

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR CERVANTES, ACCUSED-APPELLANT.

G.R. No. 90257. May 21, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

Accused-appellant Cesar Cervantes seeks a reversal of the decision of the Regional Trial Court of Pasig, Branch 156[1] convicting him of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim in the amount of P25,000.00.[2]

The facts gathered from the evidence of the prosecution are as follows:

Marivic Ortega and her family had been renting for more than three years a room in the house of Cesar Cervantes' mother at No. 577, Abella's Compound, Mandaluyong, Metro Manila.[3]

At about 11:00 o'clock in the evening of November 29, 1987, while Marivic, her mother and her brother were already asleep, Marivic's father and Cervantes had a drinking session. After a while, Marivic's father, who was already drunk, retired for the night.[4] A few minutes later, Marivic felt a hand touching her breast, rousing her from her sleep. She tried to stand up, but Cervantes got hold of her hands and pulled her down to the sofa. He then went astride her, forcibly removed her underwear, slid a finger into her vagina, and mashed her breast. When the eleven-year-old girl resisted, Cervantes showed her his fist and said: "Huwag kang gagawa ng eskandalo, kung hindi papatayin kita." ("Don't cry out or I will kill you.") He then stripped himself, placed himself on top of her again and kept on mashing her breast. A little later, Marivic felt his manhood being inserted into her private part, causing her extreme pain. Afterwards, Cervantes went out of the house.[5]

As Cervantes continued to threaten her whenever they saw each other, Marivic kept to herself the affront to her honor. But when on December 3, 1987, Cervantes tried to molest her again, the girl hit him with a broomstick. This incident, witnessed by Anita Gabatino, impelled Marivic to disclose to her parents Cervantes's sexual assault upon her on November 29, 1987.[6] Her father then brought her to the Municipal Hall, and then to the PC INP Crime Laboratory Services at Camp Crame,[7] to report the incident.

On December 7, 1987, Marivic was physically examined. The examination revealed a shallow healed laceration at 7:00 o'clock and a deep healed laceration at 6:00 o'clock in the fleshy type hymen of her genital organ.[8]

The complaint subsequently filed against Cesar Cervantes resulted, after trial, in his conviction.

In this appeal, Cervantes stresses that while the complainant testified that she was abused at 11:00 o'clock in the evening of November 29, 1987,[9] she also declared that at about the same hour that same night, her father and the accused were drinking together.[10] Her father also testified that he arrived early that night and had a drinking bout with Cervantes,[11] but the truth was that they started drinking at around 10:45 and ended at 11:30 that night.[12] Thus, it could not have been possible for the accused to rape Marivic and at the same time be drinking beer with her father.

This argument is shallow. The testimonies of both parties as to the time these events transpired were but mere estimate. They were not supposed to be a precise chronology. It would seem most unlikely that Marivic would consult her watch, assuming she had one, to ascertain the exact time when she was being sexually abused. It was enough for her to declare that she was raped at the time her father was already sleeping. Thus, when the trial court asked her how she could have been raped at 11 o'clock when she herself said her father and Cervantes were then still drinking, she protested:

A: No, your Honor. That was the time when my father was already asleep.[13]

The appellant's brief also invites the attention of this Court to the size of the room where the rape was allegedly committed. It measures 3 x 3 1/2 meters. The argument that in such a small room, and with all the family members sleeping there, a single shout for help from Marivic, or even the noise created by Cervantes during the alleged rape, could have awakened any of the occupants of that room.[14]

It must be recalled that Marivic could not bring herself to scream because of her assailant's threat. She was constrained to silently yield to his lustful attack. It is possible that there was not enough noise to awaken the other occupants from their slumber. Besides, rape may take only a short time to consummate, given especially the stealth that accompanies it and the anxiety to finish it as soon as possible to avoid discovery and apprehension.

To further impugn Marivic's credibility, the accused-appellant points out that while she initially testified that he boxed her, she declared later that he had just threatened her.[15]

This is a minor inconsistency and does not impair the essential veracity of her testimony. Her failure to recall every single detail of her horrible experience bolsters rather than weakens her credibility. Besides, whether the accused boxed her or merely threatened her is immaterial as force or intimidation does not have to be established when rape is committed against a girl under 12 years of age.

It is next asserted that the two lacerations on the complainant's organ could have been caused not by sexual intercourse but by self-manipulation or masturbation, there being no extensive abrasions or contusions on the walls of the labia minora. The answer to this is that the absence of extensive abrasions or contusions on the vaginal wall does not rule out rape because the slightest penetration is enough.[16]

Finally, the accused-appellant wonders why the alleged rape was reported to the authorities only on January 4, 1988, or 36 days after the said incident. The records show that Marivic went to the police to complain as early as the first week of December, 1987. In fact, she was physically examined on December 7, 1987, upon a request dated December 6, 1987[17] of the Commanding Officer of the Camp Crame General Hospital. January 4, 1988 was the date when Cervantes's mother went to the Municipal Hall of Mandaluyong to verify if there was really a case against her son.[18]

Marivic's delay in reporting the rape does not mean it did not happen. It is not uncommon for young girls to conceal for some time the sexual abuse committed against them because of the rapist's threat to their lives. There is also their natural reluctance to admit that their chastity has been sullied and to expose themselves not only to official interrogation with all its attendant embarrassments but also to the morbid curiosity of the general public who is interested only in the prurient details of the ravishment than in the vindication of the victim and the punishment of the rapist.

The intimation that the rape charge was prompted by the ejectment of the complainant's family from the leased premises for their failure to pay monthly rentals deserves little attention and is hereby rejected.

The Court is convinced that the trial court committed no error in finding the accused-appellant guilty of raping the 11-year old Marivic. He fully deserves the penalty of reclusion perpetua for his beastly assault on his innocent

victim, who will never experience the sweet surrender of her virginity to the man for whom she could have preserved it and to whom she could have offered it with purity and love.

WHEREFORE, the appeal is DISMISSED. The challenged decision is AFFIRMED, but with the modification that the accused-appellant shall also indemnify Marivic Ortega in the amount of P30,000.00. It is so ordered.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Presided by Judge Martin S. Villarama, Jr.

[2] Rollo, p. 17.

[3] TSN, August 19, 1988, pp. 4-5.

[4] TSN, February 23, 1989, p. 6.

[5] TSN, August 19, 1988, pp. 7-8; October 6, 1988, pp. 3-4.

[6] TSN, October 6, 1988, pp. 4-5.

[7] February 23, 1989, p. 4

[8] Exhibit B, Original Records, p. 84.

[9] TSN, October 6, 1988, p. 2.

[10] Ibid., p. 3.

[11] February 23, 1989, p. 6.

[12] March 16, 1989, p. 3.

[13] TSN, October 6, 1988, p. 4.

[14] Brief for the Appellant, pp. 13-14.

[15] TSN, August 19, 1988, p. 9.

[16] *People v. Tismo*, 204 SCRA 535 citing *People v. Somera*, 170 SCRA 428; *People v. Cruz*, 180 SCRA 765 and *David v. CA*, 182 SCRA 675.

[17] Exhibit C, Original Records, p. 83.

[18] TSN, July 21, 1989, pp. 3-4, 6.

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