

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMITIVO AVANZADO, SR., ACCUSED-APPELLANT.

G.R. No. 73116. February 29, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Before us is an appeal of Primitivo Avanzado, Sr. (hereinafter, the Appellant) from the Decision of the Regional Trial Court of Bohol, [*] convicting him of the crime of Rape and imposing on him the penalty of reclusion perpetua; to indemnify the victim, Jennifer Gudez, in the amount of P10,000.00 as moral damages; and to pay the costs.

Appellant assails said judgment and assigns the following errors in his Brief:

I

The Trial Court erred in not finding the testimony of Jennifer Gudez liable to material contradiction, improbabilities and inconsistencies of factual details.

II

The Trial Court erred in believing the testimonies of Delia Avenido and Adelfa Gudez.

III

The Trial Court erred in not conscientiously considering the testimony of Dr. Apolinario Redulla and its implications rendering morally uncertain the guilt imputed on the appellant.

IV

The Trial Court erred in disregarding the testimonies of the defense witnesses.

V

The Trial Court erred in not considering the time and the place of the commission of the alleged crime of rape which would render its commission inherently, unlikely and improbable.

VI

The Trial Court erred in overlooking the undisputed fact considering the tender age of Jennifer Gudez that she was in a very sound physical and mental condition after the alleged rape which belies her tale she was sexually abused.

VII

The Trial Court erred in convicting appellant and in not acquitting him.

Briefly, the facts, as narrated by the prosecution, and as given credence by the lower Court, are as follows:

"On July 14, 1983, about 11:00 o'clock in the morning, accused-appellant Primitivo Avanzado, Sr. saw the rape victim Jennifer Gudez walking on the road leading to the house of Delia Avenido (tsn., Oct. 1, 1984, pp. 4-5). Delia's house was only 15 meters from the house of the accused (tsn., July 27, 1984, p. 19). The accused

called on Jennifer to come into his house (Ibid., p. 4). Once inside his house, she was brought by the accused to a room on the ground floor containing a bed (Id.). The accused first directed Jennifer to sit down on the bed while he stripped off her panty and unzipped his pants (Id.). He next applied pomade on her vagina and his penis (ibid., pp. 5-6). He then placed his body over hers and inserted his penis into her vagina (Ibid., pp. 6-7). When Primitivo's penis penetrated her vagina, she felt pain (Ibid., p. 10). She did not shout because at that time a white handkerchief was placed over her mouth (Ibid., pp. 8-9). She was also afraid that the accused would get angry if she tried to shout.

"While his penis was inside her vagina, the accused kept on moving his buttocks in a push and pull manner (Id.). After about a minute of the push and pull movement, the accused stopped and withdrew his penis from Jennifer's vagina (Ibid., p. 9). It was then that she noticed that her vagina was bleeding (Ibid., p. 10). Primitivo wiped her vagina with a piece of cloth and gave her 25 centavos (Id.). She put on her panty and went home (Id.).

"At the time of the incident, Jennifer's mother, Adelfa, was working as a household help in Manila (Ibid., p. 11). She was living with her grandparents (Id.). She did not report to her Lolo and Lola that she was raped by the accused because she was afraid that the accused would kill her (Ibid., p. 12). However, upon the prodding of Delia Avenido, a prosecution witness, she related the incident to Delia (Ibid., p. 13; tsn., July 27, 1981, p. 54). Delia reported the matter to Jennifer's aunt, Enarcisa, who informed Jennifer's mother, by letter, about the crime (Id.).

"Adelfa went posthaste to Talibon and asked her daughter about the incident on July 14, 1983 (Ibid., pp. 55-56). Jennifer informed her that she was raped by the accused (Ibid., pp. 56-57). Adelfa then brought Jennifer to the Talibon Provincial Hospital where the young girl was examined by Dr. Apolinario Redulla (Ibid., pp. 57-58). She subsequently filed a complaint for Rape with the municipal trial court (Ibid., pp. 58-59; p. 3, Records). At the time of the commission of the crime, Jennifer was 9 years old (Exhibit 'B' and 'B-1') while Primitivo was almost 70 years old (Exhibit '6'). (pp. 2-4, Appellee's Brief).

The medical findings of Dr. Apolinario Redulla, dated August 31, 1983, or six (6) weeks after the incident, revealed "multiple old lacerations of hymen at 9 o'clock and 3 o'clock; admits one finger with slight difficulty; conclusion: lacerated hymen" (Exhibit "A"; t.s.n., July 27, 1984, pp. 9, 11).

As for the defense, its version of the facts reads as follows:

"Appellant, having been born on April 17, 1914, was almost seventy (70) years of age (Exh. '6-A'), a certification from the office of Local Civil Registrar Municipality of Talibon, Bohol) on July 14, 1983, the date of the commission of the alleged rape on Jennifer Gudez. Appellant and his wife Eleuteria Avanzado had a store situated at the ground floor, also known as the first floor (TSN, October 1, 1984, p. 38), of his house which is just beside a public road and facing it (TSN, October 1, 1984, p. 38). Behind the store there is a deep well where any person can fetch water for free, and in going to the deep well, people usually pass by the said store (TSN, October 1, 1984, p. 49). Directly in front of the door of the Appellant's store is a long bench (TSN, February 1, 1985, p. 108) where people especially customers or residents are accustomed to sit (TSN, October 1, 1984 p. 48) and watch the persons who play at the pingpong table (TSN, February 1, 1985 p. 98).

"At about 11:00 A.M. of July 14, 1983, the time and date of the commission of the alleged crime imputed on the Appellant, the store was opened (TSN, October 1, 1984 p. 38); a neighbor, Eufrocina Ramos, who was 60 years old at the time, was at the store to buy rice and she saw the appellant and his wife, Eleuteria Avanzado, inside the store (TSN, February 1, 1985 pp. 96-97); while inside the store, Eufrocina Ramos also saw Librada Togonon who came in to buy soap; Librada Togonon, on the other hand, was behind the store at the appellant's well since 9:00 A.M. doing her laundry and finished it at 12:00 noontime (TSN, February 1, 1985 pp. 106-107). Outside the store students were playing pingpong while those people sitting on the bench opposite the pingpong table were watching the players (TSN, February 1, 1985 pp. 107-108).

"After having bought rice from Appellant's store, Eufrocina Ramos went home and on the way she saw a group of children, one of whom was Jennifer Gudez, playing near her house (TSN, February 1, 1985 pp. 99, 105).

"On July 14, 1983 while Librada Togonon was at the appellant's well at the back of his store, she did not see Jennifer Gudez (TSN, February 1, 1985, p. 109), but she saw her only the next day, July 15, 1983, playing in the yard of Delia Avenido playing rubber band game which is played by jumping over the rubber band (TSN, February 1, 1985 p. 109)." (pp. 2-4, Appellant's Brief).

It is to be noted that the defense does not deny the commission of the crime but stresses the impossibility of its commission, assails the credibility of prosecution witnesses insisting, instead, on the reliability of its own defense witnesses.

Thus, Appellant avers that the Trial Court erred in not finding the testimony of the victim, Jennifer, filled with material contradictions, improbabilities and inconsistencies as to factual details. He argues that in Jennifer's Affidavit, she declared that "the crime happened at 12:00 noon, that she was in the ricefield when accused called on her to come to his house, and that accused was not wearing any underwear at the time (Exhibits "2", "3" and "4"), while in her testimony in Court on October 1, 1984, she stated that "the rape occurred at 11 A.M., that she was on the road coming from Delia Avenido's house on her way to her house when the accused invited her to come into his house, and that the accused opened his underwear prior to the rape" (t.s.n., October 1, 1984, p. 34).

Contradictory statements there are. However, it is a matter of judicial experience that an affidavit, "being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject" (Moore on Facts, 1094-1095, cited in *People vs. Tan*, et al., 89 Phil. 337, 341 and *People vs. Pascala*, L-26647, August 15, 1974, 58 SCRA 370).

In the case at bar, Jennifer was only nine (9) years old at the time of the commission of the crime and, therefore, more prone to error than an adult or teenager.

The inconsistent statements she made as to the date of the commission of the crime (July or August), the time of the commission of the offense (11 A.M. or 12 Noon), location of the victim when called by Appellant (public road or a rice field), presence or absence of underwear of Appellant, presence of persons when victim narrated her story to Delia Avenido, are collateral or minor matters which do not at all touch upon the commission of the crime itself nor affect Jennifer's credibility.

"The rule is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony" (*People vs. Pascala*, supra).

In fact, minor inconsistencies may be expected of some one of such tender years as Jennifer who is unaccustomed to public trial.

"The minor inconsistencies in Gloria's testimonies are to be expected. Protracted cross-examination of a 16-year old girl not accustomed to public trial would produce contradictions which, nevertheless, would not destroy her credibility" (*People vs. Limbo*, 49 Phil. 94, cited in *People vs. Gozum*, 135 SCRA 295 [1985]).

The fact is that the Trial Judge, who had the unique opportunity to observe Jennifer's demeanor on the witness chair, was impressed with her natural and direct manner of testifying and said "the weight of testimony of children like Jennifer Gudez as observed by the court is very credible" (p. 13, Decision).

Again, in *People vs. Pelias Jones* (L-61165, June 24, 1985, 137 SCRA 166) where defendant-appellant therein

was accused of having raped his own daughter, also 9 years old at the time, this Court upheld the Trial Court in giving credence to the testimony of the victim, Mary Jane, over that of the accused therein despite the inconsistencies in the victim's testimony. Thus:

"The defendant-appellant next questions the credibility of Mary Jane by pointing out several contradictory statements in her testimony, e.g., whether or not the toilet was totally dark or illuminated from a light coming from the neighboring houses; whether at the time of alleged intercourse, she and defendant-appellant were standing and facing each other or her buttocks were raised by him; whether they were using only a kerosene lamp or there was an electric bulb at the center of the house; whether defendant-appellant first inserted his fingers inside her vagina; and whether or not two months prior to and up to Oct. 16, 1981, the defendant-appellant was sleeping at their house at night or comes home only during mornings to change clothes. These inconsistencies are of minor details which do not affect the credibility of Mary Jane. They only refer to collateral matters which do not touch upon the commission of the crime itself. More important than these alleged inconsistencies is the straightforward testimony of Mary Jane that she was abused inside the toilet of their house."

Next, Appellant claims that the Trial Court erred in believing the testimonies of prosecution witnesses, Adelfa Gudez and Delia Avenido, the first, because she is complainant's mother so that her testimony is necessarily biased, and the second, because she has an axe to grind against Appellant for refusing to lend her fifty pesos. Such argument does not hold water. In keeping with ordinary human experience, a mother will not suffer her own daughter the attendant circumstances of a public trial if she were not motivated by a strong desire to hail to Court one who has wronged her daughter. A public trial for Rape cannot but carry with it a resultant social humiliation on the part of the wronged woman, especially if she was young and chaste, whose future might be adversely affected.

"It is hard to believe that a mother would sacrifice her own daughter to tell a story of defloration, allow the examination of her private parts, and thereafter present her to be the subject of a public trial, if they (mother and daughter) were not motivated by an honest desire to have the culprit, who is Emilia's own father, punished". (People vs. Erardo, L-32861, January 31, 1984, 127 SCRA 250, cited in People vs. Pelias Jones, supra).

And as far as Delia Avenido's testimony is concerned, since it is merely corroborative, the imputation of malice to her as a witness does not militate against the credibility of Jennifer's testimony.

The defense also faults the Trial Court for rejecting the testimonies of defense witnesses. True, Appellant's wife testified that he was with her tending their store at the time of the commission of the crime. That was corroborated by two customers, Eufrocina Ramos and Librada Togonon, who were buying rice and soap, respectively. There are indications, however, that the wife was away at the time, and that the room where Jennifer was ravished was one where sacks of rice were stored (t.s.n., July 27, 1984, p. 24) and was, therefore, not exposed to public view, nor frequented by people. Thus, even assuming, as the defense contends, that there were people sitting on the bench outside the store, and students playing pingpong (t.s.n., February 1, 1985, p. 98), it would not have been impossible for the crime to have been committed in the seclusion of a semi-"storeroom". The fact is that rape may be committed at a place where people congregate such as parks or by the roadside (People vs. Vidal, 127 SCRA 171, cited in People vs. Aragona, L-43752, September 19, 1985, 138 SCRA 569). Rape has also been committed on a passageway and at noontime (People vs. Lopez, L-47299, February 19, 1986, 141 SCRA 385).

Additionally made capital of by the defense is the testimony of Eufrocina Ramos that after the alleged rape she saw Jennifer playing with other children, thereby belying her tale that she was sexually abused. Even assuming that Jennifer was her playful self and was apparently in good physical condition after the incident against her honor, that would not negate the fact that she was abused. Appellant's argument bears resemblance to that of

defendant-appellant in *People vs. Pelias Jones*, supra, which was discredited by this Court:

"The defendant-appellant also questions the evident naturalness of Mary Jane after the sexual act. We agree with the observation of the Solicitor General to the effect that Mary Jane was then a 9-year old child and without full awareness of the painful realities of life. Were she a full-bloomed woman, she undoubtedly would have revolted against the dastardly act to which she was subject. But young and fragile as she was, she remained unaffected by the incident".

The defense further maintains that the Trial Court did not conscientiously consider the testimony of the examining physician, Dr. Redulla, and its implications, to the effect that the lacerations had not yet healed at the time of physical examination such that they could have been produced by other later causes. The medical findings, however, were that they were "old lacerations". Besides, as testified to by Dr. Redulla himself, the healing period of a laceration depends on various factors, like the age of the person sustaining the laceration, location of the laceration, and the supply of blood in the location where the laceration is found. Although, under normal circumstances, when the person sustaining the laceration is of tender age and there is plentiful supply of blood in the lacerated area, the laceration might heal in a week's time (t.s.n., July 27, 1984, pp. 13-14), there are other factors which might delay healing of the lacerated hymen, such as, if the area of the laceration, as in this case, is always moist.

Upon the foregoing considerations, our conclusion is that the Trial Court did not err in finding the testimonies of defense witnesses underserving of credit, and in convicting Appellant. Significantly, as the Trial Court also noted, Appellant did not even aver on direct examination, nor in the Brief, that he did not abuse Jennifer but relied mainly on the testimonies of his witnesses tending to show the circumstantial impossibility of his having committed the crime.

As in all prosecutions for Rape, an accused may be convicted on the sole basis of complainant's testimony, if credible (*People vs. Mesias*, L-40318-20, February 28, 1984, 127 SCRA 792) and where it has been established that she has no motive to testify against an accused (*People vs. Lopez*, supra) except to bring him to justice.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** except that the civil indemnity is hereby raised to P20,000.00 in line with current jurisprudence. Costs against accused-appellant, Primitivo Avanzado, Sr.

SO ORDERED.

Yap, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[*] Penned by Judge Andres S. Namocatcat.

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