

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO VILLEGAS, JR., DEFENDANT-APPELLANT.

G.R. No. 60386. January 30, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the judgment convicting Alfredo Villegas, Jr. of the crime of rape and sentencing him to the penalty of reclusion perpetua and to indemnify the offended party, Rosalia Lava, in the sum of P12,000.00.

The complaint filed by Marcelo Lava, for and in behalf of his daughter Rosalia Lava, 11 years old, for the crime of rape with less serious physical injuries reads:

"That on or about the 14th day of August 1977, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, by means of violence and intimidation, did then and there wilfully, unlawfully and criminally have carnal knowledge with the daughter of the undersigned, Rosalia Lava, against her will and consent, and in the occasion of said rape, the said Rosalia Lava sustained the following injuries on the different parts of her body:

- "1. Contused wound, right lumbar area;
2. Vaginal laceration, inferior fourchette with bleeding;
3. Hymen lacerated at 10 o'clock and 5 o'clock positions; and
4. 2 cm. lacerations of the vaginal wall at 5 o'clock position (1st degree) involving the mucosa and sub-mucosa-0.5 cm. deep extending to perineum (0.5. cm. of skin).

which lesions with medical treatment will heal in fourteen (14) days barring complication.

"CONTRARY TO LAW."

The offended party Rosalia Lava, 11 years old, testified that about 11 o'clock in the morning of August 14, 1977 she was in the house of her Manang Daga (Rowena) attending to the small child of the latter. Appellant, known to her as Junior, was also in the house while her Manang Daga was selling peanuts elsewhere. Junior covered her mouth and lay with her placing his penis in her vagina which caused it to bleed. She was not able to shout because he covered her mouth with a handkerchief; she could only wiggle her body to prevent him from having intercourse with her. Appellant removed her panty after which he pulled down the zipper of his pants and then inserted his penis into her private parts. After the intercourse, Junior left the house, leaving her very weak and exhausted.

When Rowena Daguma arrived at the house about 2:00 in the afternoon of August 14, 1977, she saw her niece, Rosalia, full of blood. Thinking that she had menstruation because she was already 11 years old, she called for a "hilot" to examine her bleeding vagina and Rosalia was made to drink boiled banana leaves. After having drunk the boiled banana leaves, Rowena cooked more peanuts for sale at the Rotary Park. She left the house and

returned about 6:00 in the evening and found Rosalia hysterical. With the help of some neighbors, they brought Rosalia to the Iloilo Doctors' Hospital.

The doctor examined Rosalia and then informed Rowena Daguma and her companions that Rosalia had been sexually abused. When asked by the doctor who abused her, Rosalia answered that it was her Manong Junior.

The examining physician, Dr. Jaime Manila of the Iloilo Doctors' Hospital, issued the following medical certificate:

"TO WHOM IT MAY CONCERN:

ROSALIA LAVA, 11 years old, female, child was admitted in this hospital on August 14, 1977 because of injuries sustained when patient was criminally assaulted.

Pertinent P.E. showed:

1. There was loss of consciousness but no vomiting.
2. Contused wound, right lumbar area.
3. Vaginal laceration, inferior fourchette with bleeding.

Repair of vaginal laceration first degree was done immediately on admission.

Post-op findings showed:

1. 2 mm. hematoma above and lateral to the urethral opening (11 o'clock position)
2. inner side of labia minora are congested.
3. hymen lacerated at 10 o'clock and 5 o'clock positions.
4. 2 cm. lacerations of the vaginal wall at 5 o'clock position (1st degree) involving the mucosa and sub-mucosa -0.5 cm. deep extending to perineum (0.5 cm. of skin). Fresh bleeding noted from the vaginal laceration.

THESE injuries will heal completely in an average of 14 days barring complication." (Exhibit A).

In his defense, Alfredo Villegas, Jr., 22 years old, denied the truth of the charge against him. He testified that on August 14, 1977 he was already married. Rowena Daguma and her husband Vening Amosco were renting in his house. Prior to August 14, 1977 there was already a grudge between him and Rowena regarding the rental of the house which had remained unpaid. About 7:00 in the morning of August 14, 1977 he left the house to work in the repair shop of his brother in Mabini Street, Iloilo City, while his wife went to sell peanuts in the central market. He stayed and worked in the repair shop of his brother until the afternoon and returned home at about 6:00 in the evening. No witness was presented to corroborate appellant's testimony.

The trial court in rendering a judgment of conviction found that -

"[T]he offended party Rosalia Lava, a retarded girl of eleven years old was staying with her aunt Rowena Daguma to take care of the latter's small child and living with the accused Alfredo Villegas, Jr., and his wife under the same one (1) room house owned by Villegas in Baybay, Tanza, Iloilo City. At about 9:00 o'clock in the morning of August 14, 1977, the aunt Rowena Daguma left the house to sell peanuts while the accused was still in the house who indicated to her that he was also leaving. When Rowena returned at about 2:00 o'clock in the afternoon she found Rosalia full of blood and thinking it was her first menstruation she consulted a hilot and they made her drink boiled banana leaves and she again cooked peanuts to be sold. She left again to sell peanuts in the Rotary Park and when she returned home at 6:00 o'clock in the evening she found Rosalia hysterical so with the aid of neighbor's they brought her to the Doctor's Hospital. In the hospital she was told

that Rosalia was criminally abused. Later two (2) policemen arrived in the hospital and upon learning that Alfredo Villegas, Jr. was responsible they left and later returned to the hospital with Alfredo Villegas, Jr. who was pointed by Rosalia as her sexual abuser.

Rosalia was examined by Dr. Jaime Manila and was even put to sleep for thorough medical examination that evening of August 14, 1977. Dr. Manila who reduced his findings in Exhibit "A" & "A-1" which he affirmed in the course of the trial and who concluded that Rosalia had lost her virginity.

The accused Alfredo Villegas, Jr. had testified that in the morning of August 14, 1977 he also left his house to report for work in the repair shop of his brother Budok Villegas situated in Mabini St., Iloilo City and stayed the whole day leaving the repair shop at 6:00 o'clock in the afternoon but was apprehended by the police that same day near the Tanza Church. The accused claimed the charge against him was not true.

This case was repeatedly postponed for the supposed additional witnesses for the defense until finally they agreed to close the case for the defense. The alibi therefore of accused Alfredo Villegas, Jr. remains uncorroborated and must be disregarded.

In a carefully prepared memorandum counsel-de officio contended that Rosalia could have easily made an outcry and under the circumstances as testified to by Rosalia rape could not have happened or penetration was not possible. But taking into consideration that Rosalia was only 11 years old and a retarded child she could hardly be expected to use any discretion or any means to resist. Likewise, the size and strength of the accused Alfredo Villegas, Jr. who is 5'6" in height and about 130 pounds can easily by force subdue the thin, frail and short Rosalia who weigh at most 75 pounds and this Court is convinced under the prosecution's evidence that the act was consummated and accomplished against the will of the aggrieved Rosalia Lava in spite of her resistance." (pp. 5-6, Decision).

Article 335 of the Revised Penal Code on Rape provides:

"Art. 335. When and how rape committed. – Penalties. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

Carnal knowledge of a girl under 12 years is always rape, even if no force or intimidation is used (paragraph 1), or she is not deprived of reason or otherwise unconscious (paragraph 2), and even if she agrees or consents. (People vs. Celis, 35 SCRA 129). Appellant's attempt to discredit complainant's story by observing that she had made no outcry during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below 12 years of age, force or intimidation need not be present. The gravamen of the offense is the carnal knowledge of a woman below 12 years old. In the case at bar, the fact that appellant ravished an 11 year old girl was proven beyond reasonable doubt.

WHEREFORE, the judgment of conviction, being in accordance with law and evidence is hereby **AFFIRMED** with costs against appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

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