

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOMEDES TOLENTINO, ACCUSED-APPELLANT.

G.R. No. 40236. December 19, 1985

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Nicomedes Tolentino was charged before the Court of First Instance of Cavite with the crime of rape in an information, reading as follows:

"The undersigned Assistant Provincial Fiscal, upon complaint originally filed in the Municipal Court of Bacoor, Cavite, by Petronilo Jimenez, father of the offended party, Maria Ruby Jimenez, hereby accuses NICOMEDES TOLENTINO of the crime of RAPE, committed as follows"

That on or about November 16, 1969, in the Municipality of Bacoor, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, and intimidation, did then and there wilfully, unlawfully, and feloniously have carnal knowledge of said Maria Ruby Jimenez, a minor girl of 14 years, against the latter's will and consent.

The said offense was committed with the aggravating circumstance of use of superior strength."

After trial, the lower court rendered judgment finding the accused guilty, thus:

"WHEREFORE, this Court finds accused Nicomedes Tolentino guilty beyond reasonable doubt of rape, and sentences him to the penalty of reclusion perpetua in accordance with Art. 335 of the Revised Penal Code, to indemnify the offended party in the amount of P12,000.00 and to pay the costs."

From the sentence, accused appealed to this Court.

The People's version of the incident is as follows:

"At about 3:00 P.M., November 16, 1969, 14-year old Maria Ruby Jimenez, was on the ground floor of the house of 63-year old accused-appellant Nicomedes Tolentino, in Mabolo, Bacoor, Cavite, Maria Ruby, then a sixth grader, was there to see Evelyn Jimenez, a second year high school student, to ask the latter to help her (Maria Ruby) with her homework. Evelyn Jimenez, a grandchild of the accused-appellant and a cousin of Maria Ruby (tsn, p. 4, May 15, 1973), was not there at the moment, so Maria Ruby stayed around for some ten to thirty minutes waiting (tsn, p. 19, April 15, 1971, p. 5, May 15, 1973). All of a sudden, the accused-appellant appeared, smiling, without saying a word, he held and mashed Maria Ruby's breast. The girl uttered a cry because the accused-appellant did not remove his hands from her breasts and she was suffering from the mashing. Then the accused-appellant gave her two fist blows on the stomach, as a consequence of which Maria Ruby fell unconscious (tsn, p. 2, April 15, 1971).

When Maria Ruby regained consciousness, her breast ached and her private part was in pain. The accused-appellant nearby, threatened to kill her should she report the incident to third persons. Then the accused-appellant ran off and left Maria Ruby in tears (tsn, p. 11, May 15, 1973). Maria Ruby went home. Her mother was there at the time but Maria Ruby did not tell her what had happened as her mother was in a bad

mood (tsn, p. 20, May 15, 1973). Maria Ruby saw blood coming from her private part when she urinated. Her panty was torn near the ass (pundio) (tsn, pp. 2, 3, & 15, May 15, 1973). Her father, Petronilo Jimenez, came home at 10:00 p.m. of that day. He noticed that Maria Ruby was restless and asked her why she could not sleep. Maria Ruby told her father that she had been raped by Nicomedes Tolentino, the accused-appellant (tsn, p. 24, May 11, 1971).

In the morning of the following day, November 17, 1969, Maria Ruby was taken by her mother to a public center in Bacoor, Cavite, where she was given medication "that was placed over her bust, a medicine that looked like a colgate and tablets given to her to be taken. (tsn, p. 27, May 11, 1971).

In the morning of November 18, 1969, Petronilo Jimenez came across the accused-appellant near a theater. Petronilo Jimenez brought the accused-appellant before Maria Ruby and she identified him as the one who raped her. On the afternoon of the 18th, the accused-appellant, on his own went to see Maria Ruby. He was again pointed to by Maria Ruby as her rapist. On both occasions, Maria Ruby trembled in fear on seeing the accused-appellant.

At noontime of November 19, 1969, Maria Ruby was visited by Eulogia Malabanan, Guidance Counsellor of Mabolo Elementary School, Bacoor, Cavite, where Maria Ruby was a pupil. Earlier, Miss Malabanan had been told by three pupils that Maria Ruby had been raped by the "old man" (lolo) (tsn, pp. 3 & 16, May 11, 1971). Miss Malabanan saw Maria Ruby, together with some teachers and three pupils. Maria Ruby told Eugenia Espiritu Sasis, one of the teachers, that it was the accused-appellant who had raped her (tsn, p. 5, Jan. 17, 1973). Maria Ruby told Miss Malabanan that her (Maria Ruby's) bust was swollen, her stomach ached, and she could hardly urinate (tsn, p. 4, May 11, 1971). At 1:00 p.m., Miss Malabanan reported the case to Barrio Captain Reynaldo Sarino. The Barrio Captain, one teacher and Miss Malabanan fetched Dr. Conrada Episcopo, the School Physician and took her to Maria Ruby. Dr. Episcopo examined Maria Ruby and found that her private organ was lacerated at 1:00 o'clock and 7:00 o'clock. Maria Ruby told Dr. Episcopo that she was raped (tsn, pp. 14-22, May 11, 1971). After the examination, Miss Malabanan and her group reported the case to the National Bureau of Investigation (tsn, p. 21, May 11, 1971).

Petronilo Jimenez, Maria Ruby's father, had taken the matter to the Philippine Constabulary as early as November 18, 1969. At that time he was told that the evidence against the accused lacked medical certificate (tsn, pp. 6-15, May 21, 1971). Thus, on November 21, 1969, Maria Ruby was examined by Dr. Isabel Sanchez of the Dra. Oliva Salamanca Hospital. Dr. Sanchez found Maria Ruby's genitalia lacerated at 1:00 o'clock caused by the insertion of a hard object into the organ. Maria Ruby's breast hurt upon contact. At that time, the lacerations were still slightly fresh, and estimated to be five to seven days old (tsn, pp. 6-12, June 17, 1971; Exh. B & B-1).[1]

On appeal, accused-appellant assigns as error the trial court's giving full faith to the testimony of the offended party, hospitalized thrice for mental disturbance, arising from her rape. During trial, however, the following observation was noted:

"The theory of the Prosecution is that the offended party, the then witness being examined by the court is a girl of tender years, innocent and still confined in a hospital under the medical attention of a facultative specializing in mental cases. But surprisingly, the alleged non-compus mentis was so intelligent to give correct and seemingly truthful answers."[2]

There is no question, therefore, that complainant's having been confined at the National Mental Hospital for shock and nervousness never affected her ability to testify. She is a credible witness.

It is true that complainant was attacked when she was unconscious and that she did not testify that accused-appellant actually had intercourse with her. But who else would have raped her except the accused-appellant who mashed her breasts and delivered two fist blows on her stomach rendering her

unconscious? It was the accused-appellant who was beside Maria Ruby when she regained consciousness and was the one who threatened to kill her should the incident reach the ears of third persons. If complainant was fabricating a story, it would have been easy for her to say that she was awake when the penetration took place. From November 16, 1969, when the rape was perpetrated, to April 15, 1971, when she testified in the Court of First Instance of Cavite, Maria Ruby was steadfast in her identification of the accused-appellant as the one who raped her. The uncorroborated testimony of complainant is sufficient. It is clear and free from any serious contradiction. Her story is impeccable and has the ring of truth throughout.[3]

The accused-appellant first claimed innocence by stating that he was suffering from irreducible hernia a year before the incident as shown by the medical certificate of Dr. Ilano. Dr. Ilano, however, admits that hernia will not prevent an erection of the male organ and such person can still perform the sexual act.

Apparently sensing that the above defense may not be convincing, the defense attributes the commission of the crime to another person through the testimony of Evelyn Jimenez, the person Maria Ruby was looking for at the time of the incident. Evelyn claims "that Maria Ruby told a different version to one Ligaya, in the presence of a certain Panchang and Evelyn herself. Maria Ruby allegedly said that when she went to the house of her grandmother she started calling but nobody answered and she proceeded entering the house. While inside the house, somebody pulled her. It happened. And the person who abused her left for the Visayas." [4] Not much weight can be given to this testimony when the following circumstances are considered — the allegation of rape by another person is not clear and convincing; this testimony was not brought out immediately after the incident nor was Evelyn Jimenez presented before the Fiscal's office; and Evelyn is a granddaughter of the accused.

Accused-appellant likewise interposes alibi. He argues that he could not have raped Maria Ruby because from 10:30 a.m. to 5:00 p.m., November 16, 1969, he was in the cockpit of Las Piñas, Rizal. This defense is unavailing. Alibi is futile if there is proof of positive identification, as in this case. Furthermore, it was not proven that it was impossible for the accused-appellant to be at the scene of the crime considering the proximity of the Zapote cockpit to the house of the accused-appellant, where the rape took place. Accused-appellant is alleged to be a cockfighting aficionado. Being so, he must have many friends and fellow aficionados who must have been with him that day, if he indeed went to the cockpit. But accused presented no one to substantiate his claim of alibi.

Lastly, the complainant, a 13 year old barrio girl would not point an accusing finger at accused-appellant, 64 years old and a grandfather, if she in fact was not raped by him.

WHEREFORE, with the modification that the civil indemnity is raised to P30,000.00, the decision appealed from should be, as it is hereby AFFIRMED.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and Alampay, JJ., concur.

[1] pp. 1-5, Brief for the Appellee.

[2] p. 148, Rollo.

[3] *People v. Dazo*, 58 Phil. 420.

[4] Appellant's Brief, pp. 4-5.

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