

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO ROSELL Y ROGASION, DEFENDANT-APPELLANT.

G.R. No. 86383. January 30, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from a decision of the Regional Trial Court of Pasig, Br. 64 finding the accused-appellant Reynaldo Rosell guilty of the crime of rape committed against his daughter, Rosario. The dispositive portion of the decision reads:

"ACCORDINGLY, the Court finds the accused Reynaldo Rosell y Rogasion GUILTY beyond reasonable doubt of the criminal offense of Rape as charged and therefore hereby sentences him to life imprisonment (reclusion perpetua)."

Vis-a-vis the penalty imposed, it maybe worthy of note that the Supreme Court, on more than one occasion has declared that rape committed by a father upon his daughter is '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.' (Pp. vs. Porras, 58 Phil, 578; and Pp. v. Seguran, 60 Phil. 933)"

No cost." (At p. 27, Rollo)

On March 16, 1987, Rosario Rosell, assisted by her mother, filed a complaint against Reynaldo Rosell for the crime of rape committed as follows:

"That on or about the 9th day of March, 1987, in the municipality of Pasig, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, ROSARIO ROSELL Y JABSON, a minor thirteen years of age, against her will and consent.

Contrary to law." (At p. 13, Rollo)

Upon arraignment Reynaldo Rosell, assisted by counsel, pleaded not guilty to the crime charged. Trial ensued.

The evidence presented disclosed the following facts:

"In the early morning of March 9, 1987, Wilma Rosell, upon the instruction of her husband, appellant Reynaldo Rosell, went to the market to buy their food. She left their residence located at Pinagbuhatan, Pasig at 5:30 and returned at 7:30 that morning. Upon arrival, Wilma Rosell saw her daughter, Rosario Rosell, lying on the bamboo bed with her short pants unzipped and looking very weak (latang-lata). Wilma Rosell could not say a word and remained speechless as she saw her daughter in that condition. She was hesitant to talk to her daughter until her husband, the appellant, left (tsn, Oct. 19, 1987 pp. 6-7).

Appellant having left, Wilma asked Rosario what had happened but the latter would not answer. Thus, Wilma brought Rosario to her aunt Conchita Cruz in Bagong Ilog, Pasig, Metro Manila, because she (Rosario) did not confide in her (Wilma). After Rosario and her aunt talked, they (Wilma, Rosario and her Aunt) went to the

police headquarter. Along the way, Conchita told Wilma that Rosario had been raped by her father (tsn., October 19, 1987, pp. 8-9).

At the police station, they reported to Pat. Crispin Pio, a police investigator, that Rosario Rosell had been raped by appellant. They did not give any statement at that time because Wilma wanted Rosario to be first examined by a physician. Besides, at that time Rosario could not give any statement because she was in a mild state of shock. That being so, the police investigator prepared a request so that Rosario could be examined by a physician at the PC/INP Crime Laboratory (tsn., Oct. 19, 1987 p. 11; tsn., Jan. 6, 1988 p. 2 and 6). Wilma and Rosario Rosell executed their statements on March 12, 1987 (tsn., Jan. 6, 1988 p. 7).

On March 11, 1987, Rosario Rosell went to the PC/INP Clinic for medical examination. Since she was only thirteen (13) years old, Col. Desiderio A. Moraleda, physician and chief medical officer of that clinic first secured the consent of the grandfather before examining her (tsn., November 6, 1987, pp. 3-4).

Dr. Moraleda found a healed linear abrasion two inches in length on the inner portion of her thigh. Dr. Moraleda did not ask Rosario how she sustained that abrasion but he testified that the wound may have been caused by rough objects such as fingernails. The genitals or sex organ of the victim showed a shallow healed laceration of 3:00 o'clock and a deep healed laceration of 6:00 o'clock. According to Dr. Moraleda, this deep laceration on the sex organ of a female is usually caused by the introduction of the male sex organ. He also stated that successive sexual intercourses will not create any new lacerations on the hymen because it may be ruptured or torn but once. The vagina of the victim admitted the vaginal speculum because the hymen was already ruptured. He did not find any spermatozoa or bacteria in the vaginal canal (tsn., November 6, 1987, pp. 4-7).

At the trial, Rosario testified that her father, the appellant, raped her many times (tsn., October 9, 1987, p. 23; tsn., November 2, 1987, p. 3). She could not tell the dates when her father raped her but she testified that her father raped her thrice before March 9, 1987. Her father raped her first in San Miguel, Pasig, Metro Manila at the house of his aunt. Rosario was raped the second time at the house of her grandmother in Sapangpalay, Bulacan (tsn., November 12, 1987, pp. 3-5). According to Rosario, her father abused her on these occasions by putting his penis inside her vagina. The victim was also raped by her father at their residence at Pinagbuhatan, Pasig, Metro Manila, on the folding bed where her father and the victim were sleeping. The victim used to sleep with her mother but her father asked her to sleep with him on the folding bed. The last time she was abused by her father was at 5 o'clock in the morning of March 9, 1987. The appellant mashed the victim's breast and inserted his finger, then his penis, into her vagina.

As appellant tried to insert his penis into victim's sex organ, he threatened to kill her and her mother if she resisted. He also threatened the victim not to tell anyone that he raped her. The night before, after he arrived between 11:00 and 12:00 in the evening, he also put his penis inside her vagina (October 19, 1987, pp. 23-29, November 12, 1987, p. 3).

Rosario resisted at that time as appellant tried to insert his penis into her sex organ, but appellant became angry and threatened that he would kill her and her mother if she resisted. Appellant also threatened that she should not tell her mother that she (Rosario) had been raped, otherwise he would kill the two of them (tsn. October 19, 1987, p. 26).

Appellant denied the accusation of rape. He stated that his wife and daughter filed the complaint against him because he did not allow his wife to work abroad (tsn., March 14, 1988, pp. 4-5, 7). (At pp. 1-7, Rollo)

In an effort to disprove the allegations against him, the accused assigns the following error:

"THE TRIAL COURT ERRED IN CONVICTING THE APPELLANT DESPITE INSUFFICIENCY OF EVIDENCE ADDUCED BY THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT." (At p. 37, Rollo)

The sole issue to be resolved in this case is whether or not the accused Reynaldo Rosell is indeed guilty of raping his own daughter, Rosario.

The accused claims that there is insufficient evidence to merit his conviction. He contends that the allegation that the victim was raped inside their own house is unworthy of belief. He further claims that it could not have happened at 5:00 a.m. that day, as his wife, the mother of Rosario was already awake 4:30 a.m. and left for the market at 5:30 a.m. This was contradicted by the victim's testimony.

Although there were some details which were lacking in the victim's testimony, the latter corrected the same by narrating the whole incident as when she pleaded to her father not to insert his penis into her vagina as it hurts. In her later testimony, she stated that after removing her underwear, and fingering her, he continued to insert his penis into her vagina and threatened to kill her and her mother if she resisted.

Contrary to the claim of the appellant that the victim's testimony is not clear, positive and convincing, this Court has been consistent in ruling that when a victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. (*People V. Budol*, 143 SCRA 241, *People V. Poculan*, G.R. Nos. 70565-67, November 9, 1988, *People v. Avero*, 165 SCRA 130). The victim in this case did not only state that she was raped but she testified convincingly on how the rape was committed.

The victim's testimony, together with the mother's testimony and further corroborated by the result of the medical examination on Rosario strengthens the prosecution's case. It is hard to believe that a mother would sacrifice her own daughter and present her to be the subject of the public trial if they were not motivated by an honest desire to have the culprit punished (*People v. San Buenaventura*, 164 SCRA 150, August 1988).

The fact that the medical examination showed no spermatozoa of the male cell does not negate rape. The slightest penetration even without emission is sufficient to constitute the crime of rape (*People v. Budol*, *supra*; *People v. Ocampo*, 143 SCRA 428). The failure of Rosario to remember the exact date of the first rape is understandable. It is not an indication of false testimony. The description of the other circumstances of the earlier rapes is credible and convincing.

The accused further contends that there could be other causes for the laceration of the hymen. The medical examination evidencing hymenal laceration at the 6 o'clock position shows that it was caused by the insertion of the penis.

Reynaldo Rosell also claims that threat, force and intimidation were not sufficiently proved because there was no evidence as to the occasions when they were made and that he had no moral influence over his daughter because she does not remember him as her father.

The testimony of the victim clearly states that the father threatened her that he would kill her and her mother if she resisted. Moreover, the statement of the accused that Rosario had no remembrance of him as her father contradicts his own statement that he never left his family and that he was a good provider of his family so much so that there was no need for his wife to work abroad.

The reason given by the accused-appellant as to why his wife, daughter and his wife's relatives filed this case against him is absurd. For one, the accusation is a serious one that would affect not only Reynaldo but the whole family as well. Compared to the consequences of such accusation, Reynaldo's reasoning is patently shallow and unworthy of belief.

The fact remains that Rosario considered the accused as her father and regarded him with the respect and love that

a daughter has for her father. So deep was her desire to have her father back after he had abandoned his family for four years that she tried to convince her mother to accept his return in 1986 and give the reconciliation to her as her graduation gift.

As proof of the moral ascendancy the accused exercised over his daughter, the daughter was made to sleep with her father in the folding bed at the latter's orders. Rosario did so without any question. She was likewise unable to refuse her father's act of bringing her to his mother's and brother's house where he subsequently raped her. He was able to perpetuate his lustful desires over and over again because of his threats and her fear of him. Considering the age of the complainant and the moral ascendancy exercised over her by the accused-appellant, x x x the complainant succumbed to his lustful desires x x x with a modicum of effort (People v. Carino, G.R. Nos. 74297 and 74351, November 11, 1988). Indeed, rape is a nauseating crime, especially when the same is committed by a father on his own daughter(s). (People v. Ramos, 165 SCRA 400).

After having thoroughly evaluated the records of the case, we find no cogent reason to reverse the decision of the trial court. We adhere to the fundamental rule in criminal as well as civil cases that in the matter of credibility of witnesses, the findings of the trial court are given weight and the highest degree of respect by the appellate court. The reason is that the trial court is in a better position to decide the question having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial. (People v. Bantac and Bugarin, G.R. No. 77115, Nov. 8, 1988).

WHEREFORE, the appealed judgment finding the accused guilty beyond reasonable doubt is hereby **AFFIRMED** with the **MODIFICATION** that the aggrieved party is ordered indemnified in the sum of **THIRTY THOUSAND PESOS (P30,000.00)**.

SO ORDERED.

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

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