

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO PLAZA, ACCUSED-APPELLANT.

G.R. No. 87235. March 27, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

Danilo Plaza was charged with having raped 13-year old Maria Rowena Ulid in a complaint dated February 7, 1979.[1]

When arraigned, accused Plaza pleaded not guilty.

On October 21, 1987, the trial court, after hearing the case, rendered its decision finding Plaza guilty of the crime of rape and sentenced him to reclusion perpetua and to indemnify Maria Rowena Ulid in the amount of P20,000.[2]

During the pendency of this appeal and after more than sixteen years from the commission of the crime, the offended party, now married, filed an affidavit of retraction and desistance on 20 October 1994.[3]

The testimony of the young victim formed the basis for the court a quo's factual findings. Maria Rowena Ulid testified that at around seven o'clock in the evening of March 27, 1978, she was sitting on a wooden trunk inside the house of Daniela Cordero in Palo, Leyte where she and accused were staying as boarders. She had just finished sweeping the floor when accused Danilo Plaza covered her mouth with his left hand and placed the other on her waist. She struggled to free herself, wriggling and pulling his hair. But the accused overpowered her, boxed her twice on the upper left chest area and threatened to kill her if she made any outcry. Thereafter, he undressed her and forced her to lie down. He "opened" his trousers and placed his male organ inside her, and, as if riding on her ("Iya ako guinsakyan") succeeded in having sexual intercourse with her. When he was done, accused stood up and hurriedly left the house. The victim meanwhile washed herself in the kitchen. This vicious assault, made with force and intimidation, resulted in Maria Rowena's pregnancy and subsequent birth to a baby boy on January 29, 1979.[4]

She kept the incident and her pregnancy to herself until sometime in January 1979 when her aunt, Fe Barbosa, confronted her and asked her if she was indeed on the family way. The girl broke down and cried, admitting that she was indeed pregnant as a result of Danilo Plaza's raping her.[5]

Maria Rowena could not have mistaken the identity of the accused. The son of her parents' tenants, he was taken in as a helper in their rice mill and sent to the same school that their daughter Maria Rowena attended and placed in the same boarding house where she stayed.

Accused denied having raped Maria Rowena Ulid, testifying that he left for Caibiran, Leyte by launch two days before the alleged rape occurred and returned only on March 28, 1978. He claimed that the girl's version was a lie, the truth being that his younger brother, Rico Plaza, was her sweetheart and the father of her child. Accused further alleged that the girl filed the rape case because he slapped her after she suspected him of stealing P100.00

from her and because his parents were going to file an agrarian case against the Ulids.

In this appeal, accused assails the trial court's finding of guilt beyond reasonable doubt and asserts that the girl's, testimony is replete with inconsistencies and shows incredible behavior.

Plaza cites a number of discrepancies in complainant's open court testimony and her affidavit, such as the place where she was boxed ("upper left chest" in her testimony and "on the shoulders" in the affidavit); which hand covered her mouth ("left" in the TSN and "right" in the affidavit); complainant claiming that accused touched her private parts after undressing her in the affidavit but omitting the same in her testimony; and not mentioning Plaza's threat in her affidavit.

Accused similarly avers that the girl's behavior during and after the alleged rape is incredible and renders the rape charge doubtful. Complainant did not shout for help or try to escape despite the fact that there were houses close by, that Plaza was unarmed and that the doors of the house were not locked. Her silence for such a long period of time also seriously affects the credibility of her testimony.

It is thus contended by accused-appellant that Maria Rowena Ulid's testimony could not be considered impeccable, sincere or true in view of the abovementioned inconsistencies coupled with her implausible actuations.

Plaza reiterates the defenses he raised in the trial court, claiming that his younger brother and complainant were lovers, that complainant charged him with rape to get back at him and that he had no motive to rape Maria Rowena.

Lastly, Plaza makes much of the testimony of the obstetrician, Dr. Ederlina Francisco who delivered Maria Rowena's baby, that ovulation would have taken place from March 31, 1978 if the first day of the 28-day cycle was on March 20, 1978.[6] Accused concludes that the alleged rape on the 27th of March could not have resulted in fertilization and complainant's pregnancy.

After carefully examining the evidence on record and accused-appellant's assigned errors, the Court finds no reason to reverse the decision of the trial court convicting Danilo Plaza of the crime of rape.

We agree with the lower court's conclusion that Maria Rowena Ulid's testimony was credible and sufficient to sustain a verdict of conviction.[7] The rape victim's sole testimony, if credible and free from serious and material contradictions, can be the basis of a conviction.[8] The offended party's candid and straightforward narration of how she was raped lends credence to her testimony.

The trial court held:

"x x x The accused had carnal knowledge of a woman using force and intimidation, not to say that there was obvious ungratefulness to the mother of Maria Rowena Ulid who was then sending the accused to school. The sexual intercourse was not voluntary, in fact, the girl resisted in what a young girl of 13 years of age can do." [9]

The court a quo was also correct in its reply to the allegation that the girl's testimony was replete with inconsistencies. But this is merely indicative of the spontaneity of the testimony of a young girl who is not used to the rigors of a public trial.[10] Said inconsistencies, being minor, do not affect her credibility.[11] In the case of *People v. Olivar*, [12] the Court, citing *Biala v. Court of Appeals* (191 SCRA 50, [1990]), held:

"x x x (I)t is settled that contradictions made between averments in a sworn statement and those made during testimony in open court may be explained by the fact that a sworn statement will not always disclose all the facts and will oftentimes and without design incorrectly described some of the material occurrences narrated."

In relation to the victim's apparently "incredible behavior" suggested by accused above, we find that they can be adequately explained.

While the girl did not shout, she did try to resist. This thirteen-year old tried to wriggle free and pull her assailant's hair.[13] But her defiance was no match to "the strength of a young man who is a farm hand accustomed to manual labor who was quite strong," boxed her in the chest and threatened to kill her.[14] Moreover, the force and intimidation employed in rape being relative, are to be viewed in the light of the victim's perception and the offender's physical condition.[15] It has also been held that there is no standard form of behavior when people, particularly young girls, are confronted by shocking and frightful incidents such as rape.[16] We find nothing inconsistent or incredible in the way complainant acted.

A thirteen-year old girl who kept silent about being raped and becoming pregnant as a result thereof, is not necessarily lying. It would not have been easy to speak of such a humiliating occurrence. Besides, she also feared for her life and that of her family. Her assessment of the threatened risk caused by accused may have been overestimated, but considering her youth and inexperience, this fact alone does not render her testimony unreliable. Long silence and delay in reporting the crime of rape has not always been construed as an indication of a false accusation.[17] Under the circumstances, Maria Rowena's protracted silence and resistance in reporting the matter should not cast doubt on the veracity of her accusation.

The lower court found the allegation that Rico Plaza, the younger brother of accused, was Maria Rowena's lover and the father of her child, a falsehood.[18] Rico Plaza's statement, made for the first time in open court on March 18, 1983 and not sooner, is a belated attempt to cover up for his eldest brother, prompted, no doubt, by the powerful influence of familial ties. Even complainant's affidavit of desistance, made sixteen and a half years later on October 13, 1994, suggest that the "lover theory" is a fabrication. In her affidavit, complainant states that she had sexual intercourse with Danilo Plaza, not with Rico Plaza, with her full consent, "the result of emotional outburst characteristic of teen-agers of (her) time." [19]

As for the claim of the accused that complainant had other reasons to charge him for the crime of rape, the trial court correctly held:

"Accused failed to show a good reason for the girl's disposition to lie in court and the complicity of her family thereto. As admitted by him, accused was living with the family of Maria Rowena Ulid x x x and he was also sent to a school where his benefactor sent her eldest child Maria Rowena Ulid and also boarded in the same house where the private complainant boarded. Indeed, it is very doubtful that the victim could make a story of rape against the accused for no motive at all. Needless to say that Maria Rowena Ulid, a thirteen-year old girl would not testify in open court recounting how and what she suffered if her rape charge is (sic) not true. x x x" [20]

Penultimately, the testimony of obstetrician, Dr. Ederlina Francisco, on the period of ovulation and fertilization vis-a-vis the date of the delivery is not conclusive that Maria Rowena was not raped by accused on March 27, 1978. Her testimony was based on general medical experience considering that complainant testified that her first day of menstruation was on March 20, 1978 and was to run for a normal 28-day menstrual cycle. However, the doctor was not testifying on the basis of Maria Rowena's actual menstrual cycle which could have been shorter or longer than the normal 28 days or even irregular, for the doctor did not possess this information.

The offended party's affidavit of retraction and desistance, executed on October 13, 1994, will not absolve accused from the crime he committed more than sixteen years ago. The Court, in *People v. Junio*, [21] held that retractions are generally unreliable and looked upon with considerable disfavor by the courts.

"The unreliable character of this document is shown by the fact that it is quite incredible that after going

through the process of having accused-appellant arrested by the police, positively identifying him as the person who raped her, x x x and then repeated her accusations in open court by recounting her anguish,"[22] Maria Rowena would, after over sixteen years, suddenly turn around and declare that she had consensual intercourse with the accused.

In *Junio*, the Court explained:

"Thus we have declared that at most a retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable."[23]

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** subject to the modification that the amount of the indemnity to be paid to Maria Rowena Ulid is increased to thirty thousand pesos (P30,000.00).

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, p. 4.

[2] Criminal Case No. 5328, Regional Trial Court, Palo, Leyte, Branch 8; Penned by Hon. Lolita O. Gal-lang; Rollo, pp. 7-20.

[3] Rollo, p. 143.

[4] TSN, April 16, 1980.

[5] TSN, October 11, 1979, p. 3.

[6] TSN, June 25, 1979, p. 12.

[7] Rollo, p. 16.

[8] *Anciro v. People*, G.R. No. 107819, December 17, 1993, 228 SCRA 629; *People v. Liquiran*, G.R. No. 105693-96, November 19, 1993, 228 SCRA 62; *People v. Joya*, G.R. No. 79090, October 1, 1993, 227 SCRA 9; *People v. Lascuna*, G.R. No. 90626, August 18, 1993, 225 SCRA 386; *People v. Arnan*, G.R. No. 72608, June 30, 1993, 224 SCRA 37; *People v. Martinez*, G.R. No. 95849, March 4, 1993, 219 SCRA 502.

[9] Rollo, p. 16.

[10] Rollo, p. 19.

[11] *People v. Tayco*, G.R. No. 100283, August 25, 1994; *People v. Joya*, G.R. No. 79090, October 1, 1993, 227 SCRA 9; *People v. Abordo*, G.R. No. 101187, July 23, 1993, 224 SCRA 725.

[12] G.R. No. 101577, November 13, 1992, 215 SCRA 768.

[13] TSN, April 16, 1980, p. 5.

[14] Rollo, p. 15.

[15] *People v. Dio*, G.R. No. 106493, September 8, 1993, 226 SCRA 176; *People v. Ylarde*, G.R. No. 110521,

July 5, 1993, 224 SCRA 405; *People v. Codilla*, G.R. No. 100720-23, June 30, 1993, 224 SCRA 104.

[16] *People v. Bautista*, G.R. No. 89967, September 1, 1994; *People v. Segundo*, G.R. No. 88751, December 27, 1993, 228 SCRA 691; *People v. Arnan*, *supra*, 224 SCRA 37.

[17] *People v. Rejano*, G.R. No. 105669-70, October 18, 1994; *People v. Dio*, *supra*, 226 SCRA 156; *People v. Mejorada*, G.R. No. 102705, July 30, 1993, 224 SCRA 837; *People v. Abordo*, *supra*, 224 SCRA 725; *People v. Alib*, G.R. No. 110232, May 24, 1993, 222 SCRA 517; *People v. Casao*, G.R. No. 100913, March 23, 1993, 220 SCRA 362; *People v. Yambao*, G.R. No. 7778, February 6, 1991, 193 SCRA 571.

[18] *Rollo*, pp. 17-18.

[19] *Rollo*, p. 143.

[20] *Rollo*, p. 19.

[21] G.R. No. 110990, October 28, 1994.

[22] *Id.*, p. 12.

[23] Citing *Flores v. People*, G.R. Nos. 93411-12, 20 July 1992, 211 SCRA 622, citing *de Guzman v. IAC*, G.R. No. 69386, 4 April 1990, 184 SCRA 128; *People v. Galicia*, No. L-39235, 25 July 1983, 123 SCRA 550; *Id.*, at pp. 12-13.

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