

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINGO OPERARIO Y GORIMO, APPELLANT.

G.R. No. 146590. July 17, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Appellant Domingo Operario y Gorimo was charged with rape in an Information that reads:

That on or about the 30th day of September 1997 in Quezon City Philippines, the said accused by means of force and intimidation to wit: by then and there willfully, unlawfully and feloniously remove the shorts and panty of the complainant, a minor, 8 years of age and thereafter inserted his penis inside the vagina of said complainant and thereafter have carnal knowledge of her against her will and without her consent.

CONTRARY TO LAW.[1]

On arraignment, appellant pleaded "not guilty". Trial on the merits thereafter followed.

After her father died, eight (8)-year old AAA moved in with her Aunt xxxxx and her husband, appellant Domingo Operario, at their house at xxxxx Street, Barangay xxxxx, Quezon City. Complainant was then a Grade 2 pupil at the Fairview Elementary School. After her classes in the morning, she would help her aunt tend their rolling store on Dahlia Street, Quezon City.

On September 30, 1997, at 7:00 p.m., complainant went home with her Aunt xxxxx and cousins xxxxx and xxxx. They found appellant drinking gin. xxxxx berated her husband and they had a heated argument. After dinner, xxxxx slept in the living room while appellant slept in their bedroom. AAA slept in the other bedroom with xxxxx and xxxx.

The following morning, xxxxx, xxxxx and xxxx left for the store. Complainant and appellant were left alone in the house. When complainant woke up, appellant ordered her to transfer to his room. He threatened to hurt her if she did not obey him.

When complainant entered the bedroom, appellant forcefully removed her shorts, t-shirt and panties. Then he took off his clothes and lay on top of complainant. She cried in pain as appellant's penis penetrated her organ. He inserted his middle finger into her vagina which caused her more pain. After sexually abusing her, he gave complainant money and ordered her to dress up.

Complainant narrated her ordeal to her cousin xxxxx who, in turn, informed her grandmother, xxxxx. Together, they accompanied complainant to the police station to report the incident. Dr. Ma. Cristina Freyra of the PNP Crime Laboratory examined complainant and found that her private organ indicated a "congested and abraded labia minora, abraded posterior fourchette x x x and congested but intact hymen." The doctor concluded that AAA was still "in virgin state physically." [2] She explained that the word "congested" signifies "discoloration on the area affected brought about by rubbing of a hard object like an erect penis." [3]

In his defense, appellant denied the charges and claimed that there was never any opportunity for him to rape his niece on the night of September 30, 1997. He alleged that at the time of the incident, complainant slept inside a room together with her two cousins, while he slept inside his bedroom.

xxxxx corroborated her husband's testimony, saying that after their quarrel, appellant went to the bedroom to sleep. The next morning, she woke up AAA at 5:00 a.m. and gave her a bath. xxxxx testified that she had been personally bathing AAA because she had been complaining that her private parts were itchy. xxxxx then brought AAA to school.

On November 29, 2000 the Regional Trial Court of Quezon City, Branch 86, rendered a decision[4] convicting appellant of rape. The dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused Domingo Operario y Gorimo guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and the Court hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the private complainant, AAA, the amount of P50,000.00 as civil indemnity and moral damages in the amount of P30,000.00.

SO ORDERED.[5]

Appellant appealed the decision on the following assignment of errors:

- The trial court erred in rendering a decision of conviction based upon an accusation which was later on declared by no less than the alleged victim, AAA, that it did not happen at all because during the alleged dates of occurrence of the imputed crime, the accused did not even have the opportunity to get near her;
- The trial court erred in making an unfounded conclusion that the itchiness of the genitals of the victim indicates that she was sexually abused not far from the date when she filed the complaint and in declaring that it is inconceivable that an eight year old child would fabricate or concoct a story of defloration against the person she considered as her parents, if there is no truth to her allegation, without considering the un rebutted circumstances that there was no evidence of molestation as admitted by no less than the young girl AAA, and because itchiness of the vagina is not an evidence that a girl or woman had been sexually molested.[6]

Appellant basically anchors his defense on AAA's admission during cross-examination that there was no opportunity for her and appellant to get near each other either on September 30, 1997 or on October 1, 1997.[7] Nonetheless, we are fully cognizant that leading questions during cross-examination, while designed to test the credibility of the witness and her testimony, traps complainant into answering either with a "yes" or a "no". By its very nature, leading questions are suggestive. The complainant in this case was of a very young age and was vulnerable to suggestion. It is, therefore, not surprising that she answered all the leading questions propounded on her in the affirmative.

The trial court firmly believed that "the crime charged was perpetrated by the accused against the complainant as the testimony of AAA appears to be very credible despite minor inconsistencies." [8] Besides, an ample margin of inaccuracies should be accorded to a child witness who was obviously gripped with tension on the witness stand.[9]

Moreover, the trial court found that xxxxx 's testimony to the effect that she personally brought AAA to school on October 1, 1997 before proceeding to the market, was inconsistent with the testimony of another defense witness, Evelyn Silbosa, who testified that nobody accompanied complainant to school on October 1, 1997. As correctly observed by the trial court, "their apparently biased testimony could not overcome the straightforward, sincere and honest testimony of AAA who could not have fabricated or concocted the charges to the prejudice of her own benefactor who had been acting as her second parent and who had considered her as his own daughter."

In her direct examination, AAA testified thus:

FISCAL SANTOS:

Q. What happened when you were left alone with Domingo?

A. When I woke up, he wanted me to transfer to his room.

Q. Did you transfer to the room of Domingo?

A. He just called for me and told me that if I will not follow his orders he will hurt me, sir.

Q. So, you transferred to the room of Domingo?

A. Yes, sir.

Q. What happened there?

A. He undressed me, sir.

Q. What were you wearing at that time?

A. I was wearing shorts and t-shirt.

Q. What about panty?

A. Yes, sir. I was wearing panty.

Q. What apparel did Domingo remove from you?

A. My short pants.

Q. What about the panty?

A. Yes, sir. Also the panty.

Q. What happened after that?

A. He also removed his short pants and his brief.

Q. Then, what transpired?

A. He forcibly tried to insert his penis on my vagina, sir.

Q. What did you feel, if any?

A. It hurt me, sir, and I was crying.

Q. What happened after that?

A. He told me that if I will continue to cry, he will slap me and then, he inserted his finger on my vagina.

Q. What finger?

A. His middle finger, sir.

Q. What did you feel?

A. I just kept on crying because it hurt me.

Q. What happened after that?

A. He asked me to wear my clothes again and then he gave me money, sir.

Q. After that, what happened?

A.

He asked me to transfer to the living room sir.[10]

Well-settled is the rule that a conviction for rape may be based solely on the testimony of the victim, as long as the same is competent and credible. This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[11]

Besides, no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[12]

Appellant alleges that complainant concocted the charge of rape against him because he shouted and scolded at her on the night of September 30, 1997. However, we find this motive too inconsequential vis-à-vis the grave nature of the accusation of rape. Likewise, his submission that his wife's relatives had gripes against him fails to persuade. The rule is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full credence.[13]

Between the positive and categorical testimony of a rape victim, on one hand, and appellant's bare denial, on the other, the former generally prevails. Universally accepted is the rule that a denial is self-serving and cannot prevail over the declaration of a credible witness who testifies on affirmative matters.[14]

Appellant further submits that the itchiness in AAA's sexual organ is not an indication that she was raped. He cites the findings in the Medico-Legal report indicating a reddening or a discoloration of the labia minora and stating that AAA was in a virgin state. He also points to Dr. Freyra's testimony to the effect that she was not sure what kind of hard object may have caused the discoloration or abraded state of complainant's labia minora.[15]

Appellant's submissions were debunked by the testimony of Dr. Freyra on cross-examination, saying that if the reddening of complainant's organ was caused by her scratching, then the congestion and abrasion would have been found on the outer part, or labia majora, and not the labia minora.

Corollarily, the lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape.[16] For rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia. It suffices that there is proof of the entrance of the male organ with the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape.[17]

Nevertheless, in crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of a rape case. The medical examination and medical certificate are merely corroborative in character.[18] These are only meant to strengthen the prosecution evidence but are not the decisive factor in the successful prosecution of a rape case.

The allegation in the information that the rape was committed on or about September 30, 1997 but was eventually

proved to have been actually committed on October 1, 1997, would not materially affect the disposition and outcome of the instant case. The date of commission is not a material element of the crime of rape. When the information alleged that the crime was committed "on or about September 30, 1997,"[19] it sufficiently apprised appellant of the charges against him. The allegation provided the parameters necessary for the accused to intelligently and completely prepare his defense.

However, we are unable to agree with the trial court that the crime committed was statutory rape. Notably, while the information alleged that AAA was a minor, eight years of age, at the time of the commission of the crime, the prosecution failed to present complainant's birth certificate or other similar authenticated documents such as her baptismal certificate and school records.

In *People v. Invencion*,[20] citing *People v. Pruna*, the following guidelines in appreciating age as an element of the crime or as a qualifying circumstance was laid down, to wit:

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
- The trial court should always make a categorical finding as to the age of the victim.

This notwithstanding, AAA's age is no longer significant as the element of force or intimidation was established beyond reasonable doubt by the prosecution. More specifically, it was proved that appellant threatened to harm her if he did not transfer to his bedroom. He also warned her to stop crying or else he will slap her. Considering that he exercised moral ascendancy over complainant because she regarded him as her own father, appellant's acts were sufficient to create fear in the mind of the victim which compelled her to submit to his sexual abuses. Verily, force and intimidation were employed by appellant to consummate the act of rape on complainant.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which was the law in effect at the time of commission of the crime in the instant case, provided in pertinent part:

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 and intimidation;

xxx xxx xxx.

The crime of rape shall be punished by reclusion perpetua.

xxx xxx xxx.

Hence, the trial court correctly imposed upon appellant the penalty of reclusion perpetua. Likewise, it correctly awarded the amount of P50,000.00 as civil indemnity. However, the award of P30,000.00 as moral damages should be increased to P50,000.00 in line with prevailing jurisprudence.[21]

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Quezon City, Branch 86, in Criminal Case No. Q-97-73333, finding appellant guilty beyond reasonable doubt of the crime of rape, is **AFFIRMED** with **MODIFICATION**. Appellant is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim the amount of P50,000.00 as civil indemnity and the increased amount of P50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Criminal Case No. Q-97-73333; Records, p. 1.

[2] Exhibit "A", Records, p. 9.

[3] Decision, Records, p. 21.

[4] Penned by Judge Teodoro A. Bay; Rollo, pp. 17-27.

[5] Id., at pp. 26-27.

[6] Id., p. 50.

[7] TSN, February 4, 1998, pp. 10-11.

[8] Decision, Records, p. 215.

[9] *People v. Iluis*, G.R. No. 145995, 20 March 2003.

[10] TSN, January 6, 1998, pp. 13-15.

[11] *People v. Antonio*, G.R. No. 145726, 26 March 2003.

[12] *People v. Serado*, G.R. No. 138664, 6 August 2002.

[13] *People v. Invencion*, G.R. No. 131636, 5 March 2003.

[14] *People v. Briones*, G.R. No. 140640, 15 October 2002.

[15] TSN, January 13, 1998, p. 16.

[16] *People v. Dy*, G.R. Nos. 115236-37, 29 January 2002.

[17] People v. Dy, supra.

[18] People v. Iluis, supra.

[19] Op. cit., note 1.

[20] G.R. No. 131636, 5 March 2003.

[21] People v. Rullepa, G.R. No. 131516, 5 March 2003.

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