

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO SARMIENTO, ACCUSED-APPELLANT.*G.R. No. 134768. October 25, 2000*

Ponente: QUISUMBING, J.

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For review is the decision[1] dated April 29, 1998 of the Regional Trial Court of Mandaue City, Branch 28, convicting appellant Mariano Sarmiento, and sentencing him to suffer the penalty of death, for the rape of a nine-year-old girl, Jocelyn Soquiño, allegedly committed as follows:

That on September, 1996, and or prior thereto, at Milagrosa Village, Sitio Sambag, Barangay San Vicente, Municipality of Liloan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with Jocelyn Soquiño, nine (9) years of age, against her will and consent.[2]

Jocelyn Soquiño was only two (2) years old when her father, Roberto and mother, Teofila separated. Roberto thereafter entrusted Jocelyn to the care of his sister Alicia Sarmiento, wife of appellant.[3] According to the prosecution, sometime in September 1996, when Jocelyn was already nine years old, while Alicia and her children were out at work, appellant tied Jocelyn's legs separately to the wall while her hands were tied to a piece of wood and gagged her with a handkerchief to prevent her from shouting.[4] While she was tied and lying on the floor, appellant removed her dress and panty. Then he took off his underwear. Jocelyn clearly saw his whole body, his testicles and his erect penis. When he mounted her, she felt severe pain as his penis penetrated her vagina several times. Later, she saw blood on her vagina.[5] Jocelyn told her aunt, Alicia, about the incident but fearing that appellant might hurt Jocelyn, Alicia did not confront her husband.[6]

After this incident, appellant and his family would regularly leave for work. Jocelyn would be left at home, locked up alone inside the house. Their neighbors, who pitied her, later helped her escape. They brought her to the nearest Department of Social Welfare and Development (DSWD) office.[7]

A few days afterwards, a DSWD employee informed Jocelyn's father about her ordeal.[8] On October 2, 1996, Dr. Susan Lai-Casiño of VSMC Obstetric-Gynecological Department conducted a medical examination on Jocelyn and found that her genitalia bore an old healed hymenal laceration at 6:00 o'clock position.[9]

On February 25, 1997, appellant was charged of rape in a complaint filed by Jocelyn, assisted by her father. On May 27, 1997 appellant, assisted by his counsel, was arraigned and pleaded not guilty. Trial ensued.

Appellant denied that he sexually molested Jocelyn and said that the charge was just manufactured by her father. Appellant claimed that in September 1996, he was working at Cebu Country Club as caddie and he left their house at around 4:30 or 5:00 o'clock A.M. as he usually does.[10] His wife, Alicia, corroborated this and added that her husband was never absent from work during the whole month of September. Further, she claimed that Jocelyn had been in their custody from the time she was four months old. Her father had tried to get her back but

they refused, that was why they falsely charged her husband with rape.[11] They refused to give Jocelyn to her father because she was studying and they could still support her education.[12]

Betty Sarmiento, appellant's daughter-in-law, also testified in appellant's behalf. She said that she and her husband were staying with her in-laws and in the whole month of September, she was always in the house and never went out, even to the market. She only went out to hear mass on Sundays and everytime she did so, Jocelyn was with her. Further she said that when all the people in the house went out for work, she and Jocelyn were left behind.[13]

On April 29, 1998, the trial court rendered its decision, thus:

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the herein accused guilty beyond reasonable doubt for the crime of rape, said accused is hereby sentenced to the penalty of death, with accessories of the law and to indemnify the offended party, Jocelyn Soquiño, the amount of P50,000.00 by reason of the commission of the offense of rape upon her and to pay the costs.

SO ORDERED.[14]

Hence this appeal. Appellant avers that the trial court erred:

I. ... IN NOT GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE DEFENSE NOTWITHSTANDING THE FACT THAT SUCH IS THE BARE TRUTH.

II. ... FOR PENALIZING HIM WITH DEATH. THE INFORMATION CHARGED HIM OF SIMPLE RAPE ONLY AS DEFINED AND PENALIZED UNDER ARTICLE 335 OF THE REVISED PENAL CODE.[15]

The first issue concerns primarily the credibility of witnesses. Appellant argues that the testimony of private complainant that he raped her in their house had no basis. At the time of the incident he was busy working as a caddie at Cebu Country Club. He claims he always leaves the house early in the morning and returns home late in the evening. There was no testimony that he returned home between morning and evening. Further, he insists that the rape story was a mere concoction. Such a concoction was highly probable, he said. For at the time of the alleged incident Jocelyn, who was nine (9) years old, could already be useful to her father. It would have been difficult for her father to get her from the Sarmientos since they took care of her from infancy, without the concocted charge.

Appellee discounts appellant's attack on Jocelyn's credibility as weak. For the trial court's evaluation of the credibility of a witness and her testimony is entitled to great respect, since it is the trial judge who observed the demeanor of the witnesses and is in a better position to assess the truthfulness of the testimonies.[16] In the absence of any clear showing that the trial judge has overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this Court should not disturb the trial court's evaluation of witnesses' credibility. In this case, private complainant with simplicity, spontaneity and candidness vividly recounted in detail her ordeal at the hands of the appellant. Her testimony was clear, unequivocal and straightforward. She positively identified appellant as her rapist.

In reviewing the records, we find that appellant for his part merely denied he raped the victim. Denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving and deserve no weight in law. They cannot be given greater evidentiary weight over the testimony of a credible witness who testified on affirmative matters. Between the positive declaration of the prosecution witness and the negative statements of the accused, it is the former that deserves more credence.[17]

As found by the trial court, in which we concur, private complainant Jocelyn was a credible witness. She was very direct, clear and spontaneous in relating how her uncle-in-law, Mariano, raped her. Her testimony reads:

Fiscal to witness:

Q : Why did you say that Mariano Sarmiento did not treat you well?

x x x

A : Because he raped me.

Q :

Now, can you tell this Honorable Court when did Mariano Sarmiento rape you? Was it last September, 1996 or prior to this date?

x x x

A : Before September.

Q :

On September, can you remember whether you were raped by Mariano Sarmiento?

A :

Yes.

Q :

Can you tell the Honorable Court as to how did Mariano Sarmiento rape you?

A :

He tied my hands and my feet with a piece of rope, and gagged me with a piece of handkerchief.

Q :

When Mariano Sarmento did this to you, covering your mouth and tying you with a rope-both hands and feet-what did he do to you?

A :

He immediately rode astride me.

Q :

Before he mounted on top of you did Mariano Sarmiento take off your clothes as well as your panties, if you were wearing panties during that time?

A :

Yes.

Q :

And when Mariano Sarmiento mounted on top of you, did Mariano Sarmiento take off his clothes, his jocky, if he was wearing any jockey?

x x x

A : Yes.

Q : And then were you lying on the floor when he mounted on top of you?

A : Yes.

x x x

Q : And was his penis erect or just dangling?

A : It was erect.

Q : And when he mounted on top of you did his penis penetrate your vagina?

A : Yes.

Q : And what did you feel when his penis penetrated your vagina?

A: Pain.

Q : How many times did his penis penetrate your vagina?

A : Several times.

Q : And did you find any blood in your vagina after the penis of Mariano Sarmiento penetrated your vagina?

A : Yes."[18]

Jocelyn was able to sustain this clarity and spontaneity and remained consistent in answering the clarificatory questions posed by the judge. Thus:

Court to Jocelyn Sarmiento:

Q :

You said that you were raped by your uncle, the accused Mariano Sarmiento. Where was your aunt when this happened?

A :

She left (nilakaw).

Q :

You also stated a while ago that when the accused raped you he tied your legs. How were your legs tied?

A :

Like that. Court Interpreter: Witness demonstrating by spreading her legs. Court to Jocelyn:

Q :

In that position it seems that each leg was tied to an object, where was it tied to?

A :

My legs were tied separately to the wall.

Q :

What about your hands, how were they tied?

A :

Like that. Court interpreter: Witness demonstrating by spreading her arms. Court to Jocelyn:

Q :

To what object was each hand being tied?

A :

To the piece of wood.

Q :

In that position, with your hands and your legs being tied each to an object or to the wall, how did he mount you?

A :

Like that. Court interpreter: Witness placing her palm over her other palm. Court to witness:

Q :

And in that position did you feel whether his penis was able to penetrate your vagina?

A :

Yes.

Q :

How did you know?

A :

It was inserted fully.

Q :

Was there complete penetration of his penis to your vagina?

A :

Yes.

Q :

What did you feel?

A :

Pain.

Q :

Did he make any push and pull movement?

A :

Yes.

Q :

How did you feel when he did that movement?

A :

Intense pain.

Q :

What did you do when there was already a complete penetration of his penis to your vagina and you feel very painful?

A :

I cried."[19]

Note that, in the direct examination earlier cited, the victim had affirmed that appellant removed her clothes including her panties and then his own clothes before mounting her. On this score, the defense failed to ask clarification on how exactly her panties were removed, fully or partly, either before or after her legs were tied to the wall. In any event, the defense utterly failed to rebut or discredit that portion of her testimony. Her cross-examination by the defense, instead of aiding appellant's case, incriminates him in fact even more by a revelation of other acts of rape he committed. Thus:

Atty. Suralta to Jocelyn:

Q :

You mentioned that you were locked inside. Was that in the room of the said house, or in the entire house where you were being locked?

A :

Inside the whole house.

Q :

Together with the children?

A :

No. Court to witness:

Q :

Where were the children at the time when you were being locked up?

A :

At work already.

Q :

During the time that you were raped by your uncle, the accused, where were the children?

A :

Working. Court to counsel: Proceed

Atty. Suralta to Jocelyn:

Q :

And the alleged rape took place only once?

A :

Several times.

Q :

When you said several times you were also tied several times?

A :

Yes.

Q :

You were told by the Honorable Fiscal that to tell a lie...or Jesus Christ, the Lord, would not want that a child tell a lie. Do you understand that?

A :

Yes.

Q :

You mean to say that everytime that you were allegedly raped your legs were tied separately and also you saw the penis of the accused erect?

A :

Yes.

Q :

You must have been accustomed to see the size of his penis?

A :

Yes.

Q :

Would it be like this one?

(Defense counsel indicating his wrist.)

A :

Yes.

Court:

Two inches in diameter.

Atty. Suralta: That is all, Your Honor."[20]

Appellant's assertion that he was charged with rape because her father wanted her back is unworthy of belief. It goes against common sense and human experience. A father would not put his daughter to an ordeal of a court trial, risking the family's honor and putting herself open to public ridicule, if he were not convinced that his daughter was really raped by appellant.[21]

Considering the testimonies of the witnesses as well as the medical report which corroborated the fact of rape, we see no reason to doubt Jocelyn's credibility. Nor do we find any flaw in her identification of appellant as her cruel ravisher.

In his second assigned error, appellant states that the trial court erred in imposing the death penalty on him. Although the prosecution had introduced evidence to prove that appellant was the victim's guardian, we must note that here the Information did not allege the qualifying circumstance of relationship. Thus, on this ground, we find that the appellant could not be convicted of qualified rape but only of simple rape, as argued by the defense. The Office of the Solicitor General agrees with the defense, and recommends that the penalty of death be reduced to reclusion perpetua. However, the OSG recommends that, in addition to civil indemnity, appellant should also be held liable for moral damages in the amount of P50,000.00

In *People vs. Edwin Decena*, GR No. 131843, May 31, 2000, we reiterated our ruling in a long line of cases that the attendant circumstances under which the death penalty may be meted out, pursuant to the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659,[22] are in the nature of qualifying circumstances. They must be alleged with particularity in the information. Otherwise, there would be a denial of the constitutional right of the accused to be informed of the charge against him. In the present case, appellant Mariano Sarmiento was charged with statutory rape under the 3rd paragraph of Article 335 of the Revised Penal Code. He was convicted of qualified rape under the same law as amended by Section 11 of Republic Act No. 7659. But the requisite qualifying circumstance of relationship was not expressly alleged in the Information against him. Thus, we find correct the stand of the defense, in which the office of Solicitor General agreed, that the appellant could not be convicted of qualified rape. It follows that indeed the trial court also erred in imposing on appellant the penalty of death. Properly, appellant should be sentenced only to reclusion perpetua.

As to moral damages, we agree with the Solicitor General that private complainant is entitled thereto. A conviction for rape carries with it the award of moral damages to the victim, without need of further proof. In addition, we also hold that to deter sex friends from victimizing young girls, exemplary damages in the amount of P20,000.00 should be imposed on appellant.

WHEREFORE, the decision of the trial court finding appellant MARIANO SARMIENTO guilty beyond reasonable doubt of the crime of rape is AFFIRMED WITH MODIFICATION. Appellant's sentence is reduced from death penalty to RECLUSION PERPETUA. Further, appellant is ordered to pay offended party Jocelyn Soquiño the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

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

Kapunan, J., on leave.

[1] Rollo, pp. 15-28.

[2] Records, p. 1.

[3] TSN, December 2, 1997, pp. 4-5.

[4] TSN, November 12, 1997, pp. 21-22.

[5] Id. at 23-25.

[6] Id. at 28.

[7] Id. at pp. 29-30.

[8] Id. at 30-32.

[9] Id. at 7-9.

[10] TSN, April 16, 1998, pp. 3-4.

[11] TSN, April 14, 1998, pp. 4-5.

[12] TSN, April 16, 1998, p. 3.

[13] TSN, February 23, 1998, pp. 8-9.

[14] Rollo, p. 28.

[15] Id. at 42.

[16] People vs. Ernesto Larin, 297 SCRA 309, 325 (1998).

[17] People vs. Alvero, G.R. Nos. 134536-38, April 5, 2000, p. 14.

[18] TSN, November 12, 1997, pp. 21-25.

[19] Id. at 32-35.

[20] Id. at 39-40.

[21] People vs. Torejos, G.R. No. 132217, February 18, 2000, p. 12; People vs. Tabao, 240 SCRA 758, 771 (1995).

[22] 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, step-parent, 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 civil 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. (As amended by Sec. 11, RA 7659)

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