

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO TAMAYO, ARTURO GARCIA ALIAS "ZORO", RODRIGO IMBUIDO ALIAS "ISONG", ACCUSED, VIRGILIO TAMAYO, ACCUSED-APPELLANT.

G.R. No. 86162. September 17, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is an appeal from the judgment[1] of the court a quo finding accused VIRGILIO TAMAYO guilty of rape, imposing upon him a prison term of reclusion perpetua, and ordering him to indemnify the offended party P30,000.00 for moral damages.

In a verified complaint, Raymundo Fabia charged that on or about the 14th of March 1981, in Barangay Cayanga, San Fabian, Pangasinan, the accused Virgilio Tamayo, together with Arturo Garcia alias "Zoro" and Rodrigo Imbuido alias "Isong," conspiring and helping one another, did then and there wilfully and feloniously have carnal knowledge of his daughter, Rosario E. Fabia, against her will and by reason of which she became insane.[2]

The evidence for the government is to the effect that on 13 March 1981, after attending her classes at the Philippine School of Business Administration (PSBA), eighteen (18) year-old Rosario went home to the province where she was living with her parents in Gardonio, San Fabian, Pangasinan. She took a jeepney that left Manila at 2:00 o'clock in the afternoon and arrived at the Poblacion of San Fabian at 7:00 o'clock in the evening. She then rode a tricycle driven by Arturo Garcia alias "Zoro," one of the three (3) accused in the lower court, to take her to Gardonio. However, instead of going to Gardonio, Garcia drove the tricycle towards San Fabian Beach. On the way, however, Garcia stopped and boarded the other accused Rodrigo Imbuido. Imbuido then started embracing and kissing Rosario; the latter tried to resist. When they reached the beach, the two accused forcibly brought Rosario to a nipa hut. Later, Tamayo arrived and tried to embrace Rosario who struggled to push him away. Rosario was able to set herself free. She fled to the other side of the hut but Tamayo followed her and embraced her. Rosario ran towards the sea but Tamayo pursued her and forced her to go back to shore. Garcia and Imbuido just stood watching on the beach. Then, the three accused forced Rosario to board the tricycle and they proceeded to Barrio Sabangan to the house of a certain Imbornal. Tamayo and his co-accused threatened Rosario that they would kill her if she talked to Imbornal about her predicament or if she attempted to escape. When they arrived at the house of Imbornal, Rosario was offered by Imbornal food and clothes. She was also invited to sleep there although, according to her, she was not able to sleep as she was not comfortable sleeping in a stranger's house. As forewarned, she did not talk to Imbornal nor to his wife and daughter about her problem. Nor did she attempt to escape from the house for fear that she would be killed if she did.

At about 2:00 o'clock early the following morning, the accused told Imbornal that they were taking Rosario to her parents' home in Gardonio. They then made Rosario board the tricycle with them. When they reached the foot of Cayanga bridge, Tamayo pulled Rosario out of the tricycle, while Garcia was watching. Imbuido was nowhere to

be found by Rosario. Tamayo suddenly embraced and kissed her. Rosario wanted to shout for help but Tamayo covered her mouth with his hand. Tamayo laid her down and removed her panty as she struggled to push him back, moving her body left and right to prevent Tamayo from inserting his penis into her private part. He succeeded nonetheless. She felt the pangs of the breach. After he ejaculated, he stood up. Garcia was still there on top of the bridge, watching. She was again forced to ride on the tricycle by Tamayo. By this time she was already weak and dejected. Together with Garcia, Tamayo brought her to the house of his uncle, Barangay Captain Claudio Tamayo. It was there that Rosario lost her balance, her sanity; she could no longer remember things.[3]

From the house of the barangay captain, Rosario was finally brought to her parents' home by the same accused Virgilio Tamayo and Arturo Garcia accompanied by Panfilo Ferreria, a relative of Rosario, who was earlier summoned by Barangay Captain Tamayo to accompany Rosario home to her parents.[4] When Rosario arrived at her parents' house, she did not recognize her family. She was also not acting normally. Since then, her mental illness continued although from time to time, she would experience lucid intervals and return to her normal self. On 18 March 1981, during one of these lucid intervals, she divulged to her father the outrage done to her.

On 23 March 1981, acting on the information of Rosario, her father brought her to the Pangasinan Provincial Hospital where she was examined by Dr. Evelyn Rosario Castro, a government physician. Dr. Castro confirmed that Rosario was suffering from a laceration on her hymen, probably caused by sexual intercourse, with her vaginal canal admitting one finger, an indication that she was no longer a virgin.[5]

On 29 March 1981, Rosario's mental condition not having improved, she was admitted at the National Mental Hospital where she was examined by Dr. Homer Galvez, Chief of the Children Adolescence Unit, who found her suffering from psychosis or insanity caused by the trauma of having been raped.[6]

On 1 March 1982, Raymundo Fabia, in behalf of her daughter Rosario, filed the complaint for rape against Virgilio Tamayo, Arturo Garcia and Rodrigo Imbuido. But only Tamayo and Imbuido were arrested; Garcia remained at large. Hence, only Tamayo and Imbuido were tried.

Appellant Tamayo denies having had carnal knowledge of Rosario. He claims that in the early morning of 14 March 1981, he accompanied Garcia to the house of a certain Imbornal located in Sabangan to fetch a lady passenger by the name of Rosario who was staying there. Tamayo claims that they stayed in that house for an hour, after which, he and Garcia brought Rosario to the house of Barangay Captain Claudio Tamayo at Cayanga. To support his professed innocence, Tamayo relates that he even joined Garcia and Ferreria in escorting Rosario home. When asked of the probable reason why the father of Rosario filed a complaint against him, he countered that the family of Rosario wanted to extort P10,000.00 from him.

Accused Rodrigo Imbuido narrated a different story: In the evening of 13 March 1981, Garcia who was his brother-in-law arrived with Rosario as passenger in his tricycle. Imbuido was at the back of Garcia; while Rosario was in the passenger's seat. Imbuido denied having kissed or embraced Rosario inside the tricycle. He said that he and Garcia just drove Rosario to the Holiday Beach in San Fabian where she took a dip for an hour. Thereafter, they brought her to Imbornal's house in Sabangan where she was given food and clothes. Imbuido denied that Tamayo was present at the house of Imbornal. Imbuido further alleged that he left the place with Garcia at 9:00 o'clock in the evening, went home, and slept from 10:00 o'clock that evening until 6:00 o'clock the following morning.[7]

The trial court believed the prosecution's theory and convicted appellant Tamayo of the crime charged. It however acquitted Imbuido on the basis of the victim's testimony pointing to Tamayo as the sole perpetrator of the rape.

In this appeal, appellant assails the trial court (a) for assuming jurisdiction over the case as the complaint is null

and void, having been filed not by the offended party who was already eighteen (18) years old at the time the offense was committed but by her father Raymundo Fabia; (b) for finding that immediately after the rape, victim Rosario Fabia became insane and recovered only on 1 September 1981; and, (c) for not acquitting him on reasonable doubt.

The appellant maintains that in order for the trial court to acquire jurisdiction to try a criminal case for rape, the complaint must be filed by the offended woman even if she be a minor, and if she does not want to file the complaint, her parents, grandparents or guardian may file the same. Appellant submits that there is no showing in the instant case that Rosario refused to file the complaint; hence, the complaint filed by her father did not vest jurisdiction on the trial court.

We find the appeal devoid of merit.

The law is clear that "(t)he offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian x x x In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf. The offended party, even if she were a minor, has the right to initiate the prosecution of the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardian may file the same." [8]

There is no doubt that 18-year old Rosario is still a minor, not having reached twenty-one (21) when the crime was committed on her. The records also fail to disclose that she filed a complaint on the outrage done to her. Consequently, when she failed to file her complaint, the filing by her father was justified under the Rules. Thus, when appellant filed a motion to dismiss in the court below for lack of jurisdiction, it was not error for the trial court to deny the same.

The appellant also assails the trial court for upholding the credibility of the prosecution witnesses. He argues that the testimonies of the four (4) prosecution witnesses were inconsistent on the date Rosario regained her sanity. He said that according to Raymundo Fabia, it was 18 March 1981, or four (4) days after the incident, because Rosario was able to narrate to him what happened to her, while Rosario herself said it was much later, particularly on 1 September 1981, when she recovered from her mental illness. He submits that while Dr. Evelyn Rosario testified that Rosario was conscious, coherent and ambulatory when she was physically examined on 23 March 1981, Dr. Homer Galvez, the psychiatrist, claimed that Rosario fully recovered from insanity on 3 July 1981. Appellant further contends that as early as 18 March 1981, Rosario was already mentally normal and capable of filing the complaint herself, thus her failure to do so militates against the truth of her story.

Rape is a most abominable crime wherein the offender should be severely punished, especially in our country where religion, tradition and culture demand high respect for Filipino women. Since the crime of rape is not normally committed in the presence of witnesses, the court merely relies on the credibility of the victim's testimony as weighed against the credibility of the accused. It is settled that in rape cases, the accused may be convicted solely on the testimony of the complaining witness provided such testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things. [9]

In the instant case, the trial court found the testimony of Rosario accurate and credible. The testimony of Rosario, partly reproduced hereunder, is enlightening:

"Q. When you reached Cayanga near the foot of Cayanga bridge, what happened there?

"A. They forced me to come out the tricycle, sir.

"Q. Who forced you to come out the tricycle?

"A. It was Tamayo, sir.

"Q. What were the two other accused doing when Tamayo tried to force you out the tricycle?

"A. I do not know where Imbuido (was), sir, but Garcia was there watching.

x x x x

"Q. What happened at the foot of the bridge?

"A. After bringing me out from the tricycle and brought me (sic) at the foot of the bridge, Tamayo embraced, kissed me and forced me to take my virginity, sir (sic).

"Q. When Tamayo embraced, kissed and tried to get your virginity, what did you do?

"A. I fought him but I was not able to resist because I am weaker, sir.

"Q. What else did you do, if any?

"A. I wanted to shout but he was able to place his hand on my mouth, sir.

x x x x

"Q. What else happened after that?

"A. Tamayo was able to lay me down and was able to remove my panty and insert his private part, sir.

"Q. After Tamayo insert(ed) his penis inside your vagina, what did you feel?

"A. I felt pain, sir.

x x x x

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"Q. When accused inserted his penis inside your vagina, what did you do?

"A. I struggled, sir.

"Q. How did you struggle, what did you do to him, if any?

"A. I fought him, sir.

"Q. Tell us, demonstrate.

"A. Witness is demonstrating that he was pushing back Tamayo.

"Q. What else aside from pushing?

"A. I was moving my body left and right, sir.

"A. I do not like that he will be able to get my virginity, sir.

x x x x

"Q. After accused inserted his penis inside your vagina, what did you do?

"A. After inserting his penis inside my vagina accused stood up, sir.

"Q. What did he do after that?

"A. Tamayo wanted to bring me inside the tricycle again, sir.

"Q. What did you do?

"A. I was so weak at the time and so they brought me to the Barangay Captain, sir." [10]

A perusal of Rosario's testimony shows that her narration of her misfortune is clear and convincing, and recounted with candor and sincerity. Her testimony does not contain any self-contradiction. Her answers to the questions of the court are spontaneous, discounting the possibility that she has been tutored or rehearsed before taking the witness stand. Rosario narrates with sufficient clarity and detail the events leading to the time appellant sexually abused her, the manner he raped her, and her positive identification of him as her rapist.

The rule is settled that with regard to the credibility of witnesses, the trial court's findings and conclusions are binding upon this Court. We quote with approval the observations of the trial court -

"Although accused Tamayo denies having had carnal knowledge of the complaining witness and states that he even helped the victim in delivering her to her father's house, this Court cannot escape the observation that the complaining witness positively identified him as the one who raped her while accused Arturo Garcia stood by watching. It is difficult to believe that a young and unmarried woman would tell a story of defloration, allow the examination of her private parts and thereafter permit herself to be the subject of public trial, unless she was not (sic) motivated by a(n) honest decision to have the culprit apprehended and punished (People vs. Francisco (Francisquite), 56 SCRA 764). The testimony of the offended party during the hearing of the instant case, in the observation of this Court was straightforward and untainted with ulterior motive other than to seek justice for her defloration. No young Filipina of decent repute would publicly admit that she had been criminally abused, unless that is the truth x x x" [11]

As regards the alleged inconsistencies in the testimonies of prosecution witnesses, this Court finds the same to be insignificant. They merely refer to immaterial and irrelevant details, particularly the date when Rosario recovered from her mental illness. Further, witnesses, possessed with different capacities for observation, cannot be expected to recall with accuracy or uniformity matters relating to the crime. [12] This is true especially when the inconsistencies refer to minor and insignificant details, in which case, the inconsistencies do not destroy the credibility of witnesses and the veracity of their testimonies on material points. [13]

The contradictions referred to by appellant do not detract from the overwhelming evidence that appellant Tamayo committed the crime charged which caused Rosario her insanity. As between the positive declaration of the prosecution witnesses and the negative statements of appellant, the former deserves more credence and weight. Besides, the records do not show any sufficient motive on the part of the victim to falsely impute to appellant Tamayo such a serious crime of rape.

It is worthy to note at this point the marked receptivity on the part of courts to lend credence to the testimonies of victims who are of tender years, such as 18-year old Rosario in this case, regarding their versions of what transpired, since the State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are not yet able to fully protect themselves. [14]

Under Article 335 of the Revised Penal Code, when by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death. However, since the death penalty cannot be imposed under the 1987 Constitution, the trial court correctly imposed upon appellant Virgilio Tamayo the penalty of reclusion perpetua. Nonetheless, the payment of moral damages to Rosario E. Fabia in the amount of P30,000.00 is increased to P50,000.00 conformably with recent jurisprudence.

WHEREFORE, the appealed decision finding accused-appellant VIRGILIO TAMAYO guilty of rape and imposing upon him a prison term of reclusion perpetua is AFFIRMED, with the modification that the indemnity in favor of complaining witness Rosario E. Fabia is increased to P50,000.00.

Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.
Griño-Aquino, J., on official leave.

[1] Penned by Judge Conrado V. Posadas, Regional Trial Court of Dagupan City, Branch 43.

[2] Rollo, p. 5.

[3] Tsn, 25 November 1982, pp. 2-25.

[4] Tsn, 30 August 1983, p. 22.

[5] Tsn, 4 January 1984, pp. 7-10.

[6] Tsn, 24 November 1982, p. 6.

[7] Tsn, 25 September 1985, pp. 6-17.

[8] Sec. 5, pars. (3) and (4), Rule 110 of the Rules of Court.

[9] People v. Alvarez, G.R. No. 73071, 11 September 1992; People v. Tabago, G.R. No. 69778, 8 November 1988, 167 SCRA 65; People v. Nuñez, G.R. No. 79316, 10 April 1992, 208 SCRA 34; People v. Sarda, G.R. No. 74479, 24 April 1989, 172 SCRA 651; People v. Monteverde, G.R. No. 60962, 11 July 1986, 142 SCRA 668; People v. Almenario, G.R. No. 66420, 17 April 1989, 172 SCRA 268.

[10] Tsn, November 1982, pp. 20-25.

[11] Rollo, p. 23.

[12] People v. Gubatin, G.R. 84730, 28 October 91, 203 SCRA 225.

[13] People v. Belibet, G.R. 91260, 25 July 91, 199 SCRA 587.

[14] People v. Cabadac, G.R. Nos. 93929-31, 8 May 1992, 208 SCRA 787.

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