

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEMION MANGALINO Y LUMANOG, ACCUSED-APPELLANT.

G.R. No. 79011. February 15, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal from the decision of the Regional Trial Court of Manila,[1] in which the accused was convicted of statutory rape under Article 335, paragraph 3 of the Revised Penal Code,[2] and sentenced to suffer the penalty of reclusion perpetua and to pay the offended parties the sum of P50,000.00 as moral damages.

The complaint signed by the father of the victim, Tomas Carlos y Valente, states:

x x x

That on or about March 7, 1984, in the city of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the undersigned complainant's daughter Marichelle, a minor, 6 years of age, against her will and consent.

Contrary to Law.

The following facts are fully supported by the evidence on record, mainly the testimonies of the victim herself and her mother, Bernardine, Dr. Roberto V. Garcia, and Staff Sergeant Mario Oser, as well as the testimonies of the witnesses for the defense — Ramil las Dulce, Linda Ayroso, and the accused himself:

At about 10 or 11 o'clock in the morning of March 7, 1984, Marichelle Carlos, 6 years old and a Grade 1 pupil at the Moises Salvador Elementary School, Manila, was playing "takbuhan" alone at the first level (ground floor) of the two-story apartment of the accused, Semion Mangalino, 53, married to 55-year old Laura Gasmin, childless, a security guard by occupation, and residing at 1597-D Honradez Street, Sampaloc, Manila.[3] At the time of the incident, Laura was in Balayan, Batangas, having left the day before the incident. The accused and Marichelle's parents (Tomas and Bernardine Carlos) are neighbors, their respective rented apartments being almost opposite each other.

During that morning of March 7, 1984, Ramil las Dulce, a 16 year--old high school student occupying the second floor of the apartment, for free and free board, too, a grandson of the accused (his mother, Edita Onadia, who lived with him upstairs, being an adopted daughter of the accused), and Laura's nephew, Armando Ayroso, were allegedly playing chess[4] in the sala of the apartment. Ramil, a witness for the defense, testified that he did not hear or see the accused calling out to Marichelle and motioning her to go inside his bedroom or "sleeping quarters" at one end of the sala of the ground floor, opposite the kitchen.

Once inside the bedroom, the accused handed the girl a two peso bill (P2.00)[5] and told her not to tell anybody about his calling her to his bedroom. The girl assented.[6]

The accused then laid Marichelle down, removed her jogging pants, and placed them beside her feet.[7] He kissed

her and fondled her infantile breasts.[8] He inserted his finger into the private part of the victim,[9] and then forcibly and repeatedly introduced his sexual organ into her undeveloped genitalia, but in vain.[10]

Meanwhile, the victim's mother, Bernardine Carlos, 27, and a plain housewife, was looking for her daughter, who should be leaving for school by that time. She was informed by her sister Agnes, who was living next door, that the adopted daughter of the accused, Cielito, had told her that Marichelle was in their apartment.[11] Immediately, Michael, Agnes' four-year old son, was dispatched to fetch Marichelle.

Hearing the call of Michael, the victim put on her garments, and on the way home noticed that her jogging pants were wet. Upon reaching her house, Marichelle narrated to her mother what had happened, saying, "Si Mang Semion nilagay ang daliri niya sa pikpik ko," and "yong titi ni Mang Semion nilagay sa pikpik ko." [12]

At about 2:30 that same day, an enraged Bernardine submitted her daughter to a physical and genital examination,[13] the results of which National Bureau of Investigation (NBI) Medico Legal Officer Roberto V. Garcia certified as follows:

No evidence (or) sign of any extra-genital physical injury noted on the body of the subject at the time of examination.

Hymen, intact and its orifice, narrow.

Sign of recent genital trauma, present.

Dr. Garcia opined that the vestibular mucosa contusion could have been caused by a hard object like an erected penis and such bruises at such part of the girl's vagina if caused by an erected penis would be an indication of an unsuccessful penetration. He discounted the probability of an accident, like bumping at an edge of a chair, or any blunt object, since there was no contusion of the labia.[14]

The confrontation between the victim and the accused took place when Staff Sergeant Mario Oser of the Waterfront Unit, Reaction Strike Force, Philippine Constabulary Metropolitan Command (P.C. Metrocom), who conducted the initial investigation, invited the accused to the P.C. Headquarters. There, Marichelle identified Semion Mangalino as the man who had abused her.

The accused vehemently denied having ever abused Marichelle. He argued that the bruises in the complainant's vestibular mucosa may have been self-inflicted, Marichelle, who was constantly running about, might have bumped her pelvis against a chair, which explained the absence of signs of contusions in the labia.

Curiously, the young victim candidly testified that she felt no pain when the accused was allegedly trying to insert his penis into her vagina. She did not cry in pain nor shout for help when she was being abused.[15]

Before the Court, the appellant assigned four errors in his brief which he claims the trial court committed, to wit:

ASSIGNMENT OF ERRORS

ERROR I

“THE TRIAL COURT ERRED IN NOT FINDING THAT, CONSIDERING THE PLACE, THE TIME, AND THE PRESENCE OF SO MANY PEOPLE WITHIN THE IMMEDIATE VICINITY WHERE THE ALLEGED CRIME WAS COMMITTED, THE ACCUSED COULD NOT HAVE SEXUALLY ABUSED MARICHELLE G. CARLOS. THE COMPLAINING WITNESS HEREIN;

ERROR II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE BRUISES THROUGH THE VESTIBULAR

MUCOSA OF THE PRIVATE PART OF MARICHELLE G. CARLOS IS THE RESULT OF AN ACCIDENT, CONSIDERING THAT ON MARCH 7, 1984, SHE WAS IN THE GROUND FLOOR OF THE APARTMENT OF HEREIN ACCUSED PLAYING — RUNNING AROUND “TAKBUHAN”;

ERROR III

THE TRIAL COURT ERRED IN ORDERING THE ACCUSED TO PAY THE OFFENDED PARTIES, MARICHELLE G. CARLOS AND HER PARENTS, TOMAS CARLOS AND BERNARDINE GANLAC CARLOS, THE SUM OF P50,000.00 AS AND FOR DAMAGES;

ERROR IV

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED IS GUILTY OF THE CHARGE ALLEGED IN THE INFORMATION, INSTEAD OF ACQUITTING HIM WITH COSTS DE OFICIO.[16]

The defense vigorously argues against the probability of the rape having been committed on two points: 1) The commission of the crime was impossible, taking place as claimed, in broad daylight, and 2) there were at least eight persons — including the accused and the complainant — on the ground floor where the rape was supposedly consummated.

The commission of the crime, submits the defense, was impossible, considering that it was allegedly committed at noontime, which would have readily exposed the act of rape to anyone glancing in the direction of the place where the suspect was abusing the victim.

On the second point, it is contended that the rape could not have been accomplished with so many persons present in the apartment. As it was, Ramil and Armando were playing chess near the front door of the apartment. Also, Linda Ayroso, 29, married to Armando, and a housewife, was washing laundry in the kitchen. Furthermore, the accused was cooking lunch also in the kitchen, and so could not have flitted from the kitchen to his room to execute his evil design without anyone noticing his absence.

The defense brings to our attention the physical layout of the apartment of the accused. The place where the alleged sexual abuse took place was not even a room, he asserts. The apartment had neither a door nor walls, and what divided the so-called room from the living room was a wooden folding divider which was full of holes, "butas-butas." [17]

Finally, the accused assails the lower court's slapping of damages based on the claims or prosecution witnesses of suffering mental anguish, moral shock, and a "besmirched reputation." Since he did not commit the offense attributed to him, the award of P50,000.00 as moral damages is unwarranted. Consequently, he prays he must be exculpated.

We deny the appeal except the amount of the award of damages which we reduce to P20,000.00 conformably to prevailing jurisprudence.

We rule that statutory rape had been committed beyond the shadow of a doubt.

The gravamen of the offense of statutory rape as provided in Article 335, paragraph 3 of the Revised Penal Code is the carnal knowledge of a woman below 12 years of age.[18] Marichelle, a little over 6 years of age at the time, was raped. Beyond that, proof of intimidation or force used on her, or lack of it, is immaterial.

The findings of Dr. Roberto V. Garcia, the NBI Medico Legal officer, who testified for the People, conclude that rape could have been perpetrated. To reiterate, he certified the existence of indications of recent genital trauma. Under normal condition, the color of the vestibular mucosa is pinkish. The doctor found the vestibular mucosa of the victim to be dark red.[19] The forcible attempt of an erected penis to have a complete penetration caused the 3

1/2-centimeter contusion prior to the hymen. The government doctor further discounted the probability of an accident, such as bumping the edge of a chair, or violent contact with a blunt object, as there was no contusion of the labia.

The penile-vaginal contact without penetration was due to the one-centimeter diameter opening of Marichelle's hymen. Usually, the average adult's hymen measures 2.8 to 3 centimeters in diameter, making it compatible to, or easily penetrable by, an average-size penis. The victim being of a tender age, the penetration could go only as deep as the labia.[20] In any case, the Court has consistently held that for rape to be committed, full penetration is not required. It is enough that there is proof of entrance of the male organ within the labia or pudendum of the female organ.[21] Indeed, even the slightest penetration is sufficient to consummate the crime of rape.

The relationship between the offender and the victim as neighbors remains unrebutted. This relationship has an important bearing on the medico-legal finding, because it explains the absence of visible signs of physical injuries.[22] The close relationship of Semion Mangalino to Marichelle — as a nearby neighbor of the Carlos family — and the degree of respect that Semion may have had in Marichelle's life, helps explain why physical force was not employed. The mere size of the accused, a robust security guard, and 163 centimeters (five feet and four inches) in height, could have easily immobilized the victim who was at that time only one hundred eight centimeters tall and weighing 31.818 kilos (70 lbs.)

The attempt to discredit the prosecution's version as shown by the fact that Marichelle did not cry out or struggle against her attacker deserves scant consideration. The absence of hymenal laceration adequately explains why Marichelle did not feel any pain during the attempted sexual intercourse. Why would she struggle, when she did not even know that her chastity was being violated? As her mother testified, it was only upon realizing that she had been defiled did her daughter cry. From then on, she became "matatakutin" and "hindi na kumakain", she became nervous and had no appetite for food — symptoms of a state of anguish.

The simplicity of the testimony of Marichelle convinces us that she was telling the truth about her having been sexually abused.

xxx xxx xxx

q

(Asst. Fiscal Mercedes C. Salvania) Now, while you were playing will you tell this Honorable court where did you go after that?

Witness (Marichelle)

a

While I was playing Mang Semion called me madam.

Court

q

Why, were you playing alone?

Witness

a

Yes, your Honor.

Fiscal Salvania

q

What were you playing?

Witness

a

I was running around "takbuan" madam.

Court

q

Were you running outside or inside the house of the accused?

Witness

a

Inside the house of Semion Mangalino, your Honor.

Fiscal Salvania

q

While you were playing inside the house of Semion Mangalino he called for you?

Witness

a

Yes, madam.

q

Why did he called (sic) for you?

Witness

a

He called me and told me to go to his bedroom madam.

Fiscal Salvania

q

When you were asked to go to his bedroom, did he give you anything?

Witness

a

Yes madam.

q

What did he give to you?

a

He gave me P2.00, madam.

Court

q

Did you accept that P2.00?

Witness

a

Yes, your Honor.

Fiscal Salvania

q

When you were asked to go inside the higaan of Semion Mangalino, did you go?

Witness

a

Yes, madam.

q

Now, when you went inside the higaan, what did he do to you?

a

He inserted one of his fingers in my private part madam.

Fiscal Salvania

q

You stated that you were wearing jogging pant?

Witness

a

Yes, madam.

q

What happened to your jogging pant?

a

He first removed my jogging pant, madam.

q

After removing your jogging pant, did he removed (sic) anything in his clothes?

a

He did not removed (sic) anything in his clothes madam.

Court

Beside the jogging pant you are (sic) wearing, were you also wearing a panty?

Witness

Yes, your Honor.

Fiscal Salvania

q

What happen(ed) to your panty, did he remove?

Witness

a

He also removed my panty madam.

Fiscal Salvania

q

What did he do with his finger?

Court

She said he inserted.

q

Was one of the fingers of the accused inserted your private part?

Witness

a

Yes, your Honor.

q

What did he do?

a

He kissed me your Honor.

q

Where did he kissed (sic) you?

a

In my breast your Honor.

Fiscal Salvania

q

Did he remove your T-shirt?

Witness

a

No madam.

xxx xxx xxx

Court

q

Did Semion Mangalino removed (sic) his pant?

Witness

a

He did not removed (sic) his pant your Honor.

xxx xxx xxx

q

Do you know what is penis?

a

Yes, your Honor.

q

Did the accused put-out his penis while he was inserting his finger in your private part and kissing you in the breast?

a

He put-out his penis while he was kissing and his one fingers (sic) inserted in my private part, your Honor.

q

What did he do with his penis?

a

He is inserting his penis in my private part, your Honor.

Court

q

Was the accused able to insert his penis into your private part?

Witness

a

He was not able, your Honor.

xxx xxx xxx

q

How do you feel or did you feel pain while the accused was trying to insert his penis into your private part?

Witness

a

I did not feel anything, your Honor.

q

Did you feel pain?

a

I did not feel anything painful, your Honor.

q

Did you saw (sic) the penis of Semion Mangalino?

a

Yes, your Honor.

q

What was your position when Semion Mangalino was trying to insert his penis into your private part?

Witness

a

I was laying down, your Honor.

Court

q

Who put you lay (sic) down, was it yourself or what?

Witness

a

Semion Mangalino, your Honor.

q

Did you not cry?

a

I did not cry, your Honor.

q

Did you shout?

a

I did not shout, your Honor.

q

Why, were there persons inside the house while Semion Mangalino was doing all these things to you?

a

There were no other persons except myself and Semion Mangalino, your Honor.[23]

Marichelle was a Grade I pupil when she was violated. She was in Grade II when she took the witness stand. In view of her very tender age and her little formal schooling, it is inconceivable for Marichelle to concoct a serious charge of rape, and to narrate, in unhesitating and simple terms, that she had been asked by the offender to go inside his room; that she was "laid down" after the accused had given her P2.00; that he removed her jogging pants and panty; that the accused kissed her and caressed her breasts, that "Mang Semion" inserted a finger into her genital, and later his sexual organ. At age 6, Marichelle would have been one of those "babes and sucklings" from whose mouths words of praise should have been perfected, but alas, she was instead compelled to relate in the presence of people, some of them complete strangers, in the police precinct and in court, her tragic story.

The heart of the matter is the violation of a child's incapacity to discern evil from good. As the behavior of the victim towards the accused during the commission of the crime and her testimony before police officers and in the court indicate, she had no awareness of the wrongfulness of the action of the accused who was old enough to be her grandfather. Her willingness to lie down on and accept the P2.00 given her by the accused, whom she looked up to as an elder person, a neighbor, and a friend of her family, indicate not naivete, but the absolute trust and confidence of the very young in an older person. She was incapable of reading malice or evil in his intentions. It is likely, that it was only when she saw how distraught her mother was at her telling of her story and the flurry of police and judicial activity stirred up by her narration that her young and innocent mind was violently exposed to

the reality of the existence of evil in the hearts of men. The moment of truth, dawning so violently upon young and innocent minds is contemptible. The older persons in the community should set themselves up as models of proper decorum and high moral purpose for young children; it is they who should guide the young, teach them, and nurture them in the way of the righteous. A 53-year-old man who instead corrupts and violates the purity and dignity of a minor is morally depraved and should be punished to the limits of the law.

It is even more difficult to conceive of Mrs. Bernardine Carlos trumping up a charge of the rape of her daughter and subject herself and her daughter to humiliation, to fear, and anxiety, and community censure that she and her daughter will have to bear for the rest of their lives,[24] simply in consideration of P50,000.00, the amount asked for in moral damages.

The trial court's findings of facts which rely on the credibility of witnesses are entitled to respect, if not finality. A painstaking examination and review of the records of the case yield no fact or circumstance that would have contradicted the findings of the trial court.

The alleged inconsistencies refer to minor details and do not at all touch upon the basic aspects of the who, the how, and the when of the crime committed. Minor discrepancies in the testimonies of Marichelle and her mother are but natural and even enhance their credibility as witnesses because these discrepancies indicate that the responses given were honest and unrehearsed.[25] In appreciation of the testimony of the victim, due regard must be accorded to her tender age.

The contention of the accused that he never left the kitchen is flawed. The facility of a quick trip to his room can not be discounted considering that kitchen where he was supposed to have been cooking was only a few meters away. That the presence of Ramil and Armando who were allegedly playing chess in the kitchen made the commission of the crime impossible, even if were true, falls flat in the face of the game of chess being one that requires utmost concentration; that being so, it is logical for both players to be concentrating on the game when the accused lured Marichelle into the room. We hold that when Ramil, Armando, and Linda were engrossed in what they were doing, that the accused surreptitiously enticed Marichelle into his higaan, and that the short distance between the kitchen and the "room" — a mere distance of 5 to 6 meters — is no obstacle to the satiation of his carnal lusting after the child.

The accused claims it was impossible for him to have raped the victim in the presence of other people, more so, in a place without privacy. We do not agree. Rape was in fact committed. It is quite possible for an experienced man, like the accused, to consummate rape in just one minute, without attracting the attention of the people inside the apartment.[26] Marichelle's complete innocence may have facilitated the perpetration of the crime, and the divider, although "butas-butas," was sufficient to conceal the commission of the bestial act.

In several instances, this Court held that rape can be committed even in places where people congregate: in parks, along the road side, within school premises, and even inside a house where there are other occupants.[27] The apartment of the accused was no exception. Lust is no respecter of time or place.

In fine, we hold that the trial court did not commit any reversible error in finding the accused-appellant guilty beyond reasonable doubt of the crime or statutory rape.

No amount of money can soothe the pain and anguish suffered by a victim of rape and her family. Still, we cannot impose the damages of P50,000.00 on the accused. As stated earlier, we reduce the amount to P20,000.00.

WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATION above indicated.

Costs against the accused-appellant.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Judge Daniel C. Macaraeg, presiding, Branch LV.

[2] ART. 335. When and how rape committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

xxx xxx xxx

[3] T.S.N., November 19, 1984, 6. In the records of the case, the first name of the accused more often than not, has been spelled as "Semion," instead of "Simeon," the usual spelling.

[4] Ibid., 25.

[5] Id., 9.

[6] Id., 7.

[7] Id., 10-14.

[8] Id., 11.

[9] Id., 12.

[10] Id., 32-33.

[11] Id., 7.

[12] T.S.N., February 25, 1985, 9.

[13] T.S.N., January 28, 1985, 5-6.

[14] T.S.N., January 28, 1985, 17-20.

[15] Appellant's brief, 65.

[16] Ibid., 62-63.

[17] Ibid., 64.

[18] Supra; People v. San Buenaventura, G.R. No. 50836, August 3, 1988, 164 SCRA 150; People v. Villegas, G.R. No. 60836, January 30, 1984, 127 SCRA 195.

[19] T.S.N., January 28, 1985, 43-45.

[20] People v. Galang, G.R. No. 70713, June 29, 1989.

[21] People v. Paton-og, G.R. No. 70574, November 27, 1987, 155 SCRA 675.

[22] G.R. Braen, M. B., The Rape Female Child: Examination and Management, 1980 Ed., p. 74.

[23] T.S.N., November 19, 1984, 7-14.

[24] People v. Managbanag, G.R. No. 66550, November 27, 1987, 155 SCRA 66.

[25] People v. Detuya, G.R. No. 39300, September 30, 1987, 154 SCRA 410, 423.

[26] People v. Detuya, Ibid. 421.

[27] People v. Viray, G.R. No. L-41085, August 8, 1988, 164 SCRA 135: People v. Managbanag, supra, 673.

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