

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JENNY TUMAMBING Y TAMAYO, APPELLANT.

G.R. No. 191261. March 02, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about how the credibility of the rape victim's identification of her attacker often depends on her spontaneous actions and behavior following the rape.

The Facts and the Case

The city prosecutor charged the accused Jenny Tumambing (Tumambing) with rape in Criminal Case 04-227897 of the Regional Trial Court (RTC) of Manila.

DK,[1] the complainant, testified that at around 2:00 a.m. on June 26, 2004 she went to sleep, leaving the lights on, at her cousin's rented room. She was startled when somebody entered the room after she had turned off the lights. The intruder, a man, poked a knife at DK and threatened to kill her if she made any noise. He removed DK's clothes and undressed himself. He then succeeded in ravishing her. When the man was about to leave, DK turned the light on and she saw his face. DK recognized him as the same person who passed by her cousin's room several times in the afternoon of the previous day, June 25, 2004. Later, she identified the accused Jenny Tumambing as her rapist.

On June 27, 2004 the doctor who examined DK found no bruises, hematoma, or any sign of resistance on her body but found several fresh lacerations on her genitals.

Tumambing denied committing the crime. He claimed that on June 26, 2004 he slept at the house of his employer, Nestor Ledesma. He went to bed at about 9:00 p.m. and woke up at 6:00 a.m. Tumambing swore that he never left his employer's house that night. Ledesma corroborated his story. Barangay officials summoned Tumambing and he went, thinking that it had something to do with a bloodletting campaign. He was shocked, however, when he learned that he had been suspected of having committed rape.

On June 27, 2006 the RTC found Tumambing guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of reclusion perpetua. The RTC also ordered him to indemnify DK of P50,000.00 and pay her P50,000.00 as moral damages.

On November 12, 2009 the Court of Appeals (CA) affirmed in CA-G.R. CR-HC 02433 the decision of the RTC in its entirety, prompting Tumambing to appeal to this Court.

The Issue Presented

The sole issue presented in this case is whether or not the CA and the trial court erred in finding that accused Tumambing raped DK under the circumstances she mentioned.

The Ruling of the Court

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.[2]

Here, both the RTC and the CA gave credence to DK's testimony. They maintained that DK categorically and positively identified her rapist. The CA invoked *People v. Reyes*[3] where the Court ruled that it would be easy for a person who has once gained familiarity with the appearance of another to identify the latter even from a considerable distance.[4] Ordinarily, the Court would respect the trial court and the CA's findings regarding the credibility of the witnesses.[5] But the courts mentioned appear to have overlooked or misinterpreted certain critical evidence in the case. This compels the Court to take a look at the same.[6]

DK's identification of accused Tumambing as her rapist is far from categorical. The Court's reading of her testimony shows that she was quite reluctant at the beginning but eventually pointed to him when it was suggested that it might be him after all. Several witnesses attested to DK's uncertainties regarding the rapist's identity when the barangay chairman arranged for her to meet Tumambing. PO2 Crispulo Frondoza, one of the apprehending officers, testified as follows:

Q:

Now in the barangay, do you have any occasion to see whether the complainant pinpointed accused as the person who abused her person?

A:

No, Sir.

Q:

What about in any precinct or agency, do you have any occasion to see complainant positively identified the accused?

A:

No, Sir.[7]

Pedrito Yacub, Sr., the Barangay Chairman to whom DK initially reported the incident testified:

Q:

When the accused enter the barangay hall upon invitation, what happened next?

A:

Correction Sir. Not at the barangay hall. In my residence.

Q:

Then what happened?

A:

He was surprised and [I] told him that he is a suspect of rape and his reply was "akala ko pakukunan niyo ako ng dugo."

Q:

What was the reaction of the accused?

A:

As we sat down in a table, a confrontation ensued. I assured the complainant. Don't be afraid. Tell me. I will protect you.

I called her two cousins. Then she stare upon the suspect. I ordered the suspect to turn left, right and backways.

Q:

After you told the suspect to pose left, right and backways, what happened next?

A:

The suspect told the complainant "huwag kang magtuturo. Ninenerbyus na ako." So she could not pinpoint the suspect.

I said, "Iha, [i]to ba?" But she cannot point to.[8] (Underscoring supplied)

DK's above behavior during her initial confrontation with accused Tumambing gives the Court no confidence that, as she claimed in her testimony, she was familiar with the looks of her rapist because she saw him on the previous day as he passed by her cousin's rented room many times. If this were the case, her natural reaction on seeing Tumambing would have been one of outright fury or some revealing emotion, not reluctance in pointing to him despite the barangay chairman's assurance that he would protect her if she identified him. In assessing the testimony of a wronged woman, evidence of her conduct immediately after the alleged assault is of critical value.[9]

The barangay chairman continued:

Q:

As barangay captain who has the duty to enforce law and city ordinances, you came to know that there were other suspect, what did you do?

A:

I invited the suspect.

Q:

Do you remember the person whom you invited known as the second suspect?

A:

His name is Alvin Quiatcho. For confrontation with the complainant. And confrontation ensued between her and the suspect. I asked her is this the suspect?

Q:

What was her answer?

A:

She said, she could not recall. Chairman pa doctor kaya natin siya. It mean[s] "makunan ng cells."

The complainant told me chairman padoktor natin [sic] na lang natin siya.

Q:

Presumably to get some sperm?

A:

Yes, Sir.

Q:

What did you do if any with the suggestion of [DK]?

A:

I told the complainant, it would be difficult to do.

Q:

After that what happened?

A:

So since she could not pinpoint also the other suspect, I released the other suspect. She could not pinpoint.[10]
(Underscoring supplied)

That DK wanted the sperm of Alvin Quiatcho (Quiatcho), the second suspect, tested and presumably compared with that found in her clearly indicates that she entertained the possibility that it was Quiatcho, rather than accused Tumaming, who raped her. The Court cannot thus accept DK's testimony that she had been familiar with the looks of the man who violated her and that she could not possibly be mistaken in identifying him as Tumaming.

Crispin Dizon, the executive officer of the same barangay, corroborated the barangay chairman's testimony:

Q:

So what was the question?

A:

The question was that, "Is this the person you saw and who rape you?"

Court: Referring to?

Interpreter: Referring to Jenny Tumaming.

Q:

What was the reply of the victim, if any?

A:

She did not answer, Sir.

Q:

What happen next when [DK] did not answer?

A:

And [DK] was again asked by the Chairman and told her not to fear and tell who raped her and point to him.

Q:

What was the reply of [DK] if any?

A:

She did not reply, Sir.

Q:

Now if you remember how many times did the Chairman asked [DK]?

A:

Four times, Sir.[11]

The RTC and the CA thought that DK was quite sure it was Tumambing who sexually attacked her. They pointed out her insistence at the police precinct that it was Tumambing who really raped her and that she positively identified him in open court. But this came about much later. The fact is that she did not refute the testimonies given by neutral witnesses that she could not point to accused Tumambing as her rapist during their initial confrontation at the barangay chairman's residence. These witnesses had no motive or reason to fabricate a story for the defense.

By the nature of rape, the court has to, quite often, rely on the sole testimony of the victim. For this reason, the court is always reminded to subject her testimony to a most rigid and careful scrutiny. It cannot afford to overlook details that are essential to an understanding of the truth.[12] Here, as shown above, DK's testimony is anything but believable and consistent.

Although she categorically said on cross-examination that she saw her attacker enter the room,[13] she did not shout or raise an alarming call. Nor did she try to escape.[14] She just lay in bed.[15] In fact, she maintained that position in bed even when her attacker was standing before her and removing his clothes.[16] She did not shout nor struggle when he penetrated her.[17]

There is one thing that DK appeared sure of. Her rapist wore a yellow shirt.[18] But this is inconsistent with her testimony that after the stranger in her room was done raping her, "bigla na lang po siyang lumabas x x x sinundan ko siya ng tingin." [19] Since DK did not say that the man put his clothes back on, it seems a certainty that he collected his clothes and carried this out when he left the room. Since DK then turned on the light for the first time, she had a chance to see him clearly. But, if this were so and he walked out naked, why was she so certain that he wore a yellow shirt?

With such serious doubts regarding the true identity of DK's rapist, the Court cannot affirm the conviction of accused Tumambing.

WHEREFORE, the Court SETS ASIDE the decision of the Court of Appeals dated November 12, 2009 in CA-G.R. CR-HC 02433 as well as the decision of the Regional Trial Court of Manila, Branch 27, in Criminal Case 04-227897, and ACQUITS the accused-appellant Jenny Tumambing y Tamayo of the crime charged on the ground of reasonable doubt. The Court orders his immediate RELEASE from custody unless he is being held for some other lawful cause.

The Court further ORDERS the Director of the Bureau of Corrections to implement this Decision forthwith and to inform this Court, within five days from receipt hereof, of the date appellant was actually released from confinement. Costs de oficio.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,* Del Castillo,**] and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 954 dated February 21, 2011.

[1] Pursuant to Republic Act 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, are withheld and fictitious initials instead are used to represent her. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.

[2] *People v. Galera*, 345 Phil. 731, 745 (1997).

[3] 369 Phil. 61, 76 (1999).

[4] *Rollo*, p. 12.

[5] *People v. Virrey*, 420 Phil. 713, 720-721 (2001).

[6] *People v. Galera*, *supra* note 2, at 754.

[7] TSN, May 10, 2005, p. 6.

[8] TSN, May 11, 2005, pp. 6-7.

[9] *People v. Galera*, *supra* note 2, at 750.

[10] TSN, May 11, 2005, pp. 9-10.

[11] TSN, May 25, 2005, pp. 7-8.

[12] *People v. Salidaga*, G.R. No. 172323, January 29, 2007, 513 SCRA 306, 318.

[13] TSN, March 4, 2008, p. 5.

[14] *Id.* at 12.

[15] *Id.* at 7.

[16] *Id.* at 16.

[17] *Id.* at 17.

[18] *Id.* at 35-36.

[19] *Id.* at 19.

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