

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. DELFIN CASTRO Y LOZADA, DEFENDANT/APPELLANT.

G.R. No. 91490. May 06, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal interposed by the accused, Delfin Castro y Lozada, from the decision[*] of the Regional Trial Court of Pasay City, Branch 110, imposing upon him the penalty of reclusion perpetua for statutory rape defined under Art. 335, paragraph 3 of the Revised Penal Code.

On the witness stand, six (6) year old Diana Rose Castro narrated how, while playing with a neighbor sometime on 4 October 1986, she was pulled by the accused inside a bathroom, prevented from going out, and made to stand on the toilet bowl. Accused is a first cousin of Diana Rose's mother. Kuya Delfin, as Diana Rose referred to the accused, then put up her clothes, took off her panty, made her lean on the wall and, despite her efforts to pull away, he inserted his private part into hers causing pain. Then she was told by the accused to go home. At home, she refused to have her private part washed by her Auntie Alice because it was hurting and painful.[1]

Mrs. Jacinta Castro, Diana's grandmother, testified that on 6 October 1986, in her house at No. 1692, F. Munoz, Tramo, Pasay City, she was asked by her husband to find out why Diana was crying. Her testimony follows:[2]

COURT:

q.

Was there anything unusual that happened on Oct. 6 particularly in your house?

a.

On Oct. 6 I was downstairs and there was a call by my husband.

.....

FISCAL:

.....

q.

Now, what was the reason why your husband called you?

a.

He asked me to find out why my granddaughter does not want to eat and just keeps on crying.

q.

And what did you do wen (sic) your husband told you to see your granddaughter?

a.

I went upstairs and found out what was wring (sic) with her whether she has fever.

q.

And what did you find out?

a.

At first she said she was complaining that her private property was painful and when I investigated I discovered that it swollen (sic).

q.

Then what happened after you found out that the private property of your granddaughter was swollen?

a.

I asked her why.

a.

(sic). And what did your granddaughter tell you

a.

At first she told me that "nasabit sa hiyero".

q.

And what did you do after that?

.....

a.

What I did was to examine her carefully her private part; I lifted her two (2) legs and I discovered that her private property was reddened and swollen.

q.

Did you ask her again what happened to her private property?

a.

Yes, sir, she told me that she was invited by her Kuya Delfin to the bathroom.

q.

And what else did she tell you?

a.

She told me that she was asked by her Kuya to stand on top of the toilet bowl and he removed her panty and his (sic) Kuya Delfin also removed his pants.

q.

What else did she tell you?

a.

She told me that his (sic) Kuya Delfin had sexual intercourse with her.

COURT:

q.

Did you ask Diane Castro how Delfin allegedly had sexual intercourse with her?

a.

Yes, Your Honor.

q.

What did she answer?

a.

She was standing and she was made to lean on the wall, your Honor.

.....

Because of Diana's revelation, the grandmother brought her to the National Bureau of Investigation for examination on 8 October 1986.[3]

Dr. Roberto Garcia, the NBI medico-legal, had this explanation:

.....

a.

Under the single heading of "genital examination," the more significant findings will be - the contused or bruised vetibular (sic) meaning the area inside the genital organ of the subject person; the hymen of the subject person was noted to be bruised or contused ...

q.

Now what do you mean when you say that the genital parts you mentioned were contused or bruised?

a.

The area was noted to be purplish or red darker than the normal appearance of the said portion being bruised or contused it would mean that this particular portion was subject to some amount of force or it could have come in contact with a hard object, the contact must have been done with a certain amount of force.

q.

Under No. 2 of the conclusion of this report it reads - "signs of recent genital trauma, present, consistent with the alleged date of infliction."

Would you explain this?

This witness meant that the appearance of the genital or prior of those mentioned was seen by this witness which brought about the trauma and that it has to be recent meaning it could have been sustained by the subject person in a matter of days prior to the date of the examination.

Q.

Now, was the hymen of the subject lacerated?

A.

No, sir.

Q.

Now this genital trauma which you said to have been suffered by the subject from what could this injury or trauma (sic), what was the cause?

A.

Any hard object would have produced this bruise or contusion.

Q.

Now, this is a case of rape, Doctor, would you venture to state from what object this could have been inflicted?

A.

Under the normal course of events injuries of this nature involving this particular portion of the body of a female or woman is produced by the insertion of a male organ."^[4]

.....

A sworn complaint for rape was filed against Delfin Castro y Lozada. It charged as follows:

"That on or about the 4th day of October, 1986 in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above named accused, Delfin Castro y Lozada, with lewd designs and taking advantage of his moral ascendancy over the undersigned complainant who is his niece, did then and there wilfully, unlawfully and feloniously have sexual intercourse with or carnal knowledge of the undersigned."^[5]

Accused pleaded not guilty and posted bail for his provisional liberty.

Delfin's alibi begins on 3 October 1986 in 1692 Munoz, Pasay City, where he lives two (2) houses away from complainant's. At about 12:00 P.M., Diana went to his house while he was taking a bath. She was crying and went inside the bathroom. When asked by the accused why, she replied that while going down the stairs, a dog whose two (2) hind legs were limping, chased her and so she tripped. The accused told Diana to go out because their dog might bite her. He proceeded to dress up and saw the victim playing outside.

In the morning of 4 October 1986, he woke up at about quarter to seven,[6] left the house at 7:30,[7] took a jeep plying the Pasay-Taft-Luneta route, arrived in school (Adamson University) at 8:15 in the morning. He proceeded to see Dolores Rivera, a godsister who worked in the treasurer's office of the university to ask the latter to type a term paper which was due that day. After submitting the term paper, he treated his godsister to lunch. Around 1:00 o'clock in the afternoon, he went home.

Mrs. Teresita Castro's testimony dovetails with her son Delfin's, saying that at around 12:30 P.M. on 4 October 1986, he arrived and ate lunch at home.[8] Mother and son talked of enmity between Mrs. Jacinta Castro, Diana's grand-mother and their family. This rape case against Delfin is a result allegedly of the envy of Diana's said grandmother over his (Delfin's) fine scholastic performance.[9]

Delfin further narrated that on or about 8 October 1986, he was invited to the Pasay Police Headquarters for questioning. While there, he was asked to undress, was blindfolded and beaten by around 7 to 10 policemen for about half an hour and made to admit that he raped Diana. Since he could no longer stand the torture, he told them that he used his small finger to touch her private part.[10] After the incident, Delfin left their house in order to avoid trouble; occasionally he would visit his parents.[11]

Finding the testimony of Diana positive, clear and credible, the Regional Trial Court disregarded the alibi of the accused and convicted him. The trial court, inter alia, stated:

"... The accused's claim that he was, in the morning of October 4, 1986, at Adamson University waiting for his term paper engenders disbelief. By his evidence, he was enrolled at the Adamson University for the second semester of school 1986-1987 classes for which usually start in October. Term papers are usually submitted at the end of the semester, not at the beginning of the semester. In any event, Delfin has not shown that it was physically impossible for him to be at the place of the incident on October 4, 1986 as, by his evidence, he returned to his house after noontime, rested for a while, then left and returned again in the afternoon. His suggestion that Diana's genital bruises could have resulted from tripping down the stairs when she was chased by a limping dog is ridiculous. A dog whose two hind legs are limping chasing her (where did the dog come from?) while she was going down the stairs? Granted that were possible or that actually happened, the fall would cause abrasions, not hymenal contusions. Finally the defenses' insinuation that Diana's grandmother Jacinta who was pictured to be supercilious and envious was behind the filing of this case is difficult to believe, there being no concrete proof thereof. Besides, it would be unthinkable for Jacinta to alienate her relations with all her in-laws, the Castros, who are staying in different houses of the same compound, by fabricating a charge against the accused.

Finally, the accused's flight from his house after the filing of the present case is not consistent with his professed innocence. He did not, according to him, have any good relationship with Diana's grandmother even before October 4, 1986. So what was he fleeing from? His answer, that he wanted to avoid trouble, tells it all...

....."

From the said decision sentencing him to suffer the penalty of reclusion perpetua and indemnify the victim in the amount of P20,000.000 by way of damages, the accused appealed to this Court pointing out the following alleged errors:

- there is no rape because -
- the hymen of the victim was not lacerated,
- the victim was allegedly standing while the crime was being committed,
- the victim is still a virgin.
- reliance on the conflicting testimony of the victim and not that of the accused.

A recent decision of this Court in a case of statutory rape observed that, usually, the average adult's hymen measures 2.8 to 3 centimeters in diameter, making it compatible with, or easily penetrable by an average-size penis. The victim being of tender age, the penetration of the male organ could go only as deep as the labia. In any case, for rape to be committed, full penetration is not required. It is enough that there is proof of entrance of the male organ within the labia or pudendum of the female organ. Even the slightest penetration is sufficient to consummate the crime of rape.[12]

Perfect penetration, rupture of the hymen or laceration of the vagina are not essential for the offense of consummated rape. Entry, to the least extent, of the labia or lips of the female organ is sufficient.[13] Diana's remaining a virgin does not negate rape.

Sexual intercourse in a standing position, while perhaps uncomfortable, is not improbable. The RTC decision explained:

"... For her account that she was made to stand on the toilet bowl made it easy for the accused to do the act as she was too small and their private parts would not align unless she was elevated to a higher position. The suggestion of the defense counsel that a finger could have been used is absurd. For if it were only a finger, there would have been no need to let Diana stand on the toilet bowl. x x x"[14]

The Solicitor General's brief, in turn, asserts that the position Diana was forced to take, made it easier for appellant to accomplish insertion of his organ than if Diana had been made to lie down.[15]

Experience has shown that unfounded charges of rape have frequently been proffered by women actuated by some sinister, ulterior or undisclosed motive. Convictions in such cases should not be sustained without clear and convincing proof of guilt,[16] considering the gravity of the offense and the penalty it carries.

On the alleged sinister motive of Diana's grandmother engendered by envy, we find this incredulous. For, what grandmother would exact vengeance on her enemies at the perpetual humiliation and disrepute of her six (6) year old granddaughter?

Finally, the issue of credibility. Who among the contending parties is telling the truth? The prosecution's evidence is simple and straightforward. Appellant's alibi must fall. Claims of his scholastic achievements, assuming they are relevant, were unsubstantiated. His counsel did not even formally offer the exhibits attesting to his enrollment at Adamson University where he was supposed to have submitted in the morning of 4 October 1986 a term paper. His credibility is dubious; he was not able to even identify the topic of his alleged term paper. To discredit the victim he testified on her alleged propensity to tell lies.[17] The trial court, however, categorically held:

"While Diana's testimony was in some instances flawed, the flaw was minor and only with respect to dates. She is a young girl. She sat at the witness stand four times, yet she survived the rigors of testifying, unwavering in her claim that she was raped."[18]

Accused-appellant claims he was coerced and tortured by Pasay policemen to admit the rape, showing to the trial court bodily signs of said abuse.[19] Aside from his self-serving assertion, the truth of such allegation was not

proven. Besides, this allegedly coerced admission of guilt cannot affect the prosecution's case which has been established by other positive evidence pointing to his guilt beyond reasonable doubt.

Finding no reversible error in the decision subject of this appeal, we affirm the same in its entirety.

WHEREFORE, the decision is AFFIRMED. Accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim, Diana Rose Castro in the amount of P30,000.00 in line with prevailing jurisprudence. Costs against the appellant.

SO ORDERED.

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

[*] Penned by Judge Conchita Carpio-Morales

[1] TSN, 22 June, 17 July, 26 October, 21 December 1987

[2] TSN, 7 April 1987, pp. 3 and 4

[3] TSN, 7 April 1987, p. 4

[4] TSN, 11 March 1987, pp. 4 and 5

[5] Records, p. 1

[6] TSN, 5 April 1988, p. 4

[7] TSN, 28 July 1988, p. 2

[8] TSN, 28 July 1988, p. 3

[9] Ibid., p. 1

[10] TSN, 9 May 1988, pp. 3 and 4

[11] TSN, 5 April 1988, p. 18

[12] *People v. Mangalino y Lumanog*, G.R. No. 79011, 15 February 1990, 182 SCRA 330

[13] *People v. Catalino Oscar*, 48 Phil 527; *People v. Lomibao*, 55 Phil. 616; *PP v. Pastores*, 40 SCRA 498; *PP v. Royeras*, 56 SCRA 666; *People v. Bacani y Poliosco*, G.R. No. 77854, 24 January 1990

[14] RTC decision, pp. 7-8

[15] Page 17, par. 3

[16] *People v. Bay*, 27 Phil 495; *People v. Pantaleon Ramos*, 35 Phil. 679

[17] TSN, 9 May 1988, p. 3

[18] RTC decision, p. 8

[19] TSN, 8 May 1988, p. 4

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