

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO ALVARADO, ACCUSED-APPELLANT.

G.R. No. 145730. March 19, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, finding accused-appellant Armando Alvarado guilty of rape of his 14-year old daughter Arlene and sentencing him to suffer the death penalty and to pay the latter the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

The information against accused-appellant reads:

That on or about the midnight of July 26, 1997, in [B]arangay Rawis, [M]unicipality of Donsol, [P]rovince of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, wilfully, unlawfully, and feloniously had carnal knowledge of his own daughter, ARLENE B. ALVARADO, a 14-year old minor, against her will and without her consent, to her damage and prejudice.

The offense is aggravated by relationship, the accused being the father of the victim.

CONTRARY TO LAW.[2]

Upon arraignment, accused-appellant pleaded not guilty, whereupon trial ensued.

The evidence for the prosecution is as follows:

On the night of July 26, 1997, accused-appellant Armando Alvarado and his friends had a drinking spree near his house in Rawis, Donsol, Sorsogon, as a result of which he became drunk. When he returned to his house, he saw his eldest daughter, complainant Arlene Alvarado, and kissed her on the cheeks and on the lips. In fright Arlene fled to the kitchen. She heard her father call complainant's younger sister, Analene, so that, he said, he could look at her private parts. Then accused-appellant left and returned to his friends.

At around midnight of the same date, accused-appellant went home and proceeded to the room where Arlene was sleeping. He removed Arlene's shorts and panties and went on top of her. Arlene could not shout because her father threatened to kill her and her family if she did so. Overcome with fear, Arlene submitted to her father's advances. Accused-appellant held her hands on her sides and stretched her legs forward. He then inserted his penis into her vagina, which hurt her. After satisfying his lust, accused-appellant went to his room and slept beside his wife Lonelisa and their youngest child Armando, Jr. Arlene cried and went to sleep. The following morning, Arlene had difficulty urinating because her vagina was very painful. She saw blood coming out of her genitals.

Arlene told no one of her ordeal, lest her father harmed her. She believed that accused-appellant was capable of

killing his entire family for accused-appellant was a violent man.[3] In August 1997, Arlene worked as househelper and babysitter of a couple, Arnulfo and Mely Ocharan, who were also residents of Donsol, Sorsogon. During her stay with the Ocharans, Arlene suffered dizziness and fainting spells. This alarmed her employers, who summoned her mother. Arlene was taken to a doctor and given some medicines, but Arlene's condition did not improve.[4] Arlene was often observed to stare blankly, as if in deep thought, but she would not say what was wrong with her. As Mely Ocharan had already paid in advance Arlene's one month salary of P800.00 to the latter's grandmother, Maria, the Ocharans decided to let Arlene finish the month and afterward to let her go home.[5]

At the end of August 1997, the Ocharan couple informed Arlene that she was going home. Arlene told them that she did not want to do so because she was afraid of her father. As the couple insisted to know why, Arlene was prevailed to tell them that she had been raped by her father. Mely Ocharan promised to help her, after which Arlene was sent home. In September 1997, she reported complainant's case to Nida Balictar, a social worker of the Department of Social Welfare and Development in Donsol, Sorsogon. Arlene was eventually placed in the custody of the DSWD.

On September 18, 1997, Balictar accompanied Arlene to the Donsol Police Station where she executed a Sinumpaang Salaysay[6] regarding the incident. The following day, Arlene was examined at the Donsol District Hospital by Medical Officer IV Ester Espedido-Villarosa, M.D.[7] Dr. Villarosa's medical certificate, dated September 19, 1997,[8] contained the following findings:

P.E.

There are no physical findings. No marks, contusion and hematoma on all parts.

I. Exam:

Introitus: Admits small ring finger, middle and forefinger with ease, but with thumb, shows some difficulty.

- Healed laceration at 9:00 o'clock
- Pregnancy test (-)

On September 22, 1997, Arlene filed a criminal complaint[9] for rape against her father before the Municipal Trial Court of Donsol, Sorsogon. In the meantime, accused-appellant was detained by the Donsol police.[10]

Lonelisa Alvarado, Arlene's mother, also testified for the prosecution. She said she married accused-appellant in April 1996 in Pilar, Sorsogon, after three children had already been born to them, namely, Arlene, Analene, and Armando, Jr. Arlene, the eldest, was born on November 23, 1983. Lonelisa testified that she never had any problem with Arlene, who was obedient in helping with the household chores and doing errands. Arlene finished only the fifth grade and was no longer attending school when she was raped. Lonelisa testified that her husband was a trouble-maker whenever he was drunk.

According to Lonelisa, at the time of the incident, her family lived in Donsol, Sorsogon together with her mother-in-law Maria, her nephew Fermin, and her niece Maylene. The house they lived in had two rooms. She, accused-appellant, and their youngest child Armando, Jr. occupied one room, Arlene occupied the other, while the rest slept in the sala.

Lonelisa confirmed that Arlene worked for the Ocharan family for about a month only because she became sick. She said that after Arlene had returned home from the Ocharans' household, she stayed in the DSWD. Later, accused-appellant was arrested. It was only then that Lonelisa learned that Arlene had accused her father of rape. Lonelisa said she was caught by surprise since she did not notice anything unusual about the relationship between

Arlene and accused-appellant. When she confronted her husband and her daughter, accused-appellant told her the charge was false, but Lonelisa did not believe him. On October 1997, Lonelisa left their house in Donsol with Analene and Armando, Jr. and transferred to Barangay Sapnangan, Pilar, Sorsogon.[11]

Accused-appellant anchored his defense on denial and alibi. According to him, at about midnight of July 26, 1997, he was at the wake for Pining Go in Rawis, Donsol, Sorsogon, about 250 meters away from his house. He arrived at the wake at around 3:00 p.m., and came home at 5:00 a.m. of the following day. When he arrived home on July 27, 1997, he cooked breakfast for their family. At that time, only two of his children, Analene and Armando, Jr., were at home. His eldest daughter Arlene, then 14 years old, was away working as a babysitter for the Ocharan family, whose house in Donsol, Sorsogon was about 700 meters away. Accused-appellant returned to the wake to help in cooking for the family of the deceased, and went home only at about 10:00 a.m. of July 28, 1997.

Accused-appellant also testified that he did not know that Arlene had filed a rape charge against him until he was invited over to the station by the police of Donsol, Sorsogon. No warrant of arrest was shown to him, but when he arrived at the precinct, he was shown Arlene's complaint, after which he was detained. He denied raping Arlene and threatening to kill her. He did not know of any reason why she filed a case against him. He expressed hurt at what Arlene had done in spite of his being a good father to her. He denied maltreating Arlene and stated that he only wished her well. Accused-appellant also stated that he never wanted Arlene to work, and his daughter's working for the Ocharan couple was his wife's idea. He wanted Arlene to finish schooling, but she reached only Grade 5 because he claimed that all she wanted to do was to attend dances and to flirt with boys. Accused-appellant surmised that, although there was nothing abnormal about Arlene, she might have accused him of rape because she had many boyfriends. Accused-appellant presented in evidence three letters[12] written by Arlene to Jisos, Isus, and Rine, turned over to him while he was already in jail by his mother, Maria. The letters had been found among Arlene's things.

To corroborate his testimony, accused-appellant presented as witnesses his niece Maylene, his mother Maria, and his brother Nelson.

Maylene Alvarado testified that her father Seferino was the brother of accused-appellant and that their family resided in Giron, Pilar, Sorsogon. She stayed in the house of her paternal grandmother in Rawis, Donsol, Sorsogon from June 1997 up to March 1998 because she was then studying at the Donsol National Comprehensive High School. According to her, on July 26, 1997, she was at her grandmother's house, but Arlene was not staying there since she was working in Pilar, Sorsogon. Maylene saw her uncle, accused-appellant, at 9:00 a.m. that day, but he attended a wake in the evening. Maylene stated that she only saw Arlene on August 7, 1997, when the latter returned home because she was bitten by a dog. She also knew that three or four days after her return, Arlene started working with the Ocharan couple. She did not know what was the nature of her cousin's work. Arlene stayed with her employers until the end of August 1997. She also did not know why Arlene left her job.

Maylene further testified that she and Arlene were close. She claimed that Arlene confided to her about her boyfriend, Rico. She allegedly learned from Arlene that Rico stayed with the Ocharans. According to her, she thrice saw Arlene and Rico together in August 1997. The first time was at the plaza when she was invited one evening, around 9:00 p.m., by Arlene's sister, Analene, to accompany her. Maylene saw Rico with Arlene at the back of a store, the former fondling the latter in different parts of her body. The second time the witness saw Arlene was at the Rawis Elementary School. It was also in the evening, around 8:30 p.m. Analene was also the one who invited her to come along. Arlene wanted to go there and told her that she would study in that school. The third time was at a place near the house of a certain Tonga. Arlene invited her to join her and Rico to find

Arlene's belt, which was lost somewhere in that place. Maylene later saw Rico pressing Arlene with his body.[13]

Nelson Alvarado, accused-appellant's younger brother, testified that he lived only three meters away from his mother's house, where accused-appellant and his family also resided. According to him, the charge of rape against accused-appellant could not be true because the latter was not home on the night of July 26, 1997. Nelson vouched for his brother's absence since accused-appellant was at a wake located about 200 to 300 meters away from his house. Accused-appellant left at 9:00 p.m. on that date and did not go home for the rest of the night. In fact, Nelson was sent by his mother to look for accused-appellant. He found him at the wake at around 9:30 p.m. Nelson also testified that Arlene was also not home on that date as she was working as a stay-in helper at the Ocharan household.[14]

Maria Alvarado, the mother of accused-appellant, also testified that her son Armando was not home on the night of July 26, 1997. She knew this for a fact because, before leaving, accused-appellant asked permission from her and his family to attend a wake at the farthest portion of Rawis, which could be negotiated by more than an hour's walk. She confirmed accused-appellant's statement that he returned only at 5:00 a.m. the following day. She likewise testified that Arlene was absent as she was then a babysitter of the Ocharan couple. She knew about Arlene's alleged boyfriend Rico, the cousin of Mely Ocharan.[15]

On June 15, 2000, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Armando Alvarado guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code as amended by Sec. II, RA 7659 and he is hereby sentence[d] to suffer the maximum penalty of DEATH and to pay the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency, without pronouncement as to cost.

SO ORDERED.[16]

Hence, this appeal. Accused-appellant contends that --

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
- GRANTING ARGUENDO THAT ACCUSED IS GUILTY, THE COURT A QUO NONETHELESS ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PRESENT INDEPENDENT EVIDENCE TO PROVE THE QUALIFYING CIRCUMSTANCE OF PRIVATE COMPLAINANT'S ALLEGED MINORITY.[17]

Except for the penalty imposed by the trial court upon accused-appellant, we find no cogent reason to overturn its decision.

First. Accused-appellant argues that complainant's testimony should not have been given credence. He contends that, although Dr. Villarosa found that complainant had sexual intercourse recently, it could not have been with accused-appellant since the examining physician testified that complainant might have had sexual intercourse either a week or a month before her examination on September 19, 1997, and complainant had sexual relationships with different men in August 1997. He contends that the trial court should have given greater weight to his defense as the same purportedly conformed to the findings of the expert witness.

We disagree. It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied

to appellate judges, of observing the demeanor of the declarants in the course of their testimonies. The only exception is if there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[18] In this case, we find no compelling reason to depart from this rule. Indeed, complainant proved herself to be a credible witness. Her narration of how she was sexually assaulted by her own father remained, as also noted by the trial court, plain, candid, straightforward, and unflawed by serious contradictions[19] in spite of the lengthy and tedious cross-examination by the defense counsel. It is also noteworthy that, in the course of her testimony, Arlene's eyes overflowed with tears,[20] which only revealed the depths of the shame and suffering she endured as a consequence of the violation of her virtue and personhood, and the truthfulness of her charge.[21] She was not impelled by any bad motive to testify falsely against accused-appellant, as shown by the admissions by the latter and his mother that they did not know of any reason why Arlene filed the rape charge against him.[22] The reasons offered by accused-appellant that Arlene had many boyfriends and that he would always scold her for attending dances and entertaining suitors[23] are flimsy. In fact, when the trial judge asked her if her accusation against her father was true considering that the death penalty could be imposed on him, Arlene unhesitatingly answered in the affirmative. Thus, she testified:

q

You filed a case of rape against your father. Do you know [that] if the court finds that your complaint is true, he will be sentenced to [the] death penalty; do you still insist that your complaint is true?

a

Yes, your Honor.

q

Do you still insist that your complaint or that rape is true?

a

Yes, your Honor.[24]

Indeed, it takes a certain amount of psychological depravity for a young daughter, even if filled with a desire for revenge, to fabricate a sordid tale of such a serious crime as sexual molestation in the hands of her own father, which could put the latter in jail for the most part of his life, or, worse, put him to death, and expose herself and her family to scandal and shame if the charge is not true.[25]

Neither can Dr. Villarosa's testimony, that Arlene could have had sexual intercourse either a week or a month before September 19, 1997, the date of the medico-legal examination, undermine Arlene's credibility. On this matter, Dr. Villarosa testified:

Prosecutor Gabito:

q

In your findings, it is stated here "healed laceration", what could have caused this laceration?

a

Sexual intercourse but most probably, it was done a month or week ago.

q

A month or week before the sexual intercourse?

a

Because it has been healed.[26]

On cross-examination, Dr. Villarosa further testified as follows:

q

So, if this laceration have been sustained one week before?

a

One week or more.

q

So, this laceration could have been caused between the first week of September or the last week of August?

a

Possibly.[27]

As pointed out by the Solicitor General, the estimated time of occurrence of the sexual intercourse made by Dr. Villarosa was merely a probability[28] and was made on the basis of her finding that the hymenal laceration had already been healed. It does not preclude the possibility that the incident happened even more than a month before the examination considering that such laceration may also be found even two months after the same was incurred. Nor was there any finding that the same was freshly healed as accused-appellant misleadingly posits it to be.[29] Be that as it may, it is settled that a medical examination is merely corroborative and is not indispensable in the prosecution of rape cases, so long as complainant's testimony as to how the incident occurred meets the standard of credibility, such as was proven in this case.[30]

On the other hand, the version of accused-appellant based on denial and alibi cannot be given weight in the face of his positive identification by Arlene as the author of the crime.[31] For alibi to prosper, not only must accused-appellant prove that he was at another place at the time of the commission of the crime, but also that it was impossible for him to be at the crime scene at the appointed time.[32] In this case, accused-appellant claimed that he was at a wake on the midnight of July 26, 1997. However, it was established that the wake was also in Rawis, within the same barangay, at a place just 250 meters away from his mother's house where his family stayed. Thus, even assuming that he was indeed at the wake that night, it would not be impossible for accused-appellant to have gone home to commit the crime.

Likewise, accused-appellant's claim that there is "overwhelming" evidence to show that Arlene had many boyfriends and had sexual relations is without any basis. A reading of Arlene's letters, which accused-appellant proffered in evidence, does not in any way show that the persons she wrote letters to had romantic relationships with her. At most, Arlene manifested that she liked them and was asking them if they liked her too. In the end, she merely referred to them as friends.[33] It is noteworthy that accused-appellant himself admitted that these letters were found among Arlene's personal belongings and he did not know if they were even sent.[34] Indeed, if they were still among her belongings they could have not been sent. At any rate, even accused-appellant agrees that the letters do not indicate that Arlene had sexual affairs.[35]

Nor can Maylene's testimony that she twice saw Arlene and the latter's alleged boyfriend Rico in a passionate pose be given credit. For one, it is questionable that Maylene was really a close confidant of Arlene as she did not even know the nature of Arlene's job at the Ocharan household.[36] For another, Maylene distinctly remembered August 7, 1997 allegedly as the date Arlene went home because she was bitten by a dog, but this witness could not recall if Arlene ever went home whenever she would transfer from one employer to another. Maylene even admitted on cross-examination that she remembered the date August 7, 1997 only for the purposes of her testimony.[37]

Neither do the testimonies of Maria and Nelson Alvarado convince us as to the veracity of accused-appellant's defense. Their attempt to establish that Arlene was not home on the midnight of July 26, 1997 because she was then employed by the Ocharan couple was contradicted by Maylene, who testified that Arlene started working for the Ocharans in August 1997. Such patent inconsistency could only cast doubt on the truth of their testimonies.[38] What is more, it was established on cross-examination that Maria Alvarado, accused-appellant's mother, would insist that the incident did not happen, being a cause for shame, and would want her son to be released from jail and the whole family to forget the matter altogether.[39]

Accused-appellant's claim that Arlene had sexual intercourse with Rico and not with him cannot be given credence. Neither accused-appellant nor his mother ever met Rico, who allegedly had sexual trysts with Arlene. They only learned this from Maylene, whose testimony was shown to be doubtful. Although Arlene admitted that she knew Rico, she denied that he was her boyfriend.

For these reasons, accused-appellant's prayer for acquittal must be denied.

Second. We agree, however, that accused-appellant should not have been meted the death penalty on the ground that the age of complainant was not proven beyond reasonable doubt. The information alleged that, on July 26, 1997, the date of the rape, Arlene was 14 years old. In her testimony, Arlene stated that she was 14 years old at the time of the incident. Accused-appellant confirmed this during the presentation of the defense evidence, but Lonelisa Alvarado, complainant's mother, testified that Arlene was born on November 23, 1983, which would mean she was only 13 years old on the date of the commission of the crime. No other evidence was ever presented, such as her certificate of live birth or any other document, to prove Arlene's exact age at the time of the crime. As minority is a qualifying circumstance, it must be proved with equal certainty and clearness as the crime itself. There must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by accused-appellant.[40] Since there is doubt as to Arlene's exact age, accused-appellant must be held guilty of simple rape only and sentenced to reclusion perpetua.

Third. In view of the reduction of the penalty, the civil indemnity awarded to Arlene should correspondingly be reduced to P50,000.00 in accordance with prevailing jurisprudence.[41] The award of moral damages in the amount of P50,000.00 should be upheld in view of the victim's injury inherently concomitant with and necessarily resulting from the odious crime of rape.[42] In addition, exemplary damages in the amount of P25,000.00 should be awarded to complainant in order to deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon their own young daughters.[43]

WHEREFORE, the decision appealed from finding accused-appellant guilty of rape is AFFIRMED with the MODIFICATION that the penalty imposed upon him is reduced to reclusion perpetua and the civil indemnity to be awarded the complainant to P50,000.00. In addition, however, accused-appellant is ordered to pay complainant exemplary damages in the amount of P25,000.00. The award of moral damages in the amount of P50,000.00 is upheld.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, and Vitug, JJ., abroad on official business.

[1] Per Judge Honesto A. Villamor.

[2] Rollo, p. 14.

[3] TSN (Arlene Alvarado), pp. 5-10, 12, July 14, 1998.

[4] Id., p. 11; TSN (Arlene Alvarado), pp. 3-6, Aug. 6, 1998.

[5] TSN (Arnulfo Ocharan), pp. 5-16, Nov. 22, 1999.

[6] Exh. B.

[7] TSN (Arlene Alvarado), p. 2, Aug. 7, 1998.

[8] Exh. A.

[9] Exh. C.

[10] Records, p. 9.

[11] TSN (Lonelisa Alvarado), pp. 2-12, July 13, 1998.

[12] Exhs. 2, 3, and 4, respectively.

[13] TSN (Maylene Alvarado), pp. 2-10, Dec. 14, 1998.

[14] TSN (Nelson Alvarado), pp. 2-6, June 17, 1999.

[15] TSN (Maria Alvarado), pp. 2-4, Oct. 7, 1999.

[16] Rollo, p. 33.

[17] Id., pp. 54-55.

[18] *People v. Delos Santos*, G.R. No. 137889, Mar. 26, 2001; *People v. Osing*, 349 SCRA 310 (2001).

[19] Records, p. 31.

[20] TSN (Arlene Alvarado), p. 8, July 14, 1998; TSN, p. 3, Aug. 7, 1998.

[21] *People v. Garcia*, 349 SCRA 67 (2001).

[22] TSN (Armando Alvarado), p. 11, Oct. 20, 1999; TSN (Maria Alvarado), p. 3, Oct. 7, 1999.

[23] TSN (Armando Alvarado), pp. 11-12, Oct. 20, 1999.

[24] TSN (Arlene Alvarado), p. 15, July 14, 1998.

[25] *People v. Alipar*, G.R. No. 137282, Mar. 16, 2001.

[26] TSN (Dr. Ester Villarosa), p. 4, Aug. 5, 1998.

[27] Id., pp. 5-6.

- [28] Records, p. 85.
- [29] Reply Brief, p. 2.
- [30] *People v. Segui*, 346 SCRA 178 (2000).
- [31] *People v. Albior*, G.R. No. 115079, Feb. 19, 2001.
- [32] *People v. Baid*, 336 SCRA 656 (2000).
- [33] Exhs. 2, 3, and 4.
- [34] TSN (Armando Alvarado), p. 13, Oct. 20, 1999.
- [35] *Id.*, p. 14.
- [36] TSN (Maylene Alvarado), p. 7, Dec. 14, 1998.
- [37] *Id.*, p. 11.
- [38] *People v. Geral*, 333 SCRA 453 (2000).
- [39] TSN (Maria Alvarado), pp. 5-6, Oct. 7, 1999.
- [40] *People v. Alipar*, G.R. No. 137282, Mar. 16, 2001 citing *People v. Tabanggay*, 334 SCRA 575 (2000); *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3, 2001.
- [41] *People v. Alipar*, G.R. No. 137282, Mar. 16, 2001; *People v. Macaya*, G.R. Nos. 137185-86, Feb. 15, 2001; *People v. De Guzman*, 349 SCRA 354 (2001).
- [42] *People v. Sabalan*, G.R. No. 134529, Feb. 26, 2001.
- [43] *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3, 2001; *People v. Alipar*, G.R. No. 137282, Mar. 16, 2001.

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