

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BUENAVENTURA BAYLON ALIAS "TURA",
ACCUSED-APPELLANT.**

G.R. No. 56877. April 27, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Once again the principal issue which confronts Us in this appeal is the credibility of witnesses. Because this is a criminal case it is obvious that the judge who tried the case and in the process observed the witnesses, noted their demeanor and even the inflections of their voices found the prosecution's evidence to be more credible. For reasons which are too trite to mention, We sustain the trial judge because an examination of the record does not warrant a different action.

This case is about the rape of a girl of tender years. SONIA ALDAS had just entered her teen years when she suffered a traumatic experience. She was abused, according to the cold and formal words of the information, as follows:

"That on or about the 8th day of March, 1978, in the Municipality of Victorias, Province of Negros Occidental, 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 have carnal knowledge of one, SONIA ALDAS, a minor 12 years and 8 months old, against the will of the latter." (Expediente, p. 32.)

The "above-named accused" was a man whose shadow had lengthened on that day in March, 1978, because he was then 78 years old. His name is BUENAVENTURA BAYLON alias "TURA".

The sentence under appeal reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds the accused Buenaventura Baylon guilty beyond reasonable doubt of the crime of rape defined and penalized under Art. 335, Revised Penal Code as amended, and hereby sentences him to suffer the indivisible penalty of reclusion perpetua and to indemnify the offended party the sum of Ten Thousand Pesos (P10,000.00) as moral damages and to pay the costs." (Id., p. 246.)

Baylon was not committed to prison pending appeal because by order of the trial judge "in the meantime the bond which he has filed [pending trial] shall serve for purposes of his provisional liberty [pending appeal]." (Id., p. 252.)

The facts, as narrated in the well-written decision of Judge Segundino G. Chua, are as follows:

"At about 6:00 o'clock in the afternoon of March 8, 1978, Sonia Aldas was on her way home from the public market of Victorias, Negros Occidental, where she bought some viands. She was accompanied at the time by a ten-year old boy, Nilo Guatag. Passing by the school premises of the Victorias Elementary School along Montinola Street, she decided to get inside in order to ask some money for her school allowance from the

accused Buenaventura Baylon, whom she used to call 'Lolo Tura'. She requested Nilo just to wait outside while she looked for the accused who was tending to the plants and flowers within the school campus. Sonia used to ask money from the accused ever since she was a student in grade one, and called him 'Lolo Tura' because the brother of the accused happened to be the husband of her father's sister.

"Sonia saw the accused and approached him asking for money. The accused told her that they go to the far end of the school building because, according to him, he kept his money in that place. (The school building is inside a fenced campus and is about 300 meters from the public market.) But once there the accused suddenly grabbed her hand and loosened her panty. Then he pushed her down to the cement floor, laid on top of her and had sexual intercourse with her. She struggled to get away from his hold, pleading with him, but he threatened to kill her with a knife. The girl felt pain when the accused inserted his penile organ into her private part and she could not remember how long the sexual act lasted.

"Then there was a tap at the door of the room. Sensing the presence of someone, the accused let her go and she ran out of the room where she met Nilo Guatag who led her out of the school campus.

"At the time of the incident Sonia Aldas was exactly 12 years, 8 months and 22 days old, having been born on July 16, 1965, according to her mother and Sonia's baptismal certificate (Exhs. "B", "B-1" and "B-2").

"Sonia did not tell anybody about the incident until the following morning when her mother arrived from Minapasok, Fabrica, in the north. Her mother, Ana Aldas, was surprised why she did not go to school that morning and she asked her daughter why. Sonia said she was not feeling well and she cried. Then she related her harrowing experience to her mother. The mother lost no time in bringing Sonia to the police station to report the incident. They saw the rural health physician, Dr. Josefina Manzon, to have her physically examined. Dr. Manzon then issued the corresponding medical certificate (Exh. "C") which is quoted hereunder in full:

'March 9, 1978

TO WHOM IT MAY CONCERN:

This is to certify that I have examined SONIA ALDAS, 11-1/2 yrs. old, female, student, residing in Fermont Village, Victorias, Negros Occidental and found the following:

1. Absence of pubic hair.
2. Hymen-freshly lacerated and congestion of the edges.
3. Vaginal canal admits one (1) finger.

(SGD) JOSEFINA A. MANZON

Rural Health Physician

Neg. Occ.'

"Dr. Manzon, a graduate of the University of Santo Tomas of 1951, passed the board examination for medicine the following year. She was in private practice for sometime until she joined the government service in 1966. Since Dec. 1, 1977 she has been the rural health physician of Victorias town up to the present time. Concerning her findings in this case, Dr. Manzon declared that the fresh laceration she found in Sonia's hymen could have been caused within 24 hours before examination, and that such injury could have been caused by a hard instrument such as an erect male organ. The congestion of the edges, according to her, referred to the swelling and reddening of the tissues. During the physical examination, Dr. Manzon could insert into the girl's private part but one inch of her forefinger because she was complaining of pain.

"On April 12, 1978, Ana Aldas filed the complaint for rape against the accused before the Municipal Court of

Victorias (Exhs. "A" and "A-1")." (Id., pp. 239-242.)

The appellant now claims:

- "1. THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.
2. THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED UNDER ARTICLE 335 OF THE REVISED PENAL CODE, AND IMPOSED THE PENALTY OF RECLUSION PERPETUA, and
3. THAT THE TRIAL COURT ERRED IN AWARDING MORAL DAMAGES." (Brief, p. 1.)

In support of the first assignment of error the appellant points to contradictory statements made by Sonia, e.g. that the accused forced her to lie on the cement floor and then loosened her panty but later she said that after the accused has loosened her panty he pushed her to the cement floor. But such contradiction in the sequence of events does not impair Sonia's credibility considering her tender years and the fact that she was narrating a traumatic experience which was attended by excitement and confusion. In fact, the trial court observed that, "Her oral declaration was clear and convincing and she weathered a gruelling cross-examination." (Id., p. 246.)

The appellant claims that Sonia offered no resistance when she was raped. It is true that Sonia admitted that she did not physically resist her Lolo Tura but she explained her omission in this wise, "How could I be able to kick him when before doing that carnal act with me he threatened to kill me and pointed a knife at me, and upon threatening me I fell unconscious because of fear. (The witness cries)." (TSN, p. 89.)

It should be recalled that in March, 1978, Sonia was less than 13 years old and the case of *People vs. Savellano*, L-31227, May 31, 1974, 57 SCRA 320, 328 is relevant; there it was held:

"It is not necessary that the force employed against the complaining woman in rape be so great or of such a character as could not be resisted. It is sufficient that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman (U.S. vs. Villarosa, 4 Phil. 434, 437 cited in 52 C. J. 1018, note 7; Decision of Supreme Court of Spain, dated May 14, 1878, 3 Viada,Codigo Penal 452; II Hidalgo Codigo Penal 302). The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other (75 C.J.S. 475)."

In insisting that Sonia offered no resistance, the appellant goes farther by stating "this may be an indication and willingness on the part of the offended party." (Brief, p. 9.) This must be the pits in advocacy. For the assertion that a girl with the smell of milk still in her mouth would willingly submit herself to a man so that he can satisfy his carnal thirst is simply unacceptable.

The appellant's brief which is not well-organized argues in the first and second assignments of error that Sonia was not raped because: (1) "being a girl a little over 12 years of age, slightly built there can [not] be immediate penetration of the penis of the accused in her vagina"; (2) Dr. Manzon said, "There could have been an attempt [of rape]"; and (3) Dr. Manzon's statement that, "There was no bleeding."

The best evidence to prove that Sonia was raped is the fact that when she was physically examined on March 9, 1978, the day following the incident, this condition was noted: "Hymen - freshly lacerated and congestion of the edges." (Exhibit C.)

Dr. Manzon did in fact say that there could have been an attempt of rape. But she also said: "Maybe he tried to insert the male organ I could not tell, Your Honor, if there was a consummation since when I inserted my finger there a laceration and the hymen was already lacerated, may be the old man tried to insert, an attempt only, Your Honor, it could be possible, Your Honor, that the male organ was already touching the vagina." (TSN, p. 46.)

Dr. Manzon is not a lawyer and it is obvious that in her mind there is no rape unless there is penetration of the vagina. But the law does not require penetration of the vagina; entry of the labia is sufficient. As a matter of fact, however, Sonia's vagina must have been entered for how could her hymen have been lacerated.

The absence of bleeding does not disprove the rape because the physical condition of Sonia was sufficient to demonstrate that it took place.

The appellant interposed the defense of alibi. He also claimed that he did not know Sonia and saw her for the first time only in court.

The defense of alibi cannot prevail over the positive identification made by Sonia. And the testimony of Mrs. Catalina Moduramente that she and the accused left the school premises together at about 6:00 p.m. on March 8, 1978, is unavailing because it was not impossible for the latter to have committed the rape before the two left the school.

It is to be recalled that Sonia addressed the accused as "Lolo Tura" because the latter's brother married the sister of Sonia's father. When the appellant was cross-examined he admitted that he has a younger brother named Carlos Baylon and that Carlos is the brother-in-law of Ana Aldas. It should also be recalled that Ana Aldas is the mother of Sonia. All these facts show that Sonia was telling the truth and that the appellant did in fact know Sonia contrary to his pretension.

Appellant's last assignment of error is to the effect that:

"It is fundamental in law that only matters which were proved can be taken by the Court in its decision. The record of this case is devoid of any proofs proving moral damage that was suffered by the offended party. Such being the fact it is respectfully submitted that the Honorable trial judge has no legal authority to award such moral damages to the offended party." (Brief, p. 13.)

Suffice it to say that, "No proof of pecuniary loss is necessary in order that moral, nominal, temprate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case." (Art. 2216, Civil Code.) And "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission." (Art. 2217, Id.)

WHEREFORE, the judgment of the trial court is affirmed in toto. Cost against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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