Piring went out of the play room, and went to the kitchen, who was left behind?

A Emil and myself, Ma'am.

Q . . . [W]hen you were left [with] Emil inside the room, could you recall . . . any unusual incident that transpired during that time when you were left, the two (2) of you?

A Yes, Ma'am.

Q What was that?

A When I was seated on the bed, Emil approached me.

Q When he approached, what happened?

A He lay me down on the bed.

Q What did you do when Emil [laid] you down on the bed?

A I tried to stand up but he prevented me from standing up.

Q At that time, how old [were] you?

A Ten (10) years old.

Q How did he prevent you from standing up [from] the bed?

A He was holding my left shoulder.

Q After that, what happened?

A He undressed me.

....

Q Was he able to undress you?

A Only my short.

Q Was he able to remove your short?

A No, Ma'am. Up to my knee only.

Q After that, what happened?

A He undressed himself.

Q What clothes did he undress?

A Short, Ma'am.

....

Q After Emil undressed himself, what happened?

A He raped me.

Q What do you mean, he raped you?

A He inserted his penis into my vagina.

Q Did you try to scream during that time?

A Yes, Ma'am.

Q What happened when you scream?

A He covered my mouth, Ma'am.

Q So that prevented you from screaming?

A Yes, Ma'am.

Q Did you not try to resist when Emil inserted his penis into your vagina?

A I kicked him, Ma'am.

Q Where did you kick him?

A I just kicked him, I do not know where I hit him.

....

Q After Emil inserted his penis into your vagina, what happened after that?

A When I tried to scream, he covered my mouth and told me not to tell anybody.

Q After that, what happened?

A I ran towards the kitchen.

. . . .

Q When he inserted his penis into your vagina, did he make a push and pull movement?

A Yes, Ma'am.

Q What did you feel when he inserted his penis into your vagina?

A Painful, Ma'am.[14]

Accused-appellant makes much of the fact that Roxanne admitted that she was unable to see whether what had been inserted in her vagina was a penis, a finger, or an instrument. Accused-appellant says that this concerns a material fact which renders Roxanne's entire testimony suspect.

Roxanne's testimony is as follows:

Q What is the exact position of your buttocks in relation to the side of the bed?

A At the corner of the bed.

Q Assuming this is your vagina, in relation to the side of the bed, where was your vagina?

A Here, sir. (Witness pointing to the edge of the bed).

Q How tall is the bed?

A Twenty-five inches.

Q Was he in the kneeling position?

A Yes, sir.

Q Was it the time he inserted his penis?

A Yes, sir.

Q You really did not see what was inserted in your vagina?

A No, because I was lying.

Q You just feel there was somet[hing] insert[ed] in your vagina?

A Yes, sir.

Q You really not sure whether it is finger, penis or instrument, hard instrument?

A I am not sure.

....

Q After inserting his penis, what happened? What did Emil do?

A I shouted and he covered my mouth.

Q What did Emil do?

A He told me not to tell to anybody.

Q Did he already remove his penis?

A Yes, sir.

Q How long did he insert his penis?

A I do not know, sir.

Q He did not insert his penis?

A He inserted it.

Q You are really sure whether or not what he inserted into your vagina was penis, finger or hard instrument?

A I am not sure, sir.

Q You are only sure that something is inserted but you are not sure whether it is a penis, finger or any hard instrument?

A I am sure, sir.

....

Q Isn't it the truth of the matter is that, you are really not sure what was inserted into your vagina, considering that you were lying on the bed?

A Yes, sir.

COURT:

Q And you did not see what was inserted into your vagina?

A Yes, sir.

COURT:

Redirect

PROSEC. LEONARDO:

Redirect, Your Honor.

Q When that thing was inserted into your vagina, where was the hand or hands of Emil?

A One hand on my mouth and one hand holding my hands.[15]

Roxanne deserves credit for truthfulness. She said she could not tell with certainty whether it was accused-appellant's penis which he inserted to her vagina or only his finger or a hard instrument because she was lying on her back. Perhaps a mature woman with sexual experience would be able to tell whether it was a penis, a finger, or an instrument which was inserted into her private part. But in this case the following circumstances make it improbable that the penetration was other than penile penetration: (1) According to Roxanne, accused-appellant was able to penetrate her because, with one hand covering her mouth and the other holding her hands, she was rendered helpless. This makes it improbable, if not impossible, for accused-appellant either to insert his finger or to poke an instrument into her vagina; (2) Accused-appellant was not engaged in foreplay but in sexual intercourse. It was, therefore, improbable that he would use his finger or an instrument to obtain sexual gratification.

Indeed, it has been held that the testimony of rape victim, who is young or of tender age, is credible and deserves full credit, especially where the facts point to her having been a victim of sexual assault. Certainly, the victim would not make public the offense, undergo the trouble and humiliation of a public trial, and endure the ordeal of testifying to all its gory details if she had not in fact been raped.[16]

In this case, Roxanne was steadfast in her claim that she had been raped and that the one who had abused her was accused-appellant. She could not have been mistaken in her identification of accused-appellant as her assailant, because he was a houseboy living in the house where she and her mother lived. In the face of such positive identification by Roxanne, accused-appellant's self-serving denials cannot prevail.[17] Moreover, her testimony is corroborated by the findings of the medical examination which indicated that she was in a non-virgin state physically, confirming that Roxanne had indeed been raped by accused-appellant.

Second. Rape is committed by having carnal knowledge of a woman under 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.[18] Under the third circumstance, regardless of the presence or absence of consent, if the offended woman is not yet 12 years old, carnal knowledge with her constitutes statutory rape. Hence, the two elements of statutory rape are: (1) that the offender had carnal knowledge of a woman and (2) that the victim is under 12 years of age at the time of the rape.[19]

In this case, the only evidence of Roxanne's age is her own testimony. Although her mother, Ernita Montemayor, testified for the prosecution, no part of her testimony touched upon her daughter's age. Hence, the trial court could only rely on the sole testimony of the victim as to her age in convicting accused-appellant of statutory rape. This is, however, insufficient.

To be sure, the testimony of a person as to her age, although hearsay, is admissible as evidence of family tradition.[20] It cannot, however, be considered proof of age beyond reasonable doubt. In those cases in which we held the victims' testimonies as to their age to be admissible, their testimonies were corroborated by the testimonies of the mothers,[21] the fathers,[22] or the grandfathers[23] of the victim or by documentary evidence, such as baptismal certificates, school records, and the like. In this case, no such corroborative or supporting evidence was presented by the prosecution. It cannot be determined from her appearance alone that she was below 12 years old. As we have held in the similar case of *People v. Vargas*: [24]

In the case at bar, however, no birth or baptismal certificate was presented to prove the age of the victim. Neither was there a showing that said documents were lost or destroyed to justify their nonpresentation. The trial court should not have relied on the testimony of Cornelia as to her age nor on the testimony of her aunt Margarila Quilang. Both testimonies are hearsay. Nor was it correct for the trial court to judge the victim's age by considering her appearance. As correctly pointed out by appellant, Cornelia could easily be mistaken for a child below 12 years of age. The difference of two or three years in age may not always be readily apparent by

mere physical manifestations or appearance. Indeed, there is generally no noticeable difference between the appearance of a ten (10) year old child from that of a twelve (12) year old. The age of the victim is an essential element in the crime of statutory rape and must be indubitably proved by the prosecution. As there was failure of proof by the prosecution, appellant cannot be convicted of statutory rape.

This does not, however, mean that accused-appellant could no longer be convicted of rape. It must be noted that the information^[25] against him likewise charged that accused-appellant had carnal knowledge of Roxanne Pedro "by means of force, violence and intimidation." The age of complainant is inconsequential.^[26] The evidence shows that accused-appellant succeeded in having sex with Roxanne through the use of force. He pinned her hands and covered her mouth to prevent her from resisting and crying out for help. Roxanne tried to kick him but to no avail. Accused-appellant lay on top of her on the bed, forced her legs apart, and inserted his penis into her vagina. When he was through with her, he threatened her with harm if she told anyone about what happened to her.^[27] Surely, Roxanne's narration of events could by no means be interpreted as consensual sex. On the contrary, her testimony showed her lack of consent to the sexual congress and the use of force and intimidation to consummate accused-appellant's unlawful design.

While it is true that Roxanne's medical examination showed no external signs of the application of violence,^[28] this does not negate the finding of rape. For as we observed in another case:^[29]

In this case, it is enough that the prosecution had proven that force or intimidation was exerted in the commission of the crime. The law does not impose upon a rape victim the burden of proving resistance. Moreover, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of the fear for her life or personal safety. Indeed, it has been said that, in rape cases, it is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It suffices that the intercourse takes place against her will, or that she yields because of a genuine apprehension of great harm.

Accused-appellant was a houseboy in the house where Roxanne and her mother lived. He was trusted by them. He was a 26-year old man while the victim was but a child. Under such circumstances, Roxanne, shocked and frightened, could not have been prepared to handle accused-appellant's sexual assault. To silence and intimidate the young girl would not have required that degree of force that would otherwise have been necessary in order to force an older and stronger woman into submission.

Based on the foregoing considerations, we hold that accused-appellant is guilty of rape. Based on our current rulings,^[30] however, the trial court's award of P200,000.00 in moral damages should be reduced to P50,000.00. On the other hand, the additional amount of P50,000.00 should also be given to complainant as civil indemnity. The award of civil indemnity requires no further proof other than the fact of rape.^[31]

WHEREFORE, the decision of the Regional Trial Court, Branch 163, Pasig City, is **AFFIRMED** with the **MODIFICATION** that the award of moral damages is **REDUCED** to P50,000.00 but accused-appellant should also pay complainant Roxanne Pedro the additional amount of P50,000.00 as civil indemnity.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Aurelio C. Trampe.

[2] Records, p. 1.

- [3] Id., p. 14.
- [4] TSN (Roxanne Pedro), pp. 2-10, September 3, 1997.
- [5] Id. pp. 10-12; TSN (Ernita Montemayor), pp. 5-6, September 16, 1997.
- [6] Exh. C; Records, p. 49.
- [7] TSN (Dr. Dennis Bellin), pp. 6-7, 9, August 27, 1997.
- [8] Id., p. 10.
- [9] TSN (Rommel Pine), pp. 2-11, December 2, 1997.
- [10] RTC Decision, p. 5, Rollo, p. 16.
- [11] Brief for the Accused-appellant, p. 1; Rollo, p. 40.
- [12] People v. Barcelona, G.R. No. 125341, February 9, 2000.
- [13] People v. Accion, 312 SCRA 250 (1999).
- [14] TSN, pp. 5-9, September 3, 1997.
- [15] TSN, pp. 33-37, Sept. 3, 1997, (emphasis added).
- [16] People v. Victor, 292 SCRA 186 (1998).
- [17] See People v. Accion, supra.
- [18] Revised Penal Code, Art. 335, as amended by Republic Act No. 7659.
- [19] People v. Romua, 272 SCRA 818 (1997).
- [20] People v. Silvano, 309 SCRA 362 (1999); People v. Alegado, 201 SCRA 37 (1991).
- [21] People v. Rebancos, 172 SCRA 425 (1989).
- [22] People v. Samillano, 207 SCRA 50 (1992).
- [23] People v. Alegado, supra.

[24] 257 SCRA 603, 610-611 (1996).

- [25] Records, p. 1.
- [26] People v. Sagaysay, 308 455 (1999).
- [27] TSN, p. 8, 26-37, Sept. 3, 1997.
- [28] Exh. C.
- [29] People v. Napiot, 311 SCRA 772, 782 (1999).
- [30] People v. Santos, G.R. Nos. 131103 & 143472, June 29, 2000; People v. Javier, 311 SCRA 122 (1999).
- [31] People v. Barcelona, supra.; People v. Napiot, supra.; People v. Ablog, 309 SCRA 222 (1999).

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