

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO ALVAREZ Y SORIANO “NALDO”;
ACCUSED-APPELLANT.**

G.R. No. 70831. July 29, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant was charged with the crime of rape in Criminal Case No. 2934 of the Regional Trial Court, Branch XXXVIII,[*] at Lingayen, Pangasinan. The information filed in the said case reads:

"That on or about the 23rd of September, 1983 at barangay Carayungan Sur, municipality of Umingan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the accused by means of force, threat and intimidation and with lewd designs, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse with Mary Grace F. Lacasandile [sic], a minor of 11 years of age, without her consent and against her will.

"Contrary to Art. 335 of the Revised Penal Code." (Page 2, Records)

Upon being arraigned, the accused entered a plea of not guilty to the offense charged. The trial court, after trial on the merits, rendered its decision on March 15, 1985, the dispositive portion of which reads:

"ACCORDINGLY, in view of all the foregoing considerations, the Court finds and holds the accused REYNALDO ALVAREZ, guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under the provisions of Article 335 of the Revised Penal Code as amended, and conformable thereto, hereby sentences said accused to serve the penalty of RECLUSION PERPETUA and to pay the costs.

"The Court further directs the accused to pay the offended party the sum of Ten Thousand (P10,000.00) pesos as moral damages pursuant to the provisions of Article 2219 of the New Civil Code, without subsidiary imprisonment in case of insolvency.

"SO ORDERED." (RTC Decision, pp. 64 and 65, Records)

Not satisfied with the decision, the accused appealed.

The facts as found by the trial court are as follows:

The complainant, Mary Grace Lacasandili, was under 12 years of age on September 23, 1983. She had a classmate, Merlita Valdez, who is the stepdaughter of accused-appellant, Reynaldo Alvarez. Merlita resided with her mother and stepfather in one house.

At about noontime of the aforesaid date, Merlita invited the complainant to watch television at her residence. The television set was inside a room located on the second floor of the house. After the television program was over, Merlita went out of the house leaving behind the complainant alone in the room.

Shortly afterwards, appellant approached and held the complainant, and then made her lie down on the floor.

When the complainant asked the appellant why she was being made to lie down, the latter answered that he will have sexual intercourse with her. The complainant protested but the appellant insisted and later removed the panties of the former. The complainant shouted for help but was told by the appellant to stop. The appellant later placed himself on top of the complainant, unzipped his pants and tried twice to insert his penis inside the vagina of the latter. The appellant stood and left after he failed to make such insertion.

After the incident, the complainant put on her panties and left the house. She later saw Merlita under a tree located near the same house. When the complainant asked Merlita why she did not render any assistance despite her shouts for help, the latter replied, "I should not have invited you to have sexual intercourse with my stepfather." The complainant did not report to anyone what the appellant did because he earlier threatened to kill her if she did so.

The records also show that on October 18, 1983, Mary Grace, Merlita and three of their classmates quarreled among themselves in school regarding their having been the victims of rape. Upon learning of the cause of the quarrel, their teachers conducted an investigation. The girls, including the complainant, recounted the ordeal they suffered in the hands of the accused-appellant. Later, the school authorities wrote to the parents of the victims informing them of the sexual abuses done to their daughters. The parents of the victims in turn reported the matter to the barangay captain and the latter sent out barangay tanods to look for the appellant. They failed to locate the appellant in his house and found him instead in the residence of his parents in Lupao, Nueva Ecija.

On October 19, 1983, or three weeks after the incident, Dra. Thelma Busto, rural health officer of Umingan Pangasinan, examined the complainant. She found no sign of sexual abuse.

The accused-appellant assigned two (2) errors committed by the court a quo, as follows:

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE LONE AND UNCORROBORATED TESTIMONY OF COMPLAINANT MARY GRACE LACASANDILI IMPUTING THE COMMISSION OF THE INSTANT CRIME BY ACCUSED-APPELLANT.

"II

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED ON GROUNDS OF REASONABLE DOUBT."

Being closely interrelated, We shall discuss the two assigned errors together.

The accused-appellant claims that it is improbable that in broad daylight, within the hearing distance of his stepdaughter and neighbors, he could have committed the crime of rape. He further asserts that this claim is supported by the fact that medical examination conducted showed negative results of lacerations or acts of sexual intercourse committed upon the complainant (p. 5, Appellant's Brief).

The complainant positively declared that she was raped by the accused-appellant. In connection with her testimony, the trial judge said:

"x x x The evidence adduced by the prosecution in support of the accusation filed against the accused is clear, cogent, truthful, convincing and leaves no iota of doubt in the mind of the court that Reynaldo Alvarez indeed committed the unlawful act imputed against him. The manner by which the offended party declared in the stand was natural, straightforward and the Court observed no insincerity or artificiality in her voice which tends to betray the credibility of her testimony. Her narration of facts on the salient aspect of the case remained firm and steadfast despite the searching cross-examination made by the counsel for the accused. The Court also finds no sinister motive and impelling reason why the offended party, who is a minor, has to concoct a lie and

point an accusing finger against the accused imputing against him the commission of such grave felony of rape." (RTC Decision, p. 61, Records)

These findings are entitled to great weight. It is a long-established rule that the findings of fact by the trial court should not be disturbed on appeal unless it is shown that the trial court had overlooked certain facts of weight and importance, it being acknowledged that the court below, having seen and heard the witnesses during the trial, is in a better position to evaluate their testimonies (*People vs. Dorado*, L-23464, October 31, 1969, 30 SCRA 53; *People vs. Espejo*, L-27708, December 19, 1970, 36 SCRA 400).

The fact that the physician who examined the complainant around three weeks after the incident found no signs of lacerations in the latter's vagina cannot serve as a basis for the acquittal of the accused. There are circumstances present which warrant a conclusion that there was penetration of the labia of complainant's vagina. Firstly, the examining physician declared that, considering the age and size of the complainant, it was possible that a man could have inserted his penis inside the former's organ without penetrating her vagina. Secondly, the complainant categorically declared that the accused-appellant tried twice to insert his penis inside her vagina but failed to do so because the penis was big. There can be no doubt that at least the labia of complainant's organ was penetrated with these two attempts.

In *People vs. Oscar*, 48 Phil. 257, this Court said:

"Perfect penetration is not essential. Any penetration of the female body by the male organ is sufficient." (*People vs. Rivers*, 147 Mich., 643)

"Entry of the labia or lips of the female organ, merely, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction." (*Kenney vs. State*, 65 L.R.A., 316; *Rodgers vs. State*, 30 Tex. App., 510; *Brauer vs. State*, 25 Wis., 413)

"Stewart, in his work on Legal Medicine, citing *Taylor vs. State* (111 Ind., 279), and *People vs. Crowley* (102 N.Y., 234), says at page 137: 'And it is undoubtedly the law that penetration even to the least extent will be sufficient to establish the crime, and this may even be inferred from the circumstances of the case.'"

Also, in the case of *People vs. Hernandez*, 49 Phil. 980, this Court said:

"Any penetration whether reaching to the hymen or not is sufficient to constitute the crime; for as Lord Meadowbank said in a case in Scotland, 'Scientific and anatomical distinctions as to where the vagina commences are worthless in a case of rape; it is enough if the woman's body is entered; and it is not necessary to show to what extent penetration of the parts has taken place; whether it has gone past the hymen, into what is anatomically called the hymen, or even so far as to touch the hymen.' (Stewart on Legal Medicine, p. 137)

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"In the following cases it has been held that the entry of the labia or lips of the female organ, merely, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction of the consummated crime of rape. (*Kenney vs. State* [Tex. Crim. App.]; 65 L.R.A., 316; 79 S.W., 817 [1903]. See [Eng.] *Reg. vs. Lines*, 1 Car. & K., 393 [1844]; 44 N.W., 571 [1890]; [Tex.]; *Rodgers vs. State*, 30 Tex. App., 510; 17 S.W., 1077 [1891]; [Wis.] *Brauer vs. State*, 25 Wis., 413 [1870].)"

The accused-appellant further claims that there is a strong indication that the instant case was only filed because he (after his arrival from Libya in 1982) did not grant a loan to the complainant's mother. (p. 5, Appellant's Brief). In this regard, We fully agree with the trial court which said:

"The sweeping contention of Reynaldo Alvarez that the instant case was filed against him because of his refusal to lend some money to the mother of the herein offended party, has not been substantiated with a strong and convincing proof, other than the lone testimony of the accused which is self-serving in character. The

assertion of accused is more likely to provoke a smile than to drive the wedge of conviction into an ordinary mind, so much so that the mother of the victim had openly declared in Court that they have a better way of life than the accused and that statement of Margarita Lacasandili was never refuted or denied by the defense." (RTC Decision, p. 61, Records)

Accused-appellant's defense of alibi does not inspire belief. Firstly, he was positively identified by the complainant as the person who abused her. Secondly, if it were true that he was somewhere else at the time when the crime was committed on September 23, 1983, it is strange why the accused-appellant did not bother to present his wife and stepdaughter as witnesses to bolster such claim. As aptly stated by the trial court:

"It is also strange and very unnatural why the accused failed to present his wife and stepdaughter in court and declared that nothing unusual took place between the accused and the offended party at noon of September 23, 1983, notwithstanding that he knows so well that his life and liberty was at stake and endangered by peril of a possible conviction of the offense filed against him and the imposition of a very stiff and severe penalty thereof. His unexplained failure to present these witnesses leads to no other conclusion that the persons who are supposed to be dear and close to him revolted and harbours remorse against the accused for what he has done. And instead of helping him in the hour of his needs, they have now abandoned him, perhaps because of the shame and dishonor he has done to his family." (RTC Decision, p. 64, Records)

No modifying circumstances attended the commission of the offense. The trial court correctly imposed the penalty of reclusion perpetua on the accused-appellant. However, the indemnity in the amount of Ten Thousand Pesos (P10,000.00) ordered by the court a quo to be paid by the accused-appellant to the complainant, Mary Grace Lacasandili, is increased to Thirty Thousand Pesos (P30,000.00). (People vs. Resano, L-57738, October 23, 1984, 132 SCRA 711)

ACCORDINGLY, with the modification above indicated, the judgment appealed from is AFFIRMED in all respects, with costs.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[*] Presided over by Judge Antonio M. Belen.

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