

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO GARCIA Y NIEVEZ, ACCUSED-APPELLANT.*G.R. No. 80993. July 17, 1990*

Ponente: PARAS, J.

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Before Us is an appeal from the decision of the Regional Trial Court of the National Capital Region, Branch 170, Malabon, Metro Manila, finding the accused Rolando Garcia guilty of the crime of Rape and sentencing him to suffer the penalty of Reclusion Perpetua, to indemnify Cecilia Padua and her parents in the sum of P20,000.00, as moral damages, and to pay the costs. (pp. 234-239, 240 Rec.).

Accused Rolando Garcia is charged by Rossana Padua with having committed the crime of rape on her eight-month old daughter, Cecilia Padua, on February 21, 1984. Cecilia Padua was born on June 18, 1983, as evidenced by her birth certificate. (Exh. "D")

The evidence for the prosecution shows that at about 8:00 in the morning of February 21, 1984, Deogracias Padua entrusted his 8-month old daughter, Cecilia, to the care of his grandmother, Josefa Mangali, at 56 Rivera St., Tanong, Malabon, because he had to go to work at Navotas and his wife, Rossana, was busy washing clothes at their residence at Disierto, Tanong, Malabon. The companion of Josefa Mangali in the house at the time was the accused, who was then jobless and living in the said house, together with his wife, Venus Padua, a sister of Deogracias Padua and a granddaughter of Josefa Mangali. Josefa Mangali took care of Cecilia Padua, but later in the day, she left the child with the accused because she had to go to Maysilo, Malabon, with instruction to the accused to bring the child home when she wakes up. The child was then sleeping in a hammock on the ground floor.

It appears that Deogracias Padua had returned to the house of Josefa Mangali at about 3:00 o'clock in the afternoon to pick up his daughter. Josefa Mangali was not at home. Deogracias Padua saw the accused sleeping outside his (accused) bedroom while his daughter was crying inside said bedroom. He noticed blood at the buttocks of his daughter, wiped it with a wet cloth, and took the child home. Upon seeing her daughter, Rossana Padua noticed that there were burns on the face and left leg of Cecilia and found blood on her rectum. Deogracias Padua surmised that Cecilia might have fallen from the cradle. Subsequently, however, they noticed blood flowing from the vagina of Cecilia. They brought her to Dr. Albert Reyes, who advised them to bring the child to a hospital. They brought Cecilia to the Malabon Puericulture Center where she was examined by a nurse, who found bruises on the private organ of Cecilia, and advised them to report the matter to the police. After reporting the matter to the Malabon Police Station, Rossana Padua accompanied three policemen to the residence of the accused and found the latter drinking with some companions. The policemen arrested the accused. Cecilia Padua was brought by her parents to the Caloocan General Hospital for examination but the hospital refused to issue a medical certificate. A letter-request, dated February 21, 1984, was then prepared by P/Lt. Dante M. Buenaventura of the Malabon Police Station, addressed to the Commanding Officer of the PC Crime Laboratory at Camp Crame, Quezon City for the physical examination of Cecilia Padua (Exh. "B"). After securing the written consent

of Rossana Padua for the PC Crime Laboratory to conduct an examination on the person of Cecilia Padua (Exh. "C"), said examination was conducted by Major Dario L. Gajardo, medico-legal examiner, who submitted a report (Exh. "A") on his findings and conclusions, as follows:

"GENERAL AND EXTRAGENITAL:

'Fairly developed, fairly nourished female subject. Breast are undeveloped. Abdomen is flat and tight. The following injuries are noted at the head and lower extremity:

'(1) Violet contusion, frontal region, measuring 3 by 3 cm., along the anterior midline.

'(2) Violet contusion, left cheek, measuring 6 by 5 cm., 2 by 4 cm., 3 cm. lateral to its anterior midline.

"GENITAL:

There is absence of pubic hair. Labia majora are reddish and edematous. On separating the same are disclosed an elastic, fleshy-type hymen with deep fresh laceration at 6 o'clock and a lacerated posterior fourchette.

'Peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

"CONCLUSION:

'Subject is in non-Virgin state physically.

'Barring unforeseen complication, it is estimated that the above injuries will resolve in 14 to 16 days."

(pp. 45-46, Rollo)

Upon the other hand, the version of the defense consists mainly of denials. Rolando Garcia denies the crime imputed to him (p. 7 tsn, April 10, 1986) and denies having seen the baby that whole day of February 21, 1984 (p. 9 tsn, April 10, 1986).

On November 16, 1987, the trial court rendered a decision convicting the accused appellant beyond reasonable doubt of the crime of rape. The dispositive portion of the said decision reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds accused Rolando Garcia y Nieves guilty beyond reasonable doubt of the crime of rape and sentences him to suffer the penalty of Reclusion perpetua, to indemnify Cecilia Padua and her parents in the sum of P20,000.00 as moral damages and to pay the costs.

"SO ORDERED. (Rollo, p. 38)

Not satisfied with the aforesaid decision, the accused interposed this appeal, and assigned the following errors, to wit:

"I

THE COURT A QUO ERRED IN NOT FINDING THAT THE PHYSICAL EVIDENCE DOES NOT CONCLUSIVELY SHOW THAT THE CHILD WAS A VICTIM OF SEXUAL ASSAULT.

"II

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT ON THE BASIS OF WEAK CIRCUMSTANTIAL EVIDENCE." (Rollo, p. 38, Appellant's Brief)

Appellant asserts that the court a quo erred in not finding that the physical evidence does not conclusively show

that the baby was a victim of sexual assault. He claims that the trial court relied solely on the Medico Legal Report (Exh. "A") in concluding that Cecilia Padua, an eight month old baby, was a rape victim. (p. 6, Appellant's Brief)

The examining doctor testifying as an expert witness said that the laceration of the hymen indicated in his report, could have possibly been caused by sexual intercourse (90%) and finger-insertion (10%); that the said laceration of the fourchette, which was almost up to the anus, is very typical in sexual intercourse; and that it was possible that the penis entered the vaginal canal because of the extent of the laceration of the hymen (pp. 5-9, *tsn.*, July 24, 1984).

The appellant would want it to appear that the findings as stated in the medical examination report are defective factually and legally wanting to sustain the theory that the child was sexually abused (p. 7, Appellant's Brief). Such assertions of the appellant do not merit a reversal of the judgment appealed from. The jurisprudential rule states that it is not even necessary that there should be a medical examination of the victim in rape cases. A medical examination is not an indispensable requisite. (*People v. Carandang*, 52 SCRA [1973]).

The fact is that the subject (Cecilia Padua) is already in a non-virgin state physically, as attested to by the examining doctor. The conclusion of a sexual assault perpetrated upon her becomes very clear and outweighs greatly the presumption that the loss of virginity may have been due to finger insertion. It cannot be disputed therefore that indeed rape was committed against the eight-month old Cecilia Padua considering the medical finding that the labia majora were reddish and edematous and that the hymen was deeply lacerated.

With regard to the second assignment of error, appellant faults the court *a quo* for finding him guilty beyond reasonable doubt on the basis of weak circumstantial evidence.

Appellant argues that the trial court had conceded that there was no direct evidence pointing to him as the malefactor and yet it found him guilty based on circumstantial evidence.

By the very nature of the crimes against chastity, generally only two persons are involved - the victim and the offender. Seldom, if ever, is there an eyewitness to the commission of the crime. In the instant case, the offended victim was only eight months old when the heinous crime was committed, and obviously cannot testify on the crime committed against her.

The trial court enumerated the series of circumstantial evidence, to wit:

- "1. That Josefa Mangali entrusted Cecilia Padua to the care of the appellant that fateful day of February 21, 1984;
- "2. That appellant was the only person with Cecilia Padua that afternoon of February 21, 1984;
- "3. That appellant had the smell of liquor;
- "4. That Cecilia Padua who was sleeping in a hammock on the ground floor of the house when entrusted to the care of the appellant, was subsequently found by her father inside the bedroom of the appellant at the second floor. (pp. 8-9, Appellant's Brief).

The first, third, and fourth circumstances were testified to by the prosecution witnesses, and, appellant disputes only the second circumstantial evidence, claiming that it was not supported by evidence and consequently the same has no probative value (*supra*).

The assertion made by the appellant with regard to the second circumstantial evidence is obviously devoid of merit. There are circumstances which strongly militate against appellant's pretenses.

The evidence on record is clear that at the time Deogracias Padua came back that afternoon of February 21, 1984 to fetch his infant daughter, the only person he noticed inside his grandmother's house was the appellant who at that time was outside his bedroom, sleeping, while his daughter Cecilia was inside the bedroom of the appellant at the second floor (pp. 4, 5, tsn., January 30, 1986). If it were true that appellant was not alone and that there were other persons at that time, Deogracias naturally could have inquired from any of them as to what probably caused the blood stains in the area of the buttocks of his infant daughter.

Appellant claims to have been sleeping the whole day of February 21, 1984 until three o'clock that afternoon and was totally unaware of the presence of the baby in the household (pp. 7, 9, tsn., April 10, 1986). If that were true, it does not stand to reason why appellant failed to contradict or rebut the first circumstantial evidence to the effect that, Josefa Mangali had entrusted to him the baby that day of February 21, 1984 (p. 3, tsn., September 27, 1985).

Another point is that, if it were really true that there were other persons in the household that afternoon, as claimed by the appellant, he should have presented his wife, Venus Padua, to corroborate his testimony that Cecilia Padua was not brought to their house that day. It seems incredible that the wife of the accused would not testify for her husband and defend him from a very serious accusation if it were true that she was with him in their house on February 21, 1984 and that Cecilia Padua was not brought to their house that day.

In addition, the accused himself admits that he knows of no reason why Josefa Mangali and Deogracias Padua would testify against him (tsn., April 10, 1986, p. 16).

And lastly, and more importantly, Cecilia was found sleeping inside the bedroom of the accused at the second floor contradicting his earlier statement that he was totally unaware of the presence of the baby in the household.

The trial court, therefore, did not commit a reversible error when it rendered the judgment of conviction predicated on circumstantial evidence against the accused.

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of RAPE, the decision appealed from is hereby AFFIRMED with costs against the appellant.

SO ORDERED.

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

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