

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADIO ITDANG, ACCUSED-APPELLANT.

G.R. No. 136393. October 18, 2000

Ponente: MELO, J.

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MELO, J.:

On appeal is the decision dated April 22, 1998 of the Regional Trial Court, 11th Judicial Region, Branch 17, Davao City, finding accused-appellant Amadio Ittang guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify complainant Cristina Ittang in the amount of P50,000.00 as moral damages.

Accused-appellant was charged with the crime of rape in an Information dated September 9, 1997 which alleged:

The undersigned at the instance of the complainant, CRISTINA ITDANG, whose affidavit is hereby attached and forms part of this Information, accuses the above-named accused of RAPE under ARTICLE 335 of the Revised Penal Code, as amended by REPUBLIC ACT 7659, committed as follows:

That on or about June 25, 1997 and sometime prior thereto, the above-named accused, a half-brother of the complainant, CRISTINA ITDANG, by means of force and intimidation, wilfully, unlawfully and feloniously had sexual intercourse with CRISTINA ITDANG, against her will.

CONTRARY TO LAW.

(p. 7, Rollo.)

Upon his arraignment, accused-appellant, duly assisted by his counsel de oficio, pleaded not guilty. Trial thereupon proceeded in due course.

The prosecution presented the victim, Cristina Ittang, who testified that accused-appellant is her half-brother. After their father's death, she lived with accused-appellant and his wife, Dionesia Ittang, at their residence at Sitio Lamitum, Marilog District, Calinan, Davao City. On June 25, 1997, at around 10 o'clock in the evening, while Cristina was sleeping in her room and while Dionesia was away, accused-appellant suddenly laid down at her side and poked a bolo at her. Then, accused-appellant forced her to remove her panties, and thereafter, inserted his penis into her vagina. Cristina struggled by stretching her arms and moving her body, but was overpowered by accused-appellant. Accused-appellant threatened her not to reveal the incident to anyone otherwise he would kill her (tsn, December 5, 1997, pp. 5-13).

Cristina's testimony was corroborated by accused-appellant's wife, Dionesia Ittang who testified that on June 25, 1997, she was sleeping in the kitchen when accused-appellant arrived home drunk at around 7 o'clock in the evening. They had a quarrel because her husband accused her of having an affair with his brother, which Dionesia denied. She left their house and went to the house of his uncle. She returned home at around 10 o'clock in the

evening and when she peeped through at the wall of their house, she saw her husband take off his shorts and have sexual intercourse with Cristina. She also saw Cristina struggling by stretching her arms and kicking the accused-appellant with her feet. She said that she was sure of what she saw because there was a lamp inside the room where the sexual intercourse happened. Afterwards, accused-appellant proceeded to the kitchen. Dionesia then asked Cristina who was the man in the room and Cristina answered it was Amadio who forced her to have sexual intercourse. The following morning, she accompanied Cristina to the police to report the incident (tsn, November 25, 1997, pp. 2-7).

Dr. Danilo Ledesma, medico-legal officer of Davao City Health Office, testified that on July 8, 1997, she physically examined the victim to determine physical signs of sexual abuse. He concluded that the victim's hymen was reduced to carunculae myrtiformis, which means that the victim had already given birth in the past. He further opined that based on the results of the examination, he was able to determine that the victim was indeed sexually abused (tsn, December 4, 1997, pp. 7-8).

Evangeline Guinto, a social worker assigned at the Substitute Home Care for Women of the Department of Social Welfare and Development (DSWD), made a case study report on the victim who was admitted to said institution. The study report is to the effect that Cristina is unschooled and illiterate and does not even know her age and her birthday since her parents never bothered to register her birth in the civil registry. Cristina was in a state of shock when brought to the center. She could not express herself because of the trauma. She had been raped by accused-appellant for a period of more than seven years already. She had previously given birth to a baby girl, the father being accused-appellant, but the baby died due to illness. She mustered enough courage to reveal everything only after her Manang Dionesia caught accused-appellant in the act of raping Cristina (Exh. "B", "B-1" & "B-2", Records, pp. 49-51)

Lastly, Evangeline Campos-Castro, a psychologist at the Davao Medical Center, testified that she conducted a psychological examination on the victim and found her to be suffering from organic brain dysfunction due to mental retardation classified as mild which the witness explained to mean that the victim has the capability to decide sometimes, although not fully. Her evaluation also showed that Cristina's mental ability is that of a 3-year old child. However, she noted that the victim could give a fair account of herself and the rape incident (tsn, January 9, 1998, pp. 3-4).

On the other hand, the defense presented Segfred Billones who testified that his daughter was married to one of the sons of accused-appellant. On June 26, 1997, he visited the spouses Amadio and Dionesia Itdang at their residence. He learned from Dionesia that accused-appellant was detained at the police station because Dionesia had filed a case against accused-appellant for mauling her during a quarrel regarding financial matters and jealousy. He declared that Dionesia did not mention anything about the alleged rape committed by accused-appellant, thus, he was surprised when he learned that accused-appellant was charged with rape. After the instant case was filed in the court, he went to the DSWD where Dionesia was staying, to talk to her and help settle the matter but Dionesia was not allowed to see him (tsn, February 12, 1998, pp. 3-9).

Ricky Itdang, the eldest son of accused-appellant and Dionesia, testified that on June 24, 1997, he visited his parents who were quarreling due to jealousy and financial problems. His father slapped and kicked his mother. Thus, his mother left their house at around 7 o'clock that evening. The following day, June 25, 1997, he was still in his parents' house when his mother arrived at around 8 o'clock in the morning to fetch his aunt Cristina Itdang and together they reported to the police the mauling incident. In the afternoon of the same day, his father was already arrested, and Ricky was left in the house together with his younger brothers and sisters, as his mother and aunt did not return home (tsn, February 13, 1998, pp. 3-7).

Rachel Ittang, daughter of accused-appellant Amadio and Dionesia Ittang, corroborated the testimony of her brother Ricky. She added that on June 24, 1997, she slept with her aunt Cristina and her other brothers and sisters in one room, and she did not notice any unusual incident that transpired between her father and her aunt (tsn, April 6, 1998, pp. 7-8). Finally, accused-appellant denied the charge of rape against him, stating that the accusation was merely fabricated by his wife as a result of their constant marital quarrels about money matters. He opined that Cristina does not have a mind of her own and his wife controls Cristina in everything she does and says. He further stated that on June 25, 1997, he was already arrested by the police for mauling his wife (tsn, February 25, 1998, pp. 3-6).

The prosecution presented Dionesia Ittang as rebuttal witness and she refuted the statements of accused-appellant and her children that she filed the complaint only to get back at accused-appellant for mauling her.

On April 22, 1998, the trial court rendered its assailed decision, the dispositive portion of which stated:

WHEREFORE, finding the evidence of the prosecution, more than sufficient to prove the guilt of accused beyond reasonable doubt of the offense charged, accused AMADIO ITDANG, pursuant to Sec. 11 of Rep. Act 7659, amending Art. 335 of the Revised Penal Code, is sentenced to suffer a penalty of RECLUSION PERPETUA, together with all accessory penalty as provided for by law.

Pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered, to pay complainant, CRISTINA ITDANG, the amount of fifty thousand (P50,000.0) pesos, by way of moral damages for all the ignominy and dishonor committed to her person by accused, as a result of the filing of this case.

It appearing that accused is presently detained, charged of a capital offense, without recommendation of his provisional liberty, pursuant to Art. 29 of the Revised Penal Code, he shall be credited in the service of his sentence, as preventive prisoner, with the full time during which he has undergone said preventive imprisonment subject to the amendment under Act 6127 and further amended by E.O. No. 214, promulgated on July 10, 1987.

SO ORDERED.

(pp. 45-46, Rollo.)

Accused-appellant argues that the trial court erred in giving weight and credence to the testimony of complainant. He maintains that the accusations of Cristina are mere concoctions and the rape case was filed upon the proddings of his wife with whom he was constantly in conflict. He likewise contends that it is highly improbable for him to rape complainant considering the fact that there were other members of the family who were sleeping in the same room at that time. Further, assuming that he had sexual intercourse with complainant, accused-appellant claims that he cannot be guilty of rape inasmuch as the complainant did not offer a more vigorous resistance, and thus no force was used to commit the sexual act.

After a thorough review of the evidence on record, the Court finds no compelling reason to depart from the ruling of the trial court finding accused-appellant guilty of the crime of rape.

Not a few persons accused of rape have attributed the charges brought against them to family feuds, resentment, or revenge, but such alleged motives have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examination (*People vs. Dacoba*, 289 SCRA 265 [1998]), especially an unschooled and illiterate victim, as in this case. The records reveal that Cristina's mental ability is that of a three-year old child. Given the immaturity and lowly intelligence of the

complainant, we are not convinced that she could have concocted a tale of pure fantasy out of mere imagination. She does not appear to have such creativity and inventiveness. In fact, despite her mental deficiency, she was able to recall the details of her ordeal at the hands of accused-appellant candidly and spontaneously. Verily, only the compulsive motive to seek justice could be strong enough for complainant to implicate her own brother, as clearly manifested in her answers to the questions of the trial court, to wit:

COURT:

Q:

Cristina, you listen. Did your Manang Baby forced you to file this case against your half-brother?

A:

My own.

Q:

When you testify here this morning, were you forced by your Manang Baby to testify here?

A:

Yes, your Honor.

Q:

You understood what you said? ?

A:

It is my own volition.

Q:

You understood that what you are telling the Court are the truth and all the truth of the incident

A:

Yes, your Honor.

Q:

Do you understand, in the course of the testimony of yours, that is a very serious offense that you would like to file against your half-brother?

A:

I know.

Q:

You understand Cristina, that as a result of your testimony, if the court finds that you are telling the truth, your half-brother will be sentenced to death?

A:

I did not understand that.

Q:

I am telling you, that if the court will find that you are telling the truth, your half-brother will be sentenced to die?

A:

Yes, your Honor.

Q:

And do you like that your half-brother will die because of your testimony in this case?

A:

I agree.

Q:

Why do you like that he will be sentenced to death?

A:

He might do it again.

Q:

Do it again to whom?

A:

Me. Do it again to me.

(tsn, December 5, 1997, pp. 34-35)

Then, too, the crime of rape, unfortunately for accused-appellant, has been known to be possible of commission even when the rapist and victim are not alone considering that, given the concomitant anxiety, the act can take only a short time to consummate. The Court has thus held that a conviction for rape is still proper despite the fact that it is alleged to have been perpetrated in the same room where other family members also sleep. Somehow, copulation does not seem to be a problem even when living in cramped quarters (*People vs. Escala*, 292 SCRA 48 [1998]).

It has also been repeatedly ruled by the Court that for rape to exist, it not necessary that the force or intimidation be so great or be of such character as could not be resisted ^¾ it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind (*People vs. Cañada*, 253 SCRA 277 [1996; *People vs. Antonio*, 233 SCRA 283 [1994]). The commission of rape with force and intimidation is clearly established by the testimony of complainant herself, thus:

COURT:

Q:

You tell the court exactly Cristina, that night of June 25, 1997, what was done to you by your half-brother?

A:

He removed my panty.

Q:

Then after he removed your panty, you said awhile ago that he put his penis inside your vagina?

A:

Yes, your Honor.

Q:

Did you allow him to do that to you, meaning to say, you like his penis to be put in your vagina?

A:

No I did not.

Q:

Alright, if you do not like, why you did not fight back?

A:

Because he had a bolo.

(tsn, December 5, 1997, pp. 32-33)

The fact that accused-appellant was brandishing a bolo at the time of the incident is ample reason for Cristina to be immediately cowed into submission, which submission, however, should not be equated with consent and voluntariness. Indeed the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety (People vs. Peñero, 276 SCRA 564 [1997]).

Further, the prosecution's evidence established beyond doubt that Cristina was mentally retarded. The results of the mental and the psychological tests showed that she had a mental age equivalent to that of a three-year old child. We have held in a long line of cases that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial desires of the accused, of even if the circumstances of force or intimidation or of the victim being deprived of reason or otherwise unconscious are absent, the accused would still be liable for rape under the third circumstance of Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which provides:

Article 335. Rape; 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 (12) years of age or is demented.

The rational, therefore, is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of child below twelve years would also constitute rape (*People vs. Estares*, 282 SCRA 524 [1997]).

Accused-appellant likewise would cast doubt on the testimony of prosecution witness Dionesia Ittang that she was able to see accused-appellant forcing himself on Cristina, arguing that Dionesia was just peeping through a slit in the wall and that the room was merely lighted by a lamp placed in the altar inside the house. This argument is impertinent and immaterial as the trial court found Dionesia's testimony credible for being grounded on legitimate sentiment to punish a very serious offense committed against the honor of her sister-in-law. It is doctrinally settled that findings of the trial court on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood, or misapplied some facts or circumstances which will alter the assailed decision or affect the result of the case (*People vs. Banela*, 301 SCRA 84 [1999]). In the case at bar, the fact that the room where the rape happened was lighted only by a lamp will not hinder Dionesia from identifying her husband as the culprit. Recognition was easy for she personally knows accused-appellant as he is in fact her husband, while the victim is her sister-in-law who has been living with her and her husband since 1981. Moreover, immediately after the incident, Dionesia verified from complainant the identity of her ravisher, and complainant confirmed to her that it was indeed accused-appellant.

Accused-appellant's bare denial cannot exculpate him. His allegation that it was his wife who initiated the filing of the rape case is not supported by the evidence on record. A bare denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving and cannot be given an evidentiary weight greater than the testimony of witnesses who testify affirmatively. And between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former ordinarily deserves more credence than the latter (*People vs. Bundang*, 272 SCRA 641 [1997]).

The defense vainly tried to attribute ill-motive on the part of Dionesia but ended up being inconsistent instead, as when defense witness Segfred Billones testified that he visited accused-appellant and his wife on June 26, 1997 and stayed at their house until June 27, 1997 (tsn, February 12, 1998, pp. 3-9) while Ricky and Rachel Ittang, children of accused-appellant, did not mention the name of Segfred Billones as among those present in their house the whole day of June 26, 1997 (tsn, February 13, 1998, p. 21; *ibid*, April 6, 1998, pp. 12-13). Verily, this inconsistency is a major one, bearing as does on important point, and thus fatal to the cause of accused-appellant.

The trial court convicted accused-appellant of simple rape as the prosecution failed to produce any evidence accurately indicating the actual age of complainant as required by this Court in its pronouncement in *People vs. Javier*, 311 SCRA 122 (1999), and based on the lower court's observation that complainant's physical appearance can pass for a 25-year old woman. Thus, the crime committed by accused-appellant is not attended by any of the seven qualifying circumstances enumerated in Section 11 of Republic Act No. 7659.

However, the trial court failed to appreciate the attendant circumstance of use of a deadly weapon under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659. Even if the information did not allege the use of a deadly weapon in the commission of rape, accused-appellant can, nonetheless, be held accountable under that provision since the prosecution was able to establish that accused-appellant used a bolo in having carnal knowledge of the victim (*People vs. Lacaba*, G.R. No. 130591, November 17, 1999). So the impossible penalty should be reclusion perpetua to death. Nevertheless, inasmuch as no aggravating circumstance attended the commission of rape, the lesser penalty of reclusion perpetua shall be imposed in this case (Article 63[2], Revised Penal Code).

Likewise, the trial court indemnified the complainant in the amount of P50,000.00 as moral damages, but did not award P50,000.00 as civil indemnity which needs no proof other than the conviction of the accused for the rape proved (*People vs. Betonio*, 279 SCRA 532 [1997]). Finally, considering that accused-appellant raped his own sister who is even suffering from mental retardation, the award of exemplary damages is justified in order to deter others from perpetrating their salacious desires on their hapless sisters.

WHEREFORE, the appealed judgment finding accused-appellant Amadio Itdang guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of reclusion perpetua is **AFFIRMED**, subject to the modifications that accused-appellant, in addition to the award of P50,000.00 as civil indemnity, shall further indemnify the victim in the amounts of P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

SO ORDERED.

Vitug, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

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