

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JAIME MAGALLANES Y PACHO, ACCUSED/APPELLANT.

G.R. No. 89036. January 29, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Lilian I. Malimban, on behalf of her five year-old daughter, Leah I. Malimban, filed a complaint for rape against appellant Jaime Magallanes y Pacho before the Regional Trial Court of Cavite City, allegedly committed as follows:

"That on or about January 10, 1988, in the City of Cavite, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused through force and intimidation, done by beating the victim, did, then and there, wilfully, unlawfully and feloniously sexually abused by having carnal knowledge of her, one LEAH ILANO MALIMBAN, a five (5) year-old child against her will and consent." (Rollo, p. 2)

Upon arraignment, appellant entered a plea of not guilty.

The facts, as found by the trial court, are as follows:

"Lilia I. Malimban on the witness stand, testified that she is the mother of five-year old Leah I. Malimban; that she has a stall in the public market of Cavite City where she lives with her three children; that on January 10, 1988 at 4:00 o'clock to 5:00 o'clock in the afternoon she was in the stall when her daughter, Leah, went home looking strange and from her maternal instinct she felt something wrong had happened; that when her children took a bath, Leah also went with them and took her bath; that thereafter laid down and covered herself with a blanket and when she removed it from her face she insisted on covering her face and there was a brownout and when the lights were on she noticed that the place where she was sitting on was full of blood; that she followed her to her mother's house but she had gone to her auntie's house instead and there they saw that her private part was already bloody and so rushed her with the help of people there to the Olivia Salamanca Hospital where she was given first aid while waiting for Dr. Santos and then and there, interviewed by a nurse named Cita Custodio and who asked her who her playmate was, told her it was 'Jaime'; that after treatment, Dra. Liza M. Santos issued a medical certificate attesting to the sexual assault on the child and thereafter she was told to go to the police station where charges were filed against the accused and he was ordered arrested in his house that very night.

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"Presented in Court, Sgt. Adriano Aguilar, Asst. Chief of the Investigation Division of the Cavite City Police Station, testified that on January 10, 1988 he investigated the accused Jaime Magallanes on complaint of the mother of Leah Malimban; that he took her statement and also investigated the accused who refused to continue with his statement; that upon picking up the accused he brought him to the hospital the following day to be confronted by the victim as she was still in shock that night; that the child Leah Malimban identified the accused in the hospital and pointed to him as the culprit; thereafter he brought back the accused to the police station and filed the corresponding charges and in connection therewith he executed a sworn statement (Exh.

D).

"The little girl, Leah, testified in a seemingly intelligible manner telling the name of her mother and informed the Court that she was not studying; that she knows Jaime, the accused, and pointed to him and stated that he was her playmate and that Jaime did something to her, boxed her on her face and removed her shorts and also removed his shorts and thereafter she fell asleep and knew nothing further.

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"Dr. Liza Santos, an obstetrician and gynecologist and consultant in the Dra. Olivia Salamanca Hospital in Cavite City, testified that on the night of January 10, 1988 she examined Leah at the delivery room of the hospital; that the patient was in the state of shock, pain and trembling; that there was profuse bleeding and hemorrhage and she had an injection of intravenous fluid into the body of the child, a complete blood count and blood typing and blood transfusion; that profuse bleeding came from her genital area and she was given sedation during physical examination and the following findings were found: Lacerated wound, left labia majora; lacerated fourchet; hematoma 2 x 1 near nape; hematoma 1 x 1 on left breast. She also said that laceration on her organ could be caused by a man's organ having been introduced with force while hematoma on the cheek and other parts of the body could have been due to a slap or blows applied to the person.

"Greta Ilano, grandmother of the victim, testified that she took care of the child in the hospital for three days and three nights where she suffered from bleeding and that while in the hospital, Sgts. Pilapil and Aguilar of the Cavite City Police came with Jaime Magallanes who was presented before Leah and she stared at him and barely removed her gaze at him and she was patently afraid and when asked by the policeman who molested her, she pointed to the accused." (Decision, pp. 1-5; Rollo, pp. 12--16).

Giving credence to the case as established by the prosecution, the trial court rendered judgment finding appellant guilty as charged, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Jaime Magallanes guilty beyond reasonable doubt of Rape and he is hereby sentenced to undergo imprisonment for reclusion perpetua, and to pay the costs." (Rollo, p. 20)

In this appeal, appellant ascribes the following errors:

"I. THAT THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN GIVING FULL FAITH AND CREDIT TO THE LONE TESTIMONY OF FIVE-YEAR OLD LEAH ILANO MALIMBAN.

"II. THAT THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN FAILING TO GIVE PROBATIVE VALUE AND CREDENCE TO THE THEORY OF THE DEFENSE.

"III. THAT THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN FAILING TO ACQUIT HEREIN ACCUSED-APPELLANT ON GROUNDS OF REASONABLE DOUBT.

"IV. THAT THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE LACK OF STRONG AND CONVINCING EVIDENCE." (Appellant's Brief, p. 2; Rollo, p. 39)

Simply stated, appellant takes issue with the credibility of the prosecution witnesses.

In this regard, suffice it to state that this Court accords great respect to the credibility of witnesses as weighed by the trial courts for they are 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. Briones*, 202 SCRA 708 [1991]; *People v. Lorenzo*, 200 SCRA 207 [1991]). Though there are certain exceptions, none exists in the case at bar.

In addition, appellant interposes the defense of alibi. Alibi is considered the weakest of defenses because it can easily be fabricated and cannot stand in the light of clear, positive and precise evidence of the prosecution establishing the identity of the accused (*People v. Gupo*, 190 SCRA 7 [1990]; *People v. Arbolante*, 203 SCRA 85 [1991]). So must it be in this case.

Similarly, this Court has consistently ruled that for alibi to prosper, the circumstances of time and place must be met (*People v. Alvarez*, 169 SCRA 730 [1989]). Not only must the accused be somewhere other than the place of the commission of the crime but that it was physically impossible for him to have been at the situs of the crime at the time of its commission (*People V. Urquia, Jr.*, 203 SCRA 735 [1991]). Here, the place of the commission of the crime, which is the city market, is just about a stone's throw away from Cine Maria, where the accused and his wife allegedly watched a movie. Such proximity negates the impossibility of the accused having committed the imputed offense. In *People v. Abuyan, Jr.*, (G.R. Nos. 95254-55, July 22, 1992), the defense of alibi was not sustained though the distance involved was two and a half hours travel by bus. In the case at bar, alibi cannot be considered because the distance between the scene of the crime and the movie house where appellant allegedly was, could be negotiated on foot in just a matter of minutes. Appellant, therefore, could have entered the movie house after molesting the victim.

In any event, this Court has invariably ruled that alibi is unconvincing and unsatisfactory when raised as a defense in rape cases (*People v. Dadaeg*, 137 SCRA 500 [1985]; *People v. Cudalina*, 63 SCRA 499 [1975]). Given the nature of appellant's disclaimer and circumstances at hand, We find the foregoing rule fully applicable in the case at bar.

The only eyewitness presented by the prosecution is the victim herself, Leah, who was only five years old at the time of the commission of the crime and at the time she testified in court.

Underscoring such circumstance, appellant seeks to destroy the victim's credibility by pointing out that she was smiling while testifying and did not show any sign of fear, anger or shock upon seeing appellant in court.

After a careful review of the records, We find no error committed by the court a quo in giving full weight and credit to the testimony of little Leah who, in all her childhood innocence and naivety, could not have possibly concocted the story she related in court as to how she was wantonly ravished and sexually assaulted by the appellant.

As records show, the only instance Leah smiled was when she was asked about her age. Her smile could mean anything. It could have been that she was glad that the person who molested her had been caught and would be punished. Or, it could only be a manifestation of pure innocence considering her tender age. But one thing is clear, the victim exhibited nary a smile when asked about the horrible offense committed against her person.

Records further reveal that when Leah was confined in the hospital with her grandmother, she became visibly frightened at the sight of appellant when presented to her by the police for identification (*Rollo*, pp. 55-56). Needless to say, appellant's allegation that Leah reacted casually and was neither shocked nor frightened when she saw him cannot be given any credence and/or adverse inference.

The lone testimony of the victim in a prosecution for rape, if credible, is sufficient to sustain a verdict of conviction and the mere allegation that a witness is of a tender age will not suffice to disqualify her from taking the witness stand. The rationale behind this ruling is the very nature of the offense where oftentimes, the only evidence that can be adduced to establish the guilt of the accused is the offended party's testimony (*People v. Santiago*, 197 SCRA 556 [1991]; *People v. Santos*, 183 SCRA 25 [1990]).

Appellant further contends that he could not have sexually abused Leah because the latter answered in the

negative when asked by the court if he laid on her.

The contention is misleading. We have thoroughly reviewed the records and found no categorical statement by Leah that appellant did not lie on top of her. The fact is, Leah lost consciousness in the course of appellant's carnal assault. Her testimony is as follows:

"FISCAL DIESMOS:

"Q - Leah, do you remember Jaime having done something to you?

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"A - Yes, mam.

"Q - What was that?

"A - He boxed me on my cheek.

"Q - What else did he do to you?

"A - I was pushed by him.

"Q - What else?

"A - I was pushed.

"COURT:

"Q - After pushing you, what did he do?

"A - My short was removed.

"Q - After removing your short, what did he do?

"A - He removed also his short.

"Q - After removing his short, what did he do?

"A - I was able to sleep and I know (sic) nothing." (TSN, April 11, 1988, p. 28)

Apparently, the complainant lost consciousness after having been boxed by appellant. The fact that complainant was boxed by appellant is confirmed by the findings of Dr. Liza Santos who testified that there were hematomas on the nape, cheeks and breasts of the complainant. Consequently, complainant could not explain what exactly was done to her by appellant. Instead, she told the court that when she woke up she took a bath and her private part was bleeding (Decision, p. 3; Rollo, p. 14).

The testimony of Leah was corroborated by Dr. Santos who examined her and found her in a state of shock, pale and trembling (TSN, April 11, 1988, p. 32). Dr. Santos also testified that she found lacerations in Leah's vagina indicating that she was sexually abused (Ibid., pp. 33-34).

In this regard, appellant argues that even the testimony of the examining physician is not conclusive as to the fact that the lacerations on the labia majora of the victim's vagina could have been solely caused by a male organ forcibly introduced into the vagina since there could have been any other cause. According to appellant, this possibility is great considering the hyperactive nature of the five-year old victim who is prone to hurting or injuring herself during her daily activities (Appellant's brief, p. 8; Rollo, p. 44)

Though the doctor may have admitted that the injury to the victim could also have been caused by a blunt object

other than a male organ, it does not necessarily follow that the victim was not raped, unless the natural course of events is disregarded in preference to surmises and conjectures. In the same manner, absence of spermatozoa in the vaginal canal does not preclude the existence of rape (*People v. Banayo*, 195 SCRA 543 [1991]; *People v. Eclarinal*, 182 SCRA 106 [1990]; *People v. Ando, Jr.*, 180 SCRA 412 [1989]; *People v. Abonada*, 169 SCRA 530 [1989]). In fact, the hymen need not be broken to establish that rape has indeed been committed (*People v. Bacalzo*, 195 SCRA 557 [1991]).

Finally, the insistence of the defense that there were four (4) other "Jaime's" or persons bearing the same name (Jaime) as appellant who could have committed the crime and not the herein appellant, is belied by the fact that the victim unequivocally pointed twice to appellant as the man who molested her, once at the hospital when asked by the policemen and the other in open court during the trial. Appellant not only failed to disprove that it was he who removed the victim's shorts or panty. He also presented no evidence to show that there was anybody else other than him then present who could have sexually molested the hapless child.

WHEREFORE, the appealed judgment is hereby AFFIRMED and the amount of indemnity is hereby increased to P50,000.00 in line with current jurisprudence. Costs against appellant.

SO ORDERED.

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

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