

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRIS PAROCHA Y MAMON, ACCUSED-APPELLANT.

G.R. No. 138866. March 06, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This case originated from an Information charging accused-appellant Cris Parocha y Mamon with the crime of statutory rape, committed as follows:

On or about May 14, 1997, in San Juan, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Angel Jungco y Rino, a minor, eight years old, against her will and consent.

Contrary to law.[1]

Accused-appellant pleaded “Not Guilty” to the accusation and trial on the merits ensued.

The evidence for the prosecution consisted mainly of the testimony of Jernnie Jungco, the eleven year-old brother of the victim.

Jernnie recalled that on 14 May 1997, at around four o’clock in the morning, their mother Rebecca Jungco left their house to wash the clothes, leaving him and his eight-year old sister, Angel in their bedroom.[2] After their mother left, Jernnie went out of the bedroom to urinate. While he was urinating, Jernnie noticed accused-appellant Cris Parocha going up their house.[3] He also noticed that Parocha removed his shirt and covered his face with it.[4] Parocha next went to the kitchen, got a knife and went inside the bedroom.[5] Parocha then pulled the hair of Jernnie, and proceeded to remove the shorts and panty of Angel who was then still asleep.[6] Parocha next removed his shorts and brief and went on top of Angel.[7] Angel woke up and tried to shout but Parocha covered her mouth.[8] Parocha remained on top of Angel for about five (5) minutes[9] after which Jernnie saw blood on the mat.[10] Thereafter, Parocha asked Jernnie where his mother was keeping their money. Jernnie answered that he did not know. Parocha told Jernnie to be silent about what he witnessed, otherwise, he would return and kill him. As soon as Parocha left them, Jernnie and Angel went to their mother to report what Parocha did.[11]

Jernnie and Angel, together with their mother, went to their Ate Celia, and they all proceeded to the police station to report the incident. They were referred to the Philippine National Police (PNP) in Camp Crame where Angel was subjected to a physical examination.

Dr. Romeo T. Salen, Chief of the Medico-Legal Division of the PNP Crime Laboratory in Camp Crame who conducted the physical examination, testified that he found that the loss of Angel’s virginity occurred in not more than twenty-four (24) hours from the time of the examination.[12] The laceration on the hymen was still fresh and bleeding.[13] He also found other injuries on the other parts of the vagina, including congestion of the labia minora, the vestibule and posterior fourchette.[14] He further testified that the cause of the injury could be caused

by the introduction to the genital area of a hard blunt object including an erect male reproductive organ.[15]

Dr. Olga N. Bausa, Pathologist of the PNP Crime Laboratory, Camp Crame, testified that she conducted a laboratory examination on the short pants of the victim[16] and found that it was positive for the presence of human blood.[17]

For the defense, accused-appellant Cris Parocha testified that on 13 May 1997, at around eleven o'clock in the evening, he was with Dennis Haber drinking beer at the store owned by Ciela.[18] Later, his mother fetched him and they went home. He and his mother parted ways with Dennis near their house.[19] He was surprised when the policemen arrived the following morning and arrested him.[20] Dennis Haber corroborated the testimony of accused-appellant.[21]

Vicitacion Villarazo testified that she was washing clothes in front of the house of accused-appellant around 11:30 p.m. on 13 May 1997.[22] She finished washing at around 5:00 a.m.[23] She stated that she noticed the arrival of accused-appellant and his mother and she never saw accused-appellant leave the house thereafter.[24]

After trial, the court a quo found Parocha guilty as charged and ruled, as follows:

WHEREFORE, premises considered, this Court finds accused, CRIS PAROCHA y MAMON, guilty beyond reasonable doubt of the crime of rape as charged and imposes upon him the penalty of reclusion perpetua; to indemnify Angel Jungco the sum of P50,000.00 and to pay the costs.

SO ORDERED.[25]

The trial court having denied his motion for reconsideration, Parocha promptly filed a notice of appeal.

We affirm the conviction of accused-appellant.

Accused-appellant faulted the prosecution for not presenting the victim in the witness stand. However, the non-presentation of the victim does not necessarily weaken the prosecution's stand.

Ordinarily, the testimony of the offended party is of utmost importance in a rape case because the victim and the alleged perpetrator are the only participants who can testify as to its occurrence. Nevertheless, the prosecution may opt not to present the offended party, especially one so young as in this case, on the witness stand to spare her the humiliation and pain of recalling once more the dastardly act she has suffered from the hands of the accused. As long as there are other evidence that could prove the commission of the crime beyond reasonable doubt, the Court is not in the position to inquire into the exercise of the prosecution's discretion. Thus, this Court ruled:

Failure to present the offended party as a witness does not constitute sufficient ground for dismissal. The testimony of the offended party is not essential to convict the defendant. Whether the offended person is to appear or not as a witness in a criminal case, depends upon the prosecuting officer, who is given by law discretion to use him as witness or not. The fact that said officer in the exercise of his discretion does not present the offended party as a witness, does not detract from the efficacy of the proceeding, and does not constitute ground for dismissal thereof. The sufficiency or insufficiency of the evidence in a criminal case does not depend upon whether the offended party took the witness stand or not.[26]

In the case before this Court, the prosecution instead presented Jernnie Jungco, the brother of the victim. Jernnie is an eyewitness to the incident. He saw accused-appellant enter their house. He was also inside the bedroom with the victim while the act was being committed. He sufficiently testified to the fact of the rape and the identity of the perpetrator. His testimony before the trial court was candid, straightforward and convincingly established the commission of the crime. He stated:

Q:

Do you recall where you were at about 4:00 o'clock in the morning on May 14, 1997?

A:

Inside our house sleeping, Sir.

Q:

Do you know if (sic) who was with you at that time?

A:

Yes, Sir. My sister.

Q:

Do you know where your mother was during that time?

A:

Yes, Sir.

Q:

Where was she at that time?

A:

She was at the shop washing, Sir.

Q:

How far is this shop from your house, if you know?

A:

It takes 5 minutes to go there, Sir.

Q:

Was there any untoward incident happened on May 14, 1997?

A:

Yes, Sir. My sister was raped.

Q:

How did it start, if you can still recall?

A:

He removed the panty and shorts of my sister, he also removed his shorts and brief and he went on top of my sister, Sir.

Q:

When you said he, whom are you referring to?

A:

Cris Parocha, Sir.

Q:

If he is present in Court, can you please point him?

A:

Yes, Sir.

Q:

Could you please point to Cris Parocha?

A:

(Witness went down the witness stand and tapped the shoulder of a person of Cris Parocha who is wearing a yellow t-shirt and maong pants.)

xxx

Q:

Why do you know that it was Cris Parocha who raped your sister that early morning on May 14, 1997?

A:

Because I saw him going upstairs, Sir.

Q:

And what were you doing when you saw him going upstairs?

A:

I was urinating when I saw him going upstairs?

Q:

What was he wearing, if you remember?

A:

White sando and blue pants, Sir.

Q:

What did you do next when you saw him going upstairs of your house?

A:

I went inside our mosquito net, Sir.

Q:

Who was with you in that mosquito net?

A:

My sister, Ma'am.

Q:

Angel Jungco?

A:

Yes, Sir.

Q:

What was the condition of the lighting in relation in that room?

A:

It is lighted, Sir.

Q:

Do you have a fluorescent lamp or bulb?

A:

Fluorescent lamp, Sir.

Q:

When you were inside the mosquito net, what did Cris Parocha do, if you can recall?

A:

He was looking for a knife, Sir.

Q:

What did he do with his sando, if you can still recall?

A:

He used it to cover his face, Sir.

Q:

Did he find any knife at your kitchen, if you know?

A:

Yes, Sir.

Q:

What did he do with that knife, if you know?

A:

He pointed it to us, Sir.

Q:

After he pointed that knife to you, what happened next?

A:

He pulled my hair, Sir.

Q:

Do you know if your sister already awaken?

A:

No, Sir she was still sleeping. When he put himself on top of my sister, that's the time that she was waken.

Q:

Why do you know that she was awaken?

A:

When he put himself on my sister, Sir.

Q:

Did you hear the voice of your sister?

A:

No, Sir, I saw her because I was peeping.

Q:

What was Cris Parocha doing when you peeped?

A:

He was raping my sister, Sir.

Q:

What do you mean when you said, he was raping?

A:

He put himself on top of my sister, Sir.

Q:

Did you see that he was wearing blue pants?

A:

Yes, Sir.

Q:

What did he do with that pants, if you know?

A:

He removed it, Sir.

Q:

What did he do with the clothing of your sister?

A:

He removed the short and panty of my sister, Sir.

Q:

And that was the time when he put himself on top of your sister?

A:

Yes, Sir.

Q:

Do you recall when you were peeping, how long was Cris Parocha on top of your sister?

A:

Five (5) minutes, Sir.

Q:

After five (5) minutes, what happened next if you can recall?

A:

He asked me where the money of my father and mother was kept.

Q:

What did you tell him?

A:

I told him, I do not know, Sir.

Q:

What happened next?

A:

He threatened me that if I will make a report, he will come back and kill me.

Q:

Do you recall of what happened next?

A:

He went downstairs.

Q:

What did you do when he left or went downstairs?

A:

I went to my mother and I reported that my sister was raped, Sir.[27]

Jernnie could not have committed a mistake about the identity of accused-appellant because he has known him for about a year prior to the incident.[28] Jernnie also sufficiently explained his failure to help his sister or to ask for help when he declared that he was afraid[29] because accused-appellant was pointing a knife at him.[30]

Accused-appellant pointed out that the medical examination on the victim failed to show any external injury, and presence of spermatozoa. Absence of external signs of physical injuries does not cancel out the commission of rape.[31] Despite the absence of physical injuries, the medical examination showed that the victim suffered fresh laceration on the hymen and other injuries on the genital area. In addition, it is a settled rule that the presence or absence of spermatozoa is immaterial in a prosecution for rape.[32]

The elements of statutory rape are: (1) that the accused had carnal knowledge of a woman and (2) that the woman is below twelve years of age.[33] This Court ruled that on the matter of the age of the child, the testimony of the mother is admissible as she is in the best position to know when she delivered her child.[34] Unfortunately, the transcript of stenographic notes of the testimony of Rebecca Jungco is not among those forwarded to the Court since the stenographer who took them down ceased to be employed with the trial court[35] and she already moved to another residence.[36] In a resolution, dated 09 February 2000, the Court required the parties to inform the Court if they have copies of the missing stenographic notes and if they have, to submit the same to the Court. In case they have no copies of the missing notes, the parties were also directed to inform the Court if they are willing to submit the case for decision without the said notes.[37] Only the counsel for accused-appellant manifested his willingness to submit the case for decision without the missing stenographic notes.[38] The Solicitor General, for its part, submitted an appellee's brief even without the lacking stenographic notes.

In view of the absence of the testimony of the victim's mother, the Court has no way of knowing the real age of the victim and it could not convict accused-appellant for statutory rape. Nevertheless, this is not sufficient to allow accused-appellant to go scot-free. He could still be convicted for the crime of simple rape in view of the categorical testimony of Jernnie that he and his sister were intimidated by accused-appellant who was holding a knife while the dastardly act was being committed. The fear caused by the threat to their lives was sufficient to cow not only the young victim but also her equally young brother.

Anent the allegation that accused-appellant was arrested and detained in violation of his constitutional right to counsel, it should be stressed that no testimony was taken from him during his detention, and if there were any, it was never presented as evidence against him during the trial. Hence, accused-appellant's contention must fail.[39]

The defense of alibi must also be rejected by this Court. Time and again, this Court has ruled that for alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime.[40] Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi seldom will hold water.[41] The Court finds incredible the testimony of Vicitacion Villarazo that she was washing clothes in front of the house of accused-appellant from 11:30 p.m. to 5:00 a.m. and that she never saw him leave the house. It would not be possible for her to notice everything that was going on inside the house of accused-appellant especially since she was busy with her own chore. Accused-appellant could have easily left the

house without her knowing it.

The Court notes that the trial court only awarded an indemnity of P50,000.00 to the victim. In addition to indemnity, moral damages should also be awarded since the rape victim's injury is inherently concomitant to and results from the odiousness of the crime.^[42]

WHEREFORE, the decision of the Regional Trial Court of Pasig City, Branch 163, is AFFIRMED with MODIFICATION that in addition, accused is ordered to pay the victim the amount of P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 15.

[2] TSN, 03 October 1997, p. 8.

[3] Id., at 10.

[4] Id., at 10-11.

[5] Id..

[6] Id., at 11-12.

[7] Id.

[8] Id., at 11; TSN, 07 November 1997, p. 9.

[9] TSN, 03 October 1997, p. 12.

[10] TSN, 07 November 1997, p. 12.

[11] TSN, 03 October 1997, p. 12.

[12] TSN, 12 December 1997, p. 9.

[13] Id., at 11.

[14] Id., at 9.

[15] Id., at 11-12.

[16] TSN, 03 July 1998, p. 4.

[17] Id., at 6.

[18] TSN, 14 October 1998, pp. 4-5.

[19] Id.

[20] Id., at 6.

[21] TSN, 04 November 1998.

[22] TSN, 24 November 1998, p. 4.

- [23] Id., at 5.
- [24] Id., at 4-5.
- [25] Rollo, p. 18.
- [26] See *People vs. Juliada*, 54 Phil. 485 (1930).
- [27] TSN, 07 November 1997, pp. 8-12.
- [28] Id., at 13.
- [29] Id., at 6.
- [30] Id., at 9.
- [31] *People vs. Osing*, G.R. No. 138959, 16 January 2001.
- [32] *People vs. Arcillas*, 348 SCRA 729 (2000).
- [33] *People vs. Boras*, 348 SCRA 638 (2000).
- [34] Id.
- [35] Rollo, p. 54.
- [36] Id., at 96.
- [37] Id., at 56.
- [38] Id., at 67.
- [39] See *People vs. Johnson*, 348 SCRA 526 (2000).
- [40] *People vs. Rabang, Jr.*, 315 SCRA 451 (1999).
- [41] *People vs. Santiago*, 319 SCRA 644 (1999).
- [42] *People vs. Pecayo, Jr.*, 348 SCRA 95 (2000).

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