

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF – APPELLEE, VS. MANUEL LOPEZ @ “AWE”, ACCUSED-APPELLANT.

G.R. No. 134774. April 19, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the decision[1] dated April 14, 1998, of the Regional Trial Court of Daet, Camarines Norte, Branch 38, convicting appellant Manuel Lopez @ Awe of rape in Criminal Case No. 8108 and sentencing him to suffer reclusion perpetua and to indemnify the offended party in the amount of fifty thousand pesos (P50,000).

In an information dated January 10, 1994, Manuel Lopez @ Awe was accused of rape defined and penalized under Article 335 of the Revised Penal Code, committed as follows:

That on or about 10:00 o'clock in the evening of October 16, 1993, at Brgy. San Vicente, municipality of Santa Elena, province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one JESSICA B. LIZ, a minor 9 years of age, against the latter's will, to her damage and prejudice.

CONTRARY TO LAW.[2]

On August 31, 1994, appellant was arraigned and pleaded not guilty.[3] Thereafter, trial ensued.

The prosecution presented Dr. Henry Moreno, Josefina Liz, private complainant Jessica Liz, and SPO3 Benjamin Torres as its witnesses, while defense presented Lope and Manuel Lopez as its witnesses.

DR. HENRY MORENO, the Municipal Health Officer of Sta. Elena, Camarines Norte, testified that on October 22, 1993, he examined Jessica Liz and in connection thereto, issued a medical certificate where he stated his findings. Thus:

X X X

Genitalia:

No pubic hair with erythematous labia majora and labia minora. Both labias are well coaptated and upon opening there's a vaginal discharge which is whitish in color but non foul smelling. There's hymenal tear at 3 and 9 o'clock position. Upon inserting the examining finger there's a less resistance and tenderness at the site of laceration, withdrawal of examining finger shows no blood.[4]

x x x

Dr. Moreno also testified that the sperm smear test conducted on Jessica was positive, but the sperm was dead. This meant that there was penetration and ejaculation.[5]

JOSEFINA LIZ, the mother of the victim, testified that Jessica B. Liz was born on May 17, 1984.[6] On October 12, 1993, she brought Jessica to the house of Lope Lopez, a quack doctor, at Purok 3, San Vicente, Sta. Elena, for confinement and treatment. On October 17, 1993, her daughter returned home and related to her that Manuel Lopez, a brother of Lope Lopez, raped her on October 16, 1993 at 10:00 P.M.[7] Josefina also testified that she and Jessica went to the Sta. Elena police station and reported the incident, and that her daughter underwent a medical examination.[8]

JESSICA LIZ, the private complainant, narrated that on October 16, 1993, at around 10:00 P.M., she was sleeping in one of the rooms in Tata Lope's house, where she was confined for treatment.[9] Suddenly, she was awakened because she felt that somebody was removing her panty.[10] She recognized Manuel Lopez (Tata Awe), brother of Tata Lope, because she saw his face.[11] She said that she knew Tata Awe because he introduced himself to her.[12] Jessica further said that after removing her panty, appellant removed his pants and brief in front of her, mounted her and forcibly inserted his penis into her vagina. She shouted "Aray ko, Aray ko". She pleaded for appellant to stop but did not. Instead, he continued for about 10 minutes. After raping her, appellant poked a bolo on her right temple and threatened to kill her if she would tell anyone about the incident.[13] Then appellant left the room.[14]

Jessica said that she relayed what happened to Tata Lope who confronted appellant about it. But thereafter, appellant again threatened to kill her.[15]

Jessica further narrated that on the same night, she left Tata Lope's house to return home. Upon arrival, she immediately told her mother about the rape. She also said that she underwent a medical examination.[16]

SPO3 BENJAMIN TORRES, the last prosecution witness, said that on October 22, 1993, he was the Officer-in-Charge at the PNP Station at Sta. Elena, Camarines Norte.[17] He testified that in the morning of the same date, a certain Josefina Liz, with her daughter, came to his office and reported a rape. He required them to secure a medical certificate and in that connection, requested Dr. Henry Moreno, the Municipal Health Officer of Sta. Elena, to conduct a medical examination on the victim and to furnish him with the results.[18] SPO3 Torres further testified that he ordered SPO1 Chavez and SPO1 Parale to fetch Manuel Lopez from Brgy. San Vicente, Sta. Elena, Camarines Norte, for investigation. However, Manuel Lopez was no longer in the said place when the police arrived.[19]

After the prosecution offered its documentary evidence, it rested its case. Thereafter, the defense presented its witnesses.

LOPE LOPEZ, brother of appellant and the quack doctor referred to by Josefina and Jessica Liz, testified that on October 16, 1993 at around 10:00 P.M., he was sleeping in his house, wherein 15 other persons were staying for the night. One of them was Jessica Liz, a patient. The following day, Lope went to Tanauan, Quezon.[20]

Lope also said that he accompanied Jessica home when the latter decided to leave his house in the afternoon on a date which he could not remember. When asked if it was his practice to escort patients to their home, he said that Jessica's case was an exception.[21]

Appellant MANUEL LOPEZ also testified. He denied committing the offense charged. According to him, on October 16, 1993, at around 10:00 P.M., he was at the house of his brother, Lope Lopez, with fifteen (15) other persons,[22] for treatment. Appellant specifically said that at the time of the rape, he was sleeping in the sala.[23]

However, when asked again, he said that he was sleeping at the balcon.[24] He further said that Lope's house was just a small house with no partition. He claimed that he knew Jessica Liz because they were both seeking treatment from Lope Lopez. He denied he raped Jessica explaining that if it were true, he would not tell his name to the victim.[25]

The trial court on April 14, 1998, rendered its decision. The dispositive portion reads:

WHEREFORE, premises considered, the prosecution having proven the guilt of accused beyond reasonable doubt, accused Manuel Lopez alias "Awe" is hereby convicted of the crime of rape and he is sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the offended party the amount of P50,000.00 as indemnity.

SO ORDERED.[26]

Hence this appeal assigning the following as errors:

- THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.
- THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY THE OFFENDED PARTY THE AMOUNT OF P50,000.00 AS INDEMNITY.[27]

The issue in this case centers on the credibility of the complaining witness, Jessica Liz, on whose testimony the trial court based its decision.

Appellant claims that Jessica Liz's testimony was not credible for not being in conformity with ordinary human experience. She testified that the offense was committed in a dark room that had no physical divisions and which was then occupied by several other persons, including the victim's Ate Nilda and her husband. According to appellant, given these conditions, it was highly improbable for the victim to positively identify the offender and for the other occupants of the house not to hear the victim's cry of pain. Appellant said that the trial court erred in convicting him of rape and ordering him to indemnify the victim in the amount of P50,000.

The appellee, through the Office of the Solicitor General, maintains that the trial court did not err in giving credence to the testimony of the victim, Jessica Liz. According to the OSG, she was able to positively identify the offender, and she give a straightforward and detailed account of the incident. A young girl's revelation of rape coupled with her voluntary submission to medical examination and willingness to undergo public trial cannot be easily dismissed as mere concoction, said the OSG. That private complainant had motive other than to seek justice in filing the complaint, according to the OSG, has not been shown. The defense of alibi posed by appellant can not prevail over the positive and credible testimony of the prosecution witness who has no ill-motive against appellant. Moreover, the latter did not prove that it was physically impossible for him to be at the scene of the crime at the time of its commission. Additionally, the physical arrangement of Tata Lope's house did not make impossible appellant's commission of the offense, for rape is no respecter of time and precinct. It can be committed in the most unlikely places, the Solicitor General said.

Findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court a quo overlooked substantial facts and circumstances, which if considered would materially affect the result of the case.[28] We have carefully perused the records of this case and find no reason to disturb the trial court's findings. Appellant's contention that it was impossible for the victim to identify her offender, for as testified by her, the room was dark, can not be given credence. It was testified by appellant himself that Tata Lope's house was provided with electric lights[29] and there was no allegation that at the time when everybody was asleep, all the lights in the house were turned off. The house therefore was not in total darkness allowing the

victim to recognize appellant. Thus, she testified:

Q:

Were you able to see his face that night?

A:

Yes, sir.

FISCAL FERRER:

And despite the fact that it was dark you can't be mistaken that it was your Tata Awe who was inside the mosquito net that night?

A:

Yes, sir.[30]

Note that the victim was with the appellant for four days at least. They were together in the same house, seeking medical treatment. Upon the victim's arrival in Tata Lope's house, appellant introduced himself to her. Appellant had conversations with her and he learned of her illness. Thus, appellant testified:

FISCAL FERRER:

But Jessica Liz knows you, is it not?

A:

Yes, sir.

Q:

Because you were together in the house of Lope also seeking medical treatment?

A:

Yes, sir.

Q:

And you will agree with me that during the time that you were in the house of your brother, you stayed most of the time together with your brother and Jessica Liz?

A:

Yes, sir.

Q:

And you will agree with me that if ever Jessica Liz does not know your name, she knows your face?

A:

Yes, sir.

Q:

In short, Jessica Liz is familiar to you?

A:

Yes, sir.

Q:

By the way, what's the complaint of Jessica Liz why she was in the house of Lope Lopez?

A:

"Nahihimatay, epileptic, purogpodog", sir.

Q:

During that time you were in the house of your brother, you assisted your brother in his treating patients?

A:

Yes, sir.

Q:

And in the course of helping your brother, you knew the ailments of these patients seeking treatment in your brother's house?

A:

No, sir.[31]

As the victim had become familiar with appellant, she could recognize his voice even in partial darkness, especially in this case where after the rape, appellant had time to lie side by side with the victim whom he threatened to kill.[32]

Appellant further contends that the house had no division, thus the impossibility of rape. But as stressed in previous cases, lust is no respecter of time and place; it can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely or high risk venues for its commission.[33] In her straightforward and spontaneous testimony, Jessica Liz testified that she was alone in a room when she was raped. It appears that while there were people in other parts of the house, no one heard the victim cry during the sexual assault. But this fact alone would not negate the commission

of the offense.

In clear contrast to the candid and unhesitating testimony of the victim, appellant's testimony shows marked inconsistencies and hesitation. When appellant was asked which part of the house he was sleeping in at the time of the incident, he first said in the sala.[34] When asked again, he said at the balcon.[35] We note further that while claiming innocence of the charge, appellant also asked for a lower sentence. This appears to us as an indirect admission of guilt.[36] A guiltless person would exert every effort to prove his innocence.[37] As the trial court observed:

...If truly he is innocent of the crime, he should not ask for a lower sentence instead he should file a counter affidavit and present witnesses that may exculpate him from the crime charged. He was given a counsel to defend his case but nowhere in the record that he initiated a counter affidavit...[38]

Coming now to the defense of alibi interposed by appellant. For alibi to prosper, appellant must prove: a) his presence at another place at the time of the perpetration of the offense; and b) the physical impossibility for him to be at the scene of the crime.[39] We note that appellant did not deny that he was in the house of Tata Lope on the night of October 16, 1993, when the alleged offense took place. Worse, we further note that appellant did not show that it was physically impossible for him to be at the room where the victim was when she was ravished. We are thus constrained to conclude that appellant's alibi is but a mere concoction deserving no serious consideration.

Under Article 335 of the Revised Penal Code,[40] the governing law at the time of the offense, when a rape is committed with the use of a deadly weapon, the penalty should be reclusion perpetua to death. As no mitigating nor aggravating circumstance attended the commission of the crime, the lesser penalty of reclusion perpetua should apply, as provided under Article 63 (2) of the Revised Penal Code.[41]

As to the award of damages, the trial court ordered appellant to pay the victim P50,000 as civil indemnity. In addition, appellant must pay moral damages in the amount of P50,000, in accordance with existing jurisprudence.[42] Further, by way of public example and to protect minors from sexual assault, the award of P25,000 as exemplary damages is also in order.

WHEREFORE, the appeal is DISMISSED. The decision of the trial court finding appellant, MANUEL LOPEZ @ "AWE", guilty beyond reasonable doubt of the crime of rape is AFFIRMED with MODIFICATION as to damages. Appellant is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim, Jessica Liz, the sum of P50,000 as civil indemnity, another P50,000 as moral damages, and P25,000 as exemplary damages. Costs against appellant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Corona, J., no part in the deliberations.

[1] Rollo, pp. 15-24.

[2] Records, p. 1.

[3] Id. at 21.

[4] Id. at 5.

[5] TSN, March 30, 1995, pp. 10-12.

- [6] TSN, May 16, 1995, p. 2.
- [7] Id. at 3-5.
- [8] Id. at 9.
- [9] TSN, November 8, 1995, pp. 3-4.
- [10] Id. at 5.
- [11] Id. at 23-24.
- [12] Id. at 5.
- [13] Id. at 6-9.
- [14] Id. at 11.
- [15] Id. at 12-13.
- [16] Id. at 13.
- [17] TSN, July 16, 1996, p. 3.
- [18] Id. at 3-4.
- [19] Id. at 6.
- [20] TSN, November 17, 1997, pp. 2-4.
- [21] Id. at 5-7.
- [22] TSN, November 27, 1997, p. 2.
- [23] Ibid.
- [24] Id. at 3.
- [25] Ibid.
- [26] Rollo, p. 24.
- [27] Id. at 41. Misspelling corrected.
- [28] People vs. Llanita, G.R. No. 134101, September 5, 2001, p. 13.
- [29] TSN, November 27, 1997, p. 4.
- [30] TSN, November 8, 1995, pp. 23-24.
- [31] TSN, November 27, 1997, pp. 10-11.
- [32] TSN, November 8, 1995, pp. 10-11.
- [33] People vs. Mangompit, Jr., G.R. Nos. 139962-66, March 7, 2001, pp. 13-14.
- [34] TSN, November 27, 1997, p. 2.
- [35] Id. at 3.
- [36] Id. at 5.

[37] Marcelo vs. Court of Appeals, G.R. No. 128513, 348 SCRA 740, 748 (2000).

[38] Rollo, p. 23.

[39] People vs. Napud, Jr., G.R. No. 123058, September 26, 2001, p. 9.

[40] Art. 335, RPC: When and how rape is committed.—Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

x x x

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.

[41] Art. 63 (2), RPC: Rules for the application of indivisible penalties.—In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x

2) When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[42] People vs. Carbonell, et al., G.R. Nos. 140789-92, September 28, 2001, p. 13.

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