

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO DOLORES, ACCUSED-APPELLANT.

G.R. No. 76468. August 20, 1990

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

ANA Rowena Prior, barely twelve (12) years old at the time of the incident on 1 November 1979, has charged ANTONIO Dolores, 42, married, with having robbed her of her virginity.

ANA was born on 10 November 1967 (Exhibit "A"). She, her mother, three sisters, the youngest being one (1) year old, and two brothers, lived in an apartment on the third floor of the Tenement Apartment Building at Punta, Sta. Ana, Manila. The father works overseas.

ANTONIO, with his wife Eloisa and a seven-year old son, who suffers from a physical defect due to cerebral palsy, occupied another apartment in the same tenement, not far from ANA's. He and his wife operate a small store on the ground floor of the tenement building. The store has a bodega for empty softdrinks bottles located behind shelves which serve as a partition (TSN, 14 June 1983, p. 3).

ANA has a first cousin, more or less of the same age, Luzviminda Domingo, who also lived in a unit on the third floor of the same tenement house.

On 1 November 1979, Luzviminda, at around 11:30 in the morning, informed ANA that ANTONIO wanted her (ANA) to go down to his store because he was going to give her a birthday present, with the additional message that "siya'y (Mang Tony) nagsisisi na at mabait."

According to ANA, when so informed, she was at home watching over her baby sister. Later in the day, at around 1:30 P.M., she went down to ANTONIO's store as bidden and asked ANTONIO for her gift. ANTONIO then told her to enter the store to see the gift. ANA went inside, looked around but saw no present. When she looked back, ANTONIO was already behind her, "pushed (her) towards the down step and even pushed (her) inside the mezzanine," causing her to fall face down on the floor. Thereafter, she recounted:

"Q What else happened after that?

A He made me lie down on my back.

Q What else happened after that?

A He went on top of me his two knees placed on my thighs and he undressed me.

Q After that what happened?

A Then he removed his pants.

Q What else happened?

A He inserted his penis inside.

Q Were you wearing a panty at that time?

A No more, sir, because at that time he had already removed my panty.

Q How did he remove your panty?

A His left hand were holding both of my hands which were crossed on top of my head while he was lying down and he used his right hand in removing my panty.

Q At that time when he was removing your panty has he already removed his pants?

A He has his pants on at that time.

Q After he has removed your panty what else did he do if any?

A It was at this time that he removed his pants.

Q When he removed his pants how did he actually removed his pants.

A By means of his right and he removed his pants.

Q Was he still on top of you when he was removing his pants?

A Yes, sir.

Q And after that what else did he do if any?

A He inserted his penis inside me. He placed his both legs between my legs and stretched sideward and forcibly opened my legs and inserted his penis inside my vagina.

Q What did you feel when he inserted his penis inside your vagina?

A It hurts.

Q What did you do when you felt that you were hurt because of the insertion of his penis inside your vagina?

A I was about to shout when he covered my mouth with his left hand.

Q When you failed to shout because he covered your mouth with his left hand what did you do?

A I did not shout any more because it is futile but I kept on resisting.

Q What else happened after that?

A Later on I heard a female voice calling him.

Q Did he succeed in inserting his penis inside your vagina?

A There was a slight penetration because when I felt it hurt I tried to turn to my left.

(witness demonstrating sideward movement of his body towards her left side)

Q You stated that someone with a female voice called him what happened?

A He put on his trouser and went outside.

Q How about you what did you do?

A I put on my clothes also.

Q What were you dressed at the time?

A Blouse and skirt.

Q What else happened after that?

A When the female had left he went inside again and hold my both hands and told me not to report the matter to anybody or else he will kill me.

Q What did you do or say any?

A I did not say anything." (TSN, 25 June 1982, pp. 4-5).

When ANA stepped out of the store, she was seen by her cousin, Luzviminda, who was about to call her so they could take a bath. Luzviminda asked ANA why she was looking so pale, touched her, and because Luzviminda thought that ANA had caught a fever, they both decided to forego their bath and to just go up to their apartments (ibid., p. 6).

Fearful of ANTONIO's threat, ANA kept the incident of 1 November 1979 to herself until five (5) months later, or on 9 May 1980. At around 2:30 P.M. of that date, ANA went to ANTONIO's store to buy a bottle of softdrinks. ANTONIO told her to serve herself. When she was drinking, ANTONIO took advantage of her and touched her breasts. Soon thereafter, ANTONIO's wife, Eloisa, arrived at the store. According to ANTONIO and Eloisa, the latter scolded ANA for buying softdrinks without payment. Frightened, ANA ran out. ANTONIO then told his wife that ANA had paid for her drink and advised his wife to go to ANA's apartment to apologize to ANA's mother. ELOISA allegedly did but because the mother was out the apology was extended to the grandmother instead (TSN, 14 July 1983, pp. 12-13).

According to ANA, however, ELOISA quarreled with the grandmother and revealed to the latter the happening between her and ANTONIO. The information was relayed to ANA's mother, who, the day after, proceeded forthwith to the Sta. Ana Police Station where ANA reported not only the 9 May 1980 incident but also that of 1 November 1979 and all other attempts on her person by ANTONIO (TSN, 9 July 1982, pp. 6-8).

Upon advice by the police, ANA and her mother proceeded to the NBI for medical examination, which was conducted on 13 May 1980, but the results of which were released only on 22 August 1980 upon subpoena by the Investigating Fiscal (RTC Decision, p. 24, Rollo). The NBI findings (Exhibit "B," Original record, p. 37) showed:

"1. No evident sign of extragenital injury noted on the body of the subject at the time of examination.

"2. Hymen, intact, and its orifice small (2.0 in diameter) as to preclude complete penetration by an average-sized, adult Filipino male organ in full erection without producing any genital injury."

Impatient, however, over the non-release of the results of the NB medical report, mother and daughter went to the PC Crime Laboratory at Camp Crame for another medical examination on 23 May 1980 (TSN, 9 July 1982, p. 15). The results revealed a different conclusion, thus:

"x x x On separating the (hymen) is disclosed an elastic, fleshy-type hymen with a deep, healed laceration at 9 and a shallow healed laceration at 3 o'clock positions. x x x

"REMARKS:

Subject is in non-virgin state physically."

On 14 December 1981, ANA's mother filed a Complaint for Rape for the incident of 1 November 1979 against ANTONIO before the then Court of First Instance of Manila. Apparently, the Investigating Fiscal had dismissed

the other charges contained in ANA's affidavit of "abuse four or five times on different occasions, particularly, on 1 November 1979, 23 February 1980, 19 March 1980, 9 May 1980 and in another occasion the date of which was not ascertained" (Decision, pp. 1 & 3; Original record, p. 102; Exhibit "DD"). Upon review, however, the filing of the present case for the incident of 1 November 1979 was directed by the City Fiscal.

In his testimony in open Court, ANTONIO flatly denied any alleged rape on 1 November 1979, contending that he was out for lunch at around 1:30 P.M. of that day and that it was his wife who was then tending the store. He and his wife alternate in taking care of the place. Since it was All Saints Day, they had many customers, aside from the fact that in front of the store is a parking lot for jeepneys and drivers mill around. ANTONIO denied having instructed Luzviminda to send ANA down to his store. In fact, he claims that he had never seen her on 1 November 1979 nor up to the date he testified on 14 July 1983 (TSN, 14 July 1983, pp. 9-10) because she lives in another tenement house. According to him, neither had he seen ANA the whole day of 1 November 1979 (*ibid.*, p. 10).

On 9 May 1980, ANTONIO admitted that ANA was in his store buying softdrinks and he had told her to serve herself because he was attending to customers. It was then that his wife arrived and scolded ANA for not paying for her drink and uttered bad words against her. He then told his wife to apologize to ANA's mother. His wife allegedly obeyed and apologized to the grandmother because the mother happened to be out (*ibid.*, pp. 10-12).

ANTONIO's line of defense is further predicated on an alleged pattern of extortion by ANA's mother. It is claimed that through the Barangay Captain she had first asked for P200.00 for the humiliation suffered by her daughter at his hands and subsequently increased it to P1,000.00 (*ibid.*, pp. 12-14). The mother allegedly told ANTONIO that if he could not give her the latter amount, she would file a case against him.

After trial, the Court *a quo*^[1] returned a verdict of guilty and sentenced ANTONIO to reclusion perpetua. Hence, this appeal.

The records disclose that the transcripts of stenographic notes containing the testimonies of ANA were not included among those transmitted to this Court. The list of transcripts forwarded by the lower Court neither included the dates when ANA testified, particularly, 14 May 1982 and 15 June 1982. It is for this reason that the decision in this case has been considerably delayed, and it was only after the Solicitor General had called the attention of the Court to the missing transcripts; after investigation by the Office of the Court Administrator; and after the lower Court personnel concerned were required to show cause why they should not be disciplinarily dealt with, that the "lost" transcripts were found "under a cabinet" and finally transmitted to this Court.

The defense faults the Court *a quo* as follows:

- "1. The trial court erred in failing to rule that the filing of this rape case was designed to extort money from the accused-appellant.
- "2. The trial court erred in omitting to acquit the accused-appellant because his guilt was not proven beyond reasonable doubt.
3. The trial court erred in being 'more inclined' to believe the medical findings of the Philippine Constabulary Crime Laboratory (PCCL) medico-legal officer and in totally disregarding the medical findings of the National Bureau of Investigation (NBI) medico-legal officer."

The defense points out that the incident was allegedly committed at about high noon on All Saints Day, when all the nearby stores in the tenement house were open to customers and when there were numerous persons milling around the stores. Given this "public setting", it is argued that ANTONIO would not have dared, let alone succeeded, in committing the crime imputed to him.

Jurisprudence is replete, however, with cases holding that rape can be committed even in places where people congregate: in parks, along the roadside, within the school premises, and even inside the house where there are other occupants (*People v. Viray*, G.R. No. 41085, 8 August 1988, 164 SCRA 135, citing *People v. Opena*, G.R. No. 34954, 20 February 1981, 102 SCRA 755 and *People v. Aragona*, G.R. No. 43752, 19 September 1985, 138 SCRA 869). It is not necessary that the place where rape is committed be isolated. Besides, in this case, the criminal act was perpetrated in the mezzanine of the bodega, behind the partition made of shelves, away from public view. More, there is only one other store on the ground floor of the tenement building (TSN, 14 June 1983, p. 3).

Aware of the caveat that the testimony of a woman crying rape must be scrutinized with extreme caution, we have meticulously reviewed the evidence and have arrived at the conclusion that ANTONIO's guilt has been established by clear and satisfactory evidence. Contrary to his assertion, the testimonies of ANA and Luzviminda were not tainted with patent inconsistencies. Their declarations convincingly show that ANTONIO had instructed Luzviminda to tell ANA to go to his store so he could give her a birthday present. ANA went as instructed. While inside the bodega of the store, she was sexually abused until the odious act was interrupted by a female voice calling for ANTONIO. Luzviminda testified that she saw ANA coming out of the store looking pale. At the same time, she also saw accused-appellant with his trousers unzipped (TSN, 30 April 1982, p. 15).

The assertion that the rape charge was fabricated for the purpose of extorting money from ANTONIO is far from persuasive. On the contrary, there is also evidence disclosing that it was ANTONIO, accompanied by the Barangay Captain, who went to ANA's apartment offering P5,000.00. Much later, ANTONIO's neighbor upped the offer to P10,000.00, which was neither accepted (TSN on rebuttal, 12 September 1986, p. 4). Taken in the light of the circumstances of this case, it is unthinkable for a child or her mother to fabricate a case of rape and falsely accuse ANTONIO just because of the latter's refusal to pay Two Hundred Pesos (P200.00), or even One Thousand Pesos (P1,000.00). It is unimaginable for them to undergo the expense, trouble and inconvenience of a public trial, not to mention the scandal, embarrassment and humiliation such action inevitably invites, as well as to subject ANA to an examination of her private parts, and to sell her honor and being for mercenary considerations. No other motive can be ascribed to complainants in filing the rape charge except that of a desire for justice and redress for a despicable wrong inflicted (*People v. Cayago*, G.R. No. 47398, 14 March 1988, 158 SCRA 586).

ANTONIO had also enmeshed himself in contradictions. In his testimony on 14 July 1983, he insisted that the present charge is a mere fabrication and that ANA never went to his store on 1 November 1979; while Luzviminda is unknown to him as she resides in another tenement; that he had not seen her until that date (14 July 1983) and, therefore, could not identify her (pp. 9-10). On 6 September 1983, however, he declared that Luzviminda was not residing in the same tenement building but "is a cousin of the Prior family" (p. 5). In other words, Luzviminda was not totally unknown to him. He even knew her relationship with ANA'S family. Again, on 13 October 1983, he testified that he and his wife take turns in taking lunch. On 1 November 1979, he went up to his apartment at 12:00 noon ahead of his wife to take his lunch and that he returned to the store after 20-30 minutes. His wife then went upstairs and stayed there for about an hour (pp. 11-12). At the subsequent hearing on 8 November 1983, however, he stated that it was his wife who first went upstairs to take her lunch. When cornered by the Fiscal, he replied that "he cannot remember anymore because of the lapse of time" (p. 2). Further, he stated that ANA did not go to his store on 9 May 1980, only to contradict himself the next instant to say that she did (p. 3). Then, too, he declared that when ANA was at the store, his wife was "maybe she was upstairs" only to state later that she had followed him to the store (p. 3). All of which prompted his lawyer to ask for continuance because ANTONIO was ostensibly not feeling well.

The foregoing cast serious doubts, indeed, on the credibility of ANTONIO, particularly, his denials of the criminal imputation.

The defense additionally faults the Trial Court for being "more inclined" to believe the medical findings of the PC Crime Laboratory (PCCL) and in totally disregarding the NBI medical report. The physical examination findings of the two agencies are admittedly contradictory. The NBI certified to ANA's virginity; the PCCL reported her non-virginity. The defense then submits that the two reports should cancel each other leaving a void, with no evidence remaining to convict ANTONIO.

Suffice it to state that even without any medical certificate, the testimonial evidence on hand sufficiently establishes ANTONIO's culpability beyond reasonable doubt. In fact, it is not even necessary that the raped victim be medically examined (*People v. Orteza*, 116 Phil. 424 [1962]; *People v. Salazar*, L-37791, 30 October 1979, 93 SCRA 796). Moreover, the NBI conclusion merely "preclude(d) complete penetration." From the testimony of ANA herself, full penetration was not effected because she had moved to the left when she felt pain in her private part, and the detestable act was interrupted when a female voice called for ANTONIO (TSN, 7 June 1982, p. 5). In other words, the NBI finding did not preclude slight penetration. The important factor is the extent of such penetration, it being sufficient that the labia has been penetrated (*People v. Salazar*, supra; *People v. Aballe*, L-45087, 23 October 1984, 132 SCRA 641).

"Complete or total penetration of complainant's private organ is not necessary to consummate the crime of rape. The slightest of penetration is sufficient. Neither is the rupture of the hymen essential for the crime of consummated rape. It is enough that there is proof of entrance of the male organ within the labia of the pudendum" (*People v. Aragona*, L-43752, 19 September 1985, 138 SCRA 569).

All told, the evidence convincingly establishes that there was carnal knowledge of ANA by ANTONIO on 1 November 1979 when ANA was barely twelve (12) years old. Statutory rape has been committed. There need have been no force or intimidation nor should the young victim have been deprived of reason or otherwise unconscious (Article 335, Revised Penal Code; *People v. Celis*, L-26977, 30 September 1970, 35 SCRA 129; *People v. de la Cruz*, L-28810, 27 March 1974, 56 SCRA 85).

Not only is conviction justified by the evidence. It is also in keeping with the role of the State as *parens patriae* by virtue of which it is mandated to provide utmost protection to those of tender years. The injury inflicted in cases of rape of this nature is not to the unfortunate minor victim alone. It causes consternation on her entire family and offends the sensibilities of society as a whole. The rigorous application of the penal law is called for (*People v. Baylon*, L-35785, 27 May 1974, 57 SCRA 114).

WHEREFORE, the judgment appealed from is AFFIRMED in toto. Costs against accused-appellant, Antonio Dolores.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.
Sarmiento, Jr., on leave.

[1] Judge Rosalio C. Segundo, presiding.

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