

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORANTE AGUILUZ Y NUQUE, ACCUSED-APPELLANT.

G.R. No. 133480. March 15, 2001

Ponente: PARDO, J.

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PARDO, J.:

Accused Florante Aguiluz y Nuque appeals from the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, Bulacan finding him guilty beyond reasonable doubt of rape, the decretal portion of which reads as follows:

"WHEREFORE, the Court finds the accused FLORANTE AGUILUZ y NUQUE guilty beyond reasonable doubt of the crime of rape under Article 335, paragraph 3 of the Revised Penal Code.

"Conformable with the provisions of Section 11 of Republic Act No. 7659, the Court imposes upon the accused the penalty of reclusion perpetua.

"The Court also hereby orders the accused to indemnify the offended party Elizabeth B. Cruz the amount of P50,000.00 as moral damages.

"SO ORDERED." [1]

On November 29, 1995, Assistant Provincial Prosecutor Emily A. Bajar of Bulacan filed with the Regional Trial Court, Bulacan, at Malolos, an information charging FLORANTE AGUILUZ y Nuque with rape committed as follows, to wit:

"That on about the 15th day of October, 1995, in the municipality of Calumpit, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs did then and there willfully, unlawfully and feloniously by means of force and intimidation have carnal knowledge of Elizabeth Cruz, below twelve (12) years old, against her will and consent.

Contrary to law." [2]

Upon arraignment on January 10, 1996, accused pleaded not guilty. [3] Trial ensued.

In 1995, Elizabeth Cruz was below 12 years of age. [4] She was a grade VI pupil at Caniogan Elementary School and lived with her grandparents Romeo and Felicidad Cruz at Sto. Niño, Calumpit, Bulacan, since the year 1984, when her parents lived separately.

Accused Florante Aguiluz was 46 years old and married to the sister of Elizabeth's grandfather. He was a caretaker of Francisco Alonzo G Building and served as lay minister and lector at San Antonio de Padua Church, located at Iba, Hagonoy, Bulacan.

On October 15, 1995, at around 3:00 in the afternoon, Elizabeth was in the house of accused Florante Aguiluz watching television with the children of the accused, namely, Maharlika, Sara and Cherry Flor. After watching television, she went home which was only about an arm's length from the house of the accused. Upon reaching

her house, she saw accused in the living room and there were no other people inside the house at that time. Accused closed the doors and windows, dragged her towards a room although she tried to push him. When they were already inside the room, accused removed Elizabeth's t-shirt and pants, including her underwear. She was forced to lie down on the floor and accused started kissing her. The accused succeeded in inserting his penis into her vagina even as she tried to push him. She felt pain and after he was through ("nakaraos"), accused went out of the room. Elizabeth went to the sala and laid down for about an hour because of the pain she felt. Later on, she went to her friends to ask them to accompany her in the house. Her friends stayed there for about half an hour until her grandfather arrived. She did not tell him what happened because she was afraid of the threat made by the accused that she would be killed if she reported the incident to anybody.[5]

The next day, on October 16, 1995, she told her friends Margie and Michelle about the incident because she knew they could help her report what happened to her to their teacher. On October 17, 1995, she told her English teacher, Mrs. Juliet T. Ortega of Caniogan Elementary School, about the incident who, in turn, reported the incident to her grandmother. She brought Elizabeth to San Fernando, Pampanga for physical examination.[6]

On October 18, 1995, Elizabeth was taken to the Jose B. Lingad Memorial Hospital, San Fernando, Pampanga where Dr. Sylvia Flores Garcia, a resident O.B. Gynecologist examined her. Dr. Garcia's findings are contained in the Medico-legal report[7] she issued. The report states:

"EXTERNAL GENITALIA & PERINEUM:

"LABIA MAJORA: well cooptated

"LABIA MINORA:

"HYMEN: Deep healed laceration at 12 & 6 o'clock position; superficial, healed laceration at 2 o'clock position

"I.E. FINDINGS: Intoitus admits 2 fingers with ease; cervix closed; uterus small

"LABORATORY REQUEST:

Pregnancy test - Negative

Smear for Spermatozoa - negative for spermatozoa

At the trial, Dr. Garcia testified. After identifying her report, she declared that there was incomplete laceration involving half of the width of the hymen but did not go beyond the base of the hymen. Among the possible causes of deep lacerations are trauma, if there is passage of blood within the hymen, infection, masturbation or insertion of foreign object inside the vagina and sexual intercourse. Her internal examination also revealed that the intoitus easily admitted two fingers which meant that the vagina canal was lax that may be caused by sexual intercourse, trauma or child bearing, although her cervix was closed and her uterus was small.[8]

Elizabeth executed a Sinumpaang Salaysay[9] on October 19, 1995, before PO1 Arsenio Cabral of the PNP, Calumpit, Bulacan. On October 20, 1995, the police filed a criminal complaint for rape[10] with the Municipal Trial Court, Calumpit, Bulacan against accused Florante Aguiluz.

In his defense, accused denied sexually molesting Elizabeth. He interposed an alibi. According to him, on October 15, 1995, he was at San Antonio de Padua Parish Church and served as layman minister and lector for the 8:00 to 10:00 mass in the morning and 4:00 to 5:00 mass in the afternoon.[11] Accused likewise presented Fr. Irineo Cabasal to corroborate his defense but on cross-examination, Fr. Cabasal testified that on October 15, 1995, there was only one mass, which was at 8:00 in the morning.[12]

After due trial, on January 6, 1998, the trial court rendered a decision convicting accused of statutory rape, the

dispositive portion of which reads:

"WHEREFORE, the Court finds the accused FLORANTE AGUILUZ y NUQUE guilty beyond reasonable doubt of the crime of rape under Article 335, paragraph 3 of the Revised penal Code.

"Conformably with the provisions of Section 11 of Republic Act No. 7659, the Court imposes upon the accused the penalty of reclusion perpetua.

"The Court also hereby orders the accused to indemnify the offended party Elizabeth B. Cruz the amount of P50,000.00 as moral damages.

"SO ORDERED.

"Malolos, Bulacan, January 6, 1998.

(Sgd.)

"OSCAR C. HERERRA, JR.

"J u d g e"

Not satisfied, accused-appellant interposed the instant appeal.[13] He contends that the trial court gravely erred in finding the testimony of Elizabeth Cruz to be credible despite inconsistencies when taken together with the testimony of Dr. Garcia regarding her medico-legal findings on Elizabeth. He insists that the testimony of Elizabeth that she bled because of the sexual intercourse is inconsistent with the findings of Dr. Garcia that she found healed lacerations in the hymen of Elizabeth. Accused-appellant also alleges that the lower court erred in convicting him of rape notwithstanding the prosecution's failure to prove his guilt beyond reasonable doubt.

The appeal is devoid of merit.

Article 335 of the Revised penal Code provides:

"Article 335. When and how rape is committed - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force and 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.

Xxx xxx xxx."

"Under the third paragraph, two elements must be established to hold the accused guilty of rape, namely: (1) that the accused had carnal knowledge of a woman and (2) that the woman is below twelve years of age." [14]

Elizabeth was less than twelve (12) years old when Florante had carnal knowledge of her on October 15, 1995. She was born on October 21, 1983, per Certificate of Live Birth.[15] In such case, proof of consent of the woman is immaterial. Sexual intercourse with a woman below twelve years old is statutory rape.[16] Her consent to the intercourse is involuntary because she is considered to have no will of her own.

Accused-appellant harps about the absence of fresh lacerations in Elizabeth's hymen, asserting that the presence of "deep healed lacerations" belies the allegation that Elizabeth was raped three days prior to the physical examination conducted on her. Accused-appellant's averments completely overlook the doctrine that the absence of fresh lacerations in complainant's hymen does not negate sexual intercourse and does not prove that she was not raped.[17] "A freshly broken hymen is not an essential element of rape. Healed lacerations do not negate rape." [18] In fact, rupture of the hymen is not essential. In rape, "complete or full penetration of the complainant's

private part is not necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entrance, or at least the introduction of the male organ into the labia of the pudendum, is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, and not the full penetration of the complainant's private part, consummates the crime." [19] Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia constitutes consummated rape. [20] In other words, "the successful penetration by the rapist of the female's genital organ is not indispensable. Penile invasion necessarily entails contact with the labia and even the briefest of contacts without laceration of the hymen is deemed to be rape." [21] If her testimony meets the test of credibility, that is sufficient to convict the accused. [22]

Contrary to accused-appellant's claim, however, the testimony of Elizabeth Cruz, particularly as regards his identity, was direct, clear and positive.

"It is well-settled doctrine that findings of the trial court regarding the credibility of the witness are to be given great weight and a high degree of respect by the appellate court." [23] "We see no cogent reason to make an exception to this rule." [24]

The accused also alleged that the grandparents of Elizabeth, who harbored ill feelings against him for having illicit relationship while being married to the sister of complainant's grandfather, concocted the rape charge.

The argument is untenable. The imputation of ill motive against the grandparents of Elizabeth is not supported by any evidence, except the testimony of the accused. In fact, the accused has not ascribed any ill motive on her part. "[W]here there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a crime, the testimony is worthy of full faith and credit." [25] Besides, it is not believable that her grandparents, who nurtured and loved the victim, would expose an innocent girl to the humiliation and stigma of a rape trial simply to get back at accused-appellant.

We are not persuaded by the appellant's defense of alibi. Appellant alleged that he was no longer residing at Sto. Niño, Calumpit, Bulacan and he was serving as lay minister at San Antonio de Padua Parish on the date of the incident. Not only was accused-appellant's alibi weak, it also did not rule out the possibility of his having committed the crime. The trial court observed:

"That Iba, Hagonoy, Bulacan and Sto. Niño, Calumpit, Bulacan are only four (4) or five (5) kilometers apart. It would only take five to ten minutes to travel using a private vehicle from his residence in Iba, Hagonoy, Bulacan to Sto. Niño, Calumpit, Bulacan and about one (1) hour by public transport. As it is, therefore there was no physical impossibility for accused to be at the scene of the crime in the date and time in question even if he was then residing at Iba, Hagonoy or even if he was then performing his duties as lay minister and lector at the San Antonio de Padua Parish Church. Also belying the alibi of the accused is the testimony of his own witness, Rev. Fr. Ireneo T. Cabasal, who declared that his Church has only one mass during Sundays and this is celebrated at 8:00 o'clock in the morning. Thus, there was no occasion for accused to perform his duties as lay minister and lector at said Parish Church in the afternoon of October 15, 1995 which was a Sunday." [26]

Appellant failed to satisfy the elementary requirements of alibi, that is, accused must be able to (a) prove his presence at another place at the time of the perpetration of the offense and (b) demonstrate that it is physically impossible for him to be at the scene of the crime. [27] Here, it was highly possible for him to be at the scene of the crime when it was committed.

The evidence having sufficiently established that the rape was committed with a woman below twelve years of age, the Court finds the imposition of the penalty of reclusion perpetua to be in accord with Article 335, Revised Penal Code, as amended by R. A. No. 7659.

In addition to the award of P50,000.00 as moral damages,[28] accused-appellant must be likewise ordered to pay P50,000.00 as civil indemnity conformably with recent pronouncements.[29] The latter is based on different jural foundations and assessed by courts in the exercise of sound discretion.

WHEREFORE, the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, in Criminal Case No. 1475-M-95, sentencing accused appellant Florante Aguiluz y Nuque to reclusion perpetua and to indemnify the offended party Elizabeth B. Cruz in the amount of P50,000.00 as moral damages is AFFIRMED with modification that accused-appellant is likewise ordered to pay the additional amount of P50,000.00 as civil indemnity to the victim.

Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. 1475-M-95, Decision rendered on January 6, 1998, Judge Oscar C. Herrera, Jr., presiding, Rollo, pp. 19-37.

[2] Information, Rollo, pp. 9-10.

[3] RTC Record, Certificate of Arraignment, p. 36.

[4] Certificate of Live Birth, Folder of Exhibits, p. 7.

[5] TSN, April 19, 1996, pp. 6-19.

[6] TSN, April 19, 1996, pp. 20-22.

[7] RTC Record, p. 4, Exhibit "D".

[8] TSN, June 24, 1996, pp. 8-30.

[9] Folder of Exhibits, p. 1.

[10] Docketed as Criminal Case No. 5144, Folder of Exhibits, p. 2.

[11] TSN, January 13, 1997, pp. 6-7.

[12] TSN, March 18, 1997, pp. 6-8.

[13] Notice of Appeal dated January 20, 1998, RTC Record, p. 261.

[14] People vs. Andres, 324 Phil. 124, 128 [1996]; People vs. Ylarde, 224 SCRA 405, 408-409 [1993].

[15] Folder of Exhibits, p. 7.

[16] People vs. Gagto, 323 Phil. 539, 556 [1996].

[17] People vs. Erardo, 343 Phil. 438, 451 [1997].

[18] People vs. Llamo, 323 SCRA 791, 804 [2000].

[19] People vs. Cura, 310 Phil. 237, 248 [1995].

[20] People vs. Balibalita, G. R. No. 134266, September 15, 2000; People vs. Campuhan, G. R. No. 129433,

March 30, 2000; *People vs. Gagto*, supra, Note 16, on p. 553; *People vs. Ylarde*, supra, Note 14, on p. 409; *People vs. Clopino*, 352 Phil. 1040, 1051 [1998].

[21] *People vs. Dimapilis*, 300 SCRA 279, 305 [1998].

[22] *People vs. Abangin*, 297 SCRA 655 [1998].

[23] *People vs. Tabalesma*, 343 Phil. 317, 327 [1997]; *People vs. Almacin*, 303 SCRA 399, 410 [1999].

[24] *People vs. Tabalesma*, supra, Note 23, on p. 327.

[25] *People vs. Manuel*, 298 SCRA 184, 194 [1998].

[26] *Rollo*, pp. 33-34.

[27] *People vs. Aranjuez*, 349 Phil. 395 [1998].

[28] *People vs. Dimapilis*, supra, Note 20, on p. 305.

[29] *People vs. Arco*, G. R. No. 132062, August 14, 2000; *People vs. Marabillas*, 303 SCRA 352 [1999].

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