

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IÑEGO LAS PIÑAS, JR., ACCUSED-APPELLANT.

G.R. No. 133444. February 20, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review of the Decision of the Court of Appeals[1] in CA-G.R. CR No. 19533, convicting accused-appellant of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua and to pay the victim the amount of P50,000.00 as moral damages and the costs.

The Information against accused-appellant states:

That on or about the 19th day of August, 1994 at 7:00 o'clock in the morning, more or less, in the Municipality of Tabogon, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (sic) AAA, a 12 years (sic) old girl against her will and consent.

CONTRARY TO LAW.[2]

Upon arraignment on October 18, 1994, accused-appellant pleaded not guilty.[3] Trial thereafter ensued.

Culled from the testimony of the victim are the following facts:[4]

The victim, twelve-year old AAA, is the niece of accused-appellant. Her father is the elder brother of accused-appellant's wife.

On August 19, 1994, at about 7:00 in the morning, the victim was on her way to Tabogon Central School, where she was a sixth grader. As she passed by the house of accused-appellant, he called and asked her to enter the house. When she went inside, accused-appellant followed and locked the door.

Accused-appellant immediately took off the victim's shorts and panties and made her sit on the sofa. Then, he knelt in front of her and licked her vagina. He unzipped his maong shorts and pulled out his penis. Thereafter, he inserted his sex organ into the victim's vagina, causing her to feel pain. She kicked him on the chest, and he fell on his back. She looked down and saw her sex organ bleeding. He told her that she was menstruating. He touched her vagina with his finger and made circular motions. Moments later, he touched her left shoulder, smearing blood on her white school uniform. He then stood up and gave her P50.00, and warned her not to reveal the incident to anybody. The victim got the money, put on her panties and shorts, and proceeded to school.

While she was in school, the victim told a friend that she was menstruating. The friend relayed this to the victim's younger sister, who in turn told their mother.

The victim had known accused-appellant to be a temperamental person who severely beats his wife, which deterred her from telling anyone what he did to her. The day after the incident, her mother interrogated her

regarding her supposed menstruation, and she finally revealed that accused-appellant had molested and sexually abused her more than five times prior to August 19, 1994. However, it was only on this last occasion that her sex organ bled.[5]

On August 20, 1994, the victim was taken to Dr. Rose Carla Simbajon for examination. Dr. Simbajon found that the hymen of the victim was intact.[6]

On November 16, 1994, the victim was again brought to Medico-Legal Officer Nestor S. Sator. The following findings were reported:

GENITAL:

Pubic hair is absent. The labia majora is full, convex and coaptated with pinkish brown labia minora presenting in between. On separating, the same disclosed an elastic and fleshy type hymen with a superficial laceration noted at the body of hymen at 9 o'clock position. The external vaginal orifice admits the tip of the examining index finger. Vaginal and peri-urethral smears are negative for gram diplococci and for spermatozoa.

Subject is in virgin state physically.

There are no external signs of recent application of physical trauma noted during the time of examination.[7]

Accused-appellant, on the other hand, denied the accusation against him and claimed that the rape charge was a mere fabrication of the victim's parents who despised him. He testified that on August 19, 1994, he left his house at around 6:30 in the morning and went to Maslog, Tabogon, Cebu, which is about 1 1/2 kilometers away from their house. According to him, at 7:30 a.m. of the same day, after borrowing money from Barangay Captain Hayag at Maslog, he rode a passenger jeepney going to Daan, Tabogon, then to Barangay Taba-o. He alleged that he stayed at the reforestation area and went home at around 3:00 o'clock in the afternoon.[8]

After trial, the court a quo ruled that the prosecution failed to prove the element of force and intimidation in the rape charge against accused-appellant. Thus, he was convicted only of child abuse under R.A. No. 7610. The dispositive portion of the decision[9] reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Iñego Las Piñas guilty beyond reasonable doubt of child abuse or sexual abuse under the aforecited pertinent provisions of Republic Act No. 7610. Accordingly, he is hereby sentenced to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL, to the indivisible penalty of RECLUSION PERPETUA. The said accused is also hereby fined in the amount of P20,000.00 conformably to Art. XII, Section 31 (f) of the same Act. The accused is moreover sentenced to pay to the offended party moral damages in the amount of P30,000.00, in accordance with Article 2219, No. 3 and No. 10 of the Civil Code of the Philippines.

The cost of this instance shall likewise be taxed against the accused.[10]

On appeal to the Court of Appeals, it was held that there is sufficient evidence to convict accused-appellant of rape through intimidation under paragraph 1, Article 335 of the Revised Penal Code, punishable by reclusion perpetua. Hence, pursuant to Rule 124, Section 13, of the Rules on Criminal Procedure, the Court of Appeals certified the instant case to this Court. The decretal portion of its decision states:

WHEREFORE, premises considered, the decision of the Regional Trial Court of Cebu City, Branch 14, dated October 10, 1994 is hereby SET ASIDE. A new judgment is hereby RENDERED finding the accused Iñego Las Piñas, Jr., GUILTY beyond reasonable doubt of RAPE, committed through force and intimidation under Article 335 of the Revised Penal Code. Accordingly, he is hereby sentenced to the penalty of RECLUSION PERPETUA with all the accessory penalties set by law. The said accused is also sentenced to pay the offended party moral damages in the amount of P50,000.00 in accordance with latest jurisprudence. (People v. Laray

253 SCRA 654 [1996]). Costs are charged against the accused.

Since the penalty imposed by the Court is RECLUSION PERPETUA, in deference to the last paragraph of Section 13, Rule 124 of the 1985 Revised Rules of Criminal Procedure, the Court hereby REFRAINS from entering its judgment and CERTIFIES the case to the Supreme Court for immediate review. The entire record of the case is likewise, ordered ELEVATED to the high court.

SO ORDERED.[11]

In this petition for review, accused-appellant raised the following errors:

I

THE COURT OF APPEALS ERRED IN CONVICTING ON APPEAL THE ACCUSED-APPELLANT AFTER THE TRIAL COURT RULED THAT THE APPELLANT CANNOT BE HELD GUILTY OF RAPE.

II

THE COURT OF APPEALS ERRED IN CONVICTING ON APPEAL THE ACCUSED WITHOUT FACTUAL BASIS FOR THE CRIME OF RAPE.

In the first assigned error, accused-appellant argues that the pronouncement of the trial court that he “cannot be held guilty of rape” amounts to an acquittal of the crime of rape, and therefore the decision of the Court of Appeals setting aside his conviction for child abuse under Section 5 (b), of R.A. No. 7610, and convicting him instead of the crime of rape, violates his constitutional right against double jeopardy.

The contention is without merit. The decisive issue here is whether accused-appellant was convicted of a crime charged in the information. A reading of the information shows that accused-appellant was charged with rape through force and intimidation under paragraph (1), Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. Having been sufficiently informed of the accusation against him, accused-appellant can thus be convicted of the crime of rape based on the evidence presented.

Moreover, it is settled that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as the law and justice dictate, whether favorable or unfavorable to them, and whether they are assigned as errors or not. Such an appeal confers upon the appellate court full jurisdiction and renders it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.[12]

Mindful of the foregoing, we find no legal obstacle in meting out a conviction for the crime of rape as originally charged in the information.

Anent the issue of credibility, the Court sees no reason to depart from the findings of the court a quo and the Court of Appeals. As a rule, testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[13]

In the case at bar, the transcript shows that the testimony of the victim has all the earmarks of truth and candid innocence typical of child-rape victims. In simple yet positive language, she was able to give details that can only come from a child who has been sexually abused. The pertinent portion of her testimony reads:

PROS. NAZARENO:

x x x x x x x x

Q -

On August 19, 1994, at about 7:00 o'clock in the morning, can you tell us where you were?

A -

I was walking towards the school.

x x x x x x x x

A -

While I was walking, he called for me

x x x x x x x x

A -

Iñego Las Piñas called for me.

x x x x x x x x

A -

He whistled to me. ("Gisitsitan")

Q -

What did you do when Iñego Las Piñas whistled or "sitsitan" at you?

A -

I approached him.

Q -

When he called you, where was he? I am referring to Iñego Las Piñas.

A -

He was at their porch sweeping.

Q -

You said that you approached him. What happened after that?

A -

He told me to get inside their house.

Q -

In effect, did you get inside his house?

A -

Yes, Sir.

Q -

After you got inside the house, what did Iñego Las Piñas do?

A -

He closed the door.

Q -

You said that he closed the door, how did he close the door?

A -

He locked the door knob.

Q -

After that, after you were already inside the house and Iñego Las Piñas locked the door knob, what happened?

A -

He took off my shorts and my panty.

Q -

You said that he took off your shorts and your panty, what were you wearing then at the time when you were inside the house of Iñego Las Piñas?

A -

I was wearing school uniform.

x x x x x x x x

Q -

You said that he took off your shorts and your panty, how about your skirt (sic), did he take off your skirt also?

A -

No, Sir.

Q -

You said that he took off your skirt and panty. After that, what did he do next?

A -

He made me sit on the sofa.

Q -

After that, what happened next?

A -

He knelt in front of me.

Q -

What did he do when he knelt in front of you?

A -

He licked my vagina.

Q -

You said that he licked your vagina. Why did you say that he licked your vagina?

A -

I noticed that. I felt it.

Q -

After he licked your vagina, what did he do next?

A -

He unzipped his shorts and then pulled out his penis.

Q -

Why, what was Iñego Las Piñas wearing then at that time?

A -

He was wearing t-shirt and shorts.

Q -

Can you tell us what kind of shorts was he wearing then?

A -

Maong shorts.

Q -

After that, after he unzipped his shorts and pulled out his penis, what did he do next?

A -

He shoved his penis into my vagina.

Q -

What happened next after he shoved his penis into your vagina?

A -

I felt pain.

Q -

What did you do when you felt pain?

A -

I kicked him.

Q -

Was he hit when you kicked him?

A -

Yes, Sir.

Q -

Where was he hit?

A -

(Witness pointing to her breast)

Q -

What happened to him when he was hit, when you kicked him?

A -

He fell on his back.

Q -

When Iñego Las Piñas, Jr. fell on his back, what did you do?

A -

I stooped or bowed my head.

Q -

After you have stooped your head, what happened next?

A -

I saw blood.

Q -

Where did you see blood?

A -

In my vagina.

Q -

After that, when Iñego Las Piñas was already feeling (sic) on his back, what did you do next?

A -

I asked him what was that blood.

Q -

What was his answer?

A -

He told me that I was menstruating.

Q -

After that, after he answered that you had already menstruated, what happened next?

A -

He touched in a round circular motion with his finger.

COURT: What did he touch?

A -

He touched my vagina making a circular motion.

PROS. NAZARENO:

Q -

You said that Iñego Las Piñas touched your vagina making a circular motion, what was used by Iñego Las Piñas in touching your vagina and making a circular motion?

ATTY. MERCADO: Incompetent, your Honor.

COURT: May answer.

WITNESS: (answering)

I cannot remember now what finger he used in touching my vagina and making a circular motion.

COURT: But it was a finger?

A -

Yes, your Honor.

COURT: Continue, please.

PROS. NAZARENO:

Q -

After that, what happened?

A -

He touched my left shoulder with his bloodied hands.

Q -

You said that you were wearing your skirt and shorts and panty. How about your blouse, was that removed when you were abused by Iñigo Las Piñas?

A -

No, Sir.

Q -

You said that he touched the left portion of your shoulder with his bloodied hand. What happened to your blouse when he touched the blouse on your left shoulder?

A -

It is (sic) smeared with blood.

Q -

Then after that, what happened next?

A -

He stood up.

Q -

You said that he stood up. What did you do when he stood up?

A -

He stood up and then tried to get something from his pocket.

Q -

What did he get something (sic) from his pocket.

A -

He got some money.

Q -

Was he able to get money from his pocket?

A -

Yes, Sir, there was.

Q -

What did he do when he was able to get money from his pocket?

A -

He gave that money to me.

Q -

How much was that money taken from his pocket and gave (sic) it to you?

A -

P50.00.

x x x x x x x x

COURT: Did he say anything when he gave the money to you?

A -

There was.

COURT: What did he say to you?

A -

He said do not tell anybody whoever he is.

x x x x x x x x

PROS. NAZARENO:

Q -

After given (sic) the money by Iñigo Las Piñas, Jr., what did you do?

A -

I proceeded to go to school.

x x x x x x x x

Q -

When you returned home from school that afternoon of August 19, 1994, did you tell your mother what happened in the morning of August 19, 1994?

A -

No, Sir.

COURT: Why not? Why did you not tell your mother about what happened to you?

A -

I was afraid.

COURT: And why were you afraid?

A -

I was afraid of what Iñego might do.

COURT: Why, what is the basis of that fear about what Iñego would do?

A -

Because he is bad.

COURT: Why do you say he is bad?

A -

Because Iñego would punish severely his children and there was a time also that he maltreated his wife and in fact his eldest child went to our house because Iñego almost stabbed his wife.[14]

The medical findings of Dr. Rose Carla Simbajon that the victim's hymen was intact, and that of Medico-Legal Officer Nestor S. Sator, showing that the victim is in a "virgin state physically," do not at all detract from the commission of rape. As consistently held by this Court, the medical examination of the victim or the presentation of a medical certificate is not essential to prove the commission of rape because the testimony of the victim alone, if credible, as in the present case, is sufficient to convict the accused of the crime.[15]

The Court of Appeals correctly convicted accused-appellant of rape through intimidation. In *People v. Dreu*, [16] we held that the test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did

not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

In the case at bar, the facility of carrying out the sexual assault against the victim was due not only to accused-appellant's moral ascendancy over the victim, but also of the victim's fear of accused-appellant. As testified by the victim, accused-appellant, who is her uncle, was known for severely beating his wife. The fear thus entertained by her young mind was enough to cow her into submission to his sexual assaults.

The alibi advanced by accused-appellant was correctly rejected by the court a quo. Aside from the inherent weakness of said defense, accused-appellant failed to prove the physical impossibility of his presence at the scene of the crime at the time of the incident.[17] The distance of 1 1/2 kilometers between his house where the crime was committed, and Maslog, Tabogon, Cebu, where he allegedly was during the approximate time of the commission of the crime, does not preclude the possibility of his presence at the locus criminis at around 7:00 in the morning of August 19, 1994. Furthermore, accused-appellant's alibi was sufficiently rebutted by prosecution witness Luisito Pareja, his neighbor. According to Pareja, he and accused-appellant, together with two other barangay mates, in fact had a drinking spree on August 19, 1994, from 9:00 in the morning to 3:00 in the afternoon.

Likewise, we find no merit in the alleged ill-motive imputed by accused-appellant on the parents of the victim, whom he said fabricated the rape charge against him. Parents would not sacrifice their own daughter, a child of tender years at that, and subject her to the rigors and humiliation of public trial for rape if they were not motivated by an honest desire to have their daughter's transgressor punished accordingly.[18]

In sum, the Court finds accused-appellant guilty of the crime of rape which, at the time of its commission, was punishable by reclusion perpetua under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.

In *People v. Catubig*,[19] the Court held that aggravating circumstances of crimes committed before the effectivity of the December 1, 2000 Revised Rules on Criminal Procedure may serve as basis for awarding exemplary damages even if not alleged in the information, so long as said circumstances are proven at the trial. Here, the prosecution was able to establish that accused-appellant is the husband of the younger sister of the victim's father, and therefore a relative of the victim by affinity within the third civil degree. This circumstance justifies the imposition of exemplary damages in the amount of P25,000.00.[20]

Consistent with prevailing jurisprudence, accused-appellant should further pay the victim the amount of P50,000.00 as civil indemnity,[21] in addition to the moral damages of P50,000.00 awarded by the Court of Appeals.

WHEREFORE, in view of all the foregoing, the Decision of the Court of Appeals in CA-G.R. CR No. 19533, convicting accused-appellant of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the victim the amount of P50,000.00 as moral damages is **AFFIRMED** with the **MODIFICATION** that accused-appellant is further ordered to pay the sum of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.

[1] Eight Division, composed of Associate Justice Rodrigo V. Cosico (ponente), Delilah Vidallon-Magtolis (member) and Salome A. Montoya (chairman).

- [2] Records, p. 1.
- [3] Records, p. 32.
- [4] TSN, February 7, 1995, pp. 3-13 and 21.
- [5] TSN, February 7, 1995, pp. 18-19, and February 8, 1995, p. 3.
- [6] Records, p. 96.
- [7] Exhibit "H".
- [8] TSN, August 17, 1995, pp. 6, 9, 12 and 15.
- [9] Penned by Judge Renato C. Dacudao.
- [10] CA Rollo, p. 54.
- [11] Rollo, p. 66.
- [12] *Ko Bu Lin v. Court of Appeals*, 118 SCRA 537, 582-583 [1982]; citing *People v. Carreon*, 115 Phil. 245 [1962] *U.S. v. Abijan*, 1 Phil. 83 [1902]; *People v. Ofindo*, 47 Phil. 1 [1924]; *Suy Sui v. People*, 92 Phil. 685 [1953].
- [13] *People v. Bañago*, 309 SCRA 417, 422 [1999]; citing *People v. Dacoba*, 289 SCRA 265 [1998]; *People v. Auxtero*, 289 SCRA 75 [1998]; *People v. Galimba*, 253 SCRA 722 [1996].
- [14] TSN, February 7, 1995, pp. 5-12.
- [15] *People v. Garigadi*, 317 SCRA 399, 419 [1999]; citing *People v. Abordo*, 224 SCRA 725 [1993].
- [16] 334 SCRA 62, 69-70 [2000] citing *People v. Fraga*, 330 SCRA 699 [2000].
- [17] *People v. Tabion*, 317 SCRA 126, 143-144 [1999]; citing *People v. Tulop, et al.*, 289 SCRA 316 [1998]; *People v. Pili, et al.*, 289 SCRA 118 [1998]; *People v. Balmoria*, 287 SCRA 687 [1998].
- [18] *People v. Bisco*, 348 SCRA 648, 655 [2000].
- [19] G.R. No. 137842, August 23, 2001.
- [20] *People v. Tabion*, *supra*.
- [21] *Supra*.

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