

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BACANI Y POLIOSCO, ACCUSED-APPELLANT.

G.R. No. 77854. January 24, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal by accused Romeo Bacani y Poliosco from the decision dated February 19, 1987 of the Regional Trial Court, National Capital Judicial Region, Branch 92 in Quezon City (Criminal Case No. Q-40901), the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is rendered finding the accused ROMEO BACANI y POLIOSCO guilty beyond reasonable doubt of the offense of rape as defined and penalized under Article 335, paragraph 3, Revised Penal Code, hereby sentencing him to suffer the penalty reclusion perpetua; ordering the accused to pay to the victim Jovelyn Peña y Peña moral damages in the amount of TWENTY THOUSAND (P20,000.00) PESOS without subsidiary imprisonment in case of insolvency; and to pay the costs." [1]

The facts as found by the trial court are as follows: Romeo Bacani, 27 years old, single, high school graduate, was the regular driver of a passenger jeepney registered in the name of Rizalita Peña Samaniego, the mother of Jovelyn Peña, the offended party.

At around six o'clock in the evening of July 28, 1985, the accused Bacani, accompanied by an acquaintance identified as Danilo (Danny) Alcantara, went to Rizalita's house to inform her that her jeepney had developed engine trouble. On the same occasion, the accused and his friend were invited by Rizalita's common-law husband, Quirino Samaniego, to join him for a drink and the three men started drinking until about ten o'clock that evening. Since it was rather late and they were all drunk, Samaniego asked the two visitors to stay for the night. They were given the room where Jovelyn usually slept. The young girl, then ten years old and a grade IV pupil, was told by her mother to sleep in the sala instead. [2]

At about 10:45 of the evening in question, Rizalita's infant child who was sleeping beside her, started to cry. As it was dark on account of the brownout, Rizalita called out to Jovelyn to ask her for some candles. Receiving no response, Rizalita got out of bed and went to the sala where Jovelyn was lying down. She was surprised to find her daughter in tears. When asked why she was crying, the child replied that she was sexually molested by "Kuya" Romy, referring to the accused. Rizalita immediately woke her husband who then instructed her to report the incident to the barangay councilman who promptly responded by taking the accused into custody and later turning him over to the police authorities for appropriate action. [3]

During the police investigation, both Rizalita and Jovelyn Peña gave their sworn statements implicating the accused as Jovelyn's attacker. [4] Jovelyn later submitted herself to a physical examination which disclosed:

"General Physical Examination:

xxx xxx xxx xxx

Normally developed, fairly nourished, conscious coherent, cooperative, ambulatory subject.

Breasts, developing. Areolae, light brown, 2.0 cm. in diameter. Nipples, light brown, slightly protruding, 0.8 cm. in diameter.

No extragenital physical injury noted.

Genital Examination:

Pubic hairs, no growth. Labia majora and labia minora, both coaptated and with fungal infection. Fourchette, tense. Vestibular mucosa, smooth and pinkish. Hymen, intact, fimbriated, and contused at 3:00 and 11:00 o'clock positions. Hymenal orifice, admits a tube, 0.5 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

Conclusions:

1. No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
2. She could have had vulvar coitus only."[5]

At the arraignment, the accused pleaded not guilty and trial proceeded accordingly.[6] On February 19, 1987, the lower court rendered a judgment of conviction. Hence the present appeal.

Accused-appellant Bacani contends that the court a quo erred in concluding that from the medical findings, the crime of rape has been committed and that he was the author thereof.

The accused denied having raped Jovelyn. He alleged that at the time when the crime was supposed to have taken place, he was asleep. He testified that after they stopped drinking shortly past ten in the evening of July 28, 1985, he went to sleep with Danny in a vacant room in Rizalita's house. He decided to spend the night there because he had an asthma attack. Then he was abruptly roused from his sleep by Samaniego (Jovelyn's stepfather) who confronted him with the young girl's accusations. It was while Samaniego was grilling him when the barangay men arrived and unceremoniously dragged him from the house. On their way to the barangay outpost, he was mauled by several people and was injured on the face.[7]

To corroborate his claim that he was asleep when the supposed rape of Jovelyn occurred, accused presented his companion Danny Alcantara who stated that the three of them (Bacani, Samaniego and Danny) stopped drinking at ten o'clock; that he slept in the same room with the accused; that he was awakened at about eleven o'clock in the evening by commotion; that when he woke up, he saw the accused being dragged out of the room by some persons, and that after the accused was taken away, he (Danny) left the house and went home.[8]

The evidence for the prosecution rested mainly upon the testimonies of the minor Jovelyn and the examining physician.

Jovelyn narrated that around 10:45 in the evening of July 28, 1985, she was asleep in the sala of their house when she was awakened by the accused who was kissing her. He removed her panty and started to press his penis against her vagina. Despite her efforts to push him away, the accused succeeded once in inserting his private organ into hers. After warning her not to tell her mother of what he had done to her, the accused left and returned to the room where he slept. Jovelyn tearfully recounted to her mother what had transpired and the latter lost no time in reporting the outrage to her husband. Soon thereafter, the barangay people came to the house to arrest the accused. Jovelyn was brought to the police station where she gave her sworn statement. Opposite her signature was the signature of her mother, Rizalita.[9] Then she was taken to the National Bureau of Investigation headquarters for medical examination.[10]

Jovelyn's testimony was sufficiently corroborated by the testimony of Dr. Bienvenido Muñoz, the NBI medico-legal officer who has handled no less than 1,000 cases in his fifteen years with the Bureau. Upon his examination of the complainant Jovelyn at 1:30 of the following day, July 29, 1985, he concluded that "she could have had vulvar coitus only." Elaborating on his findings, Dr. Muñoz testified:

"Q -

And from what appears in your findings, will you please tell us in the layman's language what your findings are, we go first to the first paragraph of this (sic) findings.

"A -

The subject here was 142 cm. in height, she weighs 35.4 kg. at the time of the examination, the subject was conscious, coherent and ambulatory. The breast were still developing, I did not find any extragenital physical injury, meaning there was no injury outside of her genital organ. Going to the genital examination, there was no rough yet or pubic hair. Both the labia majora and labia minora, these are lips covering which are still coaptated, meaning they are still together. I found the hymen showed contusion at 3 and 11 o'clock position. My conclusion there was no evidence found or extragenital injury, and she could have had vulvar coitus only.

"Q -

When you concluded that she could have vulvar coitus only, will you please amplify this?

"A -

The hymen intact, the hymen which is the structure that cares the vaginal opening was contused at 3 and 11 o'clock positions, meaning that the hymen was injured due to the jabbing of an erected object, there was no complete penetration; that hardened object did not penetrate the hymen.

"Q -

So that covers up the description of what you considered in your conclusion as vulvar coitus?

"A -

Yes sir.

"Q -

That hardened object described as erected what could be in your experience as a medico legal officer when examining this kind of matter of rape victims what would be your opinion, were this object coming from a part of a human body?

"A -

Under normal course of examination, this could be, the hymen was injured due to jabbing of erected penis, trying to penetrate the hymen."[11]

Thus, Dr. Muñoz confirmed that while Jovelyn's hymen was intact, there were signs of injury thereon, particularly contusions ("pasa") due to the repeated attempts by a hard object such as an erect male penis to penetrate the vaginal canal. Dr. Muñoz discounted accused's allegation that the hymenal contusions could have been caused "when a woman rides on a bicycle." He explained:

"(T)he hymen is about an inch covered by the labia majora and labia minora, it is not outside, two lips are external block before the hymen could be injured the outside structures must be injured because the hymen is deep within, it cannot be injured by bicycle riding without injuring the outside structure."[12]

According to the medico-legal expert, the "lips" did not show any injury which was likely to happen if the contusions on the hymen were the result of bicycle riding.

The law may now be considered as settled that complete or total penetration of complainant's private organ is not necessary to consummate the crime of rape. The slightest penetration will suffice. Neither is the rupture of the hymen essential for the offense of consummated rape. It is enough that there is proof of entrance of the male organ within the labia of the pudendum.[13] Therefore it is unnecessary to show to what extent penetration of the woman's body has been made. It is adequate if the woman's body is entered.

As far back as *People vs. Oscar*,[14] a 1925 decision, it was held that a showing of full penetration is not necessary to convict the accused. In the subsequent cases of *People vs. Hernandez*[15] and *People vs. Erinia*,[16] it was declared that complete penetration is not essential to the commission of rape. It is enough if there is a penetration of the labia.[17]

The finding of rape by the trial court was predicated on the testimony of Jovelyn and that of the attending physician Dr. Muñoz. Appellant's claim that there was no sexual intercourse is belied not only by complainant's version that she was abused but finds strong confirmation in the examination of her genitalia by Dr. Muñoz.

With the fact of rape having been established, the question to be resolved is whether or not the accused was responsible therefor. The accused maintains that from the prosecution's narration of events, it was improbable for the rape to have been committed at the time and place mentioned by the offended party. Firstly, there was no commotion or scream emanating from the living room where Jovelyn was reportedly sleeping. Jovelyn did not even raise an outcry. If the baby in the adjoining room had not cried, prompting Rizalita to ask for Jovelyn's assistance, nobody could have been the wiser. Secondly, there was a brownout. Jovelyn could not have recognized her attacker because of "zero-visibility." [18]

The above arguments are completely untenable. The fact that there was no struggle or outcry from the offended party is immaterial in the rape of a child below twelve years of age. There could still be a conviction despite the absence of force and intimidation because the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.

There is not a shred of doubt in the Court's mind that Jovelyn has positively identified her attacker. Accused Bacani was well known to the child. He has been driving her mother's passenger jeepney for three years and would sometimes stay in their house.[19]

Even Danny Alcantara, the other defense witness, who was supposed to bolster the claim of the accused that he was asleep in another room during the sexual abuse, categorically admitted that from the time he slept up to the time he was awakened, he did not know what transpired because he was drunk.[20]

Indeed, it is the theory of the accused that the rape case against him was fabricated by mother and daughter so that they could have him dismissed without the hassle and expense of an unfair labor case. The Court considers this final argument as nothing but a wild concoction by a man desperate enough to evade punishment for his act of perversion. Surely, it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just to rid herself of an unwanted jeepney driver.

In view of the foregoing, we hold that the culpability of the accused-appellant Romeo Bacani y Poliosco for the rape of ten-year old Jovelyn Peña has been proven beyond reasonable doubt.

WHEREFORE, the decision appealed from is AFFIRMED with the modification that the indemnity to the offended party is increased to P30,000.00, with costs against accused-appellant.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Original Record, p. 83.

[2] T.S.N., p. 24, March 11, 1986; p. 40, August 28, 1986.

[3] TSN, pp. 40-42, 45-46. August 28, 1986.

[4] Exh. A, Original Record, pp. 32-33.

[5] Exh. B, Original Record, p. 34.

[6] Original Record, p. 6.

[7] TSN, pp. 25-26, March 11, 1986.

[8] TSN, pp. 33-34, 36, July 10, 1986.

[9] Exh. A, Original Record, p. 32.

[10] TSN, pp. 3-6, October 10, 1986.

[11] TSN, p. 17, November 19, 1985.

[12] TSN, p. 20, November 19, 1985.

[13] People vs. Aragona, No. L-43752, September 19, 1985, 138 SCRA 569.

[14] 48 Phil. 527.

[15] 49 Phil. 980.

[16] 50 Phil. 998.

[17] See People vs. Aballe, No.L-45087, October 23, 1984, 132 SCRA 641; People vs. Paton-og, G.R.No. 70574, November 27, 1987, 155 SCRA 675.

[18] Appellant's Brief, p. 4.

[19] TSN, p. 7, October 10, 1985.

[20] TSN, p. 26, July 10, 1986.

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