

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO CRUZ, SR., ACCUSED-APPELLANT.

G.R. No. 71462. June 30, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of General Santos City, Branch XXIII, finding appellant Alberto Cruz, Sr. guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua.

The information filed against the appellant alleged:

"That last July 1983, September 1983 and last October 4, 1983, in Lagao, General Santos City, particularly in their home and within the jurisdiction of this Honorable Court, said accused Alberto Cruz, Sr., by means of violence, force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant Rosemi Cruz, for six (6) times, against her will." (Original Record, p. 1).

The prosecution evidence upon which the lower court based its finding of guilt beyond reasonable doubt is narrated by the said court as follows:

"Complainant Rosemi Cruz, 16 years old, testified that her mother died on March 15, 1979 and has been residing with her father, accused Alberto Cruz, together with her four brothers and sisters at San Isidro, Lagao, General Santos City namely: Alberto - 12 years old; Imelda - 10 years old; Armando - 9 years old and Mary Jane - 8 years old.

"Rosemi testified that in the month of July 1983, she was raped by her father twice at midnight but she cannot remember the exact dates when she was raped; that the first time she was raped was when her father, accused herein, arrived in the house drunk and he entered her mosquito net, kissed her, touched her body and removed her clothes; that at that time complainant's companions sleeping under that mosquito net were the above-named brothers and sisters; that at the time her father arrived she was asleep and was awakened only when he was already kissing her and removing her clothes; that she struggled by pushing and boxing accused; that she was warned by the accused not to report the incident or he will kill her and then accused slapped her and continued to touch her breast and all parts of her body and kissed her.

"Complainant further testified that she did not shout because accused warned her that he will kill them all if she will shout; that at that time complainant was wearing a dress and had panty which accused was able to remove and then he inserted his private part on her vagina; that accused was fully naked when he was on top of her; that some of her brothers and sisters were awakened at that time but they did not help her for fear that their father will spank them if they make a noise; that accused was able to consummate his desire on her; that after putting on his pants and T-shirt, accused warned complainant that if she will report the incident to her aunt, he will kill her; that she cried after the act, pleaded and asked accused why he raped her but accused instead did not listen, slapped her and threatened to kill her and her brothers and sisters if she will report the incident.

"The second time she was raped by her father, complainant cannot also recall the time but it happened also at

midnight, his (sic) father was again drunk, went inside her mosquito net, kissed her, touched her body, removed her clothes and inserted his penis on her vagina despite her pleas and accused told her again not to report the incident or else he will kill her. Complainant asked her father why he did this to her when she is his daughter but he did not mind her; that she did not shout because her mouth was covered; she was slapped and her head was pushed against the floor; that she was not able to fight back because if she will move her hands accused will box her. Complainant was also sleep-ing with her brothers and sisters at that time and they were again awakened but could not do anything because their father would spank them.

"In September, 1983, complainant claimed that accused raped her three times under the same situation - that it happened at midnight in their house; accused was drunk, he entered the mosquito net and had sexual intercourse with her.

"In the month of October, 1983, the same thing happened - accused was drunk and had sexual intercourse with complainant; that the complainant in all these occasions offered resistance but was not able to prevent him even once because everytime the accused was raping her, he boxed her while removing her clothes and at the same time removed his pants and T-shirt, kissed her and placed his private organ inside her vagina and had sexual intercourse with her.

"Complainant averred that the first time she was raped in July, 1983 was her first experience and accused her father, was the first man to have taken her and she felt pain.

"The last time she was raped by the accused in October, 1983, complainant was able to escape from her house and reported the incident to her aunt, Maria Hortal on October 5, 1983; that this was the first opportunity for complainant to report what accused did to her because in the months of July to October 4, she was afraid that accused might kill all of them as he threatened to do; that she never had the opportunity likewise to do so because whenever she goes market-ing, accused will let her brother accompany her to the market and give her the time to come back home so she cannot report.

"When complainant reported to her aunt that her father was raping her, she told her in answer to her question that accused raped her twice in July, thrice in September and once in October, 1983; that the matter was reported to the Police Department and she was made to see a doctor first; that Dr. Seromines examined her after which a medical certificate (Exhibit "A"), was issued. Thereafter she went back to the police station as instructed for investigation. There-after, a complaint for rape dated October 8, 1983 (Exhibit "B") was filed against Alberto Cruz, Sr., her father. Complainant pointed to the accused as the man who raped her six (6) times and alleged that she wants her father placed in jail; that she filed the case because she can no longer bear what her father did to her; that during the lifetime of her mother, accused boxed her, he always come home drunk and will not even look for work and they were always hungry and did not have anything to eat." (Original Record, pp. 56-58).

xxx xxx xxx

"The second witness for the prose-cution, Mary Jane Cruz, a 9-year old sister of complainant testified that she and Rosemi are now staying in the house of her aunt, Francisca Laho; that before they lived together with her other brothers and sisters in their house in Second Barrio, Lagao; that her father is now in jail because he did something wrong on her Ate Rosemi when he rode on top of Rosemi in their house at San Isidro, Lagao; that her father did this many times to Rosemi during midnight; that she could see her father on top of Rosemi even if it was nighttime because they had a small lamp placed in the altar about one meter away; that she saw her father on top of Rosemi several times already completely naked and her Ate Rosemi was also undressed; that her Ate Rosemi cries when her father was on top of her but she could not help her for fear that her father might spank her. Witness further testified that they were running after each other outside the mosquito net and standing." (Original Record, p. 61).

xxx xxx xxx

"xxx The medical certificate marked as Exhibit "A", showed that the internal examination findings was 'vagina admits one (1) finger with ease with healed vaginal laceration at 7:00 o'clock and 4:00 o'clock positions'." (Original Record, p. 65).

Appellant Cruz, Sr. raised a lone assignment of error in this appeal:

"THE LOWER COURT ERRED IN DISREGARDING THE CONTENTION OF THE ACCUSED THAT THE FILING OF CASE WAS MOTIVATED PURELY BY ILL-WILL ON THE PART OF THE COMPLAINANT AND HIS IN-LAWS WHOM HIS COMPLAINANT DAUGHTER IS LIVING." (Rollo, p. 56).

The appellant contends that his daughter Rosemi imputed the charge of rape against him out of her hatred for him, borne even during the lifetime of her mother.

The appellant stressed the fact that Rosemi testified that she did not love her father because he was a cruel man who spanked her and her brothers and sisters and slapped her mother (T.S.N. June 18, 1984, pp. 17-18). The appellant then alleged that Rosemi was also jealous because all of her brothers and sisters were going to school in 1983 except for her.

It is also contended that it was not only Rosemi who harbored ill-feelings toward the accused but also the accused's in-laws, particularly Maria Hortal, the aunt to whom Rosemi reported the alleged rape. It is alleged that the complaint was filed at the instance of Hortal who wanted to sell the property upon which stands the house of the accused's family.

These contentions are without merit. The alleged motives set-up by the appellant are not enough to compel the complainant and her relatives to charge the complainant's father of the heinous crime of rape and on six counts at that.

As held in the case of *People v. Alcantara* (126 SCRA 425, 436):

"xxx It is unthinkable that an unmarried teenager would endure the embarrassment and humiliation of a public disclosure that she had been ravished, allow an examination of her private parts and undergo the ordeal and expense of a court proceeding, if such indeed were not true xxx." (See also *People v. Ibal*, G.R. No. 66010--12, July 31, 1986; *People v. Garcines*; 57 SCRA 653; *People v. Cawili*, 65 SCRA 24).

From the records, we find that the complainant has no motive other than to bring to justice the culprit who had grievously wronged her, it being harder on her part to do so because it was her very own father who violated her honor.

It has long been held that no young Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor. (*People v. Ramilo*, G.R. No. 52230, December 15, 1986; *People v. Alcantara*, supra; *People v. Gamez*, 124 SCRA 260; *People v. Ilano*, 109 Phil. 912; and *People v. Gan*, 46 SCRA 667). There is nothing in the record to indicate that this rule does not apply to Rosemi.

Furthermore, it is a well-settled rule that appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (*People v. Alcid*, 135 SCRA 280; *People v. Macayan*, 126 SCRA 322; *People v. Santos*, 121 SCRA 832; *People v. Gamez*, supra; *People v. Cielo*, 133 SCRA 117; *People v. Marzan*, 128 SCRA 203; *People v. Centeno*, 130 SCRA 198; *People v. Royeras*, 130 SCRA 259; *People v. Itura*, 129 SCRA 127; *People v. Bado*, 128 SCRA 38; *People v. Atanacio*, 128

SCRA 22; *People v. Amoncio*, 122 SCRA 686; and *People v. Ibal* supra).

We have carefully reviewed the records of the case and we also find no reason to depart from this established rule.

The trial court evaluated the credibility of the complainant Rosemi Cruz as follows:

"At the time of the commission of Rape, Rosemi was only fifteen years old and full of innocence. When she testified in Court, she talked freely, voluntarily and straight-forward in recalling how she was abused by her own flesh and blood - her father. Her sincerity and candor proved the commission of Rape. She was consistent in her answers and at one time shed tears and was ashamed of what had happened to her. The ordeal was too much for her." (Rollo, p. 18).

Rosemi's testimony was corroborated by her 8-year old sister, Mary Jane.

As the trial court stated:

"xxx She testified she saw her father on top of Ate Rosemi several times fully naked and that Rosemi was crying when father was on her top and she could not help because she was afraid that her father might spank her. She testified on redirect examination that they were running after each other outside the mosquito net. She testified in a straightforward manner of testimony, sincere and full of candor. This likewise proved the commission of the crime of rape. She testified on cross-examination that despite the fact that all were awakened, her father rode on her sister Rosemi and that her brothers and sisters watched. That she saw her father on top of Rosemi and at the same time hit her sister in the abdomen and chest. A girl only eight (8) years old will not tell a lie. When the Court asked her questions, she immediately answered and gave examples to meanings asked of her. She was full of innocence and when answering questions she was straight and was direct to the point. At her age she will not falsely testify against her father, the most is protect the honor and integrity of her father but she did otherwise." (Rollo, p. 21).

The appellant questions the absence of evidence showing that the complainant suffered physical injuries from the force allegedly applied on her.

We agree with the Solicitor General that:

"xxx Although the medical certificate did not contain any indication whatsoever of physical injuries (Rec., p. 34; Exh. "H"; Exh. "I") the same does not in any manner refute much less disprove that physical force was employed by appellant in satisfying his bestial desires. It is well to note that the physical examination was conducted two days after the victim was last abused, thereby allow-ing any physical injuries to have healed or disappeared by the time of the examination.

"In any event, the testimony of complainant that she was boxed by appellant, is credible even if no external injury was visible (*People v. Budon*, 143 SCRA 251 (1986), more so in view of the testimony of her sister Mary Jane who stated that the victim was crying when she saw her father on top of Rosemi (tsn, June 1984, p. 7). In any event, actual force or intimidation need not be employed for rape to be committed. The overpowering influence of a father over his daughter suffices (*People v. Erardo*, 127 SCRA 256 (1984). Such being the case, therefore, the absence of any physical injuries cannot negate the allegation that complainant was forcibly raped much less destroy complainant's testimony of how she was raped." (Brief for the Appellee, pp. 13--14).

The appellant questions the failure of the complainant to immediately report her defloration.

The cause of the delay was Rosemi's fear for her own life and that of her brothers and sisters.

As held in the case of *People v. Oydoc*, (125 SCRA 250, 256):

"One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who

would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on the lives, xxx." (See also *People v. Valdez*, G.R. No. 51034, May 29, 1987; and *People v. Ibal*, *supra*).

In the case at bar, the complainant's mother had already died. She was completely dependent upon her father. One cannot expect Rosemi to immediately know what to do or who to turn to.

The letter of Rosemi Cruz dated December 6, 1986 addressed to her father shows that she is now happily married to a good man and she has forgiven him. She also expresses concern for her brothers and sisters who have scattered since their father entered jail. We find no evidence in the letter to indicate that the appellant did not commit the crime for which he was convicted. It merely indicates the bigness of heart of the daughter who, inspite of the horrible experience she suffered at the hands of her drunken and perverted father, can still forgive him and, at the same time, show concern for the other innocent victims of this family tragedy.

WHEREFORE, on the finding that accused-appel-lant Alberto Cruz, Sr. is guilty beyond reasonable doubt of the crime of rape in all six (6) counts filed against him, the judgment of the lower court sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED except for the modi-fication that the appellant is ordered to indemnify Rosemi Cruz the sum of P30,000.0.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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