

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JOHNPET MACALINO Y CALDERON, ACCUSED/APPELLANT.

G.R. No. 88402. June 15, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Elizabeth Baldovino, on behalf of her very young daughter Erlinda C. Baldovino, filed a complaint for rape against accused-appellant Johnpet C. Macalino before the Regional Trial Court of Pasig, Branch 156, in Criminal Case No. 72966, committed as follows:

“That on or about the 27th day of March 1988, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused [Johnpet Macalino y Calderon], with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with a two (2) year old girl, Erlinda C. Baldovino, without her consent and against her will.

Contrary to law.”[1]

The evidence presented by the People tended to establish the following facts:

Complainant, with two (2) very young children, one of whom is the two-year old victim Erlinda, resides in a rented room on the second floor of an apartment building at No. 26, Sitio Sto. Niño, Pasig, Metro Manila. The room is divided into two (2) parts with furniture forming the dividing line: one part encloses the complainant’s and her children’s sleeping quarters; while the other part alternately serves as complainant’s receiving area, dining area and servant’s sleeping quarters.

On the evening of 27 March 1988, at around 9:00 o’clock, appellant Macalino, accompanied by one Ronnie Onoya, went to the complainant’s apartment building. Appellant Macalino, seeing complainant in the ground floor of the apartment building doing her laundry, approached her and inquired as to the whereabouts of his sister Librada Macalino. Complainant replied that Librada was no longer in her employ as a domestic helper, she having apparently left for her home province. Complainant Elizabeth then requested appellant Macalino to fetch her some additional water for her laundry work. Macalino complied with her request.

Upon his return from where the water faucet was located, appellant Macalino asked Elizabeth for permission to gather up his belongings which might have been left behind by his sister Librada.[2] Elizabeth allowed appellant Macalino to go upstairs to gather his things; she stayed downstairs continuing with her laundry work. Macalino’s companion, Ronnie Onoya, stayed outside the apartment building. At that time in the evening, Elizabeth’s two (2) children aged one (1) and two (2) years, respectively, had already been put to bed: the younger one occupied a crib, while Erlinda the victim was sleeping on Elizabeth’s bed.[3]

About fifteen (15) minutes after appellant Macalino had gone upstairs to complainant’s rented room to put together his belongings, complainant Elizabeth heard “a loud deep cry” of her daughter Erlinda. Elizabeth

immediately left her laundry work and hurried up to her room. There, Elizabeth saw the accused near Erlinda, buttoning up his pants. Upon seeing her mother, Erlinda ran towards complainant, naked waist down, crying and urinating at the same time. As she touched the buttocks of Erlinda, Elizabeth felt some sticky fluid thereon and noticed some blood on the child's private parts. Elizabeth tried to comfort her daughter by hugging her and asking her what was wrong; the latter pointed to her private part.

Complainant Elizabeth thereupon turned to appellant Macalino and furiously demanded to know what he had done to Erlinda and where the child's underwear was. Appellant Macalino answered "Wala, wala akong ginawa!" (Nothing, I did not do anything!) and "Andiyan, andiyan!" (There, there!), referring to Erlinda's underwear. All the while, appellant Macalino was buttoning his pants, fixing his clothes and moving around, apparently looking for a fan knife that he owned.[4] Elizabeth asked appellant Macalino to leave her apartment; the latter apparently refused to do so. Later, complainant's lessor, named Ester, arrived and sizing up the situation, asked and convinced Macalino to leave the apartment house.

The next day, 28 March 1988, complainant Elizabeth brought the child Erlinda to the Philippine Constabulary Crime Laboratory Service at Camp Crame, Quezon City for physical examination. Dr. Dario Gajardo, the examining physician, rendered a medico legal report which contained the following findings and conclusions:

"FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are undeveloped. Abdomen is flat and soft.

There is absence of pubic hair, Labia majora are full, convex and coaptated with the pinkish labia minora presenting in between. On separating the same are disclosed a congested vulvar mucosa and an elastic, fleshy type hymen with shallow fresh laceration at 6:00 o'clock. External vaginal orifice admits the tip of the examining index finger.

CONCLUSION

Findings are compatible with a recent loss of virginity.

There are no external signs of recent application of any form of trauma."[5]

Appellant Macalino was arrested by two (2) Criminal Investigation Service ("CIS") agents on 14 April 1988, and brought to Camp Crame where the present complaint for rape was prepared against him.

After trial, the court a quo rendered a decision with the following dispositive portion:

"IN VIEW OF THE FOREGOING, the Court finds the accused JOHNPET MACALINO y CALDERON guilty beyond reasonable doubt of the crime of rape and hereby sentences said accused JOHNPET MACALINO y CALDERON to reclusion perpetua with all its accessory penalties, to indemnify the victim, Erlinda Baldovino through her mother, Elizabeth C. Baldovino in the amount of THIRTY THOUSAND PESOS (P30,000.00) in compliance with the mandate in Articles 100, 104(3), 107 and 345 of the Revised Penal Code and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.

SO ORDERED."[6]

In his Brief, appellant Macalino ascribes the following errors to the trial court:

“I. The court a quo erred in convicting the accused on the basis of uncorroborated circumstantial evidence.

II. The court a quo erred in giving credence to the self-serving and biased statement of witness Elizabeth Baldovino.

III. The court a quo erred in giving undue importance to the testimony of the doctor.

IV. The court a quo erred in failing to appreciate the conduct of the accused after the alleged incident.

V. The court a quo erred in failing to hold that the constitutional presumption of innocence has not been overcome.”[7]

The appeal must fail.

The trial court’s finding of guilt beyond reasonable doubt is quite supported by the evidence of record. It is noteworthy that complainant Elizabeth not only identified appellant Macalino as the violator of her 2-year old daughter; the child-victim herself pointed to appellant Macalino in open court. The relevant portion of the transcript of Elizabeth’s testimony follows:

“FISCAL LIM: Now you mentioned that you suspected that the accused had sexual intercourse with your daughter Erlinda. Were you able to communicate with your daughter?

Complainant: No, sir. She was the one who told me that it was painful and so I asked her what was painful?

Q: This small girl was able to tell you that?

A: Even now sir, if you ask her what is painful even she doesn’t know how to talk, she could point to that painful part, sir. [sic]

Q: To what does your child point as ‘masakit’? [sic]

A: Her vagina, sir.

Q: What happened after she told you that her private part was painful?

A: She continued crying, sir.

Q: Did you have the occasion to ask her what caused the pain?

A: Yes, sir. I asked her.

Q: Was she able to answer?

A: She could not only answer orally, sir.

Q: How did she answer you?

A: I just asked her what is painful and she pointed to [her vagina] but she did not say anything, sir?

Q: Did she tell you who caused the pain?

A: Yes, sir. She could still remember.

Q: Even now?

A: Yes, sir. If I ask her who, she will point.

Q: Will you show to the Honorable Court.

Interpreter:

Witness, the mother, and the little girl [i.e., victim] going down the witness stand. Going near the place where the accused is seated.

COURT:

Call the accused in front.

Interpreter:

The accused is standing in front of the mother and the little girl.

The little girl is standing beside her mother.

The mother is asking the little girl 'ano ang masakit sa 'yo? and the little girl pointing to her private part.

The little girl pointing to the accused when the mother asked her 'sino ang umano sa 'yo?

The mother pointed to the Fiscal if he was the one who did it and the little girl pointed to the accused.

Fiscal:

Now did you have this little girl examined by any physician after the incident?

x x x x x x x x[8]

(Underscoring supplied)

Although Erlinda was much too young to be able to speak before the trial court, her pointing to appellant Macalino as the person who had inflicted pain upon her private part, was precise, clear and loud enough for this Court to hear. The testimony given by complainant Elizabeth, which was supplemented by the child Erlinda pointing to appellant Macalino, was clear and forthright. Appellant Macalino has not adduced any reason why this Court should overturn the full faith and credit given by the trial court to Elizabeth's testimony and that of the child.

Appellant Macalino put up the defense of simple denial. He testified that he had asked permission from Elizabeth to get his clothing inside the "aparador" in Elizabeth's apartment room, and was allowed to do so. He said that it only took him five (5) minutes to do so and that he went down again, but was requested by Elizabeth to fetch some water for her, which he did. Thereafter, he bade goodbye to Elizabeth and left. Appellant Macalino suggests that complainant Elizabeth's charges against him are false and motivated by desire for personal vengeance. In his Brief, appellant Macalino suggests that Elizabeth had brought the charges of rape against him.

"as a sort of vengeance against the accused-appellant and his sister or a leverage to gain back their company, considering that the duo are of great help to her especially so that she is alone with two (2) hapless children and estranged at that." [9]

We do not think that appellant Macalino's imputation of such a motive on the part of complainant Elizabeth deserves serious consideration. The supposed motive appears to us to be much too contrived and entirely inadequate to induce belief that Elizabeth had deliberately and falsely accused Macalino of such a serious crime as the rape of a two-year old child to compel (somehow) Macalino's sister to go back to Elizabeth's domestic service.

As earlier noted, the medico-legal report on the examination of the victim Erlinda Baldovino stated that there was "a shallow fresh laceration at 6 o'clock" on the hymen of the child and that the "external vaginal orifice" admitted the "tip of the examination index finger." The range of the possible causes of the "non-virgin state" of the victim Erlinda is quite limited. The hymenal laceration could have been due to penetration, however shallow,

of the vagina either by a penis or by some other organ (such as a human finger) or by an inanimate penis-like object. There was no suggestion even from the appellant that the two-year old child was somehow so sexually precocious as to have engaged in self-stimulation so violent as to have induced severe pain and bleeding and laceration. The physician who had examined Erlinda Baldovino testified in court that the hymenal laceration had been caused, in his opinion, by sexual intercourse, that is by penile penetration of the child's vagina. During his direct and cross-examination, the examining physician, Dr. Dario Gajardo, said in part:

“FISCAL BAYANI:

In your examination, will you please tell this Court your findings.

WITNESS (Dr. Gajardo):

If the Honorable Court will allow me to read the findings, sir.

COURT:

Read it.

x x x x x x x x

COURT:

In layman's language, what does it mean?

A: The area of both sides of the opening. When I speak of congested vulva, it means 'namamaga.' I found in the examination of the genital organ from outside to the hymen I found fresh laceration at 6:00 o'clock position. [sic] When I speak of 6:00 o'clock position, I mean that if you compare the vaginal opening [with] the face of the watch, the area of laceration is at the 6:00 o'clock posterial portion of the opening, Your Honor.

Q: What could have been the cause of this 6:00 o'clock position?

A: It could be sexual intercourse, sir.

Q: Could it be lacerated at 6:00 o'clock position when you use your finger?

A: Masturbation or fingering, your Honor.

Q: A 6:00 o'clock position could have [been] caused by fingering?

A: I would say laceration inside the genital organ. When you insert your finger, there is a presence of abrasion, sir.

Q: How old is the patient here?

A: Two (2) years old, your Honor.

Q: Did you examine the patient personally?

A: Yes, your Honor.

FISCAL:

You said the laceration was fresh. In your opinion, what age is the wound in terms of days?

A: Being [a] fresh laceration, not more than 12 or 24 hours, sir.

Q: Do you confirm and affirm the truth of all the statement or data you placed in this Exh. D and D-1?

A: Yes, sir.

FISCAL:

That's all, your honor.

COURT: Cross.

x x x x x x x x

ATTY. CABANGIS:

You also have a remark in this Exh. D and I quote, 'vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.' Is it not doctor [that] this means there was no injury in the sexual organ of the victim?

A: No, sir.

Q: It is very clear there was no sperm in the sexual organ of the victim?

A: Yes, sir.

Q: And is it not doctor, the injury in the sexual organ cannot be solely caused by penetration of the sexual organ of the male?

A: As I said, there were several causes of laceration to the sexual organ, sir.

Q: In this case, you cannot make a conclusion that the male sexual organ penetrated the sexual organ of the victim?

A: [As] I said earlier, it was due to sexual intercourse.”[10] (Underscoring supplied)

The Court notes that the testimony or medical opinion of Dr. Gajardo that the fresh laceration had been produced by sexual intercourse is corroborated by the testimony given by complainant Elizabeth that when she rushed upstairs upon hearing her daughter suddenly cry out, she found appellant Macalino beside the child buttoning his own pants and that she found some sticky fluid on the child's buttocks and some blood on her private part.

Appellant Macalino assails the credence accorded by the trial court to the testimony of Dr. Dario Gajardo. While it is true that the findings and conclusions of expert witnesses do not bind the courts, such findings and conclusions may nevertheless be accorded persuasive weight on the basis of the expertise of the witness on the subject of the testimony.[11] Defense counsel has not shown any reason for supposing that Dr. Gajardo had arbitrarily overlooked or disregarded facts or circumstances of importance in the instant case. Accordingly, we see no reason why his testimony and conclusion should be overturned. It is scarcely necessary to add that defense counsel did not try to suggest that Dr. Gajardo had any sinister motive or personal resentment that could have moved him falsely to testify against appellant Macalino or that would have discredited his expert testimony or opinion.

Appellant finally argues that his failure to leave immediately after complainant Elizabeth rushed upstairs upon hearing her daughter cry out, somehow showed that he had not raped the child. This contention is not persuasive at all. As the Solicitor General noted in his brief,[12] appellant Macalino could not have fled in the first place because he was “literally caught with his ‘pants down’ immediately after the fact” and, in the second place, the scene of the crime was Elizabeth's room located on the second floor of an apartment building, there being only one door leading to and from such room. In *People v. Hangdaan*,[13] the Court had occasion to reject a similar argument, saying that:

“He [accused-appellant] attempts to bolster such denial by pointing out that unlike his co-accused Romel Ballongan, who fled and remains at large, he did not hide, thereby showing that he is innocent of the crime charged.

Appellant’s pretended innocence is clearly non-sequitur to his decision not to flee. Apart from the fact that there is no case law holding that non-flight is conclusive proof of innocence, the argument does not hold weight in the light of the positive identification of the appellant by the victim as one of two (2) men who abused her. The material factor here is that there is positive identification of the accused as the author, or more accurately, a co-author of the crime.” (Underscoring supplied)

In the case at bar too, appellant Macalino was positively identified as the violator of the child Erlinda as she lay asleep on her mother’s bed.

WHEREFORE, for all the foregoing, the Court hereby AFFIRMS in toto the decision of the Regional Trial Court of Pasig, Branch 156, Metro Manila, dated 2 May 1989 in Criminal Case No. 72966, finding Johnpet C. Macalino guilty of the crime of rape. The civil indemnity shall, however, be INCREASED to P50,000.00, in view of the particularly repulsive and unnatural character of the crime here committed. Costs against accused-appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide Jr., and Romero, JJ., concur.

[1] Complaint, Rollo, p. 3.

[2] Accused-appellant had previously stayed at complainant’s rented room, upon the request of Librada. During those occasions, accused-appellant would leave some of his things with Librada (TSN, 30 May 1988, p. 7; TSN, 17 August 1988).

[3] TSN, 17 August 1988, p. 8; Trial Court Decision, p. 2.

[4] TSN, 30 May 1988, p. 6.

[5] Records, p. 120; Folder of Exhibits, Exhibit “D.”

[6] Trial Court Decision, p. 8; Rollo, p. 20.

[7] Appellant’s Brief, p. 1; Rollo, p. 54.

[8] TSN, 30 May 1988, pp. 7-8.

[9] Rollo, p. 54; Appellant’s Brief, p. 8.

[10] TSN, 15 December 1988, pp. 2-4.

[11] *People v. Tolentino*, 166 SCRA 469 (1988); *People v. Dejucos*, 156 SCRA 469 (1987); *People v. Valdez*, 150 SCRA 405 (1987).

[12] Rollo, p. 87; Appellee’s Brief, pp. 14-15.

[13] 201 SCRA 568, 573 (1991).

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