PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL GALISIM, ACCUSED-APPELLANT.

G.R. No. 144401. November 20, 2001

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is the appeal filed by Joel Galisim, assailing the Decision[1] dated June 20, 2000 of the Regional Trial Court of San Carlos City, Pangasinan (Branch 57), in Criminal Case No. SCC-3246, finding him guilty of rape and sentencing him to reclusion perpetua.

The Charge

Acting on the sworn statement filed by Maria Lyn Aquino, City Prosecutor Alejo M. Salo filed an Information[2] dated February 28, 2000, charging appellant with rape, allegedly committed as follows:

> "That on or about the 24[th] day of February, 2000, at around 12:00 o'clock in the evening at Calomboyan, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation, and with lewd design, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with the offended party Maria Lyn Aquino, a 14 years (sic) old, against her will and consent.
>
> Contrary to Article 335 of the Revised Penal Code."

Arraignment and Plea

Assisted by counsel, appellant pleaded not guilty when arraigned on March 6, 2000.[3] Thereafter, trial ensued.

The Trial

Version of the Prosecution

As principal witness for the prosecution, Maria Lyn Aquino recounted her harrowing experience in the hands of the appellant. She testified that on February 24, 2000, about midnight, she was asleep downstairs in their house at Calomboyan, San Carlos City, Pangasinan when suddenly, she felt somebody lying on top of her. She recognized the person to be Joel Galisim. The latter removed her short pants and panty and then inserted his penis into her vagina. She felt pain and cried but appellant verbally threatened her. After satisfying his lust, appellant left by jumping out of the widow. Maria Lyn saw blood in her vagina. At the time the rape incident occurred, her father was drunk and sound asleep at the balcony of their house. Maria Lyn's younger siblings, two of whom were sleeping beside her and the others who were sleeping upstairs, were not roused from their sleep. The next day, Maria Lyn reported the rape incident to her parents who in turn reported it to the local authorities.[4]

Maria Lyn's mother, Emelita Aquino, testified that she spent the night of February 24, 2000 in the house of her

sister-in-law in Malawa, Lingayen. In the morning of February 25, 2000, Maria Lyn went to her and told her that she was raped by appellant. They then reported the incident to the police authorities and executed sworn statements. She also identified the birth certificate of her daughter to prove that she was only fourteen (14) years old at the time.[5]

Dr. Ma. Salome G. Romero, Medical Officer IV of the San Carlos General Hospital, testified that on February 28, 2000, she conducted the medical examination on Maria Lyn and found genital lacerations at the 5, 9, 10 and 11 o'clock positions. She also found conjunctions at the base of the hymenal lacerations at the 5 and 9 o'clock positions which were deep, superficial lacerations. She also noted kiss marks on both sides of the neck of Maria Lyn.[6]

Version of the Defense

For his part, appellant, a married man with children, interposed an alibi as his defense. He claimed that on February 24, 2000, at eight o'clock in the evening, he was having a drinking spree with his co-workers in the barracks of a construction site. He mentioned Rodrigo and the victim's father Venerio (Benny) Aquino as his companions. According to him, the two bottles of gin that they consumed were brought by Maria Lyn and her sister Anna Lyn. They finished drinking at about eleven o'clock in the evening and he proceeded to the house of Juanito (Jacky) Fernandez together with Rodrigo, Roger and Jimmy and arrived there at twenty minutes past eleven in the evening. After consuming two more bottles of gin, he fell asleep. When he woke up he was already in the barracks. He did not know who brought him to the barracks because he was already asleep.[7]

To bolster appellant's contention that he was asleep in the barracks at the time the rape incident happened, the defense presented his co-workers, Rodrigo Cariño, Roger Caingal and Juanito Fernandez, who testified, in essence, that they had a drinking spree and that appellant fell asleep in Jacky's house, but he was carried back to the barracks by Rodrigo and Roger.

Trial Court's Ruling

On June 20, 2000, the trial court rendered the assailed Decision, the decretal portion[8] of which reads:

> "IN VIEW WHEREOF, the Court finds the accused Joel Galisim guilty beyond reasonable doubt of rape under Article 335 of the Revised Penal Code as amended by R.A. 7659, attended by the aggravating circumstance of dwelling and sentences him to suffer the penalty of reclusion perpetua and to pay the offended party Maria Lyn Aquino, P50,000.00 as civil indemnity; P50,000.00 as moral damages; P50,000.00 as exemplary damages and to pay the costs."

Hence, this appeal.

Issues

In his Brief, appellant submits that the trial court committed the following errors:

> "I
>
> THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED ON THE BASIS OF THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.
>
> II
>
> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED CONSIDERING THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT."

In sum, appellant assails the sufficiency of the evidence for the prosecution as well as the credibility of the victim

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and her testimony.

The Court's Ruling

The appeal is without merit.

Appellant's counsel argues that the prosecution failed to prove the essential element of force or intimidation[9] considering that Maria Lyn did not offer any resistance to the acts of the accused at the time the latter was allegedly forcing himself on her. Furthermore, she did not even attempt to shout despite the fact that she was not alone in the room and there were other occupants in the house. There were also no signs of extra-genital injuries on the girl's body.

We are not persuaded. The foregoing arguments are inadequate to weaken and destroy the veracity of Maria Lyn's straightforward and positive declaration as to how appellant sexually abused her.

Contrary to the contentions of the defense, failure to shout or offer tenacious resistance did not make voluntary the complainant's submission to the criminal acts of the accused.[10] Indeed, it is not necessary that force be employed inasmuch as intimidation is sufficient.[11] It has been held that intimidation is generally addressed to the mind of the victim and therefore subjective, and its presence could not be tested by any hard-and-fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime.[12] In this case, it is plain to see how a fourteen-year old girl could have been easily intimidated and cowed to submission upon waking up to find a man, who was not her boyfriend or even a close friend,[13] on top of her in the middle of the night. Appellant was a thirty-year old construction worker in the prime of his manhood while Maria Lyn was a fourteen-year old school girl at that time. Her fear naturally weakened whatever resistance she could muster at the time and as a result, appellant succeeded in accomplishing the sexual act. We quote in part her testimony which clearly shows there was intimidation on her:

"PROS. C. TAMINAYA

Q:

What did that person do when he was on top of you?

A:

He removed my shortpants and my panty, sir.

Q:

After removing your shorts and your panty what did the accused do?

A:

He inserted his penis on my vagina, sir.

Q:

What did you feel?

A:

It was painful, sir.

Q:

What did you do when you feel pain?

A:

I cried, sir.

Q:

When you cried what did the accused do?

A:

He threatened me, sir.

xxx xxx xxx

Q:

You said that when that person was on top of you, you cried?

A:

I was scared, madam."[14]

Neither availing to appellant is his contention that it would have been improbable for the rape to take place considering that her 12-year brother Jomar was sleeping at her right side while her 5-year old sister Mary Jane was on her left. The crime of rape is not always done in seclusion.[15] The Court has more than once observed that rape can be committed in a room adjacent to where the other members of the family might be or even in a room which the victim might be sharing with others.[16]

Verily, the fact of penetration is corroborated by the medical examination which revealed that the victim sustained hymenal lacerations at the 5, 9, 10 and 11 o'clock positions. The Court has held in a number of cases that when the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[17] In fine, when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[18]

The issue also being one of credibility, we apply the well-settled rule that the trial court's assessment of witnesses' credibility will not be disturbed on appeal, absent any showing of palpable error or grave abuse of discretion.[19] Appellate courts generally accord credence to the factual findings of the trial court, for the latter is in the best position to observe the witnesses' deportment and manner of testifying.[20] It is hard to believe that Maria Lyn, a teenage lass, would admit that she had been raped, promptly report it to the authorities the very next day, allow the examination of her private parts and undergo a public trial, if she had not in fact been raped.[21]

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As for appellant's alibi, it is well-established that for alibi to prevail, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.[22] Here, the defense failed to show that it was physically impossible for the accused to be at the locus criminis or its immediate vicinity when the crime was perpetrated. In fact, witnesses for the defense, namely, Rodrigo Cariño, Roger Caingal and Juanito Fernandez, testified that the barracks where they supposedly spent the night was adjacent to the nipa hut where Maria Lyn was sleeping on the night of the incident. Thus, it was not at all physically impossible for the appellant to be at the scene of the crime at that time. In any event, the appellant's defense of alibi cannot overcome the positive identification made by the victim, who had no improper motive to testify falsely against him.[23]

To conclude, the crime committed by the appellant is rape with the aggravating circumstance of having been committed in the dwelling of the victim.[24] She was raped in her own home, the sanctity of which the law seeks to protect and uphold. Accordingly, we affirm the judgment of conviction rendered by the trial court. Appellant is convicted of simple rape and the imposable penalty therefor is reclusion perpetua. Where the law prescribes a single indivisible penalty, it shall be applied regardless of the mitigating or aggravating circumstances attendant to the crime.[25] Pursuant to prevailing jurisprudence, we sustain the P50,000.00 awarded as civil indemnity and the P50,000.00 awarded as moral damages.[26] While the trial court correctly awarded exemplary damages due to the presence of one aggravating circumstance, the amount should be reduced to P20,000.00 following recent jurisprudence.[27]

WHEREFORE, the judgment convicting appellant Joel Galisim of the crime of Rape is AFFIRMED with the MODIFICATION reducing the award of exemplary damages to P20,000.00.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Judge Bienvenido R. Estrada.

[2] Original Records, pp. 1-2.

[3] OR, p. 16.

[4] TSN dated April 3, 2000, pp. 7-15.

[5] TSN dated April 3, 2000, pp. 2-6.

[6] TSN dated March 8, 2000, pp. 4-7.

[7] TSN dated May 12, 2000, pp. 2-8.

[8] Rollo, p. 66.

[9] Revised Penal Code, Art. 335:

When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;

- When the woman is deprived of reason or otherwise unconscious; and

- When the woman is under twelve years of age or is demented.

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The crime of rape shall be punished by reclusion perpetua.

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[10] People vs. Vergel, 316 SCRA 199 (1999).

[11] People vs. Javier, 311 SCRA 122 (1999).

[12] People vs. Sagun, 303 SCRA 382 (1999).

[13] TSN dated April 3, 2000, p. 15.

[14] TSN dated April 3, 2000, pp. 8-9; p. 13.

[15] People vs. Silvano, 309 SCRA 362 (1999).

[16] People vs. Abella, 315 SCRA 36 (1999).

[17] People vs. Bation, 305 SCRA 253 (1999).

[18] People vs. Motos, 317 SCRA 96 (1999).

[19] People vs. Antonio, 303 SCRA 414 (1999).

[20] People vs. Manahan, 315 SCRA 476 (1999).

[21] People vs. Perez, 296 SCRA 17 (1998).

[22] People vs. Venerable, 290 SCRA 15 (1998).

[23] People vs. Alojado, 305 SCRA 236 (1999).

[24] Art. 14 (3), Revised Penal Code.

[25] Art. 63, Revised Penal Code.

[26] People vs. Perez, 307 SCRA 276 (1999).

[27] People vs. Rodrigo Gonzales, G.R. No. 139445-46, June 20, 2001.

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