

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEOPOLDO DAVATOS AND ROMEO TABANG, ACCUSED-APPELLANTS.

G.R. No. 93322. February 04, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Mennie Sanchez was the principal witness for both the prosecution and the defense. In fact, she was the only witness for the defense. The trial court, after assessing her conflicting statements, chose to believe her earlier testimony and convicted the accused. They are now before us to question the decision.

The criminal complaint filed with the Regional Trial Court of Palawan and Puerto Princesa charged Leopoldo Davatos and Romeo Tabang with raping Mennie Sanchez, "a virgin 13 years of age," on February 7, 1989, at Barangay San Jose, Puerto Princesa City. It was signed under oath by Mennie and her aunt and guardian, Carmen Bacaser,[1] before the City Prosecutor of Puerto Princesa City.

The prosecution presented Mennie, Dr. Alma F. Rivera, and Carmen Bacaser as its witnesses.

According to Mennie, the incident happened at about half past five in the afternoon of the above-mentioned date. She was waiting on the barangay road for a ride to Puerto Princesa when Davatos and Tabang approached her and invited her to come along with them. The two smelled of liquor. When she declined and started to run in apprehension, Davatos caught her left arm while Tabang poked a knife at her. They dragged her to a banana grove some fifty meters from the road, warning her that they would kill her if she reported what they were going to do to her. When Tabang pulled off her panty, she kicked him and ran but they overtook her and pinned her against a banana trunk. It was as she was standing against the tree that she was raped by Tabang while Davatos menaced her with the knife first used by Tabang. Her vagina bled and hurt. After Tabang, Davatos followed suit, this time pushing her to the ground and forcibly spreading her thighs before entering her, with Tabang pointing the knife at her side. Then the two left.[2]

Mennie said nothing about the rapes until about a week later when her aunt asked her about certain rumors being circulated by the two accused that they had raped her. When she confirmed the report, she and her aunt filed the complaint against the two after her medical examination on February 18, 1989.[3]

Dr. Alma F. Rivera of the Puerto Princesa General Hospital issued a medical certificate of the examination.[4] She confirmed her report at the trial and declared that the complainant's lacerated hymen suggested recent sexual contact. She also opined on questioning by the trial judge that the hymenal tear could have been self-inflicted.[5]

Carmen Bacaser testified on how she learned of the girl's rape and the action she took thereafter to bring the two accused to justice.[6]

After the prosecution had rested, the defense called Mennie back to the stand. This time she had a different story. She declared, also under oath, that her previous testimony was an outright lie she had merely invented. The two accused had not raped her. The truth was that she had sexual intercourse with her boyfriend, Raffy Damasco, and

she had pointed to the accused only because they were always with Damasco. She added that she was afraid to tell her aunt about her boyfriend because she was very strict and did not want her to have any romantic relations at her age.[7]

On cross-examination, she admitted having earlier implicated the two accused but said she was now changing her testimony because her conscience was bothering her. She insisted they were innocent. She also declared that her aunt had not fabricated the complaint for her and neither had she told her now to recant. She said her earlier and later testimonies were both of her own doing alone. She also admitted that the accused and their family had made overtures for an out-of-court settlement of the case but she denied ever having received any money from them.[8]

The defense submitted as Exhibit 1 Dr. Rivera's medical certificate earlier submitted by the prosecution as its own Exhibit A. It reads pertinently as follows:

EXTERNAL FINDING:

Breast - light brown, erected; no abrasions, no contusion, no hematoma

Extremities - No abrasions, no hematoma

Genital Organ:

Mons pubis with moderate amount of pubic hair

Clitoris - erected, no contusion, no hematoma

Labia majora - no contusion, no hematoma

Labia minora - no contusion, no hematoma

Hymenal tear at 6:00 o'clock positions

Vaginal opening admits two fingers

Cervico-vaginal smear - negative for spermatozoa.

While the prosecution stresses Mennie's hymenal laceration to support the charge of rape, the defense points to the lack of contusions and hematoma in her body to refute the allegation of force and violence.

In their brief, the appellants argue that the recantation made by the erstwhile complainant negated her former testimony for the prosecution and introduced the element of reasonable doubt that called for their exoneration. They also maintain that the trial court erred in denying their motion for reconsideration or new trial based on Mennie's retraction as acquiesced in by her aunt and guardian.

A recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. Moreover, it should be received with caution as otherwise it could "make solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses." As this Court observed in *People v. Ubina*:^[9]

xxx The rule is that a witness may be impeached by a previous contradictory statement x x x; not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e. that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained x x x. We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one (*US vs. Acasio*, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. xxx The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized - in other

words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.

In the case before us, the trial judge found Mennie's testimony for the prosecution more believable. He was correct in his guarded evaluation of the retraction and was acting from his own impressions at the trial when he described it as the testimony of "a rehearsed witness." As we have consistently held, the assessment by the trial judge of the credibility of witnesses is well nigh binding on this Court because of his opportunity to directly observe their conduct on the stand. On top of this, we also consider significant the non-presentation of the alleged seducer, Mennie's supposed boyfriend, to corroborate the retraction.

The defense makes much of the absence of any sign of violence on Mennie's body but ignores the evidence that the appellants used a knife to threaten her into submission. In any event, the absence of external injuries in the body of a rape victim is not essential to the conviction of her attacker. By contrast, the healed lacerated hymen was consistent with Mennie's allegation that she had been raped eleven days before her medical examination.

It is also contended in the appellants' brief that the trial court deprived them of due process when it denied their motion for reconsideration or new trial based on Mennie's affidavit of retraction with her aunt's acquiescence.^[10] They claim that the trial court was laboring under a misapprehension when it observed that Mennie's testimony for the defense was without her aunt's concurrence when in fact there was such concurrence.

That affidavit of retraction was not newly-discovered, being already in existence at the time Mennie testified for the appellants. It was not presented as an exhibit for the defense, and neither did Carmen Bacaser testify to affirm it. At any rate, such acquiescence was not necessary to validate her niece's declarations. Mennie was a competent witness and did not need the approval of her aunt to give her previous testimony and later to retract it.

More importantly, the subject of the affidavit had already been brought up at the trial by Mennie when she testified for the defense and made her retraction. That testimony was duly considered by the trial court when it made its decision and there was no need to examine it again in a motion for reconsideration or new trial. Bacaser's acquiescence thereto did not add one whit to its credibility as she had no personal knowledge of Mennie's claimed seduction by her boyfriend.

The Court notes the displeasure of Judge Eustaquio Z. Gacott, Jr. over certain extrajudicial pressures exerted upon him on behalf of the appellants which he said he was, however, able to resist because of "modesty aside, his strength of character." This reason is also duly if wryly noted. It is also observed that Mennie's declaration that she had been approached by the appellants for an amicable settlement of the case has not been denied by the defense. This seems to lend credence to the trial judge's complaint of external influences for the dismissal of the case.

The dispositive portion of the appealed decision reads as follows:

WHEREFORE, premises considered, on the basis of the evidence presented the Court finds the two (2) accused herein guilty beyond reasonable doubt of the crime of RAPE charged against them in this case as defined and penalized under Article 335 of the Revised Penal Code, and considering that the crime is attended by the aggravating circumstances or use of a deadly weapon and committed by two (2) persons without any mitigating circumstance to offset the same, it hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA each (this should have been punishable by death before the abolition of the death penalty); to indemnify the rape victim damages conformably with Article 21 and 2219 of the New Civil Code (QUIMIGUING vs. ICAO, L-26795, July 31, 1970, 34 SCRA 132) in the amount of THIRTY THOUSAND PESOS (P30,000.00) for each of the accused; and to pay the costs.

We agree. It is clear, despite the complainant's subsequent retraction, that Mennie Sanchez was raped in

succession by Romeo Tabang and Leopoldo Davatos, as she earlier testified. Whatever made her reject her former charge, her change of mind is not believable and, hence, was properly rejected. We repeat that mere recantation will not automatically cancel a previous declaration because the test of its acceptability is its credibility. Mennie's previous declaration of her violation appears to be the more convincing and so should be, as it was, upheld.

Once again lust and liquor have deflowered a defenseless child. A bud has been crushed before it could even blossom, and this because of the lechery of besotted men. The appellants deserve no less than the maximum imposable penalty for their depravity, and yet it does not seem to be punishment enough.

WHEREFORE, the appeal is DISMISSED and the appealed decision AFFIRMED, with costs against the appellants.

SO ORDERED.

Davide, Jr., Bellosillo, and Quiason, JJ., concur.
Kapunan, J., on leave.

[1] Original Records, p. 2.

[2] TSN, September 26, 1989, pp. 3-9.

[3] TSN, December 11, 1989, pp. 15-18.

[4] Exhibit "A," Original Records, p. 68.

[5] TSN, November 17, 1989, pp. 44-45.

[6] TSN, December 11, 1989, pp. 13-19.

[7] TSN, January 15, 1990, pp. 7-10.

[8] Ibid., pp. 11-34.

[9] 97 Phil. 515.

[10] Rollo, pp. 133-136.

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