

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMSON SAMILLANO, DEFENDANT-APPELLANT.

G.R. No. 62088. March 06, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Antique Branch II in Criminal Case No. 2275-N entitled *People of the Philippines v. Samson Samillano*. The dispositive portion of the decision reads as follows:

"IN THE LIGHT OF ALL THE FOREGOING, the Court hereby renders judgment finding the accused SAMSON SAMILLANO guilty beyond reasonable doubt of having committed the offense of RAPE punishable under the provisions of paragraph 3 of Article 335 of the Revised Penal Code and, there being neither aggravating nor mitigating circumstances to off-set one or the other, hereby sentences the accused Samson Samillano to a penalty of RECLUSION PERPETUA or LIFE IMPRISONMENT; with costs.

SO ORDERED." (Rollo, p. 13)

The prosecution's theory is summarized in the appellee's brief, to wit:

"At about 9:00 in the morning of May 16, 1981, Elizabeth Ungsod, an 11-year old girl and grade V pupil at the Zaragoza Elementary School, was in the brook in Barangay Zaragoza, Bugasong, Antique, together with her mother. Sometime thereafter, she went home ahead of her mother who continued washing clothes. Along the way, appellant, with a bolo in his possession, appeared. He held her and brought her to a dry ditch where he took off her panties. After taking off his short pants, he made her lie down. She struggled to free herself but failed. Also, she tried to shout but he covered her mouth. He then placed himself on top of her and inserted his penis inside her vagina. She felt some pain and told him so. It was then that Elizabeth's elder half-brother, Ruben Ungsod arrived. Appellant stood up and ran away. Ruben chased him but was not able to overtake him. When Elizabeth and Ruben went home, the latter told their father what happened. On the same day, she was brought to the Rural Health Physician, Dr. Rodolfo Tabotabo, who conducted a medical examination. He found the presence of seminal fluid at the vaginal fornices, newly healed lacerations inside the vagina positioned at 3:00 o'clock and 9:00 o'clock and erythematous swelling of the vaginal opening. (tsn., Feb. 2, 1982, pp. 3-9, 15-18; Oct. 20, 1981, pp. 2-5; July 19, 1982, pp. 2--5, 8-10; Exhs. "A", "C", "D", "E")." (Appellee's Brief, pp. 2-3)

An information was then filed by the Assistant Provincial Fiscal charging Samson Samillano with the crime of rape committed as follows:

"That on or about the 16th day of May, 1981, in the municipality of Bugasong, province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force, violence and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of Elizabeth Ungsod, a girl eleven (11) years of age against the latter's will.

"Contrary to the provisions of Article 335 of the Revised Penal Code." (Rollo, p. 4)

The accused-appellant, on the other hand, denied the charges against him and pointed to Ruben Ungsod, the victim's half-brother, as the person who had sexual intercourse with the victim on the alleged date. According to him, he was bringing his cow to the brook when he saw Ruben and Elizabeth having sexual intercourse under the bamboo clumps. Thereafter, he immediately went to Elizabeth's house to tell her father but the latter was not home. The accused-appellant adds that he had seen Ruben and Elizabeth engaging in sexual intercourse on two other occasions. He asserts that he is merely being made a scapegoat by Elizabeth's parents to avoid embarrassment in the barrio inasmuch as Ruben is Elizabeth's half-brother.

The lower court gave credence to the prosecution's theory and rendered the herein questioned decision. Hence, the present appeal.

The accused-appellant raises the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING GREATER WEIGHT TO THE TESTIMONY OF ELIZABETH UNGSOD.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED OF THE CRIME OF RAPE.
(Rollo, p. 42)

It must be noted that the appellant is charged with statutory rape and the gravamen of the said offense as provided under paragraph 3, Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. (People v. Alegado, G.R. Nos. 93030--31, August 21, 1991; People v. Puedan, 196 SCRA 388 [1991]; People v. Mangalino, 182 SCRA 329 [1990])

In the case at bar, there is no question as to the victim being under twelve years old (exactly 11 years 6 months and 8 days) at the time of the incident. In fact, the appellant, in his brief, did not question the lower court's findings as to the age of the victim although the records show that the defense, during the examination of the witnesses in the lower court, tried to question the probative value of the birth certificate for having been obtained only two days after the complained incident. In any case, even if the birth certificate is questioned herein, this Court will rule in the same manner as the lower court for even if the birth certificate is to be disregarded, the age of the victim has been established by other admissible evidence such as the public school records, and the testimonies of the victim herself and her father.

In People v. Alegado, supra, it has been held that under Sections 39 and 40 of the Revised Rules on Evidence, the reputation or tradition existing in a family previous to the controversy in respect to the pedigree of any of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. The word pedigree includes relationship, family genealogy, birth, marriage, death, the dates when, the places where these facts occurred and the names of the relatives. Hence, the testimonies of the victim and her father, standing alone, could prove the victim's age.

The age of the victim having been settled, the next question, then, to be resolved is whether the appellant had carnal knowledge of the victim.

On this point, the prosecution relies solely on the testimony of Elizabeth while the appellant relies on his own. The Court's task, then, is to determine which of the conflicting versions is credible.

The lower court found the prosecution's version more credible. After a very careful consideration of the records,

this Court is of the considered opinion that the lower court committed no reversible error in making the aforementioned findings. It is a well-settled principle that the findings of facts of lower courts are accorded utmost respect in the absence of a showing of arbitrariness considering that they had the opportunity to observe the demeanor and deportment of the witnesses. (People v. Raptus, 198 SCRA 425 [1991]; People v. Calixtro, 193 SCRA 303 [1991]; People v. Rafanan, 182 SCRA 811 [1990])

The appellant stresses the fact that the prosecution failed to present Ruben Ungsod even if he was an eyewitness to the crime. He was not even presented to refute the appellant's claim that it was he who was with Elizabeth on the date in question. According to the appellant, the non-presentation of Ruben is fatal to the prosecution's case as it gives rise to the presumption that if presented, his testimony would be adverse to the prosecution.

It has, time and again, been held that the non-presentation of certain witnesses by the prosecution is not a sufficiently plausible defense (People v. Dela Cruz, 184 SCRA 461 [1990]) and the matter of whom to present as witness by the prosecution is addressed to the sound discretion of the fiscal or the prosecution handling the case (People v. Fernandez, 186 SCRA 830 [1990]; People v. Nabunat, 182 SCRA 52 [1990]; People v. Marilao, 177 SCRA 271 [1987]; People v. Campana, 124 SCRA 271 [1983]). There should, thus, be no unfavorable inferences to be made from the failure of the prosecution to present Ruben. Moreover, if the appellant believes that Ruben's testimony would bolster his theory, then it is the defense who should have presented Ruben. The coercive processes of the court were at the appellant's disposal if Ruben refused to testify.

It is, likewise, erroneous for the appellant to require that Ruben refute the imputations of the appellant. It is worthy to emphasize that Ruben is not the accused in the present case. What the prosecution has only to establish is that the accused perpetrated the crime and not that some other person did not commit the same. The lower court found the victim's lone testimony sufficient to establish the appellant's culpability. This Court deems it likewise. For as between the bare denials of the accused and the positive identification made by the victim, the latter must prevail (People v. Camarao, 188 SCRA 671 [1990]; People v. Paco, 170 SCRA 681 [1989]; People v. Khan, 161 SCRA 406 [1988]).

The appellant, next, capitalizes on the findings of the rural health physician who conducted the physical examination upon the person of the victim which revealed the possibility that the victim could have engaged in sexual intercourse on previous occasions. It is claimed that the findings cast unsavory implications and gives credence to the appellant's assertions that Ruben and Elizabeth have an illicit relationship.

During the examination of Elizabeth Ungsod on the witness stand, she strongly denied having had any sexual relations with her half-brother. She even declared that it was also the accused who had sexual intercourse with her on three previous occasions (pp. 10-11, TSN, February 2, 1982)

For the determination of the appellant's culpability in the present case, it would be unnecessary to delve into the past sexual relations of the victim for the fact that the victim had several sexual liaisons will not rule out the crime of rape (People v. Hortillano, 177 SCRA 729 [1989]; even prostitutes may be raped (People v. Pido, G.R. No. 92427, August 2, 1991 citing People v. Tagle, 176 SCRA 809 [1989])

At any rate, the appellant failed to produce any iota of evidence to support his representations as to the existence of an incestuous relationship between Ruben and Elizabeth. If it is true that he is merely being made a scapegoat by the victim's parents, then, a number of barrio folks who must have become aware of the said relationship could have been presented to substantiate the appellant's claims. We also quote with approval the Solicitor General's arguments in the People's brief regarding this matter:

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"b) Prior to the date in question, appellant had allegedly seen Elizabeth and Ruben twice in sexual congress, yet he did not bother to report these two incidents to her father. And on May 16, 1981 when he claimed to have seen the two again having sexual intercourse, he again failed to report the same to her father on the pretext that the latter was not home. Considering the seriousness of the matter, he should have waited for Elizabeth's father to come home.

"c) Appellant's defense is belied by the fact that Ruben, together with Elizabeth's mother, accompanied Elizabeth to Dr. Tabotabo for examination. If Ruben was the one responsible, he would not have sought confirmation of what he had done.

"d) There is no showing that aside from appellant, some other person had seen the alleged sexual liaison between Ruben and Elizabeth. Hence, appellant's claim that said affair had caused public embarrassment to Elizabeth's family has no basis.

"e) Appellant could not explain why he should be chosen as alleged scapegoat for Ruben's sin. He admitted that he was in good terms with Elizabeth's family prior to the incident. (TSN., August 20, 1982, p. 12)" (Appellee's Brief, pp. 4-5)

From all the foregoing, there is no doubt the appellant had carnal knowledge of Elizabeth, a child under twelve years old, on May 16, 1981.

All the elements of statutory rape having been established, no other facts, such as the use or non-use of force by the appellant, need be presented to pin the responsibility for the crime herein charged upon the appellant. However, although there is apparently no need to resolve the question of whether or not force was employed, we find it imperative to make a note of the lower court's findings regarding this matter.

The lower court ruled that Elizabeth consented to the sexual intercourse with the following findings:

"It is noteworthy, that Elizabeth never reported to her parents or to anybody the fact of her three previous sexual intercourse with the accused Samson Samillano. As to the 4th sexual intercourse she had with the same accused on May 16, 1981, it was not she, but her half-brother Ruben Ungsod who after surprising them in the act of sexual intercourse, reported the incident to her father. Before her father signed the complaint, her mother had to compel her to execute the affidavit against the accused. And during trial, while going on her direct testimony, Elizabeth appeared many times to be reluctant whenever she was asked questions tending to elicit from her a declaration on the use of force by the accused in having sexual intercourse with her. On one such occasion, the Court had to order the suspension of the proceeding and upon resumption few minutes later, to order the resetting of the continuation of hearing upon motion by the prosecuting Fiscal. Likewise, worthy of note is the fact that the accused Samson Samillano, and the minor Elizabeth Ungsod are second cousins to each other. All these facts and circumstances, inter-linking with one another and taken altogether, operate to negate the existence of force or violence in the sexual intercourse the accused had with Elizabeth on May 16, 1981. On the contrary, they tend to establish consent on the part of Elizabeth in the commission thereof." (Rollo, p. 11)

The evidence on record is not sufficient to establish the victim's consent. Elizabeth was never asked in court why she had not reported the previous assaults upon her person. She was likewise never given an opportunity to explain why she was hesitant to execute the affidavit against the appellant. Her reluctance before and during trial may be interpreted as the manifest fear of a child of tender years who is being compelled to divulge things that even a woman of sufficient maturity would be embarrassed to declare in public.

It would, thus, be seen that the evidence on the question at hand is incapable of any definite interpretation. There is, indeed, no proof tending to establish the use of force. But this does not necessarily mean that there was consent, in the absence of proof establishing the same.

It is recognized that the consent of a child under twelve years old in rape cases is always regarded as immaterial for she may not yet know or fully realize the detestable nature and gravity of the acts committed upon her person (People v. Raptus, supra) But in the case at bar, the immateriality of the child's consent notwithstanding, there is no basis in attaching a graver stigma by declaring that the victim has consented to the act.

We penultimately rule that in line with the ruling in People v. Saldivia, G.R. No. 55346 November 13, 1991, the award of moral damages which the trial court failed to make is in order, for rape necessarily brings to the victim mental anguish, fright, serious anxiety, besmirched reputation, moral shock and social humiliation. We award to the complainant the sum of P50,000.00 as moral damages.

Finally, we would like to make note of the penalty imposed by the lower court upon the appellants, to wit: reclusion perpetua or life imprisonment. This Court is cognizant of the practice of lower courts in equating reclusion perpetua with life imprisonment. Such an erroneous practice must be curtailed. It is the oft-repeated rule that in a judgment of conviction for a felony, the court should specify the appropriate name of the penalty inasmuch as under the scheme of penalties in the Revised Penal Code, the principal penalty for a felony has its own specific duration and corresponding accessory penalties (People v. Aquino, 186 SCRA 851 [1990]). The proper penalty which should have been imposed is reclusion perpetua. There is no penalty of life imprisonment in the scheme of penalties under the Revised Penal Code.

WHEREFORE, all the foregoing premises considered, the present APPEAL is hereby DISMISSED. The decision appealed from is AFFIRMED with the modifications that there be an award of moral damages amounting to P50,000.00 and that the penalty to be imposed is reclusion perpetua.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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