

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO PUEDAN Y LALONGISIP, DEFENDANT-APPELLANT.

G.R. No. 92586. April 26, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

On May 31, 1988, Celestina Simbahan filed in the Manila City Fiscal's Office (which was refiled in the Regional Trial Court of Manila, Branch V, and docketed therein as Criminal Case No. 88-63617), a criminal complaint against the appellant Edgardo Puedan y Lalongisip for Rape committed against her four-year-old granddaughter, SNAIER EDWARDS y RISABA. The complaint alleged the following:

"That on or about the 15[th] day of May, 1988, in the City of Manila, Philippines, the said accused, with lewd designs, by means of force, violence and intimidation, to wit: by then and there locking said SNAIER EDWARDS y RISABA in a room and removing her panty and with malicious intent, inserted his right index finger in her vagina, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, 4 years old, against her will and consent." (p. 6, Rollo.)

On July 26, 1988, the accused, assisted by counsel de oficio, entered a plea of "not guilty" (p. 14, Rollo).

The People's version of the facts is as follows:

The victim, four-year old Snaier Edwards y Risaba, together with her maternal grandmother and maternal uncle accused Edgardo Puedan y Lalongisip (also known to Snaier as Tiyo Botyok) lives in a room on the ground floor of the two storey family home at 150 Interior 19, Loreto Street, Dapitan, Sampaloc, Manila. The upper floor of the house, partitioned into several rooms, is occupied by her mother's brothers, sisters and in-laws and other relatives (pp. 2-4, tsn, June 8, 1989). Snaier's mother, Socorro Risaba, due to financial hardships, is trying to earn a living as a dancer in Japan, while her father, William Edwards, a convicted felon, is imprisoned at the Muntinlupa (p. 8, tsn, June 8, 1989). Her paternal grandmother, Celestina Simbahan, lives at Instruccion Street, Sampaloc, Manila (p. 2, tsn, Feb. 21, 1989). Celestina visits Snaier regularly, and during these visits, brings the latter her favorite viands and other foodstuffs (p. 12, tsn, June 21, 1989).

On or before May 15, 1988, while Snaier was in their room on the ground floor, her uncle, accused Puedan, went inside her room, removed her panty, removed his pants and brief, made her lie down, went on top of her and inserted his penis in her vagina (pp. 3-4, 9-10, tsn, May 17, 1989). According to Snaier, she felt excruciating pain and there was blood on her private parts (pp. 8-9, Ibid). That her uncle, Puedan, to stop her from crying out, burned her arms and legs with a lighted cigarette (p. 7, Ibid). At that time, there was no one in the house to help her. On May 22, 1988, Snaier, upon seeing her paternal grandmother, recounted the harrowing experience she suffered in the hands of accused Puedan. Celestina Simbahan, immediately communicated with Snaier's mother, Socorro Risaba, in Japan and related the incident to her. Socorro Risaba then requested Celestina to take custody of Snaier and have her undergo medical examinations (p. 5, tsn, Feb. 21, 1989). Celestina first brought Snaier to the Jose Reyes Memorial Hospital, but was instead advised to bring the child to Camp Crame (pp. 8-9, Ibid) where she was examined by Lt. Col. Desiderio Moraleta, the Chief Medico-Legal Officer of Camp Crame, who found Snaier no longer a virgin (Exhibit E, p. 117, Record), and

submitted the following report, to wit:

"GENERAL AND EXTRAGENITAL:

"Fairly developed, fairly nourished and coherent female subject. Breasts are undeveloped. Abdomen is slightly globular and soft.

"GENITAL:

"There is absence of pubic hair. Labia majora are full, convex and coaptated with the reddish labia minora presenting in between. On separating the same are disclosed a congested vulvar muscosa and an elastic, fleshy-type hymen with shallow healing laceration at 4:00 o'clock. External vaginal orifice admits the tip of the examining index finger.

"CONCLUSION:

"Subject is in non-virgin state physically.

"There are no external signs of recent application of any form of trauma.

"Remarks:

"Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa." (p. 117, Records.)

"With the doctor's findings, a complaint was lodge against the accused before the City Fiscal's Office of Manila and a complaint for rape was filed before the Regional Trial Court." (p. 3, Decision; p. 41, Rollo.)

The accused Pudedan denied the complainant's accusation. He alleged that Snaier's testimony, as to how the rape was committed, is unworthy of belief. His version of the incident as summarized by the trial court is as follows:

"According to him [Pudedan], there were about five (5) male relatives residing at the second floor. He claimed that complainant Snaier, most of the time, stays upstairs playing with other kids of her own age. He denied vehemently having had sexual intercourse with complainant Snaier. He also denied having inserted his index finger on the private parts of complainant Snaier. In his denial, he indignantly said, why would he abuse his niece, the daughter of his very sister, instead, he placed the blame on his male relatives who occupies the second floor where his niece Snaier used to stay and play. According to him, complainant sleeps upstairs. Celestina Simbahan, the paternal grandmother of Snaier, was angry at him because his sister, the mother of Snaier does not send the money to her, instead she send the money to him. He further claimed that Celestina Simbahan wanted to get the custody of complainant Snaier in order to get the money support sent by her sister, Socorro Risaba.

"Atty. Viterbo Tagarda, while testifying, presented a letter that he received from Socorro Risaba, the mother of complainant, Snaier, stating among others that she does not believe her brother, accused Edgardo Pudedan would rape her daughter Snaier and pleads with the authorities to finish the case. That she is not interested in prosecuting accused Edgardo Pudedan." (p. 42, Rollo.)

After the trial, judgment was rendered by the trial court on September 25, 1989, convicting Pudedan of the crime charged:

"WHEREFORE, considering the very tender age of complainant Snaier Edwards the Court finds accused Edgardo Pudedan guilty beyond reasonable doubt of the crime of rape, sentences him to suffer the penalty of RECLUSION PERPETUA or LIFE IMPRISONMENT and to pay the complainant, Snaier Edwards the sum of TEN THOUSAND PESOS (P10,000.00), as damages." (p. 5, RTC Decision; p. 18, Rollo.)

On October 2, 1989, Pudedan filed a notice of appeal. (p. 19, Rollo.) In this appeal, he has raised the following

assignments of error in his brief:

"1. That respondent court erred in finding accused guilty of the crime of rape notwithstanding the failure of the prosecution to establish the time and date when the offense was allegedly committed;

"2. That the respondent court erred in finding the evidence of the prosecution credible and believable, despite its inherent improbability and incredibility, complainant being a coached witness; and

"3. That the respondent court erred in not giving exculpatory weight to the evidence adduced by accused during the trial." (p. 29, Rollo.)

There is no merit in the appellant's argument that the trial court erred in convicting him of rape, for the prosecution failed to establish the time, date and place of the commission of the offense (pp. 5-7, Appellant's Brief).

Sections 10 and 11 of Rule 110 of the Rules of Court provide:

"Section 10. Place of the commission of the offense. — The complaint or information is sufficient if it can be understood therefrom that the offense was committed or some of the essential ingredients thereof occurred at some place within the jurisdiction of the court, unless the particular place wherein it was committed constitutes an essential element of the offense or is necessary for identifying the offense charged.

"Section 11. Time of the commission of the offense. — It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act maybe alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. (Emphasis supplied.)

Article 335 of the Revised Penal Code which defines and penalizes statutory rape provides:

"Article 335. When and how rape committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve (12) years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

"The crime of rape, shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof the penalty shall be likewise death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by Rep. Act No. 2632 and Rep. Act No. 4111)."

"The gravamen of the offense is the carnal knowledge of a woman below 12 years old." (People vs. Villegas, Jr., 127 SCRA 195, 200.) Therefore, the time or place of the commission of the offense is not an essential element of the crime. Conviction may be had on proof of the commission of the crime provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information, within the

period of the statute of limitation, and within the jurisdiction of the court (U.S. vs. Arcos, 11 Phil. 555 [1908]).

The reasonable and plausible conclusion that can be gathered from the trial court's narration of facts is that the defloration of the victim was committed between May 15, 1988 and May 22, 1988 when Celestina Simbahan visited Snaier. In *People vs. Borromeo* (123 SCRA 253), this Court ruled:

"The phrase 'on or about' employed in the information does not require the prosecution 'to prove any precise date,' but may prove any date which is not so remote as to surprise and prejudice the defendant." (citing *U.S. vs. Dichao*, 27 Phil. 420.)

In his second and third assigned errors, counsel for the accused Puedan assails the trial court for giving full faith and credit to the testimony of Snaier, which is allegedly improbable, incredible and ridiculous — particularly pointing to Snaier's narration that when Puedan inserted his penis in her vagina, she was lying down while the appellant was in a sitting position (pp. 8-9, Appellant's Brief). Counsel for defendant-appellant also contends that the trial court erred in not giving exculpatory weight to the evidence adduced by him in his defense (p. 10, Appellant's Brief).

These contentions are untenable.

Snaier Edwards, the victim, is an innocent five-year-old girl. In the commission of rape against a girl below (12) years of age, the basic element to be proven is the carnal knowledge of the girl by the offender. The fact that appellant had carnal knowledge of the victim was sufficiently established by the medical evidence. The medico-legal officer who examined the victim testified that he found lacerations in her vagina indicating that she was sexually abused, thus:

"FISCAL:

"Q -

With respect to the genital area of the victim, did you conduct an examination?

"A -

Yes, sir.

"Q -

Will you kindly tell us your findings based on Exhibit E?

"A -

Examination of the genital organ, the labia minora or secondary covering the facial organ in reddish color, there is congestion, and it shows that the hymen reveals healing laceration at 4:00 o'clock position." (p. 59, Rollo.)

"FISCAL:

"Q -

Besides the touching of that Exhibit E-2 by the human hand, what else could possibly cause the infliction as shown in that?

"A -

Any part of the body getting into that portion since it is a delicate skin could cause this kind of irritation, sir.

"Q -

What portion, what human body (sic) which will cause to that Exhibit 2 will cause that irritation?

"A -

Usually, since this is genital organ, the usual part of the body is the male organ.

"Q -

Last findings, tell us what is that?

"A -

The last labia majora which is slightly congested.

"xxx xxx xxx

"Q -

Now, what have cause that irritation?

"A -

Again this labia majora another covering of the female sex organ and this congestion can also be caused by contact laceration handling portion of this body (sic).

"Q -

You said, Exhibit E-2 was possibly caused by the insertion of a male organ, what about Exhibit E-3, what can you say about that?

"XXX XXX XXX

"WITNESS:

"A -

The same, sir.

"FISCAL:

"Q -

What do you mean the same?

"A -

Since this is the actual covering of the sex organ, the introduction of the male sex organ can cause this irritation or contusion.

"Q -

With respect to the findings, will you kindly point to the Court the next finding that you have?

"A -

Next finding is the one seen at the hymen by o'clock hand at 4:00 (sic)." (pp. 60-61, Rollo.)

"WITNESS:

"A -

When I say instrument, by means only of the introduction of an object or instrument but usually our more common cause of this laceration is insertion of the male organ as this is a female sex organ.

"XXX XXX XXX

"FISCAL: (To witness)

"Q -

At this Exhibit E-1 there appears to be a line thereat and hand written statement, will you kindly tell us what is that?

"A -

This is the examination of vagina inside portion of genitalia (sic).

"xxx xxx xxx

"Q -

Will you kindly tell us what is that all about?

"A -

Findings on the vaginal minora there was also a congestion.

"Q -

Tell us, what cause the possible congestion.

"A -

It was caused by infection or irritation by insertion of any object or instrument in that portion of the body.

"Q -

Will you kindly tell us what kind of object that cause that irritation?

"A -

Usually, the cause of the insertion here is the male sex organ." (pp. 6-12, tsn, November 22, 1988.)

The cross-examination of the medico-legal officer on these points merely served to buttress his findings, thus:

"ATTY. TAGARDA:

"Q -

Was there any defloration that you found in your examination other than laceration?

"A -

Other than the laceration, there are signs of irritation like reddish of labia minora.

"Q -

What about the defloration?

"A -

It can be confined to the laceration of the hymen, sir.

"xxx xxx xxx

"Q -

In this case, you are not prepared to say that the injury sustained by the victim was thru sexual abuse or not?

"A -

Including this case, sir, the cause of the laceration of the hymen was caused by sexual abuse of adult (sic)."
(pp. 19-20, tsn, November 22, 1988.)

The victim, on the other hand, pointed to the appellant as the person who ravished her. Said she:

"FISCAL:

"Q -

What did your Tiyo Botyok (appellant) do to you?

"A -

He went inside the room.

"Q -

And what did your Tiyo Botyok do to you, if he has done anything?

"A -

He removed my panty.

"Q -

After your Tiyo Botyok removed your panty, then what did he do to you?

"A -

He removed his pants and his underwear/brief.

"Q -

After he has removed his pants and underwear, what did your Tiyo Botyok do?

"A -

He inserted his penis.

"Q -

Where?

"A -

To my private parts.

"Q -

Where is your vagina?

"INTERPRETER:

"Witness pointing to her private parts." (pp. 3-4, tsn, May 17, 1988; pp. 62-65, Rollo.)

We have examined the records of the case with extreme care and find that the flaws or discrepancies in Snaier's testimony, pointed out by defense counsel, involve minor details which are not unexpected considering that a child, five years of age, cannot possibly be familiar with the subject of sex or sexual intercourse. The minor discrepancies and contradictions indicate that she was not rehearsed. They do not destroy the core of her testimony that she was sexually violated by the appellant Puedan.

In the same vein did this Court rule in the case of *People vs. Hermosada* (143 SCRA 484):

"x x x. As earlier noted, the victim was twelve years old at the time of the commission of the crime, and thirteen, when she testified in court. Naturally, she cannot be expected to be well-versed in topics such as sex

and sexual intercourse.

" xxx xxx xxx

"We have thoroughly read and in fact reproduced the pertinent portions of Visitacion's testimony and, like the trial judge, are convinced of its veracity. Visitacion Romeo was able to narrate with simplicity and sufficient clarity the manner by which the crime against her chastity was committed. Had she been more vivid and eloquent in her description, we would have suspected her story to be a mere fabrication."

Despite her tender age, the victim in this case who was only four years old at the time of the commission of the crime and five years old when she testified in court, was able to describe her ordeal in a clear, straightforward and logical manner and was not shaken by the cross-examination to which she was exposed. Against her positive testimony, the defense's theory that the child could have been raped by any of the other males in the house where she lived, pales by comparison. It is settled doctrine that "the weak denials of the accused cannot prevail over the clear and positive testimony" of the complainant (*People vs. Gamboa, Jr.*, 145 SCRA 289). The trial court which watched both the accused and the complainant testify, believed the latter. Its finding that the accused is guilty carries great weight for it had the privilege of observing his demeanor and deportment on the witness stand and, therefore, could discern if he was telling the truth or not (*People vs. Solares*, 173 SCRA 203). The rule is that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial judge unless there is proof of his misappreciation of evidence (*People vs. Mesias, Jr.*, 127 SCRA 792; *People vs. Balbuena*, 129 SCRA 10; Underscoring supplied).

The ill-motive ascribed by Puedan to Celestina- Simbahan in filing the rape charge against him is not credible. The Court does not believe that Celestina and Snaier would pin the crime on Puedan if somebody else committed it. The fact is that Snaier was raped.

Suffice it for the Court to reiterate what we stated in the case of *People vs. Malate*, 116 SCRA 487, which is equally applicable to the case at bar. We ruled:

"The imputation of motive is obviously a desperate, albeit, vain attempt, at seeking exculpation by the defense. But assuming there was such resentment, the same could not have sufficiently impelled the victim's father to falsely and maliciously fabricate a charge of rape against Lucio Malate's son, herein appellant. The girl's father would not have gone as far as subjecting not only his daughter of tender age to the rigors and ordeals of a public trial and thereafter suffer the consequent social humiliation, but his whole family as well. Indeed, only a desire to bring the offender to justice for his bestial act could have moved Rafael Lustina to rightly press the charges against appellant."

We find that the guilt of the appellant had been proven beyond reasonable doubt and we agree with Judge Felix B. Mintu that "the sexual violence inflicted upon the eight-year-old child is a particularly appalling outrage. The trauma sustained by her is not merely physical and may be expected to remain with her for a long, long time possibly for life" (*People vs. Perez*, 175 SCRA 203, 215). Further, considering the fact that besides the sexual violence that she was subjected to, additional and unnecessary physical violence was inflicted on her in the form of painful cigarette burns on her arms, probably to provide a "cover" or explanation for her screams of pain when she was being raped, the accused should indemnify his victim for moral and exemplary damages in the increased amount of P50,000.

WHEREFORE, the judgment finding the accused Edgardo Puedan y Lalongisip guilty of the crime of rape is hereby AFFIRMED and he is hereby sentenced to suffer the penalty of reclusion perpetua with the accessory penalties provided by law and to pay moral and exemplary damages to the complainant, SNAIER EDWARDS y RISABA, in the increased amount of FIFTY THOUSAND PESOS (P50,000). Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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