

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PERMISON, ACCUSED-APPELLANT.

G.R. No. 89664. July 26, 1991

Ponente: PARAS, J.

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PARAS, J.:

An appeal from the decision* of the Regional Trial Court of Dagupan City, Branch 40, in Criminal Case No. D-5703 convicting the appellant Jose Permission of the crime of Rape.

The prosecution's version of the facts follows:

On July 8, 1983, at about 11:00 o'clock a.m., Rowena Permission, then six (6) years old, was on her way home from her kindergarten class at Bantayan Elementary School, Mangaldan, Pangasinan when she was accosted by the appellant who told her "Come here and I will have sexual intercourse with you" (t.s.n., pp. 6 and 9, August 30, 1985). On hearing the appellant's remarks, Rowena tried to run away from him. The appellant who is Rowena's uncle, being the brother of her father, chased Rowena and after getting hold of her, dragged her to a nearby bamboo grove where he removed her panty and his pants, and inserted his penis into her vagina. Rowena felt pain in her vagina and something hot came out from the appellant's penis (t.s.n., pp. 6-10, Ibid.). Afterwards, the appellant whipped Rowena with a stick and sent her away with a warning not to report the matter to her mother. Rowena went home crying and immediately reported the matter to her mother. On the same day, her mother, Belinda, brought her to the Pangasinan Provincial Hospital in Dagupan City where she was examined by Dr. Fediles Ochave. (t.s.n., pp. 9-10, Ibid.).

The medical examination conducted by Dr. Ochave revealed these findings:

" - Conscious, does not answer to question.

No external sign of physical injury.

Pelvic exam.

presence of slight congestion of labia minora and majora right and left.

hymen intact

vagina - can not admit even the small finger

rectal exam - Uterus small

adnexae - free

Suggest - Smear for presence of spermatozoa taken from vulva

Smear for presence of spermatozoa taken from a panty brought by the mother which contained about 2 cc mucoid like material whitish with reddish streaks

Vulva smear - Negative for spermatozoa.

Taken from panty - Negative for spermatozoa."

Vide, Exh. "A".

The following day, Belinda reported the incident to Barangay Captain Rogelio Dizon who accompanied her to the police where she lodged a complaint for rape.

On the other hand, the evidence for the defense tends to show that on July 8, 1983, the appellant was at home taking care of his nine-month old child as his wife was washing their clothes; that in the afternoon of the same day, he was summoned by the Barangay Captain on complaint of Belinda that he whipped his niece, Rowena, when the latter came home from school; that he immediately appeared before the Barangay Captain to deny the charge but Belinda had left for awhile; that he waited for Belinda until 6:00 in the evening but the latter no longer returned; that three days thereafter, he was again summoned by the Barangay Captain on complaint of Belinda that he raped Rowena on July 8, 1983; that he waited for Belinda at the Barangay Captain's house but the latter did not return; that he did not commit the crime attributed to him; and that his sister-in-law Belinda fabricated the rape charge against him because he threatened to kill her in a previous quarrel. (p. 28, Rollo).

Corroborating the appellant's testimony, the Barangay Captain confirmed that on July 8, 1983, the only complaint of Belinda was that the appellant whipped Rowena when the latter came home from school; that he confronted the appellant who denied whipping Rowena but Belinda did not return anymore; that it was on the following day when Belinda told him that Rowena was abused by the appellant; that he again summoned the appellant who appeared before him but Belinda, who had left as before, did not return anymore, and so he again sent the appellant home. (T.s.n., pp. 201-209, March 16, 1987).

Cipriano Biala, whose land adjoins the school site in Bantayan and is traversed by the pathway, testified that he worked on his land the whole day of July 8, 1983; that he saw Rowena and her twin brothers on their way to school and on their way back at about 10:00 o'clock in the morning; and that nothing untoward happened to them. (T.s.n., pp. 4-10, September 21, 1987).

Two other neighbors, Menardo Caballero and Alfonso Gonzales, testified that they saw the children of Belinda going to and from the school on July 8, 1983 but that nothing unusual happened when they passed by. (T.s.n., pp. 12-15, September 21, 1987).

Lucrecia Abrigo, the teacher of Rowena (T.s.n., pp. 3-4, January 23, 1989), testified that neither Rowena nor her mother complained to her of any act committed against Rowena, nor was she notified of any complaint. (pp. 4-5, Id.).

On April 24, 1989, the trial court rendered judgment, the decretal portion reading as follows -

"WHEREFORE, the accused Jose Permison is found guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 (3) of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua, to indemnify the offended party, Rowena Permison, the amount of P50,000.00 as moral damages and to pay the costs." (p. 31, Rollo)

In this appeal, the appellant assigns the following as errors:

1. The trial court erred in finding the appellant guilty beyond reasonable doubt notwithstanding the fact that the testimony of the alleged victim Rowena is not only uncorroborated but is inconsistent with human experience and behavior;

2. The trial court erred in not considering the fact that the alleged victim's mother Belinda had sufficient motive to falsely charge the appellant with rape.

3. The trial court erred in not believing the testimony of the appellant as corroborated by his witnesses.

We shall discuss the errors together as they all hinge on the issue of credibility of witnesses.

The quantum of evidence required to sustain a conviction for rape supported by the lone testimony of the complainant has been laid down as follows:

"The rule is, a judgment of conviction for the crime of rape cannot be based on the testimony of the offended party alone unless such testimony is clear, positive, and convincing, or supported by other undisputed facts and strong circumstantial evidence disclosed by the record. (People v. Poblador 76 SCRA 634). In People v. Lacuna, 87 SCRA 364, We held that:

‘x x x In a rape case, the uncorroborated testimony of the offended party may be sufficient under certain circumstances to warrant conviction. But for this rule to obtain, the lone testimony of the woman victim must be clear and free from any serious contradiction, her story must be impeccable and must ring (true) throughout or bear the stamp of absolute truth and candor. (People v. Royeras, 130 SCRA 250)

We fully realize that Rowena was of very tender age at the time of the alleged incident. Her minority, however, does not necessarily lend credence to her complaint. Numerous circumstances, detract from the credibility of Rowena's version of what happened at about noon of July 8, 1983. At the trial, she testified -

ATTY. REGINO

Q. On your way home, after your school on said morning and said date, is there anything that happened to you?

A. Yes, sir, there was.

Q. What happened to you?

A. I was dragged by my uncle Berting into the bamboo groves and he removed my panty and he had sexual intercourse with me, sir.

Q. Who is this uncle Berting that you are referring to?

xxx xxx xxx

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The witness went down from the witness stand and walked towards the persons and looked around, after which, she pointed to a man inside the courtroom and when asked, answered by the name of Jose Permison.

xxx xxx xxx

ATTY. REGINO

Q. When he was able to overtake you, what did he do?

A. He removed my panty and he removed his panty also and he put his penis inside my vagina, sir.

Q. How did you feel when your "Mama Berting" put his penis inside your vagina?

A. I felt pain, sir.

Q. Aside from pain, did you feel anything?

A. Yes, sir.

Q. What did you feel?

A. Something came out from my Uncle Berting which is very hot, sir.

Q. Where did you feel that liquid that is hot?

ATTY. GUBATAN

Objection, Your Honor, she did not say liquid.

Court

Reform the question.

ATTY. REGINO

Q. Where did you feel that something hot in your body?

Witness

In my vagina, sir.

(T.s.n., pp. 6-11, August 30, 1985)

The theory of the prosecution, however, does not inspire belief. Medical findings which are bereft of telltale signs negate carnal intercourse. Elaborating on her findings, Dr. Ochave explained -

Q. In your findings, you stated further "presence of slight congestion between labia minora and majora right and left". What do you mean by slight congestion?

A. There is increase in color of that certain tissue. It is reddish in color. There is increase in color.

x x x

Q. What is the possible cause of this slight congestion?

A. It may be due to a pressure from an object or by scratching, sir.

Q. Between the two possible causes that you stated, considering the size of the genitalia of Rowena Permison, would you say that the scratch is more the act that caused the discoloration or congestion?

A. It is possible, sir.

x x x

Q. If that object (referring to the penis) is applied with force upon the genitalia of that girl like Rowena Permison, it could not have caused only a minimal or slight congestion, but instead it would be an extensive congestion?

A. Yes, sir.

(T.s.n., pp. 8-17, March 10, 1986)

x x x

Q. You also quoted in Exhibit "A" the following "hymen intact". Are we made to understand that there was no sign at all that you noted to indicate that that part of the genitalia of Rowena Permison was touched?

A. None, sir.

Q. You further stated in Exhibit "A" the following: "Vagina - can not admit even the small finger". Will you further explain this finding, why is it that that was the condition of that part of Rowena Permison?

A. Because the vagina of the child is very small, sir.

Q. You tried to insert your finger?

A. Yes, sir.

Q. Your smallest finger?

A. Yes, sir.

Q. The vagina of Rowena Permison can not admit your small finger?

A. Yes, sir.

(pp. 17-19, Ibid.)

Since there is nothing in the medico-legal findings that would support Rowena's claim of rape, her mother, Belinda, in her bid to show that intercourse had taken place, introduced Rowena's panty which contained about 2 cc. mucoid like material with reddish streaks. The said mucoid like material, however, which was subjected to laboratory analysis is of doubtful evidentiary value. Dr. Ochoa testified thus -

Q. This mucoid like substance which you found in the panty as you said could come from an expression of a male person or from the nose of a person considering that you found mucous in the panty that was allegedly given to you by the mother of Rowena Permison. Is it possible that a person used that panty wiped the nose, flowing nose of a person either the mother who gave the panty to you or Rowena Permison herself because at that time she was crying?

Witness

A. It is possible, sir.

x x x

Atty. Gubatan:

Q. If according to you in your findings written in Exhibit A, there is reddish streaks on the mucoid like material, is it not more possible that that substance came from a bleeding nose than a male person?

Witness:

A. It may come from an injured tissue which caused the bleeding, sir.

x x x

Q. But you did not find any bleeding tissue in the entire female organ of Rowena Permison, did you not?

A. None, sir.

x x x

Q. If there is no breakage on the tissue of Rowena Permison, where did that blood come from?

Witness

A. It may have come from the tissue where the mucous came from than from an injured tissue.

(T.s.n., pp. 31-35, Ibid.)

While this Court has, in numerous cases affirmed the judgments of conviction rendered by the trial court in rape charges especially where the offended parties were very young and presumptively had no ill motives to concoct a story if only to secure indictments for a crime as grave as rape, this Court likewise reversed judgments of conviction and acquitted the accused when there were strong indications pointing to the possibility that the rape charges were merely motivated by some factors except the truth as to their commission.

In the instant case, Rowena's mother who filed the complaint, has strong motives to falsely charge the appellant because there is bad blood between her and the appellant and his wife, beginning a few months before the alleged incident, and continuing. They had a quarrel and the appellant threatened to kill her.

On cross examination, Belinda testified -

Q. That small house is near the house of your brother-in-law, Jose Permison, the accused in this case is it not?

A. Yes, sir.

ATTY. GUBATAN

Q. And because of some misunderstanding, you (left) that house and transferred to the house of your parents, did you not?

A. Yes, sir.

Q. Do you remember the day when you transferred to the house of your parents?

A. February. I do not know the exact date.

Q. Was it in 1983?

A. 1983.

Q. Now, can you still recall the cause of that misunderstanding that prompted you to abandon your previous house and transfer to the house of your parents?

A. Yes, sir.

Q. Please tell the Court.

A. I transferred to the house of my parents because Berting warned that he will kill me.

Q. When you said Berting, are you referring to the accused in this case?

A. Yes, sir.

Q. Can you tell the Court the reason, if you know, why Berting or the accused in this case said that he will kill you?

A. Yes, sir. He will kill me if I will not leave that house.

ATTY. GUBATAN

Q. Was there any exchange of words between you and the accused at that time he threatened to kill you?

A. Yes, sir. He said 'Animal'.

Q. What was the immediate cause of your altercation on that particular occasion? Do you still remember?

A. I ordered his child not to throw the waste matter or the pan which was placed beside our kitchen. And when his wife told me something, I answered, then he appeared on the scene.

x x x

Q. And since that incident in February, 1983 up to the present, you were not in talking terms with the accused, is it not?

A. Yes, sir. (T.s.n., pp. 10-13, June 20, 1985)

Rowena heard the appellant's threat to kill her mother, and she hated him ever since. On cross examination, she testified -

COURT

x x x.

Were you close to your uncle Berting when you were still young?

A. No Madam.

ATTY. GUBATAN

Q. Why?

A. Because my uncle Berting said, he will kill my mother. (T.s.n., p. 15, October 10, 1989).

Q. Were you present when your uncle Berting threatened to kill your mother?

A. Yes, sir.

Q. At that time, your house (was) very near the house of your uncle Berting, is that right?

WITNESS

A. Yes, sir.

x x x

Q. Since that time, you have hated your uncle Berting because of what he did to your mother, have you not?

A. Yes, sir. (pp. 19-20, Ibid.)

The foregoing circumstances more than suffice to cast doubt on the credibility of Rowena's testimony. On the other hand, the appellant's denial of the charge is credible, corroborated as it is by disinterested witnesses, one of them being the Barangay Captain no less.

The appellant's immediate response to the summons of the Barangay Captain to oppose the charges imputed to him is an act consistent with innocence. As the saying goes "the guilty flees even if no one pursueth, but the innocent stands as brave as a lion." (People vs. Aragona, 138 SCRA 571).

While the rule of long-standing is that alibi is a weak defense, it is an equally enduring rule that the prosecution must rely on the strength of its evidence rather than on the weakness of that of the defense. (People vs. Hora, 153 SCRA 21). In the instant case, the Court has no option but to declare that the prosecution has failed to meet the exacting test of moral certainty and proof of guilt of the appellant beyond reasonable doubt. A reversal of the trial court's guilty verdict is inevitable.

WHEREFORE, the decision of the trial court is hereby REVERSED. Accused-appellant is hereby ACQUITTED of the charge against him.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Deodoro J. Sison

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