

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SOTERO SERADO, ACCUSED-APPELLANT.

G.R. No. 138664. August 06, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Sotero Serado y Claros was charged with Rape before the Regional Trial Court of Davao City, Branch 17, in an information which reads:

The undersigned Prosecutor I, at the instance of Arlene Paraiso whose affidavit is hereto attached and form part of this information, accuses SOTERO SERADO y CLAROS of the crime of Rape, under Art. 335 of the Revised Penal Code, as amended by R.A. 8353, committed as follows:

That on or about September 6, 1998 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the abovementioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) Arlene Paraiso, eleven (11) years of age against her will.

Contrary to law.[1]

When arraigned, accused-appellant pleaded “not guilty” to the indictment.

The prosecution established that on September 6, 1998, the victim, Arlene Paraiso, spent the night in the house of her friend, Julie, who is accused-appellant’s daughter, in Batulosa, Toril, Davao City, together with accused-appellant and his granddaughter, Renabeth in a small room.

In the middle of the night, Arlene was roused from sleep when she felt accused-appellant removing her panties. After undressing her, accused-appellant inserted his penis into her vagina and made thrusting motions.

Arlene recognized accused-appellant in the dark and she told him, “Nong, enough.” This prompted accused-appellant to stop. The following morning, accused-appellant tried to kiss Arlene but she slapped and kicked him.

Arlene tearfully recounted to Julie and to another friend, Roxanne, what accused-appellant did to her. She initially refrained from reporting the incident to her mother, but eventually, she went to the police and to the barangay captain and related what happened to her.

In his defense, accused-appellant denied the charge of rape and alleged that in the morning of September 6, 1998, he was in his house chopping firewood which he intended to sell to the baker. At 8:00 in the evening, he had dinner at home with his daughter Julie, Renabeth and the victim, Arlene. Thereafter, he went to sleep because he was too tired after chopping firewood.

He woke up at 4:00 the next morning and roused Julie and Arlene from their sleep by touching them on different parts of their bodies. In Arlene’s case, he touched her feet five times. Then he went back to sleep.

Julie corroborated accused-appellant's version. She testified that she slept beside Arlene who was on the side of the wall while Renabeth was positioned between her and accused-appellant. However, she did not know what happened that night and Arlene never told her anything the following morning.

Mesiforo Mejorada, accused-appellant's son-in-law, alleged that Arlene's mother, Carmelita, had an ill-motive in filing this case against accused-appellant. He stated that on September 17, 1998, he caught Totoy Tanduyan, Carmelita's brother-in-law, stealing their pot of rice. Mesiforo claimed that the filing of this case against accused-appellant was Carmelita's way of getting back at them for the embarrassment she suffered when he reported the theft to the barangay captain and the subsequent filing of formal charges. Mesiforo alleged that Carmelita told him that she will get even by filing a rape case against accused-appellant.

The trial court gave credence to the prosecution evidence and rendered a decision, the dispositive portion of which states:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt of the offense charged pursuant to Art. 335 of the Revised Penal Code as amended by Republic Act 7659, Sec. 11, par. 1, without other accompanying aggravating circumstance, accused SOTERO SERADO is sentenced to suffer an imprisonment of reclusion perpetua, together with all accessory penalty, as provided by law.

Moreover, pursuant to Art. 100 in relation to Art. 104, of the Revised Penal Code, governing civil indemnity, accused is furthermore ordered to pay the amount of P30,000.00 by way of moral damages and another amount of P20,000.00 by way of exemplary damages, to serve as an example to others in the commission of similar offense which brought about ignominy, dishonor and sufferings to complainant, Arlene Paraiso.[2]

Accused-appellant filed the instant appeal and raised the following errors:

(1)

THE HONORABLE PRESIDING JUDGE WITH ALL DUE RESPECT SERIOUSLY ERRED IN CONCLUDING THAT THE WORD "POSSIBILITY" AS USED BY PROSECUTION WITNESS DR. SAMUEL CRUZ AS REGARDS AS TO NO (sic) PARTIAL PENETRATION OF PENIS OF THE ACCUSED TO THE VAGINA OF THE COMPLAINANT WAS EQUIVALENT TO "CERTAINTY" OF PARTIAL PENETRATION OF THE PENIS OF THE ACCUSED TO THE VAGINA OF THE COMPLAINANT. THUS, WRONGLY CONVICTED THE ACCUSED.

(2)

THE HONORABLE PRESIDING JUDGE WITH ALL DUE RESPECT SERIOUSLY ERRED IN CONCLUDING THAT SINCE THE ACCUSED WAS THE ONLY MAN IN THE ROOM WHICH WAS NOT ONLY DARK BUT SMALL, HE WAS THE RAPIST OF THE COMPLAINANT. THE HONORABLE JUDGE LIKEWISE SERIOUSLY ERRED IN CONCLUDING THAT THE WORD "NONG" IN THE SENTENCE "NONG ENOUGH" ALLEGEDLY UTTERED BY THE COMPLAINANT REFERRED TO THE ACCUSED. THE HONORABLE PRESIDING JUDGE GRAVELY ERRED IN NOT CONSIDERING THAT THE EVIDENCE OF THE PROSECUTION FAILED TO POSITIVELY IDENTIFY THE ACCUSED AS PERPETRATOR OF THE ALLEGED RAPE.

(3)

THE HONORABLE PRESIDING JUDGE WITH ALL DUE RESPECT SERIOUSLY ERRED IN NOT CONSIDERING THE ILL MOTIVES OF THE MOTHER OF THE COMPLAINANT IN FILING THIS CASE.

(4)

THE HONORABLE PRESIDING JUDGE WITH ALL DUE RESPECT SERIOUSLY ERRED IN CONCLUDING THAT THE COMPLAINANT WAS A CREDIBLE WITNESS EVEN WITH THE PRESENCE OF GROSS INCONSISTENCIES WHICH ARE SUFFICIENT TO THE MIND OF AN AVERAGE PERSON TO CAST A REASONABLE DOUBT ON ACCUSED'S GUILT.[3]

Under Article 335 (now Article 266-A[1]) of the Revised Penal Code, as amended by R.A. No. 8353, rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances:

- (a) Through force, threat or intimidation;
- (b) When the offended party is deprived of reason or otherwise unconscious;
- (c) By means of fraudulent machination or grave abuse of authority; and
- (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (*Italics supplied*)

Considering that the victim in this case was only eleven years old at the time of the rape, no proof of involuntariness on her part is necessary. She is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant, the only circumstance that needs to be proved is the fact of intercourse.[4]

In order to sustain a conviction for rape, full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ within the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape. Thus, the fact that the victim's hymen is intact and has no sign of laceration does not negate a finding that rape was committed.[5]

Accused-appellant contends that he was not positively identified by Arlene as the perpetrator of the crime. He claims that some other male person might have entered the room and perpetrated the crime.

Accused-appellant's claim lacks basis. It is a mere presumption and it pales in significance when placed vis-à-vis the positive and candid account of the victim, Arlene.

As correctly observed by the trial court:

In her open, straight-forward and unhesitating testimony, complainant was certain, in the middle of the night on September 6, 1998, accused molested her by first removing her panty and thereafter inserted his penis inside her vagina which caused pain in her vagina after his penis was inside, she felt accused made a push and pull movement. Accused stopped only, when complainant said to him, "Nong, enough".

Even in the following morning accused kept on kissing her but she slapped and kicked accused.[6]

The trial court thus concluded:

The court cannot find positive falsity on the lone testimony of complainant, rather on the basis of credibility it appears complainant deserve a loud acceptance for telling the truth of what happened on the incident in question.[7]

Time and again, this Court has ruled that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by a trial court because of its unique opportunity to observe the witnesses firsthand; and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and

conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. Since appellate courts have access only to inanimate transcripts of stenographic notes of the testimonies of the witnesses during the trial and to the various documentary evidence adduced by both parties, they must rely on the assessment of the trial court regarding the credibility of the witnesses.[8]

Accused-appellant nonetheless submits that the trial court overlooked gross inconsistencies in Arlene's testimonies which cast doubt on her credibility. Specifically, accused-appellant points out that in her direct examination, Arlene testified that after accused-appellant removed her panties, accused-appellant inserted his penis into her vagina. However, during the court's clarificatory questioning, Arlene testified that accused-appellant removed her panties, asked her to place her legs on his back, kissed her on her left cheek, carried her in his arms and touched her breast.

Contrary to accused-appellant's contention, there are no inconsistencies in Arlene's testimonies. The questions were different and were intended to elicit different answers. In the direct examination, the questions specifically revolved around the act of molestation itself, i.e., the removal of the panties and the insertion of accused-appellant's penis into Arlene's vagina.[9] In the clarificatory questioning, the questions were general as to what acts were committed against Arlene by accused-appellant.[10] Arlene answered that accused-appellant removed her panties, asked her to place her legs on his back, kissed her on her left cheek, carried her on his arms and touched her breast. Accused-appellant's acts, as enumerated by Arlene in her answer, were either preparatory to or indicative of the sexual intercourse forced by accused-appellant on Arlene. Although the trial court was obviously trying to elicit an answer detailing the sexual act itself, Arlene, being then only eleven years old, could not be expected either to fully grasp the import of the questions propounded to her or to be sophisticated and knowledgeable in the ways of sex.

Regardless, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[11] Youth and immaturity are generally badges of truth and sincerity.[12]

Not even an insinuation of ill-motive on the part of Arlene's mother can detract from the truth. The theft of a pot of rice allegedly committed by Arlene's uncle borders on the preposterous to even serve as a motive, much more a credible one, for Arlene or her mother to charge accused-appellant with rape.

Be that as it may, ill-motive is never an essential element of a crime. It becomes inconsequential in a case where there are affirmative, nay, categorical declarations towards accused-appellant's accountability for the felony.[13]

In the case at bar, accused-appellant's denial cannot overcome Arlene's affirmative and categorical declarations against him. The trial court, therefore, did not err in convicting accused-appellant of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua. The first paragraph of Article 266-B of the Revised Penal Code provides:

Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x x x x x.

In convicting accused-appellant, the trial court further ordered accused-appellant to pay the amount of P30,000.00 by way of moral damages and the amount of P20,000.00 as exemplary damages. In *People v. Belga*,[14] it was

held that civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion. Thus, in line with prevailing jurisprudence which treats the imposition of civil indemnity as mandatory upon a finding of rape, accused-appellant is ordered to pay the additional amount of P50,000.00 pesos as civil indemnity ex delicto.[15]

Likewise, consistent with prevailing jurisprudence, the award of moral damages in the amount of P30,000.00 is increased to P50,000.00. The award of exemplary damages is deleted for lack of factual basis.

On a final note, although the trial court was correct in imposing the penalty of reclusion perpetua, it should have cited Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, which is the law in effect at the time of commission of the rape on September 6, 1998, instead of Article 335, as amended by R.A. No. 7659.

WHEREFORE, based on the foregoing, the assailed Decision of the Regional Trial Court of Davao City, Branch 17, finding Sotero Serado guilty of rape and sentencing him to suffer the penalty of reclusion perpetua is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay Arlene Paraiso the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] Rollo, p. 6.

[2] Penned by Judge Renato A. Fuentes.

[3] Rollo, pp. 72-74.

[4] *People v. Manuel*, 298 SCRA 184 1998.

[5] *People v. Manuel*, supra.

[6] Decision, Records, p. 64.

[7] *Ibid.*, p. 65.

[8] *People v. Daramay*, G.R. Nos. 140235 & 142748, May 9, 2002.

[9] TSN, December 4, 1998, pp. 8-9.

[10] *Ibid.*, p. 14.

[11] *People v. Manuel*, supra.

[12] *People v. Lusa*, 288 SCRA 296 1998 .

[13] *People v. Dy*, G.R. Nos. 115236-37, January 29, 2002.

[14] 349 SCRA 678 2001.

[15] *People v. Padrigone*, G.R. No. 137664, May 9, 2002.

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