

PEOPLE OF THE PHILLIPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR MUNDA, SR., ACCUSED-APPELLANT.

G.R. No. 71625. September 12, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused Dominador Munda, Sr. appeals from the decision of the Regional Trial Court of Legaspi City, Branch 4, in Criminal Case No. 2846, which convicted him of the crime of rape. The information filed by the Assistant Provincial Fiscal read as follows:

"That in or about the month of July, 1983, in the early morning of a Sunday, at Quitinday, Jovellar, Albay, Philippines, within the jurisdiction of the Honorable Court, the above-named accused, with abuse of confidence, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Juvy M. Aldon, a twelve-year old girl, without her consent and against her will.

Contrary to law."[1]

At arraignment, appellant pleaded not guilty. After trial, appellant was convicted in a Decision dated 28 February 1985, the dispositive portion of which stated:

"WHEREFORE, judgment is hereby rendered finding the accused Dominador Munda, Sr. guilty of the crime of rape as charged beyond reasonable doubt, sentencing him to suffer the penalty of imprisonment or reclusion perpetua and to pay the costs.

The accused is ordered to indemnify the offended party the amount of Three Thousand (P3,000.00) Pesos as damages, without subsidiary imprisonment in case of insolvency."[2]

In the present appeal, appellant raises a single assignment of error: that the prosecution had failed to prove his guilt beyond reasonable doubt.

The evidence submitted by the prosecution tended to prove the following set of facts:

For many years prior to the commission of the crime, appellant Dominador Munda lived with his common-law wife, Maria Mirabete Aldon, and Juvy M. Aldon, the complainant, who is a daughter of Maria by another man. In June of 1982, Maria gave birth to a baby girl, a child of the appellant.

Every Sunday, Maria Mirabete Aldon and her daughter Juvy would go to the market place of Jovellar, Albay, to sell abaca fiber. They would usually leave the house before 4:00 o'clock a.m. in order to reach the market place before sunrise.[3] On the third Sunday of July 1983, however, Juvy was ordered by the appellant to stay home in order to mind her baby half-sister. On that particular Sunday, Juvy was still asleep when her mother left for the market. Juvy was suddenly awakened by a heavy weight pressing on her body and found appellant on top of her, seeking to copulate with her. She struggled to free herself from appellant's embrace, but to no avail. Appellant scolded the victim, got hold of her buttocks and forcibly inserted his male organ. After appellant had gratified his

sexual desires, he threatened to cut off Juvy's head if she reported the incident to her mother.[4]

About a week later, Juvy gathered enough courage to report to her mother what appellant had done. Maria confronted the appellant who readily admitted having sexually taken Juvy but asked for Maria's forgiveness and for a chance to reform. Appellant apparently did not "reform" for he shortly thereafter slapped Juvy, allegedly for getting two (2) coconuts from a pile which had been separated and designated for seedlings, and quarreled with and boxed and slapped Maria, too. Maria then reported the matter to her uncle, one Santos Mirabete, who in turn brought on 1 August 1983, to the attention of the Barangay Captain of Quitinday, Jovellar, the rape of Juvy.[5] Both parties -- the appellant and Juvy accompanied by Maria -- were summoned to the house of the Barangay Captain and there an investigation was conducted.

On 12 August 1983, Juvy was brought to Dr. Eduardo Martinez for physical examination. After the physical examination, Dr. Martinez issued a medical certificate stating the following:

"External Genitalia: No physical injuries

Hymen: Healed laceration at 3, 5, 8 o'clock position

Vagina: Admits 2 examining fingers with ease

No external physical injuries."[6]

The evidence for the defense, upon the other hand, consisted principally of the testimonies of appellant Dominador Munda; of his sister-in-law, Socorro Munda, who had allegedly gone with Maria to the market on the Sunday that appellant had raped Juvy Aldon; his nephew, Charlie Munda; and his daughter, Emmalyn Munda-Guiriba.

In his testimony, appellant claims he could not have possibly raped Juvy Aldon on that Sunday, in July 1983, since Juvy had on that day accompanied her mother Maria and his sister-in-law, Socorro Munda, to the Jovellar market place. Appellant contended that Maria had accused him of raping Juvy because the appellant had mauled and slapped Maria around on two (2) occasions: first, when he tried to bring to Maria's attention Juvy's alleged sexual affairs with two (2) men, which offended Maria no end; second, when Maria interfered while he, the appellant, was disciplining Juvy.[7]

In his Brief,[8] appellant in effect suggests that Juvy had accepted and cooperated with him when he had sexually embraced her. He points to the fact that the physical examination had not shown any scratches or contusions or abrasions on Juvy's body and that Juvy had not stated that she had bled during or immediately after the forced coitus with appellant.

Appellant's story did not impress the trial court. The trial court said in its decision:

"x x x x x x x x

The Court has observed the sincerity and candor of the offended girl. Like her mother, she is so dominated by the accused. Nobody knew that she was ravished by the common-law-husband of her mother. She does not have to tell her mother and to have her private parts examined and face the wrath of the common-law-husband of her mother and the rigors and perversion of a public trial if it were not for her desire to have the culprit apprehended and punished.

No young Filipina of rural breeding, for a silly reason of having been punished for getting two (2) coconuts, would publicly admit she had been criminally abused by the very common-law-husband of her mother, unless that is the truth. For it is her natural instinct to protect her honor.

x x x x x x x x

In a desperate attempt to destroy the veracity of the testimony of the complainant, the accused tried to show that Juvy, in her tender age, is unchaste, flirting and going with male companions. This part of the story of the defense is not only fantastic but also ridiculous. Juvy in her youth would not have known the meaning of [such] amorous adventures. On a charge of rape, the fact that, even if true, the offended party may have been of unchaste character, is no defense."^[9]

Having gone over the record of this case, we must agree with the appraisal of the trial court of appellant's defense. Like the trial court, we find it very difficult to believe that Juvy Aldon, no more than 12 or 13 years of age, had cooperated with and accepted the sexual attentions of appellant, a man 49-years old, co-habiting with her mother and living in the same house with her mother and herself. The fact that no physical injuries were found on Juvy Aldon's body does not show that force or intimidation had not been exercised upon her, Juvy had in fact testified that she had struggled against the appellant when he commenced to force himself upon her:

"Q: Now, what did you do when he was trying to insert his organ into your organ?

A: I tried to free myself but I could not because he scolded me.

Q: Why were you trying to struggle?

A: To be able to get away.

Q: Were you able to get away?

A: No, sir.

Q: Why were you not able to get away?

A: He exerted force on me.

Q: In what way?

A: He took hold of my side.

Q: After he has inserted his organ into your organs (sic), what did Dominador do?

A: After I was able to get up he threatened me that if I report to my mother he would cut off my head."^[10]
(Underscoring supplied)

The absence of signs of physical injury is moreover explained by the psychological ascendancy or dominance that appellant obviously exercised over both the victim and her mother, as well as by the dire threats which Juvy testified had been made by appellant immediately after the forced coition. Further, contrary to appellant's contention, the fact that the victim Juvy may have failed specifically to state that she had bled during or after the forced coitus, does not show voluntariness or lack of resistance on her part against the sexual embraces of appellant. In fact, Juvy did not fail to refer to the pain inflicted on her. In her sworn statement before the Municipal Circuit Judge, she stated that she was badly hurt when the accused's male member had penetrated her.^[11]

Appellant also sought to make much of the fact that the victim Juvy let a week go by before she told her mother that she had been raped. A delay of a week, under the circumstances of this case, does not show that no rape had really occurred. The relevant circumstances certainly include the fear that appellant must have instilled in the mind of Juvy and by the constant presence of the appellant in the house where appellant and Maria and Juvy lived together. As noted by this Court in *People v. Oydod*^[12] and in *People v. Cruz*,^[13] "it is not uncommon for young

girls to conceal for some time the assault on their virtue because of the rapist's threat on their lives, more so, when the rapist is the child's own stepfather living with her".[14]

Finally, appellant points to the results of Juvy's physical examination which indicated the presence of healed lacerations on her hymen. Appellant claims in his Brief that according to the examining physician, these "healed old lacerations" were "about 3 months or a year old at the time of the examination".[15] What the examining physician did in fact say on cross-examination was simply this:

"Q: When you say that the lacerations of the hymen was (sic) already healed and it (sic) is already old, could you tell us whether it (sic) was a few weeks old or a few months old?

A: I cannot exactly tell, what I can say is that it could be more than one (1) week, Sir."[16]

It should be recalled that the victim submitted herself to physical examination two (2) weeks after the rape had been committed.

Turning to the testimonies of the other witnesses of the defense, witness Socorro Munda testified that Juvy had gone with her to the market place on all the four (4) Sundays of July 1983, but that Maria had stayed home having just given birth to a child of the appellant in mid July 1983.[17]

Charlie Munda casually testified that he had seen Juvy one afternoon embracing an unidentified man in a bamboo grove.[18]

For her part, Emmalyn Munda-Guiriba stated that during the month of July 1983, she was frequently in the house of her father, the appellant. She slept there with Juvy Aldon, but could not remember if Juvy left the house to go to the Jovellar market place on the third Sunday of July 1983. Emmalyn was certain, however, that on the first and second Sundays of July 1983, Juvy stayed home the whole day.[19]

The trial court did not find the above testimony of the defense witnesses persuasive:

"The testimonies of the witnesses presented by the accused, Socorro Munda and Emmalyn Munda-Guiriba, do not corroborate that of the accused and can not be given any credence (sic). The story of the accused that he could not have raped Juvy because she was with her mother to market at Jovellar is belied by Emmalyn Munda-Guiriba who testified on cross-examination that Juvy was in the house every morning in the whole Sundays of July 1983. Socorro Munda also testified that Maria could not come with her to the market because she delivered a child in the middle of July, 1983. The evidence shows that Maria delivered a child as early as June 11, 1982. Evidently, the accused had all the opportunity to be with the complainant in one of the Sundays of July 1983.

x x x x x x x x"[20]

Once more, we find no reason to disagree with the appraisal by the trial court of the testimony of these witnesses. It is common-place doctrine that the evaluation of the trial court of the credit-worthiness of the testimony given before it, the court having had the opportunity to observe the detailed behavior of said witnesses, must be accorded great respect.[21] Appellant has not given any reason why we should ascribe any more importance to the foregoing testimonies than that given them by the trial court.

WHEREFORE, the Decision of the trial court finding appellant guilty of the crime of rape beyond reasonable doubt is hereby **AFFIRMED**, with the modification that the accused is hereby **ORDERED** to pay the victim Juvy Aldon, the sum of P30,000.00[22] rather than P3,000.00, as damages. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Fernan, C.J., (Chairman), on leave.

- [1] Rollo, p. 5.
- [2] Id., p. 30.
- [3] TSN, 25 June 1984, p. 19.
- [4] TSN, 13 February 1984, pp. 3-4.
- [5] TSN, 30 July 1984, p. 4.
- [6] Exhibit "D", Folder of Exhibits, p. 69.
- [7] Appellant's Brief, pp. 4-5; Rollo, pp. 40-41.
- [8] Id., p. 6; Rollo, p. 42.
- [9] Rollo, pp. 28-30.
- [10] TSN, 13 February 1984, p. 4.
- [11] Exhibit "A", Folder of Exhibits, p. 3.

[12] 125 SCRA 250 (1953).

[13] 151 SCRA 609 (1987).

- [14] 125 SCRA at 256.
- [15] Appellant's Brief, p. 8; Rollo, p. 35, et. seq.
- [16] TSN, 30 July 1984, p. 16.
- [17] TSN, 24 September 1984, pp. 91 & 93.
- [18] Id., p. 101.
- [19] Id., pp. 104-105.
- [20] Rollo, pp. 29-30.
- [21] *People v. Equac*, 85 SCRA 665 (1977); *People v. Palon*, 127 SCRA 529 (1984); *People v. Ancheta*, 148 SCRA 178 (1987); *People v. Rondina*, 149 SCRA 128 (1987); *People v. Taduyo*, 154 SCRA 349 (1987); *People v. Flores*, G.R. No. 66039, 7 July 1989.
- [22] E.g., *People v. Estebal*, 173 SCRA 209 (1989).

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