

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO RAMOS, ACCUSED-APPELLANT.

G.R. No. 64656. November 18, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Benito Ramos y De Lara, was charged of having raped his own daughter, Rosemarie, in Criminal Case No. R-82-1500 of the Court of First Instance (now Regional Trial Court) of Manila[1] under a complaint (p. 4, Rollo) which reads as follows:

"That on or about and during the period comprised between December 22, 1980 and March 30, 1981, both dates inclusive, in the City of Manila, Philippines, the said accused, by means of force and intimidation, to wit: by forcing complainant to lie down, giving her fistic blows on her thighs, and threatening to kill her if she would resist, did then and there unlawfully and feloniously have carnal knowledge of the undersigned complainant, accused's own daughter, against her will and consent.

"CONTRARY TO LAW."

Upon being arraigned, the accused-appellant pleaded not guilty to the offense charged. Thereafter, the case was tried on the merits. On June 3, 1983, the court a quo rendered its decision (pp. 5-10, Rollo) convicting him, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused BENITO RAMOS guilty beyond reasonable doubt as principal of the crime off rape and in accordance with Article 335 of the Revised Penal Code, hereby sentences said accused to reclusion perpetua and to pay the costs.

"SO ORDERED."

Not satisfied with the decision the accused appealed, assigning the following errors committed by the court a quo:

"1.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF ITS CONJECTURES AND UNFOUNDED CONCLUSIONS NOT BORNE BY SUFFICIENT EVIDENCE.

2.

THE TRIAL COURT ERRED IN DISREGARDING MATERIAL FACTS AND CIRCUMSTANCES POINTING TO THE INCREDIBILITY OF THE THEORY OF THE PROSECUTION.

3.

THE TRIAL COURT ERRED IN RELYING MORE ON THE WEAKNESS OF THE DEFENSE EVIDENCE RATHER THAN ON STRENGTH OF THE PROSECUTION EVIDENCE, WHICH IS LACKING IN THIS CASE.

4.

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED ON THE GROUND OF REASONABLE DOUBT" (p. 51, Rollo)

The undisputed facts are as follows:

The accused-appellant and his common-law wife, Erlinda Bartolo, have seven (7) children, namely, 19-year old Wilfredo, 18-year old Jaime, 16-year old Rosemarie, 12-year old Belinda, 4-year old Benjamin, 3-year old Simeon, and 2-year old Babylyn. On December 22, 1980, they were all residing in a small two-story house located along Algeciras, Sampaloc, Manila, except Belinda who was staying with an aunt. Rosemarie, a second year high school student, had already stopped going to school.

In support of the charge, the prosecution presented the following witnesses, namely, Rosemarie Ramos, Belinda Ramos, Erlinda Bartolo and Dr. Luis Larion.

The complainant, Rosemarie, testified that at about noontime of December 22, 1980, everybody was out of the house except her younger siblings, namely, Benjamin, Simeon and Babylyn. While she was cleaning the ground floor of their house, her father, accused-appellant herein, arrived and ordered her to clean their second floor. Once at the said floor, her father ordered her to remove her panties which she refused. She started crying when her panties were later forcibly removed by her father.

Afterwards, her father ordered her to lie down. Again, she refused so that her father pulled her by the hair. Then, the latter removed his briefs and inserted his penis inside her private part. She felt pain and kept crying. When she asked her father why she was committing such an act, the latter answered that he would kill her if she resisted.

Thereafter, her father repeated the same act, through force and intimidation, on many occasions, sometimes in broad daylight or at nighttime. There were times when her father would ask her to suck his penis and when she refused the former would box her thighs, kick her and forcibly pull her face (sinusubsub) towards his penis. Her father usually asked her to commit oral sex with him when he is drunk. There was even an occasion when the former forced her to see some pornographic pictures and when she refused her head was pushed down by him.

The complainant's sister, Belinda Ramos, testified that at about noontime sometime in December, 1980, she saw her father and sister both naked. Her father was holding a kitchen knife while on top of her sister who was crying. She was later seen by her father who warned her not to reveal to anyone what she had seen. She did not tell her mother because she was afraid. She revealed for the first time what she saw after her father and mother quarreled.

The complainant's mother, Erlinda Bartolo, declared that after Belinda reported having seen Rosemarie and her husband naked, she confronted the latter who brushed aside the accusation saying that she was just jealous. Not satisfied by her husband's answer, she reported the incident to the police. She later confronted Rosemarie who admitted that her father really raped her.

Bartolo further declared that the accused stopped Rosemarie's schooling saying that nobody will take care of their other children.

Dr. Larion testified that he examined Rosemarie on March 31, 1981, and found old lacerations in her hymen. He

also found the thickening of her hymen which is indicative of frequent sexual intercourse.

On the other hand, the accused-appellant denied having committed the offense charged. He testified, *inter alia*, that he was previously convicted of the crime of serious physical injuries and spent one year and one day in jail; that he has a bad temper and that he had maltreated his wife on previous occasions; that about a week before December 22, 1980, he and his wife quarreled; that he mauled his wife and as a result thereof the latter lost three (3) teeth; that his wife vowed to send him back to jail because of the incident; that his daughter, Rosemarie, filed the instant complaint against him because she resented his getting her back from her "tomboy" lover; that he took back Rosemarie because he wanted the latter to continue with her schooling; that only a wall measuring about two feet high separates his house and that of his neighbor; that he sleeps with his wife; that only she knows that there is a tattoo on the tip of his penis; and that no father will show his private organ to his own daughter.

In support of his first assignment of error, accused-appellant contends that the judgment of the court *a quo* is not based on the analysis of the facts as borne out by the evidence presented, but by the conjectures and biased conclusion negated by credible evidence. But he merely argues that the judgment is anchored on the testimony of the complainant, which was given full faith and credit, based on the far-fetched conclusion that he (the accused) asked her to stop schooling so that he could rape her at odd hours of the day.

In support of his second assignment of error, the accused-appellant contends that the court *a quo* erred in not taking into account material facts and circumstances pointing to the incredibility of the theory of the prosecution. He claims that the first "material fact" is that there was a unity of purpose and intent among Rosemarie, Belinda and their mother to send him to jail because of his violent temper and habit to maul and physically torture them. Moreover, he pointed out that the motive of Rosemarie in filing the charge was likewise not disputed by the prosecution's evidence. He concluded that the conspiracy of mother and daughters against a violent husband and father led them to concoct the abominable charge to banish him completely from their miserable life due to the mauling by and the ill-temper of the accused. Secondly, he contends that the charge of rape by a father on a daughter "on December 22, 1980 and every night thereafter up to March 30, 1981, after she was boxed in the thighs and kicked by the accused" is incredible considering that the complainant reported the alleged rapes to her mother and then to the police only on March 31, 1981, or more than 100 days from the first rape on December 22, 1980, and that there is absence of evidence that the accused is a sex maniac who could really have sexual intercourse everyday for 100 days with the complainant. Thirdly, he claims that the court *a quo* did not take into account the real reason why Rosemarie stopped schooling, that is, she was asked by him (the accused) to stop schooling so that she could take care of her smaller brothers and sisters.

In support of his third assignment of error, accused-appellant contends that the court *a quo* did not consider that extreme hatred might have driven the mother and her daughters to conspire against a tyrant and physically violent father.

He further contends that the testimony of Rosemarie to the effect that she noticed a tattoo on the tip of his penis does not in any way establish that he indeed raped her. If at all, he claims that it shows the conspiracy of mother and daughters to frame him up for rape and send him away for good to put an end to his cruelty to them. He explained that only his wife knows about this tattoo and that she must have told Rosemarie to bring out such information in her testimony to lend credence to her charge of rape.

In support of his last assignment of error, accused-appellant contends that the evidence adduced presents two probabilities - that is, that the accused is innocent and that the accused is guilty as charged, and of these probabilities, the court *a quo* chose the latter, totally shutting from its consideration the probability of the former.

We are not persuaded by the arguments of the accused-appellant in support of these assigned errors.

For the testimony of the offended party to be sufficient to convict for the crime of rape, it must be clear and free from any serious contradiction. Her story must be impeccable and must ring true throughout or bear the stamp of absolute truth and candor (*People vs. Lacuna*, No. L-38463, December 29 1978, 87 SCRA 364). The records show that complainant's testimony was given with utmost sincerity and candor. It leaves no room for doubt that it is not a mere fabrication. A perusal of her testimony will show that it could not have been a mere concoction. Indeed, the complainant, a child of 16 years, would not be composed and consistent in her entire testimony in the face of severe and long interrogation, if she had actually been sexually abused by her father as she had described. More significantly, complainant cried while testifying on how she was ravished by the accused-appellant. This fact, taken together with other evidenced on record, lends credence to her testimony.

Moreover, the willingness of the complainant to face police investigators and to submit to a physical examination is a mute but eloquent testimony of the truth of her charge against her own father. If she were merely prodded to relate a fabricated story to build up this serious charge, she would recoil at the possibility of being caught in her prevarication. She should feel deterred by the grave consequences of such willful falsehoods which could easily be unmasked by the medical findings that would be made after a thorough examination of her body. It was the truth of her story that gave her the courage and boldness fearlessly to face interrogation and medical examination, both effective means of verifying the truth of her serious accusation (*People vs. Clarin*, No. L-47200, October 30, 1981, 108 SCRA 680).

We are not persuaded by the arguments of the accused-appellant regarding the alleged motives of the complainant and her mother in filing the rape charge against him. They all appear to be flimsy. First, he stated that the complainant resented his act of getting her back from her "tomboy" lover. The complainant categorically testified that she did not have any such lover thereby negating this claim of the accused-appellant. Second, the accused-appellant contends that there was conspiracy among his wife and daughters to concoct the abominable charge to banish him completely from their miserable life due to his ill-temper. He testified that he had mauled his wife on previous occasions; that around a week before December 22, 1980, he mauled his wife which caused the latter to lose three (3) teeth; and that the latter vowed to send him back to jail because of the incident. There is no showing in the record that after the aforesaid date he again mauled his wife or the complainant because of his violent temper. Why then should his wife and his daughters wait until March 31, 1981, to concoct a story in order to banish him from their lives? They could have easily done so immediately after the mauling incident before December 22, 1980, if such was their real intention. Besides, it is just inconceivable that for the purpose of sending him back to jail, his wife and daughters will fabricate a story of rape committed by him upon the complainant, his own daughter, knowing fully well that the latter will be subjected to shame and dishonor, not to mention the embarrassment that could engulf the entire members of their family for such a story.

Accused-appellant also contends that it was impossible for him to have committed the crime charged because their house was separated from that of their neighbor's house by a wall barely two feet in height so that the complainant could have created noise to attract the attention of the people nearby. Considering the age of the complainant the moral ascendancy exercised over her by the accused-appellant and the fear that he had instilled in the hearts of the members of his family by reason of his violent temper as he himself admitted, it is not difficult to believe that the complainant succumbed to his lustful desires initially on December 22, 1980 and on subsequent occasions, with a modicum of effort. In *People vs. Erardo*, L-32861, January 31, 1984, We ruled:

"x x x it is the over-powering and over-bearing moral influence of the father over the daughter that takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim."

While it may be true that the complainant was made to stop her schooling so that she could take care of her

smaller brothers and sisters, this fact standing alone, does not affect the conclusion reached by the court a quo in convicting the herein appellant of the crime charged. The latter could have very well afforded himself of the opportunity to have sexual congress with the complainant who was then in their house taking care of her young siblings, or doing something else. This is evident from the testimony of the complainant that on December 22, 1980, accused-appellant ordered her to clean the second floor of their house. Obeying her father as what any obedient child would have done, she proceeded to clean that portion of their house but there, accused-appellant forcibly removed her panties, ordered her to lie down and thereafter performed the sexual act.

Accused-appellant further assails the theory of the prosecution in that the complainant only reported the alleged rapes on March 1981, or around 100 days after the rape initially committed on December 22, 1980. This was explained by the complainant who testified that the accused-appellant told her that he would kill all of them (the complainant, Belinda and their mother if she would ever reveal what he had done to her. Considering the violent temper of the accused-appellant, it is not difficult to believe that the complainant succumbed to this threat.

Lastly, this review of the decision of the court a quo revolves around the question of the credibility of the witnesses presented. After a careful scrutiny of the records, We find no cogent and justifiable reason to disturb its findings on this point. In *People vs. Bernal*, No. L-30483, July 31, 1984, 131 SCRA 1, We ruled:

"The rule in this jurisdiction on the matter of credibility of witnesses is by now settled. 'Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidenced for both parties (*People vs. Ablaza*, 30 SCRA 173, 176)."

Also, in *People vs. Villamala*, No. L-41312, July 29, 1977, 78 SCRA 145, We ruled:

"x x x on the question of credence to which the conflicting versions of the prosecution and defense are entitled, the answer given by the trial court is generally viewed as correct and thus entitled to the highest respect x x x."

We agree with the court a quo that the accused-appellant should only be convicted of that rape initially committed on December 22, 1980. While the information alleges "during the period comprised between December 22, 1980 and March 30, 1981", it does not specify the exact dates when the subsequent rapes were committed.

Under Article 335 of the Revised Penal Code, as amended, the penalty of reclusion perpetua is prescribed for the offense of rape charged. The attendance of the aggravating circumstance of relationship in the commissions of the instant case, considering that the victim is the daughter of the accused-appellant, cannot be appreciated since the aforesaid penalty is a single and indivisible one. The penalty of reclusion perpetua was correctly imposed by the court a quo.

The imposed penalty, however, is modified in that the accused-appellant shall also indemnify Rosemarie Ramos in the amount of P30,000.00.

ACCORDINGLY, the decision appealed from is affirmed with the modification above-indicated.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

[1] Presided over by then Judge Conrado T. Limcaoco, now Associate Justice of the Court of Appeals.

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