

DEOCRECIO DAVID, PETITIONER, VS. HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 79434. February 26, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Review, petitioner Deocrecio David assails the Decision of the Court of Appeals dated 31 July 1987 in C.A. - G.R. CR No. 03804 which convicted him of consummated rape committed upon the person of private respondent Luzviminda Ganiban.

On 24 September 1960, Purificacion Ganiban, mother and natural guardian of Luzviminda, filed a sworn complaint with the then Justice of Peace Court of Malinao, Aklan, charging petitioner with having raped Luzviminda. Because the warrant for the arrest of petitioner was returned unserved, the Justice of the Peace archived the case.

Sixteen (16) years later, petitioner was finally arrested but later ordered released on bail. On 28 July 1978, an information for rape was filed against him with the then Court of First Instance of Aklan. Petitioner moved to quash the case on the ground that the information was fatally defective having been based from the mother's sworn complaint rather than that of the offended party. The motion was granted by the trial court and the case was dismissed by an order dated 10 March 1980.

On 20 June 1980. Assistant Provincial Fiscal Sheila Cortez filed another information for rape this time based upon a sworn complaint of Luzviminda Ganiban. The information read:

"That on or about the 2nd day of September 1960, at 4:00 o'clock in the afternoon, in Barangay Bangcalan, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of said LUZVIMINDA GANIBAN, then a child six (6) years of age, against her will and without her consent, thereby causing upon the latter physical injuries, as follows:

1. Lacerated wound with hematoma, hymen at 6 o'clock;
2. Lacerated wound, fourchette.

as per Medico-Legal of Dr. Daniel M. Villanueva, Junior Resident Physician, Aklan Provincial Hospital, hereto attached as Annex 'B' and forming an integral part hereof."

Petitioner waived the reading of the information and entered a plea of not guilty. Trial on the merits followed. On 6 March 1986, the trial court rendered a decision finding petitioner guilty of attempted rape and decreeing:

"WHEREFORE, this Court believes that the accused unlawfully, intentionally and forcibly inserted his pointer finger into the vagina of Luzviminda Ganiban, and following the doctrine laid down by the Court of Appeals in the case of PP. vs. Lagmay (Supra), the accused is GUILTY of the lesser offense of Attempted Rape, defined

and penalized under Act 335 of the Revised Penal Code. The accused Deocrecio David being a minor (about fifteen (15) years old) at the time of the commission of the crime, is hereby sentenced to suffer an indeterminate penalty of FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to pay the offended party Luzviminda Ganiban the following amounts:

(1) Two Thousand Five Hundred Pesos (P2,500.00) for compensatory damages; and

(2) Twenty Thousand Pesos (P20,000.00) for moral damages.

without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."

Petitioner moved for reconsideration, without success.

On appeal, the Court of Appeals, on 31 July 1987, rendered a Decision convicting petitioner of consummated rape. The dispositive portion of the Court of Appeals' Decision reads:

"WHEREFORE, premises considered, the appealed judgment is MODIFIED so as to read as follows:

Accused-appellant Deocrecio David is hereby convicted of Rape, defined and penalized under Art. 335 of the Revised Penal Code, as amended, and sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of Prision Mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal as maximum, and to pay the offended party, Luzviminda Ganiban, Two Thousand Five Hundred Pesos (P2,500.00) for compensatory damages and Twenty Thousand Pesos (P20,000.00) as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED."

In the instant Petition, petitioner raises two (2) issues:

I. Whether or not the petitioner is guilty of rape as defined and penalized under Article 335 of the Revised Penal Code;

II. Whether or not the Honorable Court of Appeals has correctly appreciated the entire evidence on record."^[1]

The facts as presented by the prosecution may be summarized in the following manner:

On 2 September 1960, Luzviminda, then six (6) years of age, along with three (3) other children, were playing games inside the house of petitioner at Dangcalan, Malinao, Aklan. They were playing "anwang-anwang" (carabao, carabao) by crawling inside a rolled mat placed on the floor of what was essentially a one-room house. The children, with hands and knees on the floor and pretending to be carabaos, chased each other into one opening of the rolled mat and out on the other end. Petitioner then sixteen (16) years old, had been watching the children playing. He eventually joined the children and was tagged as the "It" or the "Bantay". As the "Bantay", he was supposed to chase the children crawling on their hands and knees and to catch them while inside the mat and to tap the buttocks of those whom he caught.^[2]

When Luzviminda was crawling towards the rolled mat, petitioner followed her into the rolled mat, and there grabbed her, covered her mouth with his hand, got on top of the rear end of the child, took out his male member and thrust it into her private part, causing the child excruciating pain. Petitioner released Luzviminda upon hearing her mother calling for her. Luzviminda got out of the rolled mat crying, ran out of the house and reported the incident to her mother. The mother, Purificacion Ganiban, noticed blood trickling down her daughter's legs and demanded to know what had happened. Luzviminda replied that petitioner had put his male organ into her

private part. The outraged mother went up the house of petitioner which was about 15 meters away; petitioner avoided her by jumping out of the house through the window and ran away.

The bleeding Luzviminda was rushed by her mother to the hospital in Kalibo, Aklan. Upon medical examination, Dr. Daniel Villanueva found that Luzviminda's hymen had been lacerated at six o'clock position, resulting in a hematoma. There was also a lacerated wound on the fourchette. No laboratory examination was, however, carried out to determine the presence of spermatozoa on Luzviminda's vagina. Luzviminda stayed in the hospital for about a week; her parents spent about P2,000.00 for her medical expenses.

The version of the facts presented by the defense was summarized by the Court of Appeals in the following manner:

"x x x The children and the accused, then 16 years old, were playing 'anwang-anwang' or 'carabao-carabao' in the sala of the house, by crawling on the floor with two hands and knees chasing each other inside a rolled mat whose opening was big enough for a child to enter (about 30 inches in diameter and about 1-1/2 arms-stretch in length), going inside one and coming out of the other end of the rolled mat. The 'It' or 'Bantay' tried to catch them by touching their buttocks with his finger.

Shortly, Luzviminda (then 6 years old) and her younger sister arrived and was allowed by the accused to join the game. After Luzviminda crawled inside the rolled mat, the accused followed her. Since she had no panty and her buttocks exposed to him, he 'pricked' her buttocks and 'accidentally hit her private part'. She came out of the rolled mat crying. When asked by Jenny Icabandi as to what had happened she replied that her private part was pricked.

Accused did not notice she was bleeding or that blood was oozing down her legs. She went home but later her mother arrived and asked what happened. He admitted to her that he had accidentally pricked her daughter's buttocks but the mother got angry and went home.

xxx xxx xxx."[3]

Thus, the central issue is whether the accused had forced his male organ into the private part of the six (6) year old Luzviminda or whether the accused had merely "pricked" or "accidentally hit her private part" with his finger.

The trial court held that the accused had inserted his pointer finger into Luzviminda's vagina, in the process causing her physical injuries. In contrast, the Court of Appeals found as a fact that the accused had indeed raped Luzviminda.

We have examined the record of this case with particular care and we find that the findings of fact by the Court of Appeals are amply supported by the evidence of record.

In the first place, we are quite unable to conceive how the accused could have accidentally inserted his pointer finger in Luzvimincia's private part. Secondly, Luzviminda testified explicitly that the accused had gotten on top of her while inside the rolled mat and had inserted his male organ into her private part:

"xxx xxx xxx

Q:

What particular game were you then playing?

A:

We were playing game in which there was a rolled mat and we got inside the mat and we took turns in getting

in and out of the rolled mat.

Q:

While it was your turn inside that mat during your game, was there unusual incident that happened?

A:

Yes, Madam.

Q:

What was that unusual incident that happened?

A:

Deocrecio David went inside also and then covered my mouth.

xxx xxx xxx

Q:

That Deocrecio David is the same Deocrecio David who is the accused in this case and the one you have pointed at the back?

A:

Yes, Madam.

Q:

And what did the said Deocrecio David use in covering your mouth?

A:

His hand.

Q:

And with how many hands did he cover your mouth? .

A:

One only

Q:

And after he covered your mouth, what did he do, if he did anything else?

A:

He forced me. He inserted his private organ inside my private organ.

Q:

By the way, how old were you when the incident took place?

A:

I was about five to six years old.

Q:

Was he able to insert his private organ inside your private organ?

A:

Yes, Madam.

Q:

And how did you feel?

A:

It was painful.

Q:

Did you shout?

A:

I could not shout because his hand was covering my mouth.

xxx xxx xxx

Q:

About how long, if you could recall did ... I reform. When the accused Deocrecio David was able to insert his private organ inside your private organ, what happened next?

A:

I heard the shout of my mother because she was calling for me because I could not be found in our house.

Q:

And what did Deocrecio David do when you heard your mother calling for you?

A:

He released me.

Q:

And when he released you, what did you do?

A:

I cried and went out of the house.

Q:

What did you notice . . . I reform. Did you notice anything unusual on your body before going down the house?

A:

Yes, Madam. Plenty of blood was running down my legs.

Q:

And when Deocrecio David put his hand on your mouth, did you hear any playmates inside the house?

xxx xxx xxx

Q:

While Deocrecio David covered your mouth and inserted his private part inside your private part, did you notice where your other playmates (sic) were?

A:

I did not see anybody else. I did not hear them also.

Q:

When you were released by Deocrecio David and you started crying going towards your home, did you notice where were your other playmates then?

A:

I did not notice them anymore.

xxx xxx xxx"[4]

Q:

You said that when the accused went top of you and covered your mouth, that was the time when you felt pain. You are referring to the pain on your private part?

A:

Yes, sir.

Q:

And that was the precise moment that you were feeling the pain that you heard the shout of your mother calling on you, is that correct?

A:

After he has done the act I heard the shout of my mother.

Q:

He was still on top of you when you heard your mother calling for you?

A:

Yes, sir.

Q:

And after your mother called you, that was the time the accused allegedly released you?

A:

Yes, sir.

Q:

And after you were released, you went out of the rolled mat?

A:

Yes, sir.

Q:

And you went out of the house of the accused?

A:

Yes, sir.

Q:

But your playmates were no longer there?

A:

They were not there anymore.

Q:

You did not know where they went?

A:

I do not know. (TSN, p. 25, November 11, 1983)."[5] (*Italics supplied*)

The testimony of Luzviminda was corroborated by the medical finding that she had sustained a lacerated wound with hematoma in the hymen at 6:00 o'clock position, and another lacerated wound in the fourchette. The Court of Appeals said on this point:

"x x x Granting that due to the victim's tender age (six years old at the time) the laceration of the hymen at 6 o'clock even with hematoma could have been caused by the finger of a 16 year old inserted into her vagina, yet there was also the laceration at the fourchette, found in between the vaginal walls and the anus, with massive bleeding, requiring the victim's hospitalization for six days. Certainly, the nature and extent of the injuries disclosed by the medical examination preclude the possibility of 'accidental' pricking caused by a single thrust of his pointer finger, thereby rendering more credible the thesis that appellant caused his sexual organ to be inserted forcibly into the victim's tender private part."[6]

True, the testimony of a rape victim must not be received with precipitate credulity. In the case at bar, the testimony of Luzviminda, far from imposing upon one's credulity, was straightforward, explicit and convincing and she did not change her story or otherwise breakdown under cross-examination.

There is, secondly, the testimony of Luzviminda's mother. Purificacion Ganiban, that when she saw Luzviminda crying and with blood oozing down her legs, she asked her what had happened and that Luzviminda had said that the accused Deocrecio David had put his male organ into her private part.[7] What Luzviminda reported to her mother immediately after the rape incident, may be treated as part of the *res gestae* and hence admissible to show that it was petitioner's male member, and not his pointer finger, that he had thrust into Luzviminda's private part.

Thirdly, as the Court of Appeals pointed out, there is no inherent impossibility or improbability of the accused raping a five (5) or six (6) year old little girl inside the rolled mat. It may be noted firstly that the diameter of the rolled mat (30 inches) was wide enough not merely to let such a child crawl through it on her hands and knees but also wide enough to enable the sixteen (16) year old boy to get on the back of the child. It should be stressed, secondly, that the rolled mat was not a rigid structure, but rather a smooth and flexible one being woven out of buri or some similar material. The net effect is that the accused could well have gotten on top of the complainant, pinned her down, opened his pants and let out his male member, inside the rolled mat. Luzviminda being only five (5) or six (6) years old then could not have put up a vigorous struggle, with accused's hand on her mouth and his weight on her back.

It is quite settled doctrine that even the slightest penetration of the labia of the pudendum is sufficient to consummate the crime of rape.[8] In the case at bar, the laceration of Luzviminda's hymen and the lacerated wound on her fourchette very clearly showed that there had been some penetration and that accordingly the offense must be qualified as consummate rape. The trial court found the accused guilty only of attempted rape upon the strength of *People v. Lagmay*,[9] but in doing so, obviously misapplied that case to the one at bar. In *Lagmay*, the appellant had used force and violence in trying to have carnal knowledge of the complainant, but did

not succeed in introjecting his male organ into the offended girl because of her continuous and vigorous resistance. Because Lagmay had ejaculated without penetration, he used his finger on the offended party and was thereupon found guilty of attempted rape. In the case at bar, Luzviminda's testimony was that the accused had used his penis; it was the accused who, in seeking to exculpate himself, alleged that his finger had, inexplicably, found its way into Luzviminda's vagina.

We are aware that the Solicitor General took the position before the Court of Appeals that the accused should be convicted merely of having inserted his finger into the victim's vagina, i.e., of acts of lasciviousness. We are also aware that in rape, the only witnesses available are commonly the accused and the victim and everything therefore depends upon the credibility of the testimony given by the victim and the accused. Here, a consideration of the surrounding circumstances of this case leads us to agree with the Court of Appeals that the testimony of Luzviminda is well worthy of credence and is quite sufficient to sustain conviction of the accused. The Court of Appeals said:

"But there is yet one more significant circumstance the lower court failed to appreciate. It is said that the rape victim who brings her case to the court undergoes the indignity of being 'raped again', what with the forced recollection of the harrowing experience, the numerous inquisitions, exposure to public humiliation and the irreparable loss of self-respect and self-worth, along with her family and loved ones so much so that many a rape victim and/or their families would rather keep the crime to themselves. In the case at bar, the incident happened way back in 1960. The case was only revived in 1978 and the victim already married by then. Had this been a simple case of 'finger pricking', why did the victim and her family choose to pursue the case and subject themselves anew to the humiliation of a public trial when they could have chosen to keep mum and forget the whole incident after having been 'numbered' by 16 long intervening years? The fact that the victim already married, and her mother, doggedly pursued the case in spite of the time and money and energy in coming to the hearings from Manila where they have already settled and in spite of being subjected anew to the rigors of the trial, will serve to prove the sincerity of Luzviminda's motivation — the search for justice and the plea for redress for a crime of such a nature that is otherwise better left forgotten.

It must be noted that there is no iota of evidence on record to show that the victim or her family were prompted by ill-will or any untoward motive to place the accused in jeopardy or to have him prosecuted for vindictive purposes.

We are morally convinced that the crime of consummated rape was committed and that the offended girl even at this last stage deserves vindication.

xxx xxx xxx." [10]

We conclude that the accused has failed to show reversible error on the part of the Court of Appeals in convicting him of consummated rape.

Under Article 335 of the Revised Penal Code, the penalty for consummated rape is reclusion perpetua. Crediting the accused with the mitigating circumstance of minority^[11] since he was sixteen (16) years old at the time of the commission of the rape, and there being no aggravating nor any other mitigating circumstance present, the penalty next lower in degree — reclusion temporal, in its medium period — is properly imposable. Applying the indeterminate sentence law and the penalty next lower in degree to reclusion temporal medium being prison mayor medium, the accused should suffer imprisonment for an indeterminate period of from eight (8) years and one (1) day (not six [6] years and one (1) day, as the Court of Appeals decreed) of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

WHEREFORE, the Petition for Review is DENIED for lack of merit and the Decision of the Court of Appeals is hereby MODIFIED so as to impose upon petitioner Deocrecio David an indeterminate sentence of imprisonment

ranging from eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. The petitioner shall pay Thirty Thousand Pesos (P30,000.00) as moral damages. In all other respects, the Decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Petition, Rollo, p. 10.

[2] TSN, 26 August 1983, pp. 35-36.

[3] Rollo, pp. 82-83.

[4] TSN, pp. 67-70, November 10, 1983.

[5] Rollo, pp. 90-91.

[6]] Id., p. 88.

[7] TSN, August 26, 1983, p. 5.

[8] E.g., *People v. Budol*, 143 SCRA 241 (1988); *People v. Conchada*, 88 SCRA 683 at 693 (1979); *People v. Velasco*, 73 SCRA 574 at 581 (1976); *People v. Ignacio*, 60 SCRA 11 at 12 (1974); *People v. Amores*, 58 SCRA 505 at 508 (1974); *People v. Pastores*, 40 SCRA 498 at 509 (1971); *People v. Oscar*, 48 Phil. 527 at 529 (1925); and *People v. Hernandez*, 49 Phil. 980 at 982 (1925).

[9] *People v. Lagmay*, C.A.-G.R. No. 5078-R, promulgated 6 January 1951.

[10] Rollo, pp. 92-93.

[11] Article 13, paragraph 2 and Article 68, Revised Penal Code.

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