

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO ORANI Y DULOG, ACCUSED-APPELLANT.

G.R. No. 144429. July 30, 2002

Ponente: VITUG, J.

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VITUG, J.:

Norberto Orani was charged with raping an eight-year old girl, Jenelyn Nuyad, in an information that read:

“That on or about 12:00 o’clock noon of November 27, 1996, at Sitio Lapu-lapu, Barangay Ineangan, Municipality of Dupax del Norte, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of violence and intimidation and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of Jenelyn Nuyad, eight (8) years old, against her will and consent, to her damage and prejudice.”[1]

At his arraignment, the accused entered a plea of “not guilty;” trial ensued.

Jenelyn Nuyad, the complaining witness was the first to be presented by the prosecution. Jenelyn testified that, about lunchtime on 27 November 1996, her mother, Lilia Salvador, left her alone in the house. Not much later, she went to the place of their neighbor, Joven Orani, to play but soon returned after she was scolded by Joven for having supposedly damaged his plants. Just as she got back home, the accused, Norberto Orani, barged in and hastily brought Jenelyn to her room. Caught by surprise, she called out for help but the accused was quick to cover her mouth. He pushed her down and undressed her. The accused inserted his penis into her private part and made a “pumping motion.” After he was done with her, a white fluid (“kisit”) came out of his penis. The accused threatened Jenelyn not to report the incident to anyone or she would get killed. Despite this warning, Jenelyn narrated what had happened to her mother, Lilia, when the latter arrived home. Lilia promptly brought Jenelyn to the police authorities and then to Dr. Rowena Rosario for examination.

According to Dr. Rosario, the breasts of the young girl yielded no remarkable signs of manipulation, her vagina showed no abrasion but only reddening; the clitoral region also showed no sign of ruse handling. What was apparent, Dr. Rosario said, was the presence of three old lacerations. She did not discard the presence of “trauma” in the girl’s private part; thus, despite the absence of abrasion, her vagina could have been slightly penetrated.

The defense put to the witness stand accused Norberto Orani who denied the accusation hurled against him. He claimed that on 27 November 1996 he was at the public market with his wife and Lilia, the mother of the complainant herself; until about noon to sell vegetables. He arrived home at one o’clock in the afternoon. He asseverated that Lilia had an axe to grind against him because her pleas to have her house built on their land was refused by his family. The accused added that he was among the barangay tanods who had reported a rape incident involving Jenelyn and Lilia’s common-law-husband, Pio Reyes, sometime before.

Carmen Acosta, a co-vendor of the Oranis, corroborated, in part, the testimony made by the accused, saying that she rode home with appellant and his wife, together with Lilia, at about lunchtime on 27 November 1996. Once

the news about the reported rape had reached her, she voluntarily presented herself to testify in court. At one time, when she and Lilia had a chance to talk about the case, the latter said that she would withdraw her accusation only if Orani were to give her P20,000.00.

The trial over, the court a quo convicted the accused but only for simple rape on account of the failure of the prosecution to prove the real age of Jenelyn. The trial court held:

“WHEREFORE, in view of the foregoing, the Court finds the accused, NORBERTO ORANI y DULOG, guilty beyond reasonable doubt of the crime of Rape penalized under Sec. 1 of Article 335 as Amended by R.A. 7659 and hereby sentences him to suffer the penalty of RECLUSION PERPETUA. Accused is further ordered to pay the victim, JENELYN NUYAD, the amount of FIFTY THOUSAND PESOS (P50, 000.00) as indemnity ex delicto.”[2]

In his appeal to this Court, the convicted accused gave the following assignment of errors:

“I

“THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE.

“II

THE TRIAL COURT LIKEWISE ERRED IN DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.”[3]

In most rape cases, like here, the Court is confronted with the issue of credibility, a task that is not always easy to discharge because it is left, almost invariably, with only the testimony of the accused and the complainant to rely on, virtually admitting of no other direct evidence. Thus, the Court is often constrained to take the word of the trial court, and it is only when matters of significance and substance have apparently been overlooked[4] that the findings of the trial court are re-examined and even at times discarded. The case at bar poses no problem in the application of this long established general rule of giving respect to the trial court in its evaluation.

Despite her young age, Jenelyn was clearly straightforward in narrating her ordeal before the court below. She testified:

“Q Madam witness on November 27, 1996 at noon where were you?

“A I was inside our house, sir.

“Q Again, where is your house located?

“A Lapu-lapu, Ineangan, Dupax del Norte, sir.

“Q On November 27, 1996 at noon time did you see or ever met this Norberto Orani?

“A Yes, sir.

“Q Where have you seen this Norberto Orani?

“A Inside the house, sir.

“Q Whose house was that?

“A At our house, sir.

“Q In what particular part of your house did you see Norberto Orani?

“A In the room, sir.

“Q And you were also in the room at that time?

“A Yes, sir.

“Q Were you the only two persons inside the room?

“A Yes, sir.

“Q While the two of you were in the room that day of November 27, 1996, what happened next?

“A He [laid] me down, sir.

“Q And what did you do when he [laid] you down?

“A I shouted, sir.

“Q What did Orani do when you shouted?

“x x x x x x x x

“A He covered [my mouth] with his hand, sir.

“Q After covering your mouth with his hand, what else did he do to you?

“A He undressed me, sir.

“Q You said he undressed you, what did he remove from you?

“A My shorts, sir.

“Q And after removing your shorts, were you still wearing anything?

“A No more, sir.

“Q You have no more panty?

“A No more, sir.

“Q After Orani removed your shorts, what did Orani do also?

“A He undressed himself also, sir.

“Q When you said undress, what did he remove from himself?

“A His shorts, sir.

“Q After removing his shorts was he still wearing anything?

“A None, sir.

“Q After removing your shorts and his shorts, what did he do while [lying] down?

“A He went on top of me, sir.

“Q Aside from going on top of you, what else did he do?

“A He went astride of me, sir.

“Q What is your position when you were [lying] down?

“A I was trembling and I was [lying] face up, sir.

“Q While on that position you said that the accused rode astride of you, what part of your body did Orani ride astride of you?

“A Here, sir. (Witness pointing to her chest and her private part.)

“Q Did you see Orani remove his pants?

“A Yes, sir.

“Q Where was Orani while removing his shorts?

“A At the room, sir.

“Q After Orani was removing his pants, by the way was he able to remove his pants?

“A Yes, sir.

“Q What did you see when he removed his pants?

“A I [saw] something, sir.

“Q What did you see when the accused removed his short pants?

“A His penis, sir.

“x x x x x x x x

“Q Before Orani, have you ever seen a naked man?

“A Yes, sir.

“Q So you already saw a naked man even before Orani?

“A Yes, sir.

“Q So it was not Orani therefore the first man whom you saw a naked man in his private part?

“A Yes, sir, there was the other person before.

“Q Who was that other person whom you saw before?

“A Pio Reyes, sir.

“PROS. CALIP:

Your Honor, there was a case filed before this Court against Pio Reyes for rape.

“COURT:

Yes, the Court takes [judicial] notice of the case filed against Pio Reyes pending before this Court.

“PROS. CALIP:

“Q Madam witness you also testified earlier that this Orani inserted his penis to your vagina is that correct?

“A Yes, sir.

“Q And what did you feel when this Orani inserted his penis to your vagina?

“A Painful, sir.

“Q How long a time was the penis of Orani being inserted into your vagina?

“A For quite a long time, sir.

“COURT:

“Q When Orani inserted his penis into your vagina, what did Orani do?

“A There is still, sir.

“Q What did Orani do while his penis was inserted to your vagina?

“A He masturbated, sir.

“Q Do you know what masturbation means? Why? What did he do to you to make you say that he masturbated?

“x x x x x x x x

“A He made a pumping motion, sir.

“Q Where was the penis of Orani while he was pumping?

“A In my vagina, sir.

“Q Did the penis of Orani penetrate or enter your vagina?

“A Yes, sir.

“Q Did you see the penis of Orani?

“A Yes, sir.

“Q When he removed his short pants, to what direction was it pointed?

“A It was pointed forward, sir.

“Q You saw his penis? Did you see it for quite sometime?

“A Yes, sir.

“Q Was your vagina penetrated?

“A It was penetrated, sir.

“x x x x x x x x

“Q After Orani finished pumping motion, what happened next?

“A ‘May lumabas na ‘kisit,’ sir.’”[5]

There appears to be no reason for disbelieving Jenelyn. It may be apt to say again that it would be quite unimaginable for a young girl to contrive a tale of defloration and allow herself to be entangled in controversy and public scrutiny without any compelling cause. Jenelyn could not have been so emotionally and psychologically debauched as to point an accusing finger to an innocent man if, in fact, she was not ravished. Absent any ill-motive that is shown, her stance should be beyond question.

The positive identification of appellant by Jenelyn as being her defiler totally erodes his defense of alibi.[6] When

identification is categorical and consistent, alibi stands no chance.[7] In order that an alibi can be rightly considered, the defense must establish that the accused has not been at the scene of the crime during its commission and that it would have been physically impossible for him to be at the crime scene at such time.[8] It is only when these requirements are satisfied by the accused that alibi can assume significance in determining his innocence.

Appellant and Jenelyn had been neighbors and that only a few meters separated the doors of their respective places of abode. While Carmen Acosta sought to corroborate the defense of alibi, i.e., that appellant, along with his wife and Lilia, rode home with her, at about lunchtime of 27 November 1998, she, however, did not say that she also was aware of what might have transpired during the hours that followed.

The supposed grudge held by Lilia against him, i.e., for his family's refusal to grant Lilia's request to put up her house in their lot, is rather trifling to be the cause for so serious an accusation as rape against appellant. Indeed, it is unthinkable that a mother would drag her daughter to the dark burrow just to avenge such a denied plea.

Given all, the Court is constrained to affirm the assailed judgment, as well as the sentence of reclusion perpetua meted pursuant to Article 335 of the Revised Penal Code, as amended, with, however, the modification that, as regards the civil liability, appellant, conformably with the prevailing jurisprudence, must be ordered to pay P50,000.00 moral damages to the victim in addition to the P50,000.00 civil indemnity already awarded to her.

WHEREFORE, the judgment of the trial court appealed from, holding appellant Norberto Orani y Dulog guilty beyond reasonable doubt of simple rape and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED**. The award of damages is **MODIFIED** by ordering appellant, in addition to the P50,000.00 civil indemnity ordered by the court a quo, to pay his victim, Jenelyn Nuyad, the amount of P50,0000 moral damages. Costs against appellant.

SO ORDERED.

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

[1] Rollo, p. 4.

[2] Rollo, p. 39.

[3] Rollo, p. 47.

[4] *People vs. Navales*, 337 SCRA 436; *People vs. Pacina*, 338 SCRA 195; *People vs. Asuncion*, G.R. No. 123916, 19 June 2001.

[5] TSN, 01 July 1998, pp. 6-10.

[6] *People vs. Enolva*, 323 SCRA 295; *People vs. Ricafranca*, 323 SCRA 652.

[7] *People vs. Jose*, 324 SCRA 196.

[8] *People vs. Arcay, et al.*, G.R. No. 132373, 23 October 2001; *People vs. Concorcio, et al.*, G.R. No. 121201-02, 19 October 2001.

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