

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR CASTILLO, ACCUSED-APPELLANT.

G.R. No. 84310. May 29, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Accused-appellant, Edgar Castillo, was charged with the crime of rape under Article 335 of the Revised Penal Code before the Regional Trial Court stationed at Abuyog, Leyte, in an information which reads:

"That on or about the 15th day of February, 1986, in the municipality of La Paz, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, and with lewd designs, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with Melba Luya, a five-year old child, against her will and consent to her damage and prejudice.

"x x x" (p. 10, Records).

Upon arraignment, he entered a plea of not guilty (p. 5, Rollo).

After trial, the court a quo rendered judgment on September 28, 1987, convicting the accused-appellant of the offense charged, the dispositive portion of which reads:

"WHEREFORE, the prosecution having proven the guilt of the accused beyond a (sic) reasonable doubt, EDGAR CASTILLO is hereby found guilty beyond reasonable doubt of RAPE a violation of Par. 3, Art. 335 of the Revised Penal Code and is sentenced to suffer the penalty of RECLUSION PERPETUA, (life imprisonment) and to pay the costs.

"x x x." (pp. 25-26, Rollo).

Hence, this appeal.

The facts as appearing in the records are as follows:

On February 15, 1986, after cooking their evening meal, Miguela Luya proceeded to their barn (camalig) to look for her daughter (p. 3, TSN). When she reached the barn, she saw her daughter naked and standing immediately next to her houseboy, the accused-appellant herein, who was wearing only his briefs. When she inquired from the accused what he did to her daughter, he did not answer and hastily left towards the house, gathered his clothes and immediately left Miguela's house. With the help of a CHDF patrol, they caught up with the accused and brought him to the police department in La Paz, Leyte. Melba was brought to the hospital and the medical examination conducted on her revealed the following:

"I. EXTERNAL FINDINGS:

- clothing and underwear show no tearing.
- No seminal fluid stains on the clothing or skin.

- No signs of external injuries.

"II. INTERNAL EXAMINATION:

- Vulva shows slight hyperemia.

- Hymen, thin, and circular in shape, showing complete laceration at 5:00 o'clock (in the face of clock), with slight fresh bleeding.

- Vaginal opening barely admits examiner's small finger; absence of seminal fluid (p. 4, Records).

Melba testified during trial that after the accused fed the pigs in the barn, he undressed her and asked her to lie on top of him. The accused also kissed her on her right cheek and touched her abdomen, but she did not feel the fingers of the accused in her vagina. While she was on top of the accused, he made a push and pull movement and at this point, she felt the private part of the accused touch her vagina and, she felt pain in the area (pp. 20-22, TSN).

The accused on the other hand, denied having raped the victim. He alleged that the charge against him was concocted only by the parents of Melba to avoid paying him his one year's salary at P200.00 a month. He presented no other exculpatory evidence.

The points raised by appellant are: 1) That the court a quo relied heavily on the testimony of the examining physician that the victim's hymen was lacerated possibly due to penetration of the appellant's sex organ when according to the victim, Melba, appellant was lying on his back and she was made to lie on his left knee and did not move anymore to any other part of his body (TSN., p. 9, January 8, 1987). According to appellant, the victim testified that when he made the up and down movement, complainant did not feel his sex organ penetrate her genitals.

The appellant contends that from the facts proved in the trial court, there was no rape but only acts of lasciviousness. The victim did not categorically state that she saw the sex organ of the appellant nor that the said organ of the appellant entered the vagina.

This contention of appellant has no merit as he relied only on a portion of the testimony of the victim when the entire testimony of the victim should have been considered. The records reveal that on direct examination, the victim testified that she saw the sex organ of appellant. The victim further testified that at one point, the appellant made the "up and down" movement whereupon she felt the private part of the appellant touch her vagina and thereafter felt pain in the area.

Q

When Edgar Castillo was making a series of up and down movement while you were on top of him, did you feel if the private part of Edgar Castillo penetrated your vagina?

A

No, sir.

Q

But it touched your vagina?

A

Yes, sir.

Q

That is why you felt pain?

A

Yes, sir. (TSN, p. 22)

There was no showing that the accused-appellant inserted his fingers inside the private part of the victim. As against the testimony of the victim that the private part of the accused-appellant touched her vagina, his allegation that he committed only acts of lasciviousness, cannot prevail.

It is not essential that the victim in a crime of rape should testify that she saw the penis of the appellant before she was raped. This is the least of the concern of a victim, especially an innocent child. It is also difficult to expect a child of tender age (about 6 1/2 years old when she testified) to remember after one year whether or not she saw the penis of the appellant. It is unfair to expect her testimony to be perfect in all respects, without any mistakes or inconsistencies.

The appellant also contends that the natural behavior of the victim soon after the alleged rape, negates the commission of rape. It is allegedly unimaginable that a small five-year old child, whose hymen was completely lacerated due to alleged penetration of the male organ on her private part, would not have suffered shock, serious bleeding, extreme pain as well as loss of consciousness as a consequence of the assault.

It is not inconceivable that despite the rape, the victim still acted normally because the penetration was not attained by force and besides, the penetration was only slight. Since there was no full or complete penetration of the vagina it is not expected that the pain would be unbearable. As found by the trial court, "she (victim) saw the penis of accused but it did not go inside her private parts, but it touched her vagina so she felt pain." (p. 6, RTC Decision) The fact that there was no full penetration was confirmed by the medical finding of the physician that the labia of the vagina is open but the vagina itself hardly admits one small finger and there was only a slight bleeding caused by the total laceration of the hymen at 5 o'clock.

It is true that, standing alone, a physician's finding that the hymen of the alleged victim was lacerated, does not prove that she was raped. A physician is presented not to prove that the victim was raped but to show only that the latter had lost her virginity (*People v. Opena*, G.R. L-34954, Feb. 20, 1981, 102 SCRA 755). However, when the physician's finding of penetration is corroborated by the testimony of the victim that the appellant's private part touched her vagina, it is sufficient to establish the essential requisite of carnal knowledge.

The difficulty, recognized and acknowledged, in decision-making where the prosecution is rape, arises from the fact that usually, only the participants can testify as to the alleged sexual abuse. The accused may deny such an occurrence, put up the defense that he was somewhere else, or allege the consent on the part of the complainant. The court then is left with no choice but to exert the utmost effort to determine the likelihood that a sexual act did take place and under what circumstances. Such choice is not always easy (*People v. Egot*, G.R. No. L-35775, June 29, 1984, 130 SCRA 134).

It is even more difficult to ascertain in this case whether or not the crime charged was committed because there

was no witness to the rape except the victim herself, a five-year old child. However, We are convinced that although the victim was only about six and a half years old at the time her testimony was taken and that there were inconsistencies in some points in her testimony, she positively stated that she felt the penis of the appellant on her vagina. It can then be concluded that there was penetration, though incomplete, and it was sufficient to prove carnal knowledge of a child under twelve years of age.

In the crime of rape, complete or full penetration of the complainant's private parts is not necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entrance, or at least, the introduction of the male organ into the labia of the pudendum is proved (see *People v. Cruz*, G.R. No. 82121, December 29, 1989, *People v. Basas*, G. R. No. L-48019-22, June 29, 1984).

The court a quo properly imposed the penalty of reclusion perpetua. However, it failed to award civil indemnity to the victim which this Court now imposes in the amount of P40,000.00.

ACCORDINGLY, the decision of the trial court dated September 28, 1987 is AFFIRMED with the modification that accused-appellant is ordered to pay the amount of P40,000.00 as civil indemnity to the victim.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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