

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO YAMBAO Y SEQUERO, ACCUSED.

G.R. No. 77778. February 06, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

In Criminal Case No. 86-0322 (M) of the Regional Trial Court, Branch 54, Macabebe, Pampanga, Ricardo Yambao y Sequero was charged with the crime of rape under an information which reads:

"That sometime on or about the 2nd week of June, 1986, at Barangay San Roque, municipality of Macabebe, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RICARDO O. YAMBAO y SEQUERO, being then a household helper of Ofelia R. Viray, and taking undue advantage of the confidence reposed in him, with lewd designs, by means of deception, deceit, threat and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having carnal knowledge with Jennifer R. Viray who is a minor daughter of Ofelia R. Viray below twelve (12) years old, that is, being then only six (6) years of age, against her will and consent." (Rollo, p. 8)

The accused entered the plea of not guilty to the offense charged when arraigned on October 1, 1986. After trial, the Court a quo rendered judgment on March 4, 1987, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds accused RICARDO YAMBAO y SEQUERO guilty beyond reasonable doubt of the crime of Rape as charged in the Information, and hereby sentences him to suffer the penalty of Reclusion Perpetua, with all the accessories provided for by law.

"The accused Ricardo Yambao y Sequero is further ordered to indemnify the victim Jennifer Viray the sum of THIRTY THOUSAND (P30,000.00) PESOS, Philippine currency.

"Said accused is further ordered to pay the cost of this suit.

"SO ORDERED." (p. 25, Rollo)

Hence, this appeal from the lower court's decision with alone assignment of error:

"THE LOWER COURT ERRED IN FINDING HERE IN ACCUSED GUILTY OF RAPE BEYOND REASONABLE DOUBT, AND IN SENTENCING HIM TO LIFE IMPRISONMENT." (p. 54, Rollo)

However, the appellant further divided his assignment of error into two arguments stating that:

"I. The Lower Court erred in ignoring the well established principle that the prosecution must depend upon the strength of its own evidence that it cannot rely on the weakness of the evidence for the defense.

"x x x

"II. The Lower Court erred in closing its eyes to the fact that the alleged victim's testimony was coached, and as such could not be the clear and convincing proof upon which conviction could be based." (Rollo, pp. 55, 58)

The antecedent facts of this case are as follows:

Private complainant, Jennifer Viray, is the six-year old daughter of Ofelia and Freddie Viray, who lived at the basement of the house of Encarnacion Isip at San Roque, Macabebe, Pampanga. Accused-appellant, Ricardo Yambao, was employed as a household helper of Encarnacion Isip whose duties included fetching water for his employer Isip and Ofelia Viray from six to ten o'clock in the morning everyday.

Prior to the second week of June, 1986, the accused-appellant and Ofelia Viray had a disagreement over the amount of water delivered to her. Whenever Ofelia Viray would do her laundry the accused-appellant would simply deliver just one pail of water, thus causing further disagreement.

On or about the second week of June, 1986, Ofelia Viray went to buy rice at around ten o'clock in the morning, leaving behind her daughter Jennifer and her three (3) other children in their house along with Ricardo Yambao who was then fetching water for them. Evidence for the prosecution disclosed that Ricardo arrived with a pail of water. Thereafter, he called Jennifer saying, "Jenny, come here." Jennifer refused but Ricardo pulled her and brought her to the "bahay-bahayan" which was outside the house. Once inside the bahay-bahayan, the accused had carnal knowledge of Jennifer.

In the afternoon of July 9, 1986, Ofelia Viray was washing their clothes when Jennifer approached her and handed her panty. Jennifer complained that she was suffering pain in her stomach. It was only then that Jennifer informed her mother that Ricardo had carnal knowledge of her. Ofelia noticed that there was blood and pus in the panty of Jennifer and upon examining her private part, she saw a wound which was slightly swollen.

Thereafter, they brought Ricardo to the municipal building where he was investigated by Pat. Roberto Tongol. During the said investigation, Jennifer confirmed the report made by her mother that she had been sexually abused and pointed to Yambao as the culprit.

Medical examination conducted by Dr. Evelyn Macabulos revealed that:

"x x x one Jennifer Viray, 6 years of age, female, child from San Roque, Macabebe, Pampanga was physically and internally examined in this hospital this date with the following findings:

PPE CR-100/min. RR-26/min.

F/N, F/D, conscious, coherent, ambulatory

HEENT: unremarkable

Heart and Lungs: essentially normal

Abdomen: soft, tender over hypogastrium, no palpable mass

External Genitalia:

not yet fully developed, greenish foul smelling discharge at the vulva. Vulva is congested, hymen with laceration at 2.5 and 9 o'clock, congestion (-) bleeding.

Smear for spermatozoa:

negative

Gram's stain:

vaginal discharge presence of diplococci found extra?cellularly, Pus-cells." (p. 20, Rollo)

Appellant denied having carnal knowledge of the private complainant. The appellant insisted on his explanation that he was charged of criminally assaulting the victim because of the grudge of the victim's mother regarding the accused's failure to give more water for her laundry.

However, the lower court considered his explanation and the alleged grudge as trivial, insignificant and inconsequential.

Appellant also claimed during the police investigation and again during the trial that it was Severino Sanchez whom he saw with Jennifer during the second week of June, 1986. He even saw the victim sitting on Sanchez' lap and lifting her buttocks occasionally.

In relation to this contention, the lower court noted that the accused did not present any evidence to corroborate his claim that it was Sanchez whom he saw with the victim at the time of the incident thereby concluding that the evidence presented establishes the accused's guilt to a moral certainty.

There are three (3) settled principles to guide an appellate court in reviewing the evidence in rape cases:

- (1) An accusation for rape can be made with facility; it is difficult for the person accused, though innocent to disprove it.
- (2) In view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.
- (3) The evidence for the prosecution must stand or fall on its merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People v. Villapana, G.R. 53984, 5 May 1988)

On the basis of the aforementioned guidelines, this Court will decide the merits of the appellant's assignment of error of the lower court's decision.

It has been an established rule that "the findings of the judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case" People v. Sibayan, L-41700, August 30, 1982).

The lower court relied heavily on the sole testimony of the victim and found the said testimony clear, logical, convincing and conclusive. It even stressed the fact that the victim is certainly an intelligent six-year old girl and hence, it had every reason to give full credence to her testimony.

The 1988 decision of People v. Derpo (GR 41040 and 43908-10, 14 December 1988) relating to a rape of a girl who was still below twelve years of age held that "no woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by a desire to have the culprit apprehended and punished." It is even harder to believe that complainant, then only six years old, naive and definitely inexperienced in sexual matters would concoct charges of rape against the appellant.

The appellant controverts the fact that the complainant's testimony was coached and argues that such testimony could not be the clear and convincing proof upon which conviction could be based.

Appellant's allegation is without merit. It has been held that the young victim's failure to give a detailed account of how she was abused, her denial that she conferred with a lawyer and her admission that she did not shout nor cry are hardly consequential as to negate the commission of the statutory crime of rape. The testimony of the victim shows the naivete and sincerity of childhood. (People v David, G.R. 72355-59, 15 September 1989).

Considering that complainant herein is only a six-year old child, her failure to give a detailed account during the police investigation of how she was abused is understandable and her admission during cross-examination that she conferred with her mother and it was the latter who told her what to say before the Court are but natural and expected and therefore inconsequential as to negate the commission of the crime charged.

Appellant also alleges that it was the grudge of the complainant's mother that initiated the charge against him. The Court agrees with the lower court's stand that such allegation of grudge is trivial, insignificant and inconsequential.

It is inconceivable that a mother of a six-year old child would fabricate a rape charge, subject her daughter to physical examination and the embarrassment of a public trial. A mother would not sacrifice her daughter's honor to give vent to a grudge knowing fully well that such an experience would damage her daughter's psyche and tar her for life. (*People v David*, supra)

It is illogical to assume that because of a petty disagreement over the amount of water to be delivered to complainant's mother, the complainant and her parents will pick up the bludgeon by undergoing "the trouble of having their child examined, undergo the rigors of a public trial, and practically expose themselves to embarrassment and humiliation just to settle a score with accused." (*People v Ausan*, GR 49728, 15 July 1987)

It is true that complainant failed to report the incident to anyone immediately after the alleged rape in the absence of any threat or intimidation notwithstanding the fact that complainant was suffering pain in the stomach and reveal that her private part is infected. However, the silence of the offended party in a case of rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Other relevant facts and circumstances must be considered to determine the veracity of the accusation. (*People v Hortillano*, GR 71116, 19 September 1989) Failure to report an incident immediately does not cast doubt on the credibility of the charge notwithstanding the fact that the delay is not in anyway attributable to the threats of death and intimidation given by the accused to the victim. It must be noted that the offended party is a six-year old child who in all probability does not even know nor understand the gravity of the offense perpetrated against her.

The lower court gave credence to the victim's testimony because such was further buttressed by the corroborative testimony of the victim's mother, the findings of the medico-legal as well as the report of the police investigator. Indeed the medical report showed lacerations of the hymen, enough to prove that there was penetration, although the same report showed the absence of spermatozoa.

It has been held that the absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape. The important consideration in rape is penetration and emission. The absence of spermatozoa may be due to the fact that the victim was examined two days after the incident. She could have washed them out of her body by then. (*People v Abonado*, supra) Indeed, the non-existence of spermatozoa in the vagina of the complainant could be attributable to the fact that the latter was examined only a month after the incident.

Furthermore, the lower court noted that the accused did not present any evidence to corroborate his claim that it was Severino Sanchez whom he saw with Jennifer during the second week of June, 1986. It also stressed the fact that the accused did not explain why the said Sanchez was not presented in Court.

The appellant finally argues that "the lower court erred in ignoring the well established principle that the prosecution must depend upon the strength of its own evidence that it cannot rely on the weakness of the evidence for the defense." (Rollo, p. 55)

Jennifer's direct testimony on the rape perpetrated against her is clear, logical, convincing and conclusive. Taken with the other conclusive evidence presented against appellant, the same can withstand strict scrutiny and is definitely not weak as appellant claims.

Thus, the Court has no option but to declare that the lower court has rightfully reached its decision that the

prosecution has met the exacting test of moral certainty and proof of guilt of the accused beyond reasonable doubt.

WHEREFORE, the judgment of the trial court dated March 4, 1987 is AFFIRMED except as to the amount of indemnity the appellant should pay the victim which is hereby increased to P40,000.00.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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