

CRESENCIO S. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 141512. April 16, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Fourth Division of the Court of Appeals affirming the decision of the Regional Trial Court, Branch 54, Macabebe, Pampanga, which found petitioner Cresencio S. Mendoza guilty of attempted rape and sentenced him to imprisonment of six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

The information against petitioner alleged:[2]

That on or about the 15[th] day of May 1995, in Barangay Sampaloc, Municipality of Apalit, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Cresencio Mendoza did then and there willfully, unlawfully, and feloniously commence the commission of the crime of rape directly by overt acts, to wit: by then and there kissing and touching the private parts of Eloisa Vasquez, ripping and tearing her dress, and placing himself atop said victim with his pants and underwear down in pursuance of his intention of having carnal knowledge of said victim, but nevertheless did not consummate the crime of rape as a consequence, by reason of causes other than the spontaneous desistance of the accused, that is by the resistance offered by said Eloisa Vasquez and her cries for help and the timely arrival of other people.

Contrary to law.

Upon arraignment on February 2, 1993, petitioner pleaded not guilty to the crime charged.[3] As he waived the pre-trial, trial on the merits ensued, during which the prosecution presented SPO2 Francisco Cortez, Elma Cabrera, Emma Bayano Vasquez, and Eloisa Vasquez as witnesses. On the other hand, the defense presented petitioner and his son Alberto Mendoza.

The evidence for the prosecution shows the following:

Petitioner Cresencio S. Mendoza is the owner of the Apalit Cockpit Arena in Sampaloc, Apalit, Pampanga. His daughter Marilou ran a store in the cockpit, employing complainant Eloisa Vasquez.[4] On March 15, 1995, Eloisa reported for work at around 1:00 p.m. because of a cockfight that afternoon.[5] At around 6:30 p.m., after the last cockfight and the customers in the store had left, Eloisa went inside a room to unplug the freezer.[6] After unplugging the freezer, Eloisa was about to leave the room when she saw petitioner standing by the door.[7] Petitioner blocked her way, pushed her inside the room, and then locked the door behind them. Petitioner then embraced Eloisa and kissed her on the neck and the lips.[8] Despite Eloisa's resistance, petitioner succeeded in removing her shirt and pulling her pants and panties down to her knees and touching her private parts.[9] Petitioner removed his pants and forced the victim to lie down on the cement floor. He placed himself on top of her and thrust his hips against hers.[10] But Eloisa kept moving, making it difficult for petitioner to penetrate her,

until suddenly someone outside kicked the door. Petitioner hurriedly stood up, put on his pants, and then opened the door. The intruder turned out to be Albert Mendoza, petitioner's son, who had wanted to get inside the room.[11] Petitioner left in a hurry as his son Albert proceeded to the store.[12] Eloisa put on her clothes and left crying.[13] On her way out, she met Robin and Elma Cabrera. Elma embraced Eloisa as she listened to the latter's story.[14] The two women then went to the store where they met Marilou Mendoza, the daughter of petitioner. Eloisa told Marilou what petitioner had done to her.[15] Petitioner and her parents reported the matter to the police authorities of Apalit, Pampanga. Eloisa and her mother gave statements to the police. In addition, Eloisa signed a criminal complaint for attempted rape.[16]

On the other hand, the defense presented evidence to the following effect:

On March 15, 1995, at around 6:30 p.m., after the last cockfight, petitioner went inside the power room to turn off the lights and electric fans in the arena. He saw Eloisa sitting on a chair beside the door. Eloisa followed him inside the room and held his right hand. He told her, however, not to do that lest his wife and children see them. Petitioner claimed that Eloisa asked for money, but he refused to give her any.[17] At that point, petitioner's son, Albert, opened the door and came in. Seeing petitioner talking to Eloisa, Albert asked, "What are you doing here? My mother might get angry if she sees you talking." Petitioner then turned off the lights in the stadium and left.[18] Petitioner denied the accusation against him and claimed that he did not know why Eloisa would file a case of attempted rape against him.[19] On October 28, 1997, the trial court promulgated its decision, the dispositive portion of which states:[20]

WHEREFORE, from all the foregoing, the Court finds the accused Cresencio Mendoza guilty beyond reasonable doubt of Attempted Rape as defined and penalized under Art. 6 in relation to Art. 335 of the Revised Penal Code, and as a consequence of which, he is hereby sentenced to suffer imprisonment of SIX YEARS and ONE DAY to EIGHT YEARS of Prison Mayor and to indemnify the offended party in the amount of P20,000 and pay the cost of the proceedings.

SO ORDERED.

On appeal to the Court of Appeals, the decision of the trial court was affirmed with modification. Petitioner's sentence was changed to six (6) years of prison correccional, as minimum, to eight (8) years and one (1) day of prison mayor, as maximum. Petitioner filed a motion for reconsideration, but his motion was denied. Hence, this petition. Petitioner alleges that the Court of Appeals overlooked relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion or finding of facts.

After reviewing the records of the case, we are of the opinion that the decision of the Court of Appeals should be affirmed.

First. In adjudging rape cases, this Court is guided by the following principles: (a) an accusation of rape is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the nature of the crime in which only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[21] As in most cases of sexual aggression and molestation, the resolution of the present appeal hinges on the issue of credibility of the witnesses of the parties. On this point, we think the Court of Appeals correctly sustained the decision of the trial court which found the testimony of the victim and the other witnesses for the prosecution worthy of belief. The trial court's assessment of the credibility of witnesses should be accorded great respect because of its opportunity to hear their testimonies and observe their demeanor and manner of testifying.[22] Indeed, we find Eloisa's testimony, both on direct and cross-examination to be clear and spontaneous, and we are persuaded that she was telling the truth. Eloisa

narrated in detail how petitioner had tried to rape her on or about May 15, 1995:[23]

FISCAL BUSTOS

Questioning

You mentioned, Ms. Witness, that at about 6:30 o'clock in the evening of May 15, 1995, you were already through with your work as a vendor at the Apalit cockpit arena, do you want us to understand that you do not have any more customers at that time?

WITNESS

Answering

None anymore, sir.

Q:

What did you do when you had no more customers?

A:

I already packed up the merchandise, sir.

Q:

After you were able to pack up your things, what else did you do?

A:

I entered the room, sir, in order to unplug the socket of the freezer.

Q:

Then, what transpired inside the room?

A:

I had already unplugged the socket, sir, and when I was about to go out of the room, I saw Mr. Mendoza.

Q:

When you saw this Cresencio Mendoza by the door, what happened?

A:

I was trying to pass, sir, but he didn't want me to go out.

Q:

And then what did you do?

A:

He pushed me to the inner side of the room, sir.

Q:

So, was he able to push you to the inner side of the room?

A:

Yes, sir.

Q:

Then, what happened to the door?

A:

He locked it, sir.

Q:

And then what else did he do?

A:

He approached me, sir.

Q:

And then what else transpired when he approached you?

A:

He embraced me, sir.

Q:

How about you, what did you do when he embraced you?

A:

I was trying to release myself, sir, and I was crying.

Q:

Were you able to release his hold from you?

A:

I was not able to, sir.

Q:

And then what else did he do?

A:

He kissed me on my lips and my neck, sir.

Q:

While he was doing that, what were you doing?

A:

I was trying to release myself from him, sir, I was shouting and I was crying.

Q:

Were you able or were you successful in trying to release his hold from you?

A:

I was not, sir.

Q:

Then, what did he do next?

A:

After that, he was trying to pull my clothes, but I was trying to get away from him until I was pushed against the wall.

Q:

Was he able to remove your upper shirt, what else did Cresencio Mendoza do?

A:

And after he was able to remove my upper dress, sir, he embraced me tightly.

Q:

What else did he do?

A:

He was trying to pull down my pants and he was able to pull it down to the knee.

Q:

And, at that time, what was your position?

A:

I was standing, sir.

Q:

And what were you doing?

A:

I was crying, sir.

Q:

What else?

A:

I was resisting him, sir.

Q:

Now, after Cresencio Mendoza was able to pull your pants down to your knees, what else did he do?

A:

Mr. Mendoza also pulled down his pants, sir.

Q:

After pulling down his pants, what else did he do?

A:

He laid me down and put himself on top of my body, sir.

Q:

What else did he do?

A:

He was making push and pull (coitus) movements.

Q:

At that time, you said he was already able to remove his pants, was he wearing anything else at that time aside from his pants?

A:

He was not, sir.

Q:

So he was not able to remove his brief?

A:

He was not, sir.

Q:

How about you, was he able to remove your panty?

....

A:

Yes, sir, he was able to pull it down.

Q:

Now, you said that after he was able to have you lie down, he started to do coitus movements while he was on top of you, now, was he successful in having sexual intercourse with you?

A:

He was not able to insert it in my vagina, sir.

Q:

Now, at the time that he was making coitus movements, what did you feel, did you feel the penetration?

A:

Yes, sir.

Q:

Please tell the Honorable Court why he was not successful in inserting his private part into your vagina.

A:

Because I was resisting, sir.

Q:

Please tell the Honorable Court how you were resisting at the time.

A:

I was moving my legs to my left and to my right, sir.

....

Q:

Yes, Your Honor. After that, what else transpired?

A:

Bet kicked the door, sir, and he was saying, Father, wait.

Q:

Who is this Bet who kicked the door?

A:

He is the son of Mr. Mendoza, sir.

Q:

After this son of Mr. Mendoza kicked the door of that room, was that door opened?

A:

It was not, sir.

Q:

What did Mr. Mendoza do?

A:

He was forced to open the door, sir.

Q:

So, he stood up and took off his hold on you?

A:

Yes, sir.

Q:

And how about you, what did you do?

A:

I raised my pants up, sir.

Q:

So, you want us to understand that while opening the door, Mr. Mendoza's pants were still down?

A:

He had already raised it up, sir.

Q:

So he raised it up already before opening the door?

A:

Yes, sir.

Q:

After this, Mr. Mendoza was able to open the door, what else transpired?

A:

He already went out of the room, sir.

During cross-examination, the witness also gave a clear and positive account of her experience. She stated that petitioner removed his briefs before mounting her and that she felt a liquid substance on her body after he rubbed his private parts against hers.[24]

Second. Petitioner claims that the victim was motivated by ill will in accusing him with attempted rape. Petitioner says that the charge was filed simply for money. Other than his self-serving testimony, however, petitioner had not presented evidence to establish his claim. When there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of a crime, the conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credit.[25] Testimonies of witnesses who have no motive or reason to falsify or perjure their testimonies should be given credence. No young Filipina of decent repute would publicly admit that she has been criminally abused unless it is the truth.[26] As the Court of Appeals observed:[27]

This Court finds no reason to doubt the testimony of the complainant in this case. The testimony of a rape victim is credible when she has no motive to testify against the accused (People vs. Gagto, 253 SCRA 455; People vs. Cañada, 253 SCRA 277).

The complainant is the employee of Marilou Mendoza, the daughter of Cresencio Mendoza who operates a store in the cockpit owned by the accused. She has no reason to concoct a false accusation against the old man. His theory that the complainant was trying to borrow money from him and was caught by his son while holding his hand and thus concocted a story of attempted rape just to save herself from embarrassment is not worthy of credence. A woman will not expose herself to the humiliation of a rape trial, with its attendant publicity and the morbid curiosity it will arouse, unless she has been truly wronged and seeks atonement for

her abuse (*People vs. Cañada*, supra). Considering the inbred modesty and the consequent revulsion of a Filipina against airing in public things that affect her honor, it is hard to conceive that complainant would reveal and admit the ignominy she had undergone if it were not true (*People vs. Gecomio*, 254 SCRA 82; *People vs. Catolito, Sr.*, 265 SCRA 109).

Indeed, the claim of a young girl that she has been sexually molested and her willingness to subject herself to a public trial or ridicule cannot be easily dismissed as a mere concoction.[28] Considering the inbred modesty and antipathy of a Filipino woman to the airing in public of things that affect her honor, it is hard to conceive that Eloisa would admit the ignominy she had undergone if it were not true. By testifying, she made public a painful and humiliating secret which others would have simply kept to themselves.[29] Third. Petitioner claims that Eloisa's testimony is full of inconsistencies. For one thing, Eloisa was only 15 years old and inexperienced at the time she testified and, therefore, it is to be expected that inconsistencies would crop up in her testimony. For another, the inconsistencies referred to are minor: they relate only to trivial matters and do not affect Eloisa's credibility. They even enhance the veracity of her testimony as they erase any suspicion of a rehearsed declaration.[30] Fourth. Petitioner likewise claims that the attempted rape could not have been committed in a public place like a cockpit. As we have already noted, however, lust is no respecter of time and place,[31] and rape can be committed in many different kinds of places.[32] It can be committed in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[33] Besides, in this case, the attempted rape was committed in an empty room .

Neither is there merit in petitioner's assertion that, being already 68 years old at the time the crime was committed, he could not have overpowered the complainant. In the first place, petitioner did not present any proof of his age nor of his claim of physical infirmity. He did not prove that he was suffering from any ailment which would have prevented him from attempting to commit rape. To the contrary, the records show that he was actively running a cockpit. Moreover, we have upheld the conviction of a 60-year old man who raped a 14-year old girl;[34] a 52-year old man who raped a 15-year old girl;[35] a 78-year old man who raped a 12-year old girl;[36] and an 81-year old man who raped an 11-year old girl.[37] In one case,[38] we rejected the defense that at 65 the accused had no more sexual urge and that he could not have an erection and perform the sexual act anymore, even after a doctor had examined the accused by stimulating his organ with a wisp of cotton for three minutes and there was no erection. This is because advanced age does not necessarily mean that sexual intercourse is no longer possible, as age is not a criterion taken alone in determining sexual interest and capability of middle-aged and older people.[39] Fifth. As regards the claim that petitioner's guilt was not proven beyond reasonable doubt, suffice it to say that the law requires only moral certainty or "that degree of proof which produces conviction in an unprejudiced mind." Proof beyond reasonable doubt does not mean certainty as to exclude the possibility of error.[40] In the case at bar, the weight and quantity of evidence needed to prove petitioner's guilt beyond reasonable doubt was met and established by the prosecution. An affirmance of the verdict of conviction is therefore proper.

Art. 335 of the Revised Penal Code[41] provides that rape is committed by a man who has carnal knowledge of a woman through force, threat or intimidation. Under Art. 6, in relation to the aforementioned article, rape is attempted when the offender commences the commission of rape directly by overt acts and does not perform all the acts of execution which should produce the crime of rape by reason of some cause or accident other than his own spontaneous desistance.[42] All the elements of attempted rape are present in this case. If petitioner was not able to consummate the crime, it was because of the resistance made by Eloisa and the timely arrival of his son.

Under Art. 335 in relation to Art. 51 the Revised Penal Code, the penalty for attempted rape is *prision mayor*. In the absence of any mitigating or aggravating circumstance, the maximum of petitioner's sentence shall be *prision*

mayor in its medium period. The minimum of the sentence must be within the range of prision correccional. For lack of basis, we delete the award of P20,000.00 indemnity to the victim.[43]

WHEREFORE, the decision of the Court of Appeals finding petitioner guilty beyond reasonable doubt of attempted rape and sentencing him to pay the costs is AFFIRMED, with the MODIFICATION that he is sentenced to an indeterminate prison term of six (6) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and that the award of P20,000.00 as indemnity is deleted.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Justice Salome Montoya and concurred in by Justices Conrado Vasquez, Jr. and Teodoro Regino.

[2] Records, p. 2.

[3] Certificate of Arraignment; Records, p. 15.

[4] TSN (Eloisa Vasquez), pp. 5-6, Oct. 11, 1996.

[5] Id. p. 6.

[6] TSN (Eloisa Vasquez), p. 5, Oct. 21, 1996.

[7] Id., p. 6.

[8] Id., pp. 6-7.

[9] Id., pp. 7-8.

[10] Id., pp. 8-9.

[11] Id., pp. 8-14.

[12] Albert is also known as "Bet," "Ambet," "Ambhet," and "Alberto."

[13] TSN (Eloisa Vasquez), p. 14, Oct. 21, 1996.

[14] Id., p. 15.

[15] Id., pp. 16-17.

[16] Id., pp. 17-24.

[17] [17] TSN (Cresencio Mendoza), pp. 12-14, July 10, 1997

[18] Id., pp. 12-16.

[19] Id., pp. 16-17.

[20] Decision, p. 4; Records, p. 108.

[21] People v. Garcia, G.R. No. 117406, Jan. 16, 2001; People v. Barcelona, G.R. No. 125341, Feb. 9, 2000; People v. Bea, 306 SCRA 653 (1999).

[22] People v. Garcia, supra; People v. Salonga, G.R. No. 128647, March 31, 2000.

- [23] TSN, pp. 5-14, Oct. 21, 1996.
- [24] TSN, pp. 18-21, Nov. 27, 1996.
- [25] *People v. Tabao*, 240 SCRA 758 (1995).
- [26] *People v. Domingo*, 226 SCRA 156 (1993).
- [27] Decision of the Court of Appeals, pp. 5-6, Rollo, pp. 27-28.
- [28] *People v. Dado*, 244 SCRA 655 (1995).
- [29] *People v. Codilla*, 224 SCRA 104 (1993).
- [30] *People v. Sioc, Jr.*, 319 SCRA 12 (1999); *People v. Paranzo*, 317 SCRA 367 (1999).
- [31] *People v. Cura*, 240 SCRA 234 (1994).
- [32] *People v. Umali*, 242 SCRA 17 (1995).
- [33] *People v. Cura*, *supra*.
- [34] *People v. Elizaga*, 73 SCRA 524 (1976).
- [35] *People v. Buenaventura*, 207 SCRA 179 (1992).
- [36] *People v. Baylon*, 129 SCRA 62 (1984).
- [37] *People v. Bayuhan*, 238 SCRA 330 (1994).
- [38] *People v. Olmedillo*, 116 SCRA 193 (1986), cited in *People v. Bayuhan*, *supra*.
- [39] R. Dickinson, *Human Sex Anatomy* (2nd edition, 1949), cited in *People v. Bayuhan*, *supra*.
- [40] *People v. Esquila*, 254 SCRA 140 (1996).
- [41] Now Art. 266-A, as amended by R.A. No. 8353.
- [42] *People v. Campuhan*, G.R. No. 129433, March 30, 2000.
- [43] *Id.*; *People v. Gonzales*, G.R. No. 129894, April 11, 2000.

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