

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO PEREZ ALIAS "ROGELIO PEREZ", ACCUSED-APPELLANT.

G.R. No. 84362. July 07, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

Accused-appellant Fernando Perez was charged before the Regional Trial Court of Roxas City with the crime of rape committed as follows:

"That on or about the 3rd day of June, 1987, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above accused, armed with a knife and with the use of force and intimidation, did then and there wilfully, unlawfully and feloniously, have carnal knowledge [of] one CHRISTINE DORADO, an 8-year old girl, against the will of the said Christine Dorado, in the following manner; that the accused grabbed the said Christine Dorado, pointing a knife at her body and telling her not to shout otherwise, he will kill her, removing her underpants, making her to spread her legs, lie with and have carnal knowledge [of] Christine Dorado against her will.

CONTRARY TO LAW."[1]

After trial, the trial court rendered a decision dated 6 June 1988, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing, this Court finds the accused Fernando Perez, alias "Rogelio Perez", GUILTY beyond reasonable doubt of the crime of Rape as defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Acts No. 2632 and 4111, and sentences him to suffer imprisonment for life (reclusion perpetua) and to pay the complainant and offended party P50,000.00 in moral and exemplary damages. Pursuant to the provisions of Art. 29 of the Revised Penal Code, the accused, who is a detention prisoner, shall be credited in the service of his sentence with the full time during which he had undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the disciplinary rules imposed upon convicted prisoners.

SO ORDERED."[2]

The present appeal assigns the following as errors said to have been committed by the trial court:

"I

The trial court erred in convicting accused despite failure of prosecution to present sufficient evidence to establish his identity as the rapist of Christine Dorado.

II

The trial court erred in convicting accused despite insufficiency of evidence to prove his guilt beyond reasonable doubt."

The facts of the case as found and summarized by the trial court are as follows:

"It appears from the testimony of the offended party, Christine Dorado, at 8 a girl of tender years and a Grade III pupil, that at about 7 o'clock in the evening of June 3, 1987, while she was alone washing some dishes on a cemented portion outside the kitchen of their house at the PHHC Housing Project in Brgy. Lawa-an, Roxas City, the accused, whom she identified in court as her assailant, surreptitiously approached her from behind, poked a knife at her, threatened to kill her if she shouted, and then forced to lie down. When she was already lying on the ground, the accused held her by her hands, raised her skirt and forcibly removed her underwear. Then the accused forced his sex organ into her genitals.

This assault inflicted upon the complainant a fresh hymenal laceration with slight bleeding at 5 o'clock position and a lacerated wound with moderate bleeding at the vaginal mucosa, as shown in the medical certificate issued by Dr. Evelyn B. Sicad who examined her at the Roxas Memorial General Hospital. According to the examining physician, there was complete penetration as the hymen was almost completely broken. This finding of the doctor was confirmed by the testimony of the young complainant herself who said that when the accused forced his sexual organ into her genitals, there was complete penetration, causing her vagina to bleed profusely and making her feel severe pain that made her cry. That the young girl bled profusely as a result of the sexual assault committed against her cannot be denied. She identified in court the pink dress she was then wearing which was full of bloodstains. She likewise identified the underwear she had on which the accused, according to her, forcibly removed, thereby tearing the garter, in order to realize his carnal desires.

Before pointing in court to the accused as her assailant that fateful early evening of June 3, 1987, young Christine Dorado had twice clearly and positively identified the accused as the man who criminally assaulted her. The first time she did so was when immediately after the arrest of the accused by the Roxas City Police he was taken to their house and then and there, in the presence of the apprehending officers and many other people, she identified and pointed to him as her assailant. She did this again at the Roxas City Police Station in the presence of her parents and police investigators during the investigation of this case by the police. At the police station, following his identification by the complainant, the accused admitted his guilt."[3]

Appellant controverts the trial court's findings of fact and submits the following recital:

"[Accused Fernando Perez testified] that in the evening of June 3, 1987, he was at the house of his girlfriend located at the upper portion of Homesite, Brgy. Lawa-an, Roxas City. He was working at the fishpond in Tico, Pontevedra and was brought there by Tawi Aga-in. He was apprehended at the house of his girlfriend, Mercedita. Then he was handcuffed and brought to the house of the victim for identification, however, the victim could not recognize him. But after the victim had talked to the police, victim pointed him as her assailant. He was then brought to the police station where he was manhandled and forced him to admit that he raped the victim. He fainted, then they splashed water on his face and after regaining consciousness, he was made to stand and was hit by the butt of an armalite on his forehead. He was forced to admit the crime because he could not withstand the maltreatment. He has never been accused of rape or acts of lasciviousness."[4]

The appellant principally contends that there is no evidence sufficient to show that his identity was fully established by prosecution; that the identification made by the victim of the appellant as her rapist was not made "spontaneously." [5] This, appellant contends, is shown by testimony of the victim herself, which went as follows:

"CROSS EXAMINATION:

ATTY. CONANAN:

Q: When for the first time did you meet the accused Fernando Perez in this case?

COURT:

After June 3 or before, because she mentioned that she has not met him before June 3.

ATTY. CONANAN:

Q: After June 3, 1987?

A: When he was brought to the Police Station.

Q: Were you there at the Police Station when he was brought?

FISCAL POSADAS:

Precisely, your Honor.

COURT: Witness may answer.

A: Yes sir.

ATTY. CONANAN:

Q: Why were you there?

A: Because the police ordered me to be there, sir.

Q: Was it not a fact that accused Fernando Perez was brought to your house before he was brought to the Police Station?

A: He was brought to our house, sir.

Q: And when he was brought to your house, you do not know him?

A: No, sir.

Q: And then after that he was brought to the Police Station together with you and your mother?

A: Yes, sir.

Q: Now, since you were there at the police station, what did the police do with the accused Fernando Perez?

A: He was manhandled sir.

x x x x x x x x

Q: And he was manhandled and castigated by the policemen and the accused Perez then acknowledged that he was the one who raped you?

A: Yes, sir.

Q: And it was the first time that you knew that he was the one who raped you because he told you that he was the one who raped you after he was castigated by the police?

A: Yes, sir.

x x x x x x x x

COURT:

x x x x x x x x

Q: But while he was in your house, you did not point to him?

A: I did your Honor because the Police asked to point to him your Honor.

Q: While there in your house?

A: Yes, your Honor.

Q: While there in your house, did the accused admit that he was the one who raped you?

A: No, he did not your Honor.

Q: And it was only in the Police Station that he admitted?

A: After he was manhandled, he admitted before the Police your Honor."^[6]

From the aforequoted testimony the defense suggests that the victim did not even recognize the accused as her assailant when the latter was first brought to her residence; that she pointed to him as the rapist only after the police asked her to do so; that the victim only knew that the accused was her attacker when the latter admitted having committed the crime.^[7]

Apropos the allegation that Christine Dorado had not clearly identified the appellant as her assailant, the trial court found that Christine had on two occasions unequivocally pointed to appellant as the man who had sexually assaulted her. The first time she did so was right after the arrest of appellant by the Roxas City police who immediately brought appellant to Christine's home and there, "in the presence of the apprehending officers and many other people" she pointed to him as the attacker. The second time she identified appellant was at the Police Station, in the presence of her parents and police investigators. The clarity and definiteness of Christine's pointing to appellant as her attacker are all the more impressive when it is recalled that the police had earlier presented to her three (3) other possible suspects and that she had denied the involvement of any of the three (3) in the attack upon her.^[8]

Appellant's contention that Christine was not in a position to have seen the face of her assailant in the course of the rape was negated by the following testimony given by Christine:

"Q: If you could still recall Christine Dorado, what does (sic) Fernando Perez wearing at that time?

A: He was wearing something brown.

Q: Was he wearing long pants or short pants?

A: Long pants, sir.^[9]

x x x x x x x x

Q: Now, you said you know that accused as Fernando Perez, how did you know considering that it was night time?

A: Because there was light sir, as the 3 flourescent lamp of our neighbors were switch on and lighted his face."^[10] (Underscoring supplied)

Further, there is no merit to appellant's suggestion that Christine did not recognize him as the attacker when asked if she knew him at the time he was brought to her residence. An examination of victim's testimony before the lower court would show that the victim was confused by the question and that her answer thereto referred to the name of the appellant, not to his identity as the rapist. Her testimony was as follows:

"Q: But that time you do not know actually who was the person who raped you, isn't it?

COURT:

The name of the person.

A: I did not know him first at that time."[11] (Underscoring supplied)

What emerges from examination of the transcript of Christine's testimony is that appellant's above suggestion was made possible principally by the weakness of the translation of the proceedings (both questions and answers) into English. The verb "to know" was used where "to see" or "to recognize" would have been more precise; "to know a person" was used where "to know the name of a person" was really meant.

As against appellant's suggestion and denial, the trial court found the victim's testimony clear, definite and entitled to full credence:

"x x x After such a careful study and evaluation of the evidence adduced during the trial, the Court has come to the inescapable conclusion that the evidence presented by the prosecution is more credible and convincing, and thus entitled to greater weight, than that adduced by the defense. The Court, observing the demeanor and the obvious honesty and innocence of so young a victim as Christine Dorado on the witness stand, has found no reason at all to doubt the veracity of her testimony and that when she clearly, unhesitatingly and positively pointed to and identified the accused as the man who ravished her near the kitchen of their house in the early evening of June 3, 1987, she was telling the truth, the whole truth, and nothing but the truth. The fact that the young girl admitted that it was only at the time of the incident that she saw the accused for the first time and that she did not know him before does not in any way diminish the weight that should be given to her clear and convincing testimony. The Court is convinced that the girl is quite sure of the identity of the accused, so much so that when several suspects were presented to her by the police for identification she readily told the police that the culprit was not one of them. It was only when the herein accused was brought before her that she was able to tell the police that they had finally found the man they were looking for."[12]

That an innocent eight-year old child would impute a crime as serious as the one at bar to a person she had never met before the attack, if indeed he had not assaulted her, strains belief excessively. The further suggestion that the child may have been influenced by her parents and the police to make a false charge must fail, absent any showing of malice or ill motive on the part of either parents or police.

The testimony of Christine was moreover corroborated by the testimony of other witnesses:

"[Testimony of Mr. Ambrosio Dorado]

Q: Now, you said that after your daughter Christine Dorado was examined by the Nurse at the Saint Anthony Hospital, she told you that she was assaulted by someone, whom she could recognize by face, is it right?

A: Yes. Your Honor.

Q: Since then, has your daughter ever pointed to a man who allegedly assaulted her?

A: She said that she could only recognize the face but not his name.

Q: Has she ever pointed to a man after she told you that, as having criminally assaulted her?

A: As of now she has pointed somebody.

Q: That man your daughter pointed to you as having criminally assaulted her inside this room?

A: Yes. Your Honor.

Q: Will you point to him?

A: He is there. (Witness pointing to the accused Fernando Perez).[13]

[Testimony of Norma Dorado]

ATTY. CONANAN:

Q: By the way, when your daughter Christine Dorado already recovered, you asked her how does the alleged rapist who raped her look like?

A: Yes. I asked her.

Q: And what was her answer?

A: Short and stocky fellow and had a squinting eyes.

Q: And in fact his hair was curly?

A: No, sir.

x x x x x x x x

Q: Mrs. Dorado, how many times did the policemen investigate you or your daughter after the alleged incident on June 3, 1987?

A: Twice sir.

Q: Was that investigation in your house in the National Housing Authority or at the Police Station?

FISCAL POSADAS:

I object to the word 'investigation on the announcer.'

ATTY. CONANAN:

Policemen.

A: At the Police Station.

Q: And during that investigation there were already several suspects presented by the Police Station and all of them were presented to you and your daughter?

A: Yes, sir.

Q: Now, if you can still recall, how many of them?

A: I cannot remember. There were several of them.

Q: Now, and all of them were not identified by your daughter?

A: No, sir. The ones who were brought to the hospital she did not identify.

Q: Now, the accused in this case Fernando Perez was apprehended several days after the alleged raped of your daughter and he was brought to your house in the National Housing Authority, Lawa-an, Roxas City, can you still recall that?

A: Yes, sir.

Q: And at the time when the accused was brought to your house, your daughter was in your house?

A: Yes, sir.

Q: And you were not there according to you because you were in the well fetching water?

A: Yes, sir.

Q: Now, how far is this well where you fetch water from your house?

A: About one and half (1-1/2) kilometer, it is near the TELECOM Station.

Q: And when you arrived in your house after fetching water, the accused Fernando Perez was still in your house?

A: Yes, sir.

Q: And it was when you arrived that your daughter Christine Dorado pointed the accused as the man who raped her?

A: Yes, sir.[14]

[Testimony of Pat. Ernesto Apruebo]

A: After he was booked by the Desk Officer and investigated, we brought him back to Lawa-an for identification of the victim and the victim Dorado pointed to him as her assailant.

Q: Was the accused Fernando Perez the only suspect whom you showed to the victim Christine Dorado?

A: There were others sir who were picked up and apprehended by Pat. Dorde.

Q: Do you know if Pat. Dorde showed the suspects he apprehended to the victim Christine Dorado?

A: Yes, he did but the victim did not point to them as her assailant.

x x x x x x x x

Q: Do you know if being investigated the victim Christine Dorado pointed to the accused as her assailant?

A: Yes, she did your Honor when Pat. Olendo asked her to identify the accused.

Q: Did you actually see the victim point to her assailant in the Roxas City Police Station?

A: Yes, your Honor."[15] (Underscoring supplied)

The trial court found the above-quoted testimonies credible and convincing. It is firmly settled doctrine that the finding of the trial court, which had the inestimable advantage of observing the detailed demeanor of the witnesses, are entitled to great respect.[16] We find no reason at all to doubt the findings of the trial court here. It must be noted that these witnesses had no known reason falsely to impute a serious charge against the appellant. As held by this Court in *People v. Patog*,[17] "[W]here there is no evidence and nothing to indicate the principal witness for the prosecution was [moved] by improper motives the presumption is that he was not so [moved] and his testimony is entitled to full faith and credit."

Appellant also put up the defense of alibi. He claimed that early in the evening of 3 June 1987, at about the time the rape was committed, he was visiting his girlfriend, Mercedita de la Cruz, in her house "in the upper and hilly portion of the PHHC Housing Project where, incidentally, the house of the offended party's parents was also located." [18] The trial court disposed of this defense quickly and decisively:

"x x x Where the crime was committed could hardly be a few hundred meters away from Mercedita's house. Being familiar with the place, the Court takes judicial notice of the fact that the PHHC Housing Project in this

City is laced with good, all-weather roads. It is not a big housing complex, with an area of a few hectares only, and it would not take a man more than 30 minutes to walk [at] ordinary pace from one end to the other. So from where he said he was at the time, it would have taken the accused only a few minutes to reach the offended party's house. It was that near and accessible."[19]

As the trial court noted, appellant had himself testified that on the evening when Christine Dorado was sexually assaulted, he was "in the vicinity of the crime scene (sic) and not in a distant town." [20]

It is also contended by appellant that the trial court disregarded his constitutional right against self-incrimination, when it held that:

"x x x the accused has been positively identified by the offended party as the perpetrator of the crime and who, in fact, has admitted his culpability in the presence of a number of witnesses." [21]

Appellant claims, predictably, that he was forced to admit the crime imputed to him because he could no longer endure the brutalities inflicted upon him by the police authorities; that he was not assisted by counsel when he made said admission; that such maltreatment was even unqualifiedly attested to by the victim herself. It is argued that the trial court gravely erred when it appreciated and admitted said admission as evidence against the appellant.

The foregoing allegation need not detain us for long. The case against appellant herein was not founded solely nor even principally on the said admission but rather on the positive identification of the appellant by victim. The basis of the trial court's finding of guilt was not the said admission but the evidence adduced by the prosecution quite independently of that admission. In fact, in its decision, the court made only a passing reference to the admission appellant now attacks.

Appellant tries to make capital of the testimony of Christine Dorado apparently attesting to the fact of the said forced admission. Assuming *arguendo* that appellant had indeed been made to admit to the crime by the exercise of force and intimidation by the police, it should be noted that even before said admission was given, the victim had already positively identified him as her assailant. Appellant's extrajudicial confession may and should be disregarded, if, as here, the other evidence submitted by the prosecution is sufficient to prove his guilt beyond reasonable doubt. [22]

In sum, we agree with the trial court that the guilt of the appellant has been proven beyond reasonable doubt. The sexual violence inflicted upon the eight-year old child is a particularly appalling outrage. The trauma sustained by her is not merely physical and may be expected to remain with her for a long, long time, possibly for life. We believe that in this case, the victim is entitled to the heightened level of moral and exemplary damages that the trial court awarded her -- P50,000.00.

WHEREFORE, the judgment of the trial court is **AFFIRMED** in its totality. Costs against appellant.

SO ORDERED.

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

[1] Complaint, Records, p. 1.

[2] Appealed Decision, p. 7; Records, p. 212.

[3] *Id.*, pp. 207-208.

- [4] Appellant's Brief, p. 1; Rollo, p. 224.
- [5] Id., 232.
- [6] TSN, 23 November 1987, pp. 31-34; Records, pp. 107-110.
- [7] Appellant's Brief, p. 11; Rollo, p. 234.
- [8] TSN, 23 November 1987, p. 26; Records, p. 102.
- [9] Id., pp. 9-10; Records, p. 86.
- [10] Id., pp. 12-13; Records, p. 88.
- [11] Id., p. 24; Records, p. 100.
- [12] Decision, p. 5; Rollo, p. 210; underscoring supplied.
- [13] TSN, 11 November 1987, pp. 21-22; Records, pp. 74-75.
- [14] TSN, 20 October 1987, pp. 19, 21-22; Records, pp. 19, 21-22.
- [15] TSN, 15 December 1987, p. 29; Records, p. 141.
- [16] People vs. Aboga, 147 SCRA 404 (1987).

[17] 144 SCRA 429 (1985).

- [18] Decision of the trial court, p. 4; Rollo, p. 209.
- [19] Ibid.
- [20] Decision, p. 5; Rollo, p. 210.
- [21] Appellant's Brief, p. 11; Rollo, p. 234.
- [22] People vs. Polo, 147 SCRA 552 (1987).

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