

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR MEJIAS, ACCUSED-APPELLANT.

G.R. No. 79677. November 28, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Tagbilaran City convicting the accused appellant, Victor Mejias of the crime, of rape. The dispositive portion of the decision reads:

"WHEREFORE, finding the herein accused VICTOR MEJIAS GUILTY beyond reasonable doubt for the crime of RAPE, said accused is hereby sentenced to undergo the penalty by imprisonment of RECLUSION PERPETUA, to indemnify the offended party Ruena Dolmiguez, by way of moral damages, the amount of TWENTY-FIVE THOUSAND (P25,000.00) PESOS without any subsidiary imprisonment in case of insolvency and to pay the cost." (p. 68, Rollo)

The information charging the accused with the crime of rape reads as follows:

"That on or about the 31st day of May, 1986 at barangay Tungod, municipality of Inabanga, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused entered the house of the offended party and once inside, with intent to have sexual intercourse and by means of force and intimidation and by taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously embrace the offended party, Ruena Dolmiguez and bring her to the room of the said house, bit her neck, box her head and force her to lie down face up, lie down on top of her, removed her panty and forcibly insert his penis into the vagina of the said offended party, who was then twelve (12) years old; against the will and consent of the latter; to the damage and prejudice of the said offended party; with the aggravating circumstances of dwelling without the offended party having given provocation.

"Acts committed contrary to the provisions of Art. 335 of the Revised Penal Code as amended by Republic Act Nos. 2632 and 4111." (p. 59. Rollo)

Upon arraignment on September 9, 1986, the accused assisted by his counsel, Atty. Romualdo Lumantao of the Citizens Legal Assistance Office (CLAO) pleaded not guilty.

The evidence adduced by the prosecution is stated by the trial court as follows:

"That private complainant Ruena Dolmiguez is twelve (12) years old having been born on March 21, 1974 at Tungod, Inabanga, Bohol (Exhs. B and B-1) and is studying at Central Elementary School as grade V pupil. That as a child, she played games such as biking, running and others.

"That on May 31, 1986 at around 3:00 o'clock p.m., she was at their house in Tungod, Inabanga, Bohol cooking rice with her younger sister Flordeliza, aged two (2) years old while her mother was selling fishes at the Inabanga public market, her father was attending fiesta at Talibon, Bohol and her brothers and sisters were playing in their neighborhood.

"That while thereat, suddenly the accused went inside their house, embraced her, touched her breasts and

private parts and warned her that she must not reveal anything to her mother, otherwise, he would maul her. That she struggled to free herself from accused's embrace by striking him with her two hands alternately but unfortunately she was not able to extricate herself because accused embraced her tightly that she suffered pain. Then accused moved her towards the left and right sides that she shouted for help. So accused struck her head using his closed fist which made her feel pain on her head and she suffered dizziness. Then accused covered her mouth with his right hand and with the use of his left hand, forcibly grabbed and removed her panty and her panty was torn. After that, accused also undressed himself by removing his shorts without releasing her instead embraced her tightly by pressing her head to his chest since by standing, her height would only reach the chest of accused. That later on, accused pushed her towards the floor and she fell to the floor with face up. She continued to struggle by kicking accused's feet but accused evaded her kicking. That she could no longer use her hands in fighting accused because they were placed by the accused above her head and were tightly held by accused with one of his hands. So again she shouted for help and accused struck her head for the second time and again she felt pain in her head and dizziness. Then accused knelt on her thighs and sucked the right side of her neck using his mouth and after that, accused inserted his penis into her vagina although she tried to evade it by moving her buttock and she felt pain on her vagina although it did not bleed. That accused's penis was not able to penetrate her vagina but it has touched and was inserted on the folds of her vagina. As a matter of fact, the accused's penis was able to touch the orifice of her vagina. Then later on she felt something wet on her vagina and the accused stood up and went out of their house by running.

"That when accused was no longer inside their house, she stood up and washed her vagina with water because she saw that there was something white in it.

"That she sat down afterwards because aside from suffering pains on her vagina, she was tired because of struggling and has suffered injuries below her navel caused by the fingernails of the accused when the latter forcibly grabbed her panty. That she put on her panty and cried and went out to go to her mother who was at Inabanga public market in order to get rice but was not able to do so because she kept on crying and instead, she went back home.

"That at around 8:00 pm of the same date, her mother arrived at their house and when she saw that she had reddish mark on her neck, she asked her what happened to her and she told her that she was raped by the accused. That they went to the house of the barangay captain, Petronilo de la Torre, in order to lodge a complaint against herein accused and later on, they went to the hospital where she was examined by Dr. Carlomagno S. Misa who issued her a Medical Certificate (Exh. A).

"On cross examination, she admitted that she was investigated by the police of Inabanga wherein she has signed a sworn statement (Exhs. 1 and 1-A).

"She also admitted that she was investigated by Judge Lily Soriano Pujol of the MCTC of Inabanga-Buenavista, Inabanga, Bohol (Exhs. 2 and 2-A).

"She however denied having any boyfriend." (pp. 106-107, Rollo)

The accused-appellant's version of the incident which was rejected by the trial court is as follows:

"That herein accused knows private complainant Ruena Dolmiguez for a long time already because he and she are living at Tungod, Inabanga, Bohol with the house of Anita Minguito wherein he is living only three (3) meters to the house of Ruena.

"That he knows their barangay captain Petronilo de la Torre who testified that the distance of Minguito's house to Ruena's house is ten (10) meters which is not correct because actually it is only three (3) meters as shown in the picture which he had requested Claudio Anora to hire a photographer to take pictures these houses (Exhs. 3, 3-A, 3-B and 3-C).

"That last May 31, 1986 at around 3:00 p.m., he went to the house of Ruena who was with her younger sister

Flordeliza, aged two (2) years old and who were then staying downstairs of their house.

"Immediately after reaching Ruena's house, he touched her breasts and private parts because accordingly they are sweethearts and Ruena did not resist. Then he told her to go upstairs so that their romancing could not be seen by people outside and Ruena acceded by carrying her younger sister and went upstairs of their house. While upstairs, Ruena laid down on the floor and masturbated his penis for a duration of five (5) minutes and while she was masturbating his penis, he opened her dress and placed himself on top of her, holding his penis and when he was about to reach his climax, he placed his penis between Ruena's thighs and the latter clipped it and afterwards, he made a push and pull movement and later on something white came out from his penis which were sprayed on Ruena's panty because she was still wearing her panty since he did not remove it and after that, he went out of Ruena's house.

"He admitted having threatened Ruena not to tell her mother of this fact because she might be whipped." (pp. 107-108, Rollo)

The accused-appellant now raises the following assignment of errors in his brief:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND UNCORROBORATED TESTIMONY OF COMPLAINING WITNESS.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED FOR THE CRIME OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. (p. 90, Rollo)

By the very nature of the offense of rape, conviction or acquittal depends almost entirely on the credibility of the complainant's testimony because of the fact that usually only the participants can testify as to its occurrence (People v. Ocampo, 143 SCRA 428 [1986]). There is, therefore, every reason for the court to examine with the greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience (People v. Sunga, 123 SCRA 327 [1983]).

We agree with the Solicitor General's manifestation that the accused-appellant should be acquitted of the crime charged since there are a lot of inconsistencies and improbabilities in the testimony of the complainant which do not inspire belief.

The private complainant during her direct examination testified that the accused forcibly removed her panty causing it to be torn before the accused had sexual intercourse with her (p. 5, ten., Oct. 14, 1986). She said that she felt something wet on her vagina during the intercourse and when she washed her vagina after intercourse she found something white on it which could only have been the accused-appellant's semen (p. 8, *ibid.*)

However, upon further examination by the trial judge about her torn panty, complainant had this to say:

"COURT:

Where is that panty of yours that according to you was tarried? (sic)

"A It got lost.

"COURT:

Why did it got lost?

"A I threw it because I was afraid.

"COURT:

Afraid of what?

"A

Of the stain caused by that something white which came from his penis. (p. 9, tsn., Oct. 14, 1986; Underlining supplied)

We can not imagine how her panty got stained with the semen of the accused when according to her the accused forcibly removed her panty and threw it away before consummating the sexual act.

We find complainant's testimony more consistent with the version of the accused, as he explained:

"Q When you reached the house of Ruena Dolmiguez what happened?

"A I touched her breast, her private parts because we are sweethearts.

"Q And in what place of her house did you touch her nipple and other parts of her body?

"A Downstairs of their house.

"Q After that what did you do next?

"A I told her let's go upstairs so that we could not be seen by people from the store.

"Q Then what did Ruena Dolmiguez do?

"A She carried her younger sister and came with me upstairs.

"Q Upstairs of their house?

"A Yes sir.

"Q

While she was upstairs of her house what happened next?

"A Ruena lie down.

"Q And what did you do?

"A I told her to masturbate my penis.

"Q Did she in fact masturbate your penis?

"A Yes sir.

"Q For how long did you require her to masturbate your penis?

"A Not less than five (5) minutes.

"Q While she was masturbating your penis for five (5) minutes what happened next?

A

While she was masturbating my penis, I opened her clothes and then placed myself on top of her holding my penis and when I was about to climax, I placed my penis in between her thighs which she also clipped.

"Q While on that position did anything come out from your penis?

"A Yes sir.

"Q What came out from your penis?

"A My semen.

"Q When your semen came out to what part of the body of Ruena was it spread?

"A On her panty, the upper portion of her panty.

"Q

Why, was she wearing panty at that time while you were inserting your penis in between her thighs?

"A Yes sir." (pp. 6-7, tsn., Dec. 17, 1986)

The accused-appellant did not waive in his testimony that the complainant had her panty on when questioned upon cross-examination:

"Q

How about the panty of Ruena, you removed her panty so that your penis can reach her vagina?

"A

I did not.

"Q

Why did you not remove her panty?

"A

I did not remove her panty because I was afraid considering that that was my first time doing that." (pp. 2-3, tsn., March 25, 1987)

Considering the close proximity of her thighs to her vagina, it could be possible that some semen was spilled on complainant's panty which explains why her panty got stained as she stated in her testimony.

The complainant also testified that she shouted two times while the accused was raping her (p. 13, tsn., Oct. 15, 1986). Considering that the alleged rape happened at 3:00 in the afternoon in a place where several houses are built close to each other, it is hardly believable that no one heard complainant's cries for help. If indeed a struggle ensued between the complainant and the accused, the complainant's two-year old sister would at least have been disturbed into crying. The neighbors would have been alerted. But when asked about this, Ruena did not answer nor volunteer any information about it (p. 9, tsn., Nov. 21, 1986; Exh. 3). Fronting the house across the road was the store of Querubin Lubertenor. There is no showing that Querubin's store was closed at that time. On the contrary, there is evidence that it was open as defense witness Claudio Anora testified that he even bought a cigarette from the store and stayed there for awhile to smoke (p. 17, tsn., March 25, 1987). Another defense

witness, Rhodora Mejias also testified that she was inside her house which was just near complainant's place (pp. 9-10, tsn., Nov. 21, 1986). These were never denied or rebutted by the prosecution. It is, therefore, unbelievable that no one heard complainant's outcries if she indeed shouted for help.

The complainant's acts after the incident do not jibe with her story of having been raped. The complainant testified that she went to the public market to buy rice where she met her mother but did not bother to tell her that she was raped:

"COURT:

Proceed Fiscal.

"Q

You said that you went to the municipality to see your mother. In what place of the municipality did you go to see your mother?

"A In the public market.

"COURT:

What was your purpose in going to your mother?

"A To get rice.

"COURT:

Were you able to get the rice?

"A No Your Honor.

"COURT:

Why?

"COURT:

Because my mother asked me.

"COURT:

What did your mother ask you?

"A She asked me why I was covering my head.

"COURT:

And what was your answer?

"A

I did not say anything.

"COURT:

Tell the Court. Why did you cover your head?

"A Because I was afraid to be seen.

"COURT:

By whom?

"A The passersby.

"COURT:

And why were you afraid of the passersby?

"A I was afraid if they will strike me with the midribs.

"COURT:

Why would they strike you with the midribs?

"A I was afraid if my mother will strike me with midribs.

"COURT:

Why will your mother strike you with midribs?

"A Because I am not revealing according to her.

"COURT:

What is there to reveal?

"A According to her why I am always covering my head.

"COURT:

In other words, you were covering your head because you have done something wrong?

"A Yes Your Honor.

"COURT:

Why? Do you consider being raped as a wrong when according to you it was done to you by the accused?

"A I am afraid that it will be known.

"COURT:

By your mother?

"A Yes Your Honor.

"COURT:

You mean you do not really have the intention to tell your mother that you were abused that you were raped?

"A

Yes Your Honor.

"COURT:

Why?

"A Because she will again scold me.

"COURT:

What do you mean by again scold me?

"A Because my mother scold me in a different way.

"COURT:

You mean that you do not want to tell your mother that you were raped because she will scold you?

"A Yes Your Honor." (pp. 12-13, Tsn., Oct. 14, 1986)

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"COURT:

Proceed Fiscal.

"Q

Now, since you were not able to get the rice because as you said you were afraid that of your mother because she asked you what happen to you, where did you go if any?

"A I went home.

"Q Now, your mother when you went home where was she?

"A She was in the market?

"Q Did she return to the house afterwards?

"A No Maam.

"Q From that time until the evening she did not go home?

"A She went home at about 6 o'clock in the evening.

"Q Now, after your mother arrived in your house, did you had any conversation with her?

"A No Maam.

"Q She did not say anything to you?

"A None.

"Q Even late in the evening?

"A When we went already to the barangay captain.

"Q Why did you go to the barangay captain?

"A Because my mother filed a case.

"Q Now, why did your mother file this case when you said that you had no conversation with her?

"A She immediately brought me to the barangay captain.

"Q What did she complain to the barangay captain?

"A That I was raped by Victor.

"Q How did she know that you were raped by Victor, where did she get that information if any from whom?

"A Because she saw a chicken nene on my neck.

"Q What do you understand by chicken nene?

"A There is a reddish mark on my neck?" (pp. 14-15, tsn., Oct. 14, 1986)

It is quite unnatural for a girl not to reveal the assault on her virtue immediately after it has happened to her mother especially in this case where there is no threat to her life. Her testimony even gives the impression that she had no intention of revealing the incident to her for fear of being scolded. It was only when the mother found the reddish mark (tsikinene) on her neck that she said she was allegedly raped.

In the case of *People v. Baderes* (153 SCRA 253 [1987]) we held that:

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"x x x In all such cases, the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth and falsity of the charge. Indeed, it may well be doubted whether a conviction of the offense of rape should even be sustained from the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape was committed and immediately thereafter was such as might be reasonably expected from her under all the

circumstances of the case." (at p. 265; underlining supplied)

In this light, the veracity of her claim that she was raped is all the more doubtful when defense witness Rhodora Mejias testified that:

"Q In the evening of May 31, 1986 at about 8:00 o'clock in that evening, do you still remember where were you?

"A Yes, sir.

"Q Where were you?

"A I was in the dancing hall.

"Q Where was that dancing place located?

"A At the side of the chapel of Inabanga, Bohol.

"Q While there, you also had a chance to see Ruena Dolmiguez?

"A

Yes sir.

"Q What was Ruena Dolmiguez doing there?

"A She was selling candies and cigarettes.

"Q She was alone selling cigarettes?

"A She had a companion, a child, Violeta Omus.

"Q While there seeing Ruena, did you witness any unusual incident?

"A Yes, sir.

"Q What was that unusual incident?

"A Ruena Dolmiguez was called by her twin brother.

"Q When Ruena was called by her twin brother what happened?

"A Ruena did not go with Roy and Roy continued to murmur.

"Q Then after that what happened next?

"A After that Nang Lilia Dolmiguez followed.

"Q Who is this Lilia Dolmiguez you are talking about?

"A Her mother.

"Q Is she around in the courtroom, can you please point to us?

"INTERPRETER:

Witness pointing to the person answering to the name Lilia Dolmiguez.

"Q You know why Lilia Dolmiguez went to Ruena Dolmegez her daughter?

"A

No, but I saw her followed Ruena.

"Q After that what happened next?

"A Nang Lilia pulled Ruena.

"Q Towards what place did Lilia pull Ruena?

"A To their house.

"Q Then after that, did you happen again to see Ruena?

"A Yes, sir.

"Q Where?

"A When I was there in the place of Querubin.

"Q Where is that place of Querubin?

"A In front of her house.

"Q Of the house of Lilia Dolmiguez?

"A

Yes, sir.

"Q Why were you there?

"A I was in Querubin's place because my father was there.

"Q While you were at Querubin's place what did you observe?

"A I saw Lilia and Ruena crying and then Lilia kept on pinching Ruena.

"Q After that what happened next?

"A They walked and proceeded to the house of the barangay captain.

"Q You know the reason why Lilia kept on pinching Ruena?

"A I do not know the reason." (pp. 4-6, Nov. 21, 1986)

This was even corroborated by Claudio Anora, to wit:

"Q On the evening of May 31, 1986 at about 7:00 in the evening, you still remember where were you?

"A I was in my house.

"Q Where is your house situated?

"A Near the dancing place of Tungod, Inabanga, Bohol.

"Q From your house, do you remember if you went to other place?

"A After I took my supper, I went down and went to the dancing place and then from there, I bought cigarette in the store.

"Q What store did you buy cigarette?

"A I bought my cigarette from the kids going around selling cigarettes.

"Q From whom did you buy cigarette?

"A I bought cigarette from Ruena Dolmiguez and Violeta, the daughter of Ernesto Hunos.

"Q When you said Ruena, you mean the complainant in this case Ruena Dolmiguez?

"A Yes.

"Q

For how long did you stay in the store of Ruena in that evening, while you bought that cigarette from Ruena, did you observe any unusual incident?

"A Yes.

"Q What was that unusual incident?

"A There was a small boy I noticed who came and told Ruena to go home, maybe he is the brother of Ruena Dolmiguez.

"Q Then what happened next?

"A Then after that, the mother of Ruena came later.

"Q

When the mother of Ruena came, what happened?

"A

She pulled Ruena and commanded her to go home. While doing it, she was pinching Ruena while on the way, she kept on pinching her.

"Q What place did the two go?

"A To their house.

"Q Upon seeing the two going to their house, what did you do?

"A Because of my surprise (sic), I followed them.

"Q When you followed them, what happened?

"A

And while I was able to catch up with them at the store of Querubin, I heard the mother said that this girl is erotic and she was raped and I told her, if that is the case, you report to the barangay captain. I was the one who advised the mother to go to the barangay captain." (pp. 18-20, tsn., March 25, 1987)

Except for the complainant's denials, the prosecutor did not present any other evidence to rebut the truth of the foregoing testimony. As between a positive and categorical testimony which has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.

In the light of human experience, a rape victim could not possibly recover immediately from a traumatic experience and be out in the streets selling cigarettes after the alleged rape.

The complainant also testified that she was boxed on the head by the accused while she was raped. She said that she felt pain on her head and became dizzy. (pp. 2-3, & 16, tsn., Oct. 15, 1986). Considering that accused-appellant is 22 years old and the victim, only 12 years old, the blows would have been so hard that the probability of sustaining external injuries on the head is great. However, when she was examined by Dr. Carlomagno Misa nine hours after the incident (p. 6, tsn., Oct. 3, 1986) there were no signs of any injuries on the head. Neither were there any signs of physical injuries sustained on her body if complainant indeed struggled with the accused. This, therefore, tends to lend credence to the appellant's claim of the absence of struggle or of any physical force having been employed.

We have held that the appellate court generally does not disturb the findings of the lower court considering that the latter is in a better position to pass upon the matter of credibility having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the hearing (*People v. Serante*, 152 SCRA 510 [1987]). In this case, however, we take exception to this well-settled rule in order to keep faith with the immutable principle that every criminal conviction must be supported by proof beyond reasonable doubt (*People v. Ola*, 152 SCRA 1 [1987]). The testimony of the complainant lacks the earmarks of truth and credibility. It has also not been corroborated by the facts and testimonies on record. The lower court has certainly overlooked certain facts and circumstances of substance and value which lead us to doubt its conclusion that rape was actually committed by the accused-appellant.

WHEREFORE, the judgment of conviction is hereby REVERSED on grounds of reasonable doubt. The accused-appellant is ACQUITTED of the crime charged.

SO ORDERED.

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

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