

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PORFERIO IGNACIO, DEFENDANT-APPELLANT.

G.R. No. 90318. July 24, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The complaining witness said her father raped her twice. The father maintained a flat denial. The trial court believed her and sent him to jail. He is still there awaiting the outcome of this appeal.

The daughter is Paulina Ignacio Galan, who was 26 years old when the alleged incidents occurred. She is a widow. She has two illegitimate children. She has two surviving legitimate children by her late husband. The fifth child, according to her, was the result of the rapes.

She is unlettered and apparently of limited intelligence. Because of this, the prosecutor requested and was given permission to ask her leading questions.

The father is Porferio Ignacio, who was 59 years at the time of the alleged rapes. He lives with his wife in the house where he allegedly violated his daughter. He seems to be hard of hearing.

The information for rape was filed against him on January 14, 1987, with the Regional Trial Court of Southern Leyte.

Paulina testified that her father raped her at about 8 o'clock in the evening of June 8, 1986, in her parents' house at Anahawan, Southern Leyte. Her mother was away at the time, attending a wake. She said that while she was lying on the floor, her father approached her, pointed a bolo at her breast, pulled off her panty and forcibly mounted her. He said he would kill them all if she reported the attack.

She swore that he raped her a second time, but her testimony on this point is rather confused. First she said this happened shortly after the first rape, before her mother returned at 9 o'clock that same evening. On cross-examination, she said the second rape was committed early the following morning, about twelve hours later.

The father indignantly denied the charge. He said he could not have raped Paulina on that date because she was still in Manila then. When she came back and sought to stay with them in his house, he turned her down because he "could not understand her behavior." This he said must have been the reason for her accusing him. He inferred that another man had caused her pregnancy because she was already with child when she returned from Manila in June 1986.

After trial, Judge Walerico B. Butalid found the accused-appellant guilty as charged and sentenced him to the penalty of reclusion perpetua. He was also ordered to pay civil indemnity to the victim in the amount of P25,000.00.[1]

The accused-appellant now seeks reversal of this decision on the ground that the trial court should not have given credence to the evidence of the prosecution.

The appellant's brief points to the many contradictions in Paulina's testimony, to underscore her lack of credibility. It stresses that on direct examination she said she did not resist her father's attack because of her fear of him,[2] but on cross-examination she said she struggled and kicked him before he finally subdued her.[3] She said first that she was alone when she was raped[4] but on cross-examination she recollected that her three children were sleeping in the same house at the time.[5] She claimed that she was raped twice before her mother arrived at 9 o'clock[6] that night but later said her mother arrived at about 11 o'clock p.m.[7] and that the second rape was committed at 8 o'clock the following morning.[8] She also said she reported the rapes to her mother and the police two days later, that is, on June 10, 1986,[9] but her sworn statement complaining about the rapes was taken at the Anahawan Police Station on November 5, 1986.[10] Finally, she testified that she did not leave her parents' house even after her father had raped her,[11] but in the sworn statement she made five months later she said she immediately packed up and transferred to the house of another relative.[12]

The Court has often enough observed that the minor inconsistencies of a witness do not necessarily detract from the veracity of his testimony as a whole. The reason is that he is not expected to narrate an incident with total or perfect recall, particularly if it is attended with confusion and violence.

But the inconsistencies in the case at bar are not insignificant; on the contrary, they reasonably cast suspicion on Paulina's credibility. The incident - or incidents - could have been easily remembered by her not only because she was directly involved therein as one of only two protagonists. There were no irrelevant attendant circumstances that might have marred or obscured her memory. Despite all this, however, the record clearly shows that she contradicted herself many times during her brief testimony, categorically saying one thing on direct examination and another on cross-examination with equal certitude.

It is difficult to understand how she could have forgotten the time of the alleged second rape, which she first said followed within an hour of the first rape, or, as she later swore, at 8 o'clock the following morning. That was about twelve hours later. One does not recall an experience like this with such an amazing disharmony of memory as if it had happened many years ago with the entangled participation of many persons in a hodgepodge of tumultuous events. This was a one-on-one confrontation. The alleged rapes were committed quietly and were soon accomplished. No less significantly, they supposedly took place less than two years before she testified on September 24 and October 13, 1987. Strangely, her testimony was a blurred recollection of the details of a harrowing happening that should have been etched deeply in her mind.

Apart from this, Paulina's testimony per se is not worthy of belief. She said she was alone with her father at the time of the first rape but corrected herself later, saying that her three children were in the house with them and asleep when it happened. She said she submitted meekly to his advances because she was afraid but she recanted later and said she kicked her father and vainly tried to fight him off "for three minutes" until he finally had his way.

Assuming such resistance, one may well wonder why, if she had the courage to repel his attack, she was not brave enough to cry for help to awaken her children, who were sleeping nearby. The oldest of these children was 12 years old and could have prevented the assault by simply waking up.

Paulina said first that the second rape was committed before her mother's return from the wake at 9 o'clock that same night or, on second thought, at 11 o'clock. The complainant would have us believe that she did nothing after the first rape, not even to seek the protective company of her sleeping children. Instead, she practically waited alone until her father came back, his loins not yet sated, to ravish her again. She would also suggest that her 59-year old father was able to penetrate her again after his first incursion, which he had accomplished only an hour or so before, and even as he expected his wife to return home at any time to discover him on top of their

daughter.

That thought alone, it would seem to the Court, would have made him limp with apprehension.

If, on the other hand, the second rape took place about ten hours later as Paulina also declared, it is hard to imagine how it could have been effected at that busy place and hour, and in the bright light of the day. Everybody must have been awake already at 8 o'clock that morning; this was a rural place where that hour is no longer early. The mother at least would have been up and about by that time, preparing if not putting away breakfast. The children would probably be at play or starting for school or attending to their assigned chores in the farm. The whole house would have been astir when, according to the prosecution, the lecherous father was rolling on the floor with his impaled daughter in an unbelievable exhibition of his unnatural lust.

Paulina said she reported the incidents to her mother and the police two days later, that is, on June 10, 1986, but there is no corroboration of this statement, not even from her mother. The sworn statement Paulina gave the police accusing her father of raping her was made when she was already 5 months pregnant and could no longer conceal her condition.

The accused-appellant's defense is no less convincing either. It is a mere denial. Nevertheless, considering that he was the defendant and not the prosecutor, we do not see what more he could have said at the trial beyond that spirited denial. After all, it was a negative averment. It was not for the accused-appellant to prove that he did not rape her daughter but for the prosecution to prove that he did rape her. *Ei incumbit probatio qui dicit, non qui negat*. "He who asserts, not he who denies, must prove."

As Paulina delivered her child in February 1987, or less than 9 months after the alleged rapes, there is reason to doubt that the accused-appellant is the father of that child. It is possible, as the accused-appellant asserts, that she was already pregnant when she returned from Manila (although he could not have known this by just looking at her then as she was only one month on the way at that time). In any event, Paulina does not appear to be a strictly moral person as it is not denied that she had earlier borne two illegitimate children by one man before she married another person.[13] While this fact would not necessarily taint her testimony, it would at least cast doubt on its veracity to tilt the balance in favor of the accused-appellant.

Notably, the accused-appellant's wife and Paulina's mother did not testify to corroborate either her husband or her daughter. Neither the prosecution nor the defense saw fit to call her as its witness, so we can only conjecture on the truth that she has not chosen to reveal.

The Court also notes that the several lawyers who represented the accused-appellant were almost lackadaisical in his defense if not actually incompetent. At one stage of the trial, the judge had to advise the defense to secure other counsel after one of its lawyers failed to put through certain questions over the objection of the prosecution. He finally gave up.[14]

The Court is not unmindful of the oft-repeated observation that, unless she was telling the truth, the rape victim would not deliberately identify herself as such and expose herself to public disgrace and the embarrassment of having to testify on the sordid details of her violation. This would be especially true if the ravisher was her own father as the humiliation would be compounded by the stigma of incest and there would be the natural reluctance, born of an underlying filial loyalty, to denounce her own kin.

But it does not necessarily mean that once the charge is made, the conviction of the accused would follow as a matter of course. For in this jurisdiction, as we have also consistently held, accusation is not synonymous with guilt. While the tendency of the courts in rape cases is to believe the complaining witness for the reasons above stated, there is still a significant number of decisions in which the accused has been exonerated for failure of the

prosecution to prove his guilt beyond reasonable doubt. This had to be so for under the Bill of Rights the accused is presumed innocent until the contrary is proved.

It cannot be stressed often enough that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. Even if the defense is weak, the accused is still entitled to acquittal if the prosecution is also weak, not to say even weaker. To repeat, it is for the prosecution to prove that the accused is guilty, not for the defense to prove that he is innocent. Innocence is presumed; it is guilt that must be established.

We are not unaware of the fact that the accused-appellant was charged in the information with only one rape, to wit, the first one allegedly committed shortly after 8 o'clock in the night of June 8, 1986, and that it was therefore not really necessary for the prosecution to prove the second rape. True enough. Nevertheless, the testimony of the complaining witness on the alleged second rape had a bearing on her credibility in general and is a reliable gauge in determining whether she was telling the truth or falsifying it.

Our assessment of her testimony in its totality is that it is less than persuasive. Whatever it might be worth by itself, her narration of the first supposed rape was definitely discredited by her narration of the second supposed rape, which was completely unbelievable. The tale of the second rape destroyed whatever possibility there was of our accepting the tale of the first rape for both stories were tainted with the same virus of fabrication that made them equally suspicious.

We do not find that the prosecution has succeeded in proving the guilt of the accused-appellant with the exacting quantum of proof that is needed to convict. The accused-appellant must be set free because the evidence against him is not sufficient to overcome the constitutional presumption of innocence in his favor. If indeed he is guilty of raping his own daughter, it is not for us to pronounce his conviction. That judgment must be made by an omniscient Higher Tribunal whose justice is far wiser than that of this earthly court.

WHEREFORE, the appealed decision is REVERSED and the accused-appellant is ACQUITTED on reasonable doubt. It is so ordered.

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

[1] Rollo, p. 11.

[2] TSN, September 24, 1987, p. 6.

[3] TSN, October 13, 1987, p. 6.

[4] TSN, September 24, 1987, p. 5.

[5] TSN, October 13, 1987, p. 9.

[6] TSN, September 24, 1987, p. 6.

[7] TSN, October 13, 1987, p. 7.

[8] Ibid.

[9] TSN, September 24, 1987, p. 7.

[10] Exhibit "A."

[11] TSN, October 13, 1987, p. 8.

[12] Exhibit "A," p. 2.

[13] TSN, May 4, 1989, p. 9.

[14] TSN, October 13, 1987, p. 13.

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