

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONCIO ALIVIANO, ACCUSED-APPELLANT.

*G.R. No. 133985. July 10, 2000*

Ponente: DE LEON, JR., J.

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### DE LEON, JR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of Cebu City, Branch 15, convicting herein appellant, Leoncio Aliviano y Yburan, of the crime of rape.

The appellant, Leoncio Y. Aliviano, stands charged with the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, in an information that reads:

That on or about the 21st day of March, 1996, at about 9:00 o'clock in the evening, in the city of Cebu, Philippines, and within the jurisdiction of the Honorable Court, the said accused, armed with a knife, with the use of force and intimidation upon the person of Ivy Maquiling, who was then a minor (being) more than 7 years of age, with deliberate intent, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the said Ivy Maquiling, against her will.

CONTRARY TO LAW.

Upon being arraigned on December 22, 1997, the appellant, assisted by counsel, pleaded "Not guilty" to the information in this case. Thereafter, trial on the merits ensued.

The evidence of the prosecution shows that Miraflor Maquiling and her younger sister, Ivy, were watching television on the second floor of the house of the appellant on March 21, 1996 at around 9:00 o'clock in the evening. The wife of the appellant, Corazon Aliviano, and her granddaughter Liezel, were likewise watching the television. Sometime later, Miraflor directed Ivy to go to their house and find out if their mother, Isidra, who is a vegetable vendor, had arrived from the market.[2]

Ivy had just descended from the stairs when the appellant suddenly pulled her into his room. Once they were inside the room, the appellant undressed her and himself. Then he dragged her into the mosquito net after having switched off the light inside the room. Appellant forced himself on Ivy by inserting his penis into her vagina while swinging his buttocks. Apparently not contented, the appellant subsequently inserted his finger into her vagina.[3]

Ivy felt excruciating pain in her private part during the occasion. However, she could not move nor shout for help inasmuch as her mouth was covered by the right hand of the appellant while his left hand was holding a knife pointed at her neck. After consummating the act, the appellant put on Ivy's panty, her pair of shorts and her t-shirt.[4]

Thereafter, Ivy proceeded directly upstairs to join her sister, Miraflor, who was still watching the television. Miraflor noticed her disheveled appearance and pale lips prompting her to ask Ivy what took her so long.[5] Ivy kept mum on her harrowing experience inasmuch as, according to her, she was threatened by the appellant with death, including her family, should she divulge what he did to her.[6]

On March 22, 1996, Ivy recalled having taken a bath and had changed her panty twice since her private part was bleeding.[7] On March 23, 1996, at around 8:00 o'clock in the morning, Ivy's brother, Nonoy, noticed her panty that was smeared with blood. Upon having confronted by her sister, Miraflor, Ivy confided that she was raped by the appellant in the evening of March 21, 1996.[8] On the same day, Miraflor reported to her mother what the appellant did to her sister.

Isidra was extremely distressed by what happened to her youngest daughter, Ivy. However, she was afraid to confront the appellant about it for the reason that the appellant is a known toughie in the neighborhood. On many occasions, she had seen the appellant sharpened his bolo and boasted that "it was sharp enough to kill a man". She also felt helpless from the threats of the appellant as she is separated from her husband and their four (4) children were left under her care.[9]

Isidra finally mustered enough courage when the appellant was detained in jail on September 19, 1997 on the charge of having allegedly attempted to hack his wife to death. On October 3, 1997, Isidra accompanied Ivy to the police in Cebu City to lodge a complaint for the crime of rape against the appellant.[10] Ivy was investigated by PO1 Gay Inting Rodriguez of the Cebu City Police, before whom she narrated how she was raped by the appellant in the evening of March 21, 1996.[11] She underwent pelvic examination that was conducted by a certain Dr. Norma Cataos, M.D. at the Cebu City Medical Center in Cebu City.

Dr. Aster Khosravibabadi, M.D., who is a colleague of Dr. Norma Cataos at the department of Obstetrics and Gynecology in the Cebu City Medical Center, was authorized by the head of the said department to interpret the results of the pelvic examination appearing in the medical certificate[12] for the reason that Dr. Cataos had transferred to Mindanao and could not be contacted. After having identified the signature of Dr. Norma Cataos, M.D., which appears at the bottom of the medical certificate, Dr. Khosravibabadi testified that the patient, Ivy Maquiling, suffered multiple hymenal lacerations and the introitus, or the opening of her vagina, admits the tip of the small finger. The multiple hymenal lacerations may have been caused by the forcible penetration of a blunt object which could be a penis or a finger. That the vaginal opening admits the tip of the small finger is attributed to the fact that the patient may have been uncooperative, or due to fear during the examination that normally causes spasm or constriction of the muscles around the vaginal opening.[13]

Appellant Leoncio Aliviano denied the charge of rape against him in the information. Leoncio testified that he was fetched in his house by the mother of the alleged victim, Isidra Maquiling, and a certain Kulas Azor in the morning of March 20, 1996. Kulas' son, Joel, had been allegedly paralyzed for sometime, and his (appellant) neighbor, Isidra, who is a relative of Kulas, requested the appellant to administer treatment on Joel being a "manghihilot". They left Mambaling, Cebu City at around 7:00 o'clock in the morning and reached the house of Kulas in Barangay Punay, Aloguinsan, Cebu, at around 9:00 o'clock in the morning of the same day. Leoncio allegedly remained in Aloguinsan, Cebu for four (4) straight days treating Joel of his illness and went home only on March 24, 1996.[14]

Leoncio revealed in court that he underwent vasectomy operation sometime in 1981 that was conducted by a certain Dr. Alberca and that from 1992 up to the present, he could no longer manage to have an erection.[15] He could not recall any motive that may have impelled the private complainant and her mother to lodge a complaint for rape against him except that he had scolded Ivy once for pushing his granddaughter Liezel and for having taken some of his things in the house.[16]

Corazon Aliviano, wife of the appellant, testified that she and the family of the private complainant are in good terms even up to the present being neighbors in Colbita, Mambaling, Cebu City. Ivy and her elder siblings namely: Virgilio, Nolan and Miraflor, used to frequent their house to watch television.[17]

On March 21, 1996, at around 9:00 o'clock in the evening, Corazon was inside their house together with her daughter Melanie, her granddaughter Liezel, and the sisters Ivy and Miraflor who were watching the television. However, her husband, Leoncio, was not present inasmuch as he had gone to Aloguinsan, Cebu on March 20, 1996 to treat a paralyzed patient. He returned home only on March 24, 1996.[18]

Corazon opined that the Maquilings might have been offended when she got mad at Ivy for quarrelling with her granddaughter, Liezel. She stated that Isidra never confronted her regarding the charge of rape that her husband allegedly committed against her daughter. She is not also aware of the threats allegedly made by her husband on Ivy and her mother.[19]

Upon being recalled to the witness stand on March 31, 1998, Corazon stated that she went to the house of Kulas Azor in Aloguinsan, Cebu to request the latter and his son, Joel, to testify and corroborate the alibi of the appellant in this case. However, Corazon alleged that they refused for the reason that Isidra, who is their relative, allegedly talked to them against acceding to her request.[20]

After analyzing the evidence, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises all considered, the Court finds accused Leoncio Aliviano GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized by Article 335 of the Revised Penal Code in relation to R.A. 7610 and R.A. 7659 and he is hereby sentenced to suffer the penalty of reclusion perpetua with accessory penalties provided for by law and to pay the victim Ivy Maquiling the sum of P50,000.00 as moral damages and to pay the costs of this suit.

SO ORDERED.

In his appeal, the appellant raised the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN NOT APPRECIATING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED.

After a thorough review of the evidence on record, this Court finds no cogent reason to depart from the ruling of the trial court finding the appellant guilty of the crime of rape. In the review of rape cases, this Court is almost invariably guided by three (3) principles, to wit: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.[21] Proceeding from the said principles, We agree with the trial court's evaluation, and give credence to the testimony of the private complainant as against that of the appellant.

The private complainant in this case, Ivy Maquiling, is a young woman of tender age. Ivy was merely nine (9) years old when she testified in court in February 1998, and claimed that she was raped by the appellant on March

21, 1996 when she was exactly seven (7) years, six (6) months and thirteen (13) days old, having been born on September 8, 1988.[22] Considering the age of the private complainant, it would be highly improbable for a girl of her age to fabricate a charge so humiliating to herself and to her family had she not been truly subjected to the painful experience of sexual abuse.[23] Indeed, no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[24]

The appellant, Leoncio Aliviano, failed to impute any improper motive except to surmise that Ivy and her mother might have been slighted when he scolded the former for pushing his granddaughter and for having taken some of his things in his house. Apart from being a mere speculation, the same is far too shallow to deserve even a scant consideration by this Court. On the other hand, Ivy was admittedly very close to Leoncio whom she fondly addressed "Lolo". In fact, Corazon, the wife of Leoncio testified in court that their families remain in good terms being neighbors in Colbita, Mambaling, Cebu City. It is elemental that where there is no showing that the private complainant was impelled by any improper motive in making the accusation against the accused, her complaint is entitled to full faith and credence.[25]

Notably, the testimony of Ivy stands free from any serious or material contradictions that may detract from her credibility. The same is characterized by the trial court as honest and straightforward. Hence, it is established that the appellant, Leoncio Aliviano, suddenly pulled the private complainant, Ivy Maquiling, into his room at the ground floor of his house when Ivy was on her way to find out if her mother had arrived from the market. Once inside the room, Leoncio undressed Ivy and himself. After switching off the light inside the room, he dragged her into the mosquito net and raped her. Leoncio inserted his penis into her vagina and simultaneously swung his buttocks. Ivy felt excruciating pain in her private part. However, she could not shout for help for the reason that Leoncio covered her mouth with his right hand while his left hand was holding a knife that was pointed at her neck. Subsequently, appellant inserted his finger into Ivy's vagina. Thereafter, Leoncio warned Ivy not to tell anyone about the incident otherwise, he would kill her and her entire family.

Appellant states that, contrary to Miraflor's testimony, Ivy could not recall having practiced how to dance with her sister on March 23, 1996 at around 8:00 o'clock in the morning during which time, Ivy allegedly confided to Miraflor that she was raped by Leoncio in the evening of March 21, 1996. Leoncio likewise states that while Isidra claimed that she was informed of the crime by Miraflor only in the morning of March 23, 1996, Ivy testified that she had already informed her mother about it on March 22, 1996. The appellant may not successfully impugn the credibility of the private complainant based on minor inconsistencies in her testimony that do not even touch on the essential elements of the crime. Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall.[26]

The delay in reporting the crime to the police authorities does not undermine the charge of rape against the appellant considering that said delay was satisfactorily explained by the mother of the private complainant.[27] Isidra explained during the trial of this case that she was afraid that Leoncio, a notorious toughie in the neighborhood, might make good his threats of death to her family and herself. No less than the appellant's own wife, Corazon, admitted that Leoncio had wild temperament whenever he was drunk. On many occasions, Isidra could see Leoncio sharpening his bolo and boasted that the same was sharp enough to kill a man. Although she felt distressed by what had befallen her youngest daughter, Isidra suffered in silence as she felt helpless being separated from her husband. She finally mustered enough courage when Leoncio was detained in jail on September 19, 1997 for having attempted to hack his wife to death with his bolo. Besides, this Court is not unaware that no mother would sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public trial for rape if she were not motivated by an honest desire to have her

daughter's transgressor punished accordingly.[28]

The appellant next assails the admissibility of the medical certificate for the reason that Dr. Norma Cataos, who prepared the document, was not presented for its identification. He contends that Dr. Aster Khosravibabadi, who identified and interpreted the findings in the medical certificate in court, is not even the official custodian of the document. Concededly, the subject medical certificate cannot be given any probative value. It is settled that since a medical certificate involves an opinion of one who must first be established as an expert witness, it could not be given weight nor credit unless the doctor who issued it be presented in court to show his qualifications.[29] In any case, We have already ruled that a medical certificate is not indispensable to prove the commission of rape.[30] It is merely corroborative evidence. In this case, the lone testimony of the victim, Ivy Maquiling, which is credible and free from serious and material contradictions, is sufficient to warrant the conviction of the appellant.[31]

In addition, the appellant claimed that he underwent vasectomy operation sometime in 1981, and that he could no longer manage to have an erection since 1992. However, the appellant failed to present in court any medical certificate to that effect; much less Dr. Alberca, who allegedly performed the operation in 1981. Impotence, as a defense in a prosecution for rape, is both physical and medical question that should be satisfactorily established with the aid of an expert and competent testimony.

Lastly, the defense of alibi by the appellant is unavailing in this case. The same was not corroborated by any disinterested and credible witness. The wife of the appellant hardly made any difference on the inherent weakness of his defense of alibi in view of the biased nature of her testimony. Besides, this Court has consistently held that where the accused was positively identified by the victim herself who harbored no ill motive against the accused, such as in the present case, the defense of alibi must fail.[32]

In view of the foregoing, the appellant, Leoncio Aliviano, is liable for the crime of rape under Article 335 of the Revised Penal Code, as amended. Article 335 of the Revised Penal Code, as amended by Section 11, of R.A. 7659, provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- 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:

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the

parent of the victim.

- when the victim is under the custody of the police or military authorities.
- when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
- when the victim is a religious or a child below seven (7) years old.
- when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease .
- when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

It appears that the appellant used a knife to threaten his victim on the occasion of the commission of the crime of rape. Hence, the imposable penalty in accordance with Article 335 of the Revised Penal Code, as amended, is reclusion perpetua to death. There being no proof of any aggravating or mitigating circumstance, or any of the qualifying circumstances mentioned in Section 11 of R. A. 7659, the imposable penalty in this case of simple rape is reclusion perpetua. It has been the policy of the Court to award outrightly an amount not exceeding P50,000.00 to rape victims which relates to or can be categorized as actual or compensatory damages.[33] In addition, moral damages may be awarded to victims of rape notwithstanding the absence of proof as basis for its award.[34]

WHEREFORE, the appealed decision of the Regional Trial Court of Cebu City, Branch 15, convicting the appellant, Leoncio Y. Aliviano, of the crime of rape is AFFIRMED. Appellant Leoncio Aliviano is hereby sentenced to suffer the penalty of reclusion perpetua, and to pay the private complainant the amount of P50,000.00 by way of actual or compensatory damages in addition to the amount of P50,000.00 as moral damages.

### **SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Judge Galicano C. Arriego. Rollo, pp. 72-78.

[2] TSN dated January 26, 1998, p. 4.

[3] TSN dated February 9, 1998, pp. 5-8.

[4] TSN dated February 9, 1998, pp. 7-8.

[5] TSN dated January 27, 1998, p. 5.

[6] TSN dated February 9, 1998, pp. 9-10.

[7] TSN dated February 11, 1998, p. 6.

[8] TSN dated January 26, 1998, pp. 5-6.

[9] TSN dated January 28, 1998, pp. 3-4.

[10] TSN dated February 3, 1998, pp. 3-4.

[11] Exhibit "1".

- [12] Exhibit "B".
- [13] TSN dated March 4, 1998, pp. 6-8.
- [14] TSN dated March 20, 1998, pp. 3-4.
- [15] TSN dated March 20, 1998, p. 6.
- [16] TSN dated March 20, 1998, p. 4.
- [17] TSN dated March 6, 1998, pp. 3 and 8.
- [18] TSN dated March 6, 1998, pp. 4-6.
- [19] TSN dated March 6, 1998, p. 6.
- [20] TSN dated March 20, 1998, pp. 2-3.
- [21] People vs. Gallo, 284 SCRA 590, 612 (1998); People vs. Bernaldez, 294 SCRA 317, 328 (1998)
- [22] Exhibit "A".
- [23] People vs. Molas, 286 SCRA 684, 690 (1998); People vs. Dacoba 289 SCRA 267, 272 (1998)
- [24] People vs. Cabebe, 290 SCRA 543, 554 (1998)
- [25] People vs. Gementiza, 285 SCRA 478, 486 (1998)
- [26] People vs. Sta. Ana, 291 SCRA 188, 216-217 (1998)
- [27] People vs. Lusa, 288 SCRA 296, 305 (1998)
- [28] People vs. Tumala,Jr., 284 SCRA 436, 443 (1998); People vs. Develerio, 289 SCRA 547, 564 (1998)
- [29] People vs. Bernaldez, 294 SCRA 317, 334 (1998)
- [30] People vs. Auxtero, 289 SCRA 75, 82, (1998); People vs. Quiamco, 268 SCRA 516, 528 (1997)
- [31] People vs. Gallo, 284 SCRA 590, 612 (1998)
- [32] People vs. Sta. Ana, 291 SCRA 188, 217 (1998)
- [33] People vs. Perez, 296 SCRA 17, 36 (1998)
- [34] People vs. Fuertes, 296 SCRA 602, 614 (1998); People vs. Prades, G.R. No. 127569, July 30, 1998.

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