

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO FABRE Y VICENTE, ACCUSED-APPELLANT.

G.R. No. 146697. July 23, 2002

Ponente: VITUG, J.

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VITUG, J.:

Leonardo Fabre was adjudged guilty by the Regional Trial Court, Br. VI, of Prosperidad, Agusan del Sur, of raping his own daughter Marilou Fabre, and he was sentenced to suffer the extreme penalty of death.

Fabre was indicted in an Information that read:[1]

“That on or about 4:00 o’clock in the afternoon of April 26, 1995 in the house of the accused located at Manat, Trento, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by force, threats and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter MARILOU FABRE, a girl thirteen (13) years of age, of good reputation, against her will and consent to the damage and prejudice of the said victim consisting of moral, actual and compensatory damages.”

Accused pleaded not guilty to the crime charged. At the trial, the prosecution presented the testimony of Marilou, that of Adela Fabre, her mother and the wife of the accused, and that of Dr. Reinerio Jalalon, the doctor who examined Marilou, along with the medico-legal certificate issued by Dr. Jalalon, the sworn statement of Adela, and the criminal complaint signed by both Marilou and Adela. The defense, during its turn in the presentation of evidence, countered with the testimony of the accused himself. It also called Adela Fabre back to the witness stand.

The trial court gave credence to the evidence given by the prosecution, particularly to the narration of the young complainant, expressing a quote from an observation once made by this Tribunal in one of its decision that “even when consumed with revenge, it (would) take a certain amount of psychological depravity for a young woman to concoct a story which (could) put her own father for the rest of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame.”[2] Convinced that the accused committed the crime of rape on his own daughter, the trial judge disposed of the case thusly:

“WHEREFORE, the Court finds accused LEONARDO FABRE y VICENTE alias Nardo, GUILTY beyond reasonable doubt as principal of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code as amended by R.A. No. 7659 Section 11 thereof and hereby imposes upon the accused Leonardo Fabre y Vicente alias Nardo the penalty of DEATH; to pay the victim Marilou Fabre civil indemnity in the amount of FIFTY THOUSAND (P50,000.00) PESOS and the costs.”[3]

In this automatic review, the convicted accused assigned the following alleged errors committed by the court a quo.

“I

“THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT’S DEFENSE OF ALIBI AND DENIAL.

“II

“ASSUMING IN ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH SENTENCE UPON ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE ACTUAL AGE OF MARILOU FABRE AT THE TIME OF THE COMMISSION OF THE ALLEGED RAPE.”[4]

The defense argues, rather desperately, that the testimony of appellant should acquire added strength for the failure of the prosecution to conduct cross-examination on him and to present any rebuttal evidence. The cross-examination of a witness is a prerogative of the party against whom the witness is called.[5] The purpose of cross-examination is to test the truth or accuracy of the statements of a witness made on direct examination.[6] The party against whom the witness testifies may deem any further examination unnecessary and instead rely on any other evidence theretofore adduced or thereafter to be adduced or on what would be believed is the perception of the court thereon. Certainly, the trial court is not bound to give full weight to the testimony of a witness on direct examination merely because he is not cross-examined by the other party.

The alibi of appellant itself would not appear to be deserving of serious consideration. His account that at the time of the alleged rape he was working at a coconut plantation, just about one kilometer away from the place of the crime, hardly would amount to much. Nor would the testimony of Adela Fabre, his wife, merit any better regard. At first, she testified that on the day of the rape incident, she had left their house at four o’clock in the afternoon. Later, however, she changed her story by saying that she had left the house in the morning and returned only at ten o’clock that same morning, staying home the whole day thereafter. In any event, in order that alibi might prosper, it would not be enough for an accused to prove that he was somewhere else when the crime was committed; he would have to demonstrate likewise that he could not have been physically present at the place of the crime or in its immediate vicinity at the time of its commission.[7] Clearly, in the instant case, it was not at all impossible nor even improbable for appellant to have been at the crime scene.

Upon the other hand, the evidently candid and straightforward testimony of Marilou should be more than enough to rebut the claim of innocence made by appellant.[8]

On 26 April 1995, around four o’clock in the afternoon, Marilou Fabre was alone in their house in Barangay Manat, Trento, Agusan del Sur. Adela Fabre, her mother, had gone to Purok 4 to buy fish while her siblings were out strolling. After cleaning their yard, Marilou went to the adjacent palm plantation, about fourteen to fifteen meters away from their house, to gather palm oil. Marilou had been gathering palm oil for about a minute when her father, appellant Leonardo Fabre, arrived. He suddenly gripped Marilou’s hands and forcibly dragged her towards the house. He closed the door and removed his daughter’s underwear. He took off his pants and asked Marilou to hold his sex organ. In tears, Marilou obeyed her father. He then began touching the girl’s breasts and vagina. He forced her to lie down, mounted her and sought to insert his penis into her organ. Marilou cried in pain. When after some time he still could not insert his penis into Marilou’s vagina, he applied coconut oil to lubricate his and his daughter’s sexual organs. He was finally able to penetrate her. Once inside her, appellant made push and pull movements until he was through with her. Appellant threatened to kill her if she would tell anybody about the sexual encounter. The young girl’s mother, Adela Fabre, arrived home about five o’clock that afternoon but, remembering her father’s threats, she kept mum about her ordeal.

The credibility of Marilou would not be all that difficult to discern from her narration that, as so described by the prosecution, “was full of graphic details which a young provincial girl could not possibly have concocted and which could only have come from someone who must have personally experienced a brutal rape assault.” She testified:

“PROS. ENRIQUEZ:

“Q Now, Miss Marilou, can you recall where were you on April 26, 1995 at about 4:00 o’clock in the afternoon?

“A Yes, sir.

“Q Where were you that time?

“A In our house, sir.

“Q What were you doing in your house?

“A I was cleaning our yard, sir.

“Q How far is your yard where you were doing some works from your house?

“A (Witness pointing a distance of around 2 to 3 meters.)

“Q Now, while you were doing your work in your yard, can you recall if there was an incident that occurred?

“A Yes, sir.

“Q What was that incident that occurred?

“A While I was gathering a palm oil my father arrived and suddenly dragged me to our house, sir.

“COURT:

“Q Where is your house located?

“A At Purok 4, Manat, Trento, Agusan del Sur, Your Honor.

“PROS. ENRIQUEZ:

“Q What did you do when your father dragged you to your house?

“A Because I was dragged by my father to our house I just went with him, sir.

“Q While you were in your house after having been dragged by your father, what happened if any?

“A He closed our house and he removed my panty, sir.

“Q And after removing your panty, what did your father do next?

“A He removed his pants and he let me hold his penis, sir.

“Q And what did you do next after holding his penis?

“A I was crying, sir.

“Q While you were crying what did your father do?

“A He was touching my breast and my vagina, sir.

“Q After that what did he do next?

“A He let me lie down, sir.

“Q And while lying down, what did your father do?

“A He mounted me and he inserted his penis, to my vagina, sir.

“Q And what did you feel while your father was inserting his penis to your vagina?

“A Very painful, sir.

“Q And what did you do while your father was inserting his penis to your vagina?

“A I was crying, sir.

“Q And while you were crying what did your father do if any?

“A He told me not to tell anybody because if I will do it he will kill me, sir.

“Q Now, did your father find it easy to insert his penis to your vagina?

“A It [took] a long time, sir.

“Q And did he use anything to facilitate the insertion of his penis to your vagina?

“A Yes, sir.

“Q What was that?

“A He used coconut oil in his penis and also in my vagina so that his penis can easily insert my vagina, sir.

“Q Now, while his penis was in your vagina, can you tell this Honorable Court if he did anything also on top of you and while his penis was inside your vagina?

“A None, sir.

“Q Did he make any movement?

“A Yes, sir.

“Q What was that movement?

“A He made a push and pull movement on my body, sir.

“Q Now, while your father was doing it to you where was your mother that time?

“A She was in Purok 4, Manat, Trento, Agusan del Sur, sir.

“Q And did you report this incident to your mother?

“A Not yet sir because he told me not to tell anybody.

“Q So when did you had a chance to tell your mother about this incident?

“A On May 1, 1995, sir.

“Q And what did your mother do after you reported to her this incident?

“A She reported [the matter] to the Kagawad, sir.”[9]

It has been stressed quite often enough that the testimony of a rape victim, who is young and still immature, deserves faith and credence[10] for it simply would be unnatural for a young and innocent girl to invent a story of defloration, allow an examination of her private parts and thereafter subject herself and her family to the trauma of a public trial unless she indeed has spoken the truth.[11] Most especially, a daughter would not accuse her own father of such a serious offense or allow herself to be perverted if she were not truly motivated by a desire to seek a just retribution for a violation brazenly committed against her.[12]

Confirming Marilou’s story was the medical report and testimony of Dr. Reinerio Jalalon, the government physician stationed at the Bunawan District Hospital in Agusan del Sur, who examined Marilou. Dr. Jalalon made these findings; viz:

“Abrasion at (L) labia minora at 3:00 o’clock position.

“Vaginal smear (-) negative for spermatozoa.”[13]

The doctor concluded that it was possible that genital penetration on the victim did occur and that a penis could have caused the abrasion on the victim’s labia minora.

There is merit, however, in the plea of the defense, seconded by the prosecution, that the penalty of death imposed

by the trial court should be reduced to the penalty of reclusion perpetua. Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, provides:

“The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.”

While the father-daughter relationship between appellant and private complainant has been sufficiently established, the fact of minority of the victim, although specifically averred in the information, has not been equally shown in evidence. These qualifying circumstances of relationship and minority are twin requirements that should be both alleged in the information and established beyond reasonable doubt during trial in order to sustain an imposition of the death penalty.[14] Neither an obvious minority of the victim nor the failure of the defense to contest her real age always excuse the prosecution from the desired proof required by law.[15] Judicial notice of the issue of age without the requisite hearing conducted under Section 3, Rule 129, of the Rules of Court, would not be considered sufficient compliance with the law. The birth certificate of the victim or, in lieu thereof, any other documentary evidence, like a baptismal certificate, school records and documents of similar nature, or credible testimonial evidence, that can help establish the age of the victim should be presented.[16] While the declaration of a victim as to her age, being an exception to the hearsay proscription, would be admissible under the rule on pedigree, the question on the relative weight that may be accorded to it is a totally different matter.[17]

In the case at bar, the complainant claimed that she was 13 years old at the time of the incident.[18] Her mother stated, however, that she was 14.[19] The birth certificate of the victim, at least already in her teens, was not presented to ascertain her true age on the bare allegation that the document was lost when their house burned down.[20] No other document that could somehow help establish the real age of the victim was submitted.

The Court, in sum, upholds the decision of the trial court convicting Leonardo Fabre of the crime of rape but must reduce, on account of insufficiency of proof on the qualifying circumstance of minority of the victim, the penalty of death to reclusion perpetua. With respect to the civil liability, the Court sustains the award of P50,000.00 civil indemnity but, in keeping with prevailing jurisprudence, must additionally order the payment of P50,000.00 moral damages[21] and P20,000.00 exemplary damages.[22]

WHEREFORE, the judgment of the court a quo finding LEONARDO FABRE guilty of rape is AFFIRMED but the sentence of death therein imposed should be, as it is hereby so, reduced to reclusion perpetua. The award of P50,000.00 civil liability in favor of victim, Marilou Fabre, is sustained; however, appellant is further ordered to pay to the victim the amounts of P50,000.00 moral damages and P20,000.00 exemplary damages.

SO ORDERED.

Bellosillo, (Acting C.J.), Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.
Davide, Jr., C.J., on leave.

[1] Records, p. 1.

[2] Rollo, p. 20; People vs. Melivo, 253 SCRA 347.

- [3] Rollo, p. 22.
- [4] Rollo, pp. 34-35.
- [5] *People vs. Suplito*, 314 SCRA 493.
- [6] Francisco, *Evidence*, 3rd Ed., 1996, p. 460.
- [7] *People vs. Blanco*, 324 SCRA 280; *People vs. Dacibar*, 325 SCRA 725; *People vs. Espina*, 326 SCRA 753.
- [8] See *People vs. Flores*, 322 SCRA 779; *People vs. Sale*, 345 SCRA 490.
- [9] TSN, 1 April 1997, pp. 4, 5, 6.
- [10] *People vs. Balgos*, 323 SCRA 372; *People vs. Alipayo*, 324 SCRA 447.
- [11] *People vs. Regala*, 329 SCRA 707; *People vs. Veloso*, 330 SCRA 602.
- [12] *People vs. Bernaldez*, 322 SCRA 462; *People vs. Razonable*, 330 SCRA 562.
- [13] Exhibit A, Records, p. 117.
- [14] *People vs. Javier*, 311 SCRA 122; *People vs. Tundag*, 342 SCRA 704; *People vs. Cula*, 329 SCRA 101.
- [15] *Ibid.*
- [16] *People vs. Liban*, 345 SCRA 453; *People vs. Tundag*, *supra*.
- [17] *People vs. Liban*, *supra*.
- [18] TSN, 1 April 1997, p.3.
- [19] TSN, 17 June 1997, p.2.
- [20] *Ibid.*
- [21] See *People vs. Docena*, 322 SCRA 820; *People vs. Bawang*, 342 SCRA 147; *People vs. Toquero*, 339 SCRA 69.
- [22] *People vs. Liban*, *supra*; *People vs. Catubig*, G.R. No. 137842, 23 August 2001.

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