

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOSIMO BARREDO, ACCUSED-APPELLANT.

G.R. No. 133832. March 28, 2000

Ponente: VITUG, J.

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VITUG, J.:

Execrable as it so is, the crime of rape becomes even most odious when committed against a child of tender years by a man old enough to be her grandfather.

Accused-appellant, Zosimo Barredo, was charged with the crime of Rape in a criminal complaint, dated 13 May 1997, filed before Branch IV of the Regional Trial Court of Batangas City. Docketed Criminal Case No. 9003, the complaint, in its accusatory portion, read:

"That on or about the 19th day of March, 1997, at about 6:30 o'clock in the morning, at Barangay Talahib, Municipality of Tingloy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of one Riolyn Panganiban, eight (8) years and nine (9) months old, against her will and consent." [1]

Arraigned on 15 October 1997, accused-appellant Barredo, assisted by counsel, entered a plea of not guilty to the offense charged.

The case for the prosecution. –

On 19 March 1997, at about 6:30 in the morning, eight-year old Riolyn Panganiban, together with accused-appellant Zosimo Barredo, whom Riolyn would fondly address "Tio Simo," were walking downhill along the Barangay road in Talahib, Tingloy, Batangas. Barredo requested Riolyn to accompany him to the retail store of one Tiya Deling on the pretext of buying some sugar which she could then bring back to his wife since he was going elsewhere to attend a wake (dasalan). Along the way, accused-appellant propositioned Riolyn, i.e., "Tayo maghindutan," to which the complainant replied "Ayaw ko po." [2] Accused-appellant persisted, carried Riolyn off the road, and then stopped at a nearby mango tree. He laid her on the ground, pulled down her underwear and covered her eyes with his hat and hands. She could feel that appellant was trying to insert his penis into her vagina. Riolyn felt pain but all she could do was to cry because appellant had threatened to kill her. His lust satisfied, he dressed up and told Riolyn to put back her underwear. From there, the two proceeded to Tiya Deling's store. Accused-appellant gave Riolyn P2.00 to get some candies for the children at home.

Arriving home, Riolyn started to cry and told her mother what the accused had done to her. Her mother reported the incident to their Barangay Captain who took no time in inviting accused-appellant to the Tingloy Police Station. Riolyn, assisted by her mother, executed a "sinumpaang salaysay" [3] narrating the incident before the police authorities.

Riolyn was brought for medical examination to the Rural Health Physician, Dr. Maria Lourdes Gajitos, of

Tingloy, Batangas. Her medical examination disclosed that the right hand of the victim was swollen and while her hymen was still intact, there was, however, erythema or redness near the vaginal opening.

The version of the defense. -

Accused-appellant denied having raped Riolyn. In the morning of 19 March 1997, he said Riolyn went to his house, merely ten meters away where she and her family resided, asking for coffee and sugar but since he had none at the time, he asked Riolyn to instead come with him to buy some at the store of Tiya Deling about half a kilometer away. The two went. After buying coffee and sugar, Riolyn went back home alone since he had to assist a certain Tiya Mensyang in the observance of the 9th day of death of the latter's son. He denied having raped Riolyn. The accusation, he asserted, had been filed only to get back at him because his wife was "mad" at Riolyn's mother for failing to pay back the cash and goods she had borrowed from his wife.

Decision of the trial court. -

On 04 May 1998, the trial court found accused-appellant guilty of the crime charged; it adjudged:

"In the light of all the foregoing considerations, the Court is morally convinced that accused Zosimo Barredo, from the evidence adduced in this proceedings, did in fact and in truth had carnal knowledge, sexually abused-complainant Riolyn Panganiban, a nine year old child on March 19, 1997 at about 7:00 o'clock in the morning at Barangay Talahib, Tingloy Batangas. Wherefore, accused Zosimo Barredo is found guilty beyond reasonable doubt of the crime of Statutory Rape under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. He is therefore sentenced to death by lethal injection pursuant to existing laws. He is further directed to pay complainant Riolyn Panganiban with the sum of One Hundred Thousand Pesos (P100,000.00) as compensatory and moral damages. With costs.

"SO ORDERED."[4]

The death sentence having been meted by the trial court, the case has been elevated to this Court for automatic review.

Accused-appellant assigns the following errors allegedly committed by the trial court:

"I

"THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE, AND IN IMPOSING THE DEATH PENALTY.

"II

"THE COURT A QUO ERRED IN ORDERING ACCUSED-APPELLANT TO PAY COMPLAINANT THE AMOUNT OF P100,000.00 AS COMPENSATORY AND MORAL DAMAGES."[5]

In essence, appellant assails the credibility of the victim pointing out supposed improbabilities in her testimony, focusing particularly on the following testimony of the victim, to wit:

"Q.

When Zosimo Barredo inserted his penis to your organ, was your face still covered by the hat?

"A.

Yes, sir.

"Q.

Why were you able to say that it was his organ being inserted to your organ because according to you, your face was covered?

"A.

Pakiramdam ko po'y parang iyon.

"COURT:

"Q.

Did you actually see his penis?

"A.

No, sir.

"Pros. Judit:

"Q.

Was the organ being inserted to your organ hard or soft?

"A.

Soft, sir.

"Q.

Was the insertion of his organ to your organ took a long time?

"A.

Yes, sir.

"Q.

Why?

"A.

Because it is very long.

"Q.

Was there anything that comes out from his penis which you felt while inserting his organ?

"A.

No, sir."[6]

Against this assertion, however, is the full narration made by Riolyn of the bitter incident that has befallen her. Her testimony -

"Q.

You saw Ka Zimo when he was about to buy sugar?

"A.

Yes, mam.

"Q.

You went with him to buy sugar?

"A.

Yes, mam. Because he requested me after he bought sugar I will bring the sugar to his wife.

"Q.

So, from the place where you met Ka Zimo and he requested you to go with him to the store to buy sugar, you immediately proceeded to the store because you were about to buy sugar, were you with Tio Zimo when you bought sugar?

"A.

Yes, mam.

"Q.

And then Ka Zimo asked you to bring back the sugar to his wife?

"A.

Yes, mam.

"Q.

Did you bring the sugar to your Tia Angeles?

"A.

Yes, mam.

"Q.

How about your Tio Zimo where was he when you brought back the sugar to his wife?

"A.

He told me he will go to dasalan, mam.

"Q.

You mean you were alone when you got back to the house of your Tia Angeles?

"A.

Yes, mam.

"Q.

After that you did not meet Tio Zimo again on that day?

"A.

When we met, we walked downhill, he brought me to the manggahan and then he raped me and after that we proceeded to the store to buy sugar and after that he requested me to bring back the sugar to his house and after that he told me that he will go to the dasalan, mam.

"Q.

You are saying that before you brought back the sugar to Tia Angeles your Tio Zimo brought you to the manggahan where he raped you?

"A.

Yes, mam.

"Q.

You mentioned a while ago that you were brought to the manggahan and you used the word 'raped', you have heard the word 'rape', even prior to March 19, 1997?

"A.

Not yet, mam.

"Q.

And that word 'rape', you came to know about the word, 'rape' from your mother only on March 19, 1997, that is correct?

"A.

Yes, mam.

"Q.

What exactly did your Tio Zimo do to the manggahan?

"A.

When we were going downhill he proposed that we indulge in the hindutan (sexual intercourse), I refused but he brought me to the mango grove where he lay me down on the ground, he undressed me and covered my face with his cap but I think that he was also undressed himself because how come that he was trying to insert his penis into my vagina when he already lay himself on top of me, mam.

"Q.

You said that he proposed to you, 'Tayo mag-hindutan' now, you answered 'Ayaw ko po', do you mean to say that you already knew what was being done when two persons made a sexual act?

"A.

Yes, mam.

"Q.

Why do you know it such early age of what being done by a person engaged in sexual act?

"A.

Is it true when husband and wife make love, the woman get pregnant, mam.

"Q.

But you do not know yet what is being done in order that a child could be conceived?

"A.

How could a woman get pregnant, mam.

"Q.

You have seen someone doing that before March 19, 1997?

"A.

Not yet, mam.

"Q.

You said that after you said 'No', to his proposal that you engaged in that sexual act, how far was that from the manggahan when you said you were raped?

"A.

From that place to that jeep a distance of about 15 meters, mam.

"Q.

From that place up to that 15 meters distance, you walked casually with Tio Zimo?

"A.

He carried me, mam.

"Q.

When your Tio Zimo forcing his penis into your vagina, what did you do?

"A.

I wanted to shout but my mouth was covered by his cap and hand, mam.

"Q.

What did you feel?

"A.

I felt pain, mam.

"Q.

Did you feel pain because of his weight?

"A.

Yes, mam.

"Q.

You said that he was covering your face with his cap, how many hands did he use in covering your face?

"A.

Only one, mam.

"Q.

Could you still tell us, the left or right hand?

"A.

I do not know, mam.

"Q.

What he did was that after he had lay you down he immediately covered your face and lied on top of you?

"A.

Yes, mam.

"Q.

And after that he immediately tried to insert his penis?

"A.

Yes, mam.

"Q.

What were your hands doing at that time?

"A.

My hands are at my back, mam.

"Q.

You were not able to kick him?

"A.

No more, mam, because my legs were crossed because my legs were being weighed down by his legs, mam.

"Q.

Your two feet were together at the time when his feet was also on top of your feet?

"A.

Yes, mam.

"Q.

But you were not able to hold it?"[7]

There is no doubt in the mind of the Court that accused-appellant has had carnal knowledge of the victim. In rape cases, the courts are guided by the long-standing rule that penetration is not essential for conviction of the culprit.[8] Mere knocking at the doors of the pudenda, so to speak, by the accused's penis suffices to constitute the crime of rape,[9] and the fact that her hymen is still intact does not negate its commission.[10] Physical evidence indicates that there has been erythema or redness in the vaginal opening of the victim. An entry into the vaginal orifice, however slight, consummates the offense.

Once again, the Court finds occasion to stress that the issue of credibility, the principal thrust of the defense in assailing the judgment of conviction, is a matter best addressed by the trial court who has the chance, much better than that of an appellate court, to observe the demeanor of the witness while testifying.[11] So, also, there has almost invariably been a marked receptivity by the courts in lending credence to the testimony[12] of young victims of rape particularly when the sexual assault is committed while they are still in their tender years. If found

to be credible, a lone testimony by the victim is considered enough to sustain a conviction.[13]

In the absence of corroborative evidence, the court would not be prepared to accept the usual lame defense of denial over the straightforward and positive declaration of a victim. Quite accepted universally is the rule that denial is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testify on affirmative matters.[14] The testimony of Riolyn, unshaken even during cross-examination, indeed deserves more persuasive weight than the bare denial of the accused.

Accused-appellant is correct, however, in faulting the trial court for its imposition of the penalty of death.

Article 335 of the Revised Penal Code, as amended by Republic Act 7659 (otherwise known as An Act To Impose the Death Penalty on certain Heinous Crimes), 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 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.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"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.

"2. When the victim is under the custody of the police or military authorities;

"3. When the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

The penalty for the crime of rape is generally one of reclusion perpetua. Rape becomes punishable by death only if a qualifying circumstance is present, and none appears to be extant in the instant case. While the victim, Riolyn,

is admittedly eight years and nine months old at the time of the commission of the offense, the offender, however, is not her 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 to warrant the imposition of the extreme penalty.

In its decision, the trial court awarded the sum of P100,000.00 by way of compensatory and moral damages without specifying the portion of the award that should respond to the particular kind of damages. In line with prevailing jurisprudence, the Court holds that the appellant should be ordered to pay the sum of P50,000.00 as civil liability ex-delicto and another P50,000.00 as moral damages.

WHEREFORE, the judgment of the Regional Trial Court, branch IV, of Batangas City convicting accused-appellant Zosimo Barredo of the crime of rape in Criminal Case No. 9003 is **AFFIRMED**, with the **MODIFICATION** that the penalty of death imposed by the trial court should be reduced, as it is hereby so reduced, to reclusion perpetua. Accused-appellant is ordered to pay the complainant, Riolyn Panganiban the sum of P50,000.00 as civil liability ex-delicto and an additional amount of P50,000.00 as moral damages or a total amount of P100,000.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 4.

[2] TSN, January 5, 1998, p. 13.

[3] Records, p. 5.

[4] Rollo, p. 16.

[5] Rollo, p. 31.

[6] TSN, 19 November 1997, p. 5.

[7] TSN, 05 January 1998, pp. 11-14.

[8] People vs. Faigano, 254 SCRA 10.

[9] People vs. Echegaray, 257 SCRA 561.

[10] People vs. Palicte, 229 SCRA 543; People vs. Abella, 228 SCRA 662; People vs. Ligotan, 262 SCRA 602.

[11] People vs. Conde, 252 SCRA 681.

[12] People vs. Casipit, 232 SCRA 638; People vs. Junio, 237 SCRA 826.

[13] People vs. Bulaybulay, 248 SCRA 601.

[14] People vs. Carizo, 233 SCRA 687.

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