

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIO GARCIA Y BAUTISTA, ACCUSED-APPELLANT.

G.R. No. 92269. July 30, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The complaining witness was only nine years old when she was raped. This happened at about six-thirty in the evening of February 2, 1989, in Barangay Tabuating, San Leonardo, Nueva Ecija.

Marilou Santos was playing hide-and-seek with her cousins when Lucio Garcia grabbed her, covered her mouth and dragged her near the river. The girl screamed for help and was heard by her cousin Anna, who followed them. Anna saw him remove his pants and lie on top of Marilou. Marilou felt much pain when he inserted his sex organ in hers. Anna fled for fear that Lucio might next turn on her.

Remigio Galang, who was passing by, saw Lucio forcing his attentions on Marilou. Remigio immediately ran to Marilou's father, Enrique Santos, to inform him of the incident. On their way to the scene of the crime, they met Anna, who told them what had happened.

When they reached the river, Lucio was wearing only his briefs. Marilou was standing nearby and crying. Lucio tried to escape but Remigio caught him. Enrique then fetched a barangay tanod, who placed Lucio under arrest.

Marilou's physical examination revealed the following findings:[1]

Breast - not yet developed

External Genitalia - no pubic hair

- with laceration on middle aspect of labia majora

- with reddening and small amount of blood oozing.

The above narration was made through the testimonies of the prosecution witnesses, principally Marilou herself. Marilou is a retarded child and most of the answers she gave were prodded by leading questions.[2] The other witnesses were Annabel Manzon,[3] Enrique Santos,[4] Remigio Galang,[5] and Dr. Leonardo Gonzales, who made the medical examination.[6]

The defense presented only the accused himself. He had earlier, through counsel, withdrawn his plea of guilty but later changed his mind and decided to go to trial.[7]

Lucio testified that at the time of the incident in question, he was sleeping under the stage constructed for the town fiesta. He was drunk. He was awakened when Marilou kicked him several times. In the presence of other persons, he asked Marilou why she was kicking him. A few minutes later, a barangay tanod arrived and arrested him. He was told he was being charged with embracing Marilou but the following day he learned that he was being accused of raping her.[8]

There was no corroboration from the "other persons" he claimed to have witnessed his version of the incident.

After trial, the Regional Trial Court of Nueva Ecija rendered judgment[9] disposing as follows:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt for the crime of rape committed on the child below 12 years old and sentences him to reclusion perpetua or life imprisonment and to indemnify the offended party in the amount of P15,000.00.

It is contended in the appellant's brief that the trial court erred in giving credence to the prosecution witnesses despite their conflicting testimonies and in not holding that the guilt of the accused had not been proved beyond reasonable doubt.

Specifically, the defense argues that Lucio would not have committed the rape in plain view of many people and that the medical report did not contain a finding of physical violence on Marilou's body or a definite conclusion that carnal intercourse was consummated.

We hold for the prosecution.

Strange as it may seem, there are cases when fear of discovery or the possible appearance of other people in a public place has not deterred the commission of rape. Animal lust is an aberration that this Court will not explain for the benefit of the accused. Rape was committed in a public street in *People v. De los Reyes*;^[10] in a public park in *People v. Veloso*;^[11] in a public market in *People v. De la Cruz*;^[12] within school premises in *People v. Gamboa*;^[13] and inside a house with several other occupants in *People v. Opeña*.^[14] The scene of the rape is not always or necessarily isolated or secluded.

Force or intimidation does not have to be proved where the victim is less than twelve years old.^[15] In the case at bar, the victim was only nine years old, besides being retarded. No violence - or not much of it anyway - was necessary to subject Marilou to the appellant's lechery. In fact, we have held that even when the victim is of age, or only more than 12 years old, proof of violence is not indispensable to a rape conviction.^[16]

Neither is a medical examination.^[17] And if such examination is held, it is not necessary to show that there was full penetration of the vagina to constitute the consummated crime of rape.^[18] It is settled that the mere entry of the penis into the labia majora of the female organ, even without rupture of the hymen, suffices to warrant a conviction for rape.^[19]

The alleged inconsistencies in the testimonies of the prosecution witnesses do not impair their essential veracity. Marilou's mental condition explains why she merely nodded to most of the questions asked. Anna's confusion may be attributed to her age (she was then 15) and her lack of experience with court proceedings.

At any rate, we must give proper weight to the factual findings of the trial judge, who had the opportunity that this Court does not have of observing the witnesses and of assessing their credibility by their demeanor on the stand. There is substantial evidentiary basis for such findings in the case before us.

We are convinced that Lucio Garcia is guilty of the crime charged, which has been established with proof beyond reasonable doubt that has overcome the constitutional presumption of innocence in his favor. He fully deserves the penalty imposed by law for his bestial defilement of his innocent victim.

But the penalty is not "reclusion perpetua or life imprisonment," as Judge Cecilio F. Balagot put it. We have already explained in Administrative Circular No. 6-A-92 and in many cases^[20] that the two penalties are not interchangeable as life imprisonment does not carry the accessory penalties attached to reclusion perpetua. The proper penalty in this case is reclusion perpetua, not life imprisonment.

If there is anything more nauseating than the crime committed by the appellant, it can only be the appellant himself. It is meet that he be banished from the society of decent persons who should not be exposed to his obscene presence.

WHEREFORE, the appealed judgment is AFFIRMED except as to the penalty, which is changed to reclusion perpetua and as to the civil indemnity, which is increased to P30,000.00. Costs against the appellant.

SO ORDERED.

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

[1] Exhibit "A;" Records, p. 4.

[2] TSN, September 14, 1989, pp. 8-9.

[3] TSN, September 13, 1989, pp. 16-19.

[4] TSN, September 13, 1989, pp. 9-12.

[5] TSN, September 14, 1989, pp. 2-4.

[6] TSN, September 13, 1989, pp. 3-6.

[7] TSN, September 13, 1989, p. 2.

[8] TSN, September 14, 1989, pp. 13-15.

[9] Penned by Judge Cecilio F. Balagot, October 17, 1989; Rollo, p. 26. The decision is flawed with many grammatical errors.

[10] 203 SCRA 707.

[11] 148 SCRA 60.

[12] 158 SCRA 537.

[13] 145 SCRA 289.

[14] 102 SCRA 755.

[15] Article 335 (3) of the Revised Penal Code; People v. Lualhati, 171 SCRA 277.

[16] People v. Rabanes, 208 SCRA 768; People v. Torrevillas, 203 SCRA 576; People v. Feliciano, 195 SCRA 19; People v. Pasco, 181 SCRA 233.

[17] People v. Godines, 196 SCRA 765.

[18] People v. Castro, 196 SCRA 679.

[19] People v. Bacalzo, 195 SCRA 557.

[20] People v. Serdan, 213 SCRA 329; People v. Sangil, 208 SCRA 696; People v. Samillano, 207 SCRA 500; People v. Ramos, 203 SCRA 237; People v. Alvarez, 201 SCRA 364; People v. Bugho, 202 SCRA 164; People v. Baguio, 196 SCRA 459; People v. Abletes, 58 SCRA 241; People v. Gonzales, 58 SCRA 205; People v. Deveje,

56 SCRA 559.

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