

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVENCIO LUCAS Y PARCUTELA, ACCUSED-APPELLANT.

G.R. No. 80102. January 22, 1990

Ponente: CORTES, J.

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CORTES, J.:

Once again this Court is called upon to review a case involving the heinous crime of rape, made even more so because it was committed by a father against his own flesh and blood.

On March 10, 1986, Mauricia Lucas filed a complaint accusing appellant, her own natural father, with rape, committed as follows:

That on or about the month of September, 1985, in the City of Manila, Philippines, the said accused, father of the undersigned complainant, with lewd designs and by means of force, violence and intimidation, to wit: by tying her legs, undressing her, burning her face with a lighted cigarette, poking a knife at her body and threatening to kill her should she tell the matter to her mother or anybody else, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, 13 years of age, against her will and consent. [Record, p. 1.]

Upon arraignment, with the assistance of counsel, accused pleaded "not guilty." Trial ensued, whereupon the lower court rendered a decision finding appellant guilty of the crime charged with the aggravating circumstances of relationship and cruelty. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered declaring that accused JOVENCIO LUCAS y PARCUTELA is guilty beyond reasonable doubt of the crime of RAPE, and he is hereby sentenced to RECLUSION PERPETUA (Art. 335, RPC); to indemnify Mauricia Lucas the sum of P30,000 as moral damages, but without subsidiary imprisonment in case of insolvency; and to pay the costs . . . [RTC Decision, p. 4; Rollo, p. 14.]

The victim testified that this was in fact not the first time she was sexually abused by appellant. The trial court noted in its decision that —

* * *

Mauricia Lucas testified that she had already been raped by her father, once in Romblon, some three (3) months before September 1985, and again in Manila before the third rape that was committed in September 1985. It was the THIRD act of rape committed in Manila in September 1985 that is the subject-matter of the instant criminal prosecution. After this third, two (2) more rapes were allegedly committed on her person by the accused in Manila sometime in September 1985. . . . [T]he evidence will be concentrated on the THIRD RAPE committed in the City of Manila in September 1985, for which the victim made her move and complained to the authorities on March 3, 1986 . . .

* * *

[RTC Decision, p. 2; Rollo, p. 12.]

In this appeal, appellant raises the following assignment of errors, mainly challenging the lower court's evaluation of the witnesses' testimonies and the evidence:

I

THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE LACK OF EVIDENCE SHOWING HE IS THE PERPETRATOR OF THE CRIME;

II

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED ON THE BASIS OF PRESUMPTIONS AND SELF-SERVING TESTIMONIES OF THE PROSECUTION WITNESSES [Appellant's Brief, p. 1; Rollo, p. 42.]

Ultimately, the only issue presented in this case is whether or not the appellant was proven guilty beyond reasonable doubt of the crime of rape.

After a careful review of the record, this Court affirms the judgment of the trial court finding appellant guilty beyond reasonable doubt of the crime charged, aggravated by the circumstances of relationship and cruelty (ensanamiento.)

The trial court's decision is amply supported by evidence proving to a moral certainty the guilt of the appellant. We find that the record sufficiently establishes that, indeed, as held by the trial court, appellant had carnal knowledge of Mauricia, through force and intimidation, against the latter's will.

The prosecution's version of the case as adopted by the lower court is as follows: Sometime in September 1985, thirteen-year old Mauricia, then working as a housemaid, was fetched by her father from her place of work at 1171 Batanes Street, Sampaloc, Manila. Mauricia asked appellant where they were going, but the latter simply did not answer. Father and daughter boarded a jeepney and alighted in a dark place which Mauricia found unfamiliar. Mauricia was then brought to a dark room where her father tied both her hands and feet to a bed, undressed her, lighted a cigarette and burnt her face with it, kissed her, fondled her private parts, and finally, pointing a knife approximately eight (8) inches long at her neck, consummated the sexual act. All throughout the forced sexual intercourse, appellant was laughing. He then threatened to kill Mauricia if she revealed the incident to anyone. Despite such warning, Mauricia told her paternal grandfather about her terrible experience. Her grandfather, angered, confronted the appellant, but the latter only threatened to harm the old man. About six months after the alleged rape took place, Mauricia decided to report the incident to the police. On March 3, 1986, a physical and genital examination was conducted on Mauricia by Marcial G. Cenido, Medico-Legal Officer of the Evidence-Laboratory Division of the Western Police District. The fact of defloration is supported by the findings of the Medico-Legal Officer [Exhibit "C", Record, p. 35] which reads:

1. Breasts are fairly developed, hemispherical in shape and with small brownish nipples and areolae;
2. Abdomen is flat, soft and without striae of pregnancy;
3. Hymen is relatively thin, narrowed with a deep old healed gaping laceration at 6 o'clock position extending to the base;
4. Introitus vagina admits two (2) examining fingers with relative ease; and
5. Last menstrual period — Menarche has not started as of this date.

OPINION: The above findings is consistent with a girl who is no longer a virgin.

The Medico-legal officer further testified that the findings are consonant with a woman who has had "several experience with sexual intercourse" [t.s.n., October 7, 1986, p. 3.] However, because the physical and genital examination was conducted about six months after the rape, evidence of violence, whether external or internal, can no longer be established. Be that as it may, the absence of any evidence of force does not negate a finding that forcible sexual intercourse actually took place [People v. Domen, G.R. Nos. L-47675-76, January 31, 1983, 120 SCRA 486.]

I.

An accusation for rape can easily be made because the nature of the crime is such that it is difficult to prove or disprove its veracity. In such an offense where it is usually only the accused and his victim who can testify as to its occurrence, conviction or acquittal hinges almost solely upon the credibility of the witnesses [People v. Manzano, G.R. No. L-38449, November 25, 1982, 118 SCRA 705.] In the present case, only the complainant herself had testified as to the details of the rape. However, although the evidentiary rule in such crimes is that the testimony of the victim should not be received with precipitate credulity [People v. Estacio, G.R. No. 54221, January 30, 1982, 111 SCRA 537], nonetheless, even the uncorroborated testimony of the offended party in an accusation for rape is sufficient to justify conviction if said testimony is "credible and positive, and satisfies the court beyond reasonable doubt" [People v. Galicia, G.R. No. L-39235, July 25, 1983, 123 SCRA 550.]

In the case under review, we find no reason to doubt the victim's credibility. The trial court, having had the opportunity of hearing firsthand the witnesses of both prosecution and defense and of observing their demeanor and manner of testifying during the trial, noted that during cross-examination the victim showed "sincerity and conviction" and appeared to be truly "aggrieved" [t.s.n., December 18, 1986, p. 17.] In its decision, the trial court further regarded the defense's theory of revenge as "absurd . . . puerile and childish" [RTC Decision, p. 3; Rollo, p. 13.] Indeed, scrutinizing the record, we find that there exists no cogent reason to disturb the trial court's assessment of the witnesses' credibility. This Court finds it noteworthy that instead of testifying in open court in order to defend himself against the victim's accusation, appellant simply chose not to rebut the charges, but remained silent, and relied solely on the testimonies of his wife and friend, thus inhibiting himself from personal scrutiny of the judge.

The defense anchors its case mainly on alibi. As stated in the trial court decision, the defense relied only on the testimonies of Venancia Lucas (wife of appellant and natural mother of the victim) and of Clarita Monsale, and on a letter written by the Barangay Captain of Matutuma, San Andres, Romblon, but did not present the accused himself who "pointedly and purposely did not testify in his behalf" [RTC Decision, p. 2; Rollo, p. 12.] Appellant's wife Venancia, mother of the victim, claimed that her husband was with her in Romblon in September 1985, and that it was only in February 3, 1986 that, together, they decided to try to make a living in Manila [t.s.n., March 13, 1987, p. 5.] Another witness, Mrs. Clarita Monsale, a friend of the appellant, testified that whenever appellant and his wife visited Manila, they would always stay with her in an old sunken barge which served as her house. The couple, she further alleged, left for Romblon in 1984 and returned to Manila only in February, 1986 when they came to live with her again [t.s.n., May 14, 1987, pp. 7-8.] A note handwritten by the barangay captain, one Pedro Taladtad, Jr., alleging that, as far as he can remember, appellant left for Manila only in February, 1986, was likewise submitted in evidence. These testimonies, however, are insufficient to establish alibi without the testimony of the appellant. By themselves, these testimonies do not convincingly establish that it was impossible for appellant to have been in Manila at the approximate date that the offense was committed.

But the appellant himself, the only person who could make a positive and categorical statement of his

whereabouts at the time of the commission of the crime, did not even testify in order to refute the accusations against him and support his defenses. With his silence, there is, strictly speaking, no evidence of alibi which the defense witnesses could corroborate. It was held in the case of *People v. Resano* [G.R. No. 57738, October 23, 1984, 132 SCRA 711, 717-718] that:

* * *

. . . [The witness], of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him. But where the prosecution has already established a prima facie case, more so when the offense charged is grave and sufficient enough to send accused behind bars for life . . . , then in order to meet and destroy the effects of said prima facie case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such a situation, it may be necessary for the accused to have a complete destruction of the prosecution's prima facie case, that he take the stand since no hardship will in any way be imposed upon him nor advantage be taken of him. . . . If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardy indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves. . . .

* * *

Alibi is generally a weak defense, and cannot prevail over positive identification of the appellant as the perpetrator of the crime. Moreover, in order to establish an alibi, the accused must be able to show that it was impossible for him to have been present at the time of commission and in the place where the crime was committed [*People v. Quidilla*, G.R. Nos. 79369-70, October 28, 1988, 166 SCRA 778; *People v. Sambangan*, G.R. No. L-44412, November 25, 1983, 125 SCRA 726.] Where a claim of alibi is supported only by testimony of relatives and friends, it deserves scant consideration, more so in the light of positive identification [*People v. Baniaga*, G.R. No. L-14905, January 28, 1961, 1 SCRA 283.] In the present case, there is no showing that appellant never returned to Manila from Romblon since the time he left the city, allegedly in 1984, save for the statements of his wife and friends. It was not impossible for him to have made occasional visits to Manila in order to see his daughter. Besides, the fact that Mauricia identified appellant as her rapist belies his denial and defense of alibi. It only shows that the appellant had, on at least one occasion, left for Manila during the time that he was allegedly in Romblon.

To buttress its argument, the appellant contends that the failure of Mauricia to shout for help from bystanders prior to the rape while they were still in public view casts doubt on the prosecution's case. The contention deserves no consideration. The appellant, being the victim's father, had some moral ascendancy and influence over his daughter which, in itself, was sufficient to intimidate and force her to submit to his desires [*People v. Robles*, G.R. No. 53569, February 23, 1989; *People v. Alcid*, G.R. Nos. 66387-88, February 28, 1985, 135 SCRA 280; *U.S. v. Villarosa*, 4 Phil. 434, (1905).] Besides, the victim testified that she offered resistance to her father's sexual advances [t.s.n., February 20, 1987, p. 2.] It is hard to believe that any daughter would simply give in to her father's lascivious designs had not her resistance been overpowered [*People v. Erardo*, G.R. No. 32861, January 31, 1984, 127 SCRA 250.]

Appellant would argue further that "[t]he unexplained silence of complainant for six (6) months despite her allegations of several rapes committed against her (even before September 1985) renders doubtful the truth of her charge," claiming that "such silence on her part could be construed as an implied condonation of what her father had done to her" [Appellant's Brief, pp. 9-10.] Again, the contention is unmeritorious. It has repeatedly been held

that the delay in reporting a rape incident due to death threats, as in this case, can not be taken against the victim [People v. Valdez, G.R. No. 51034, May 29, 1987, 150 SCRA 405; People v. Ibal, G.R. Nos. 66010-12, July 31, 1986, 143 SCRA 317] nor can the fact of delay alone be taken as implied consent [People v. Seculles, G.R. No. 52348, October 23, 1984, 132 SCRA 653.] This Court had occasion to note that "it is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives" [People v. Oydoc, G.R. No. 61679, October 26, 1983, 125 SCRA 250.] It should be borne in mind that this case involves a victim of tender age and limited schooling (Grade V) whose actions under such difficult and trying circumstances are dominated more by fear than by reason. She cannot be expected to have such exceptional courage as to disregard a threat on her life [People v. Cruz, G.R. No. 71462, June 30, 1987, 151 SCRA 609; People v. Valdez, supra; People v. Ibal, supra], especially where her aggressor was her own father. The fact that the victim was finally able to muster enough courage to report the incident is, in fact, commendable. As held in the case of People v. Molero [G.R. No. 67842, September 24, 1986, 144 SCRA 397, 413], "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."

The defense finally alleges that the complaint for rape was filed by Mauricia because of resentment against her father who scolded and boxed her when he caught her in the embrace of her boyfriend [t.s.n., March 13, 1987, p. 3.] These allegations, however, were never substantiated. Even assuming that there existed some resentment on the part of the victim against appellant, allegedly an irresponsible parent and habitual drunkard [t.s.n., December 18, 1986, p. 16,] it is nevertheless hard to believe that a young and naive lass could so be motivated by feelings of revenge as to fabricate a story of rape, to have her private parts examined and to subject herself to the indignity of a public trial, against her very own father, if there be no truth to the same. In this case, Mauricia, repeatedly apprised by the trial court of the possible consequences that may befall the appellant if convicted, remained steadfast in her determination to see that the wrong against her is vindicated, even if it would mean the tragedy of seeing her own father brought to jail [t.s.n., Feb. 20, 1987, p.2.]

As correctly held by the court a quo: "No daughter, especially one of tender age, would accuse her own father of this heinous crime of rape had she really not been aggrieved. No amount of intercession could batter down her determination that justice be meted to her father. She underwent public trial and admitted her shame only with the objective that her father be sent to prison, if that be his fate for having repeatedly assaulted the womanhood of his own flesh and blood, one who he was supposed to defend with his own life in the first place" [RTC Decision, pp. 3-4; Rollo, pp. 13-14.]

II.

Anent the aggravating circumstances of relationship and cruelty, We find that, as correctly appreciated by the trial court, both existed in the present case.

The alternative circumstance of relationship is taken into consideration when, as in this case, the victim is the descendant of the offender [Art. 15, Revised Penal Code.] In crimes against chastity, relationship is aggravating. The gravity of a crime attended by abuse of relationship was emphasized in the case of People v. Porras [58 Phil. 578, 579 (1933),] which likewise involved the rape of a daughter by the father, wherein it was held that: "[t]he crime in this case was so monstrous that no punishment which is in the power of this or any other human tribunal to decree, could possibly be a sufficient expiation of the offense." In this case We find that, indeed, appellant abused the filial trust reposed in him by his daughter in order to carry out the crime to his every advantage. He personally fetched the victim, his daughter, at her place of work, took her to the scene of the crime, and forced himself sexually.

Likewise, cruelty attended the commission of the crime. There is cruelty when the offender enjoys and delights in making his victim suffer slowly and gradually, causing unnecessary physical pain in the consummation of the offense [People v. Gatcho, G.R. No. L-27241, February 28, 1981, 103 SCRA 207; People v. Dayug, 49 Phil. 423 (1926).] Cruelty is present in this case where appellant tied the victim to a bed, burnt her face with a lighted cigarette while raping her and laughed as he did all these.

III.

Under the Revised Penal Code, whenever the crime of rape is committed with use of a deadly weapon, the penalty shall be reclusion perpetua to death [Art. 335,] and where the commission of an offense punishable by two indivisible penalties is attended by at least one aggravating and no mitigating circumstance, the greater penalty shall be imposed [Art. 63 (1).] In this case, the commission of the rape was with the use of an eight-inch long knife, undoubtedly a deadly weapon. Since the crime is attended by two aggravating and no mitigating circumstances, it would ordinarily merit the imposition of the death penalty. However, in the light of Sec. 19 (1), Art. III of the Constitution providing that the death penalty shall not be imposed unless Congress for compelling reasons involving heinous crimes provides for capital punishment, the penalty of reclusion perpetua is imposed instead.

WHEREFORE, the decision of the trial court is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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