

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORIO G. MABUNGA, ACCUSED-APPELLANT.*G.R. No. 96441. November 13, 1992*

Ponente: REGALADO, J.

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The Court views with grave concern what appears to be an increasing incidence of incestuous rape, as reported in the media and actually lodged in criminal charges before the prosecutorial agencies and in the courts. How many more are unreported, due to understandable reluctance or fear just like cases of domestic violence against wives which remain shrouded in familial secrecy, we can only surmise. The matter of spousal abuse is now the subject of congressional concern, and it is just as imperative that incest perpetrated on innocent children should now be addressed firmly, not only by the courts but jointly by legislators, spiritual authorities and social workers. The proliferation of incestuous rape of minors, a crime which figuratively scrapes the bottom of the barrel of moral depravity, is a revolting phenomenon in a Catholic country like ours such that it was not even anticipated in specific penal laws. Yet, once again, we have such a case before us.

In a complaint dated August 11, 1986, accused-appellant Honorio G. Mabunga y Gulog was charged with the crime of rape against his own daughter, committed as follows:

"That on or about the 20th day of January 1984 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and with the use of a kitchen knife, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with JENELYN MABUNGA Y JAVA (daughter), against the latter's will and without her consent." [1]

and trial thereafter proceeded upon a plea of not guilty entered by appellant at his arraignment.

We have carefully scrutinized the records in this case and we find that the evidence for the prosecution substantiates the documented synthesis of facts set out in appellee's brief and which we have decided to reproduce herein to portray the sordid details of the crime.

"On January 20, 1984, Benilda Mabunga was sent by her husband, appellant herein on an errand to Malabon to get the papers he needed for going abroad. Appellant was a security guard assigned to the night shift. Benilda left their house in Bagong Silang, Caloocan City at around 9:30 A.M. leaving behind appellant and their children, the thirteen-year old complainant and six-year old Chennelyn" (pp. 5-6, TSN, July 8, 1987; p. 3, TSN, December 20, 1989).

"At around 10:00 A.M., appellant told Chennelyn to go out and play (p. 6, TSN, December 20, 1989). As soon as complainant was left alone with appellant (her father) in their one-room house (pp. 4, 6, *ibid.*), appellant told complainant to take off her clothes and that if she would not do it, he would kill her. He pointed a knife on her neck and told her to lie on the floor. When complainant had already lain down, he took off her skirt, her upper garment, and her panty (p. 5, *ibid.*) and told her not to tell anybody especially her mother about what he was doing (p. 4, *ibid.*). Appellant then took off his own clothes, pants and brief, went on top of complainant while pointing the knife on her neck, inserted his penis into her private part and kissed her while she cried. While

appellant was on top of complainant, the lower part of his body went up and down and stopped when his semen spouted out. After the sexual intercourse, appellant told complainant who was still crying to dress up and not to tell her mother about it or else he would kill them all (pp. 5-6, *ibid.*).

"When her mother arrived, complainant did not tell her what happened because appellant was in the house. Appellant told his wife that he would bring complainant to his place of work at the Airport Motel, Baclaran so that she could wash his clothes and cook for him. Complainant went with him that same afternoon (p. 6, *ibid.*).

"In the evening of that same day, at around 8:00 P.M., complainant was again raped by appellant, this time at the guardhouse of the Airport Motel where he made complainant lie down.

"Complainant stayed with appellant in the guardhouse of the Airport Motel, Baclaran where she washed his clothes and cooked for him. She also sold candies, cigarettes and vegetables near the guardhouse (pp. 8-9, 13, *ibid.*).

"During her stay with appellant at the guardhouse, she was repeatedly raped by him but she could not resist because he kept threatening her that he would maul her or hurt her bodily (pp. 8-9, *ibid.*).

"During complainant's stay at the guardhouse of the Airport Motel, she was able to disclose the fact that she was being raped by appellant to an old woman who was also working in that place. The old woman, however, could not do anything but promised complainant that she would bring her to the old woman's relatives in Olongapo City but this plan did not materialize (p. 22, *ibid.*). Complainant was also able to talk to one of her relatives about what appellant was doing to her but the relative did not believe her (p. 23, *ibid.*).

"On July 7, 1986, complainant left the guardhouse after appellant told her that he was going to impregnate her. Before she left, however, she wrote a letter addressed to her mother stating that she had to leave their house because she would be raped again by appellant who told her that they would live together in Batangas (Exhibit 'B'). She placed the letter inside the bag of her mother when the latter went to the Airport Motel although her mother testified that complainant placed this letter inside her bag when she was in their house (p. 9, *ibid.*).

"Complainant took a bus where she befriended an old woman by the name of Aling Florencia. The latter asked her what was her problem as she was crying. After complainant related to Aling Florencia what her own father had done to her, Aling Florencia invited complainant to live with her in Novaliches. Complainant stayed in the house of Aling Florencia until July 31, 1986 when she asked permission to go home (p. 9, *ibid.*).

"When complainant arrived at their house in Bagong Silang on July 31, 1986, her mother told her that they were going to Diliman, Quezon City to the house of her mother's brother, Felimon Java, who was a policeman. Her mother had found the letter which complainant placed in her bag and had confronted appellant about the matter. Appellant first admitted having raped complainant but later denied it (p. 10, *ibid.*).

"After complainant told her uncle, Felimon Java, what happened, they went to the police station in front of Nepa Q-Mart, Quezon City. There, complainant filed a complaint for rape against appellant. On the same day, the Quezon City Police referred her to the National Bureau of Investigation (NBI) where she underwent a physical examination (pp. 10, 21, *ibid.*).

"After the examination, they went back to the police headquarters in Quezon City and they made a request that her case be transferred to Caloocan City (p. 11, *ibid.*).

"On August 8, 1986, complainant executed a written statement (Exhibit 'E') at the Caloocan City Police Station in connection with the case. Her mother, Benilda, also gave a statement (Exhibit 'D'); then her father was arrested (p. 12, *ibid.*).

"Thereafter, complainant stayed in her uncle's place in Diliman, Quezon City (p. 12, *ibid.*).

"After the complaint was filed, appellant told Benilda in one of their encounters to give complainant to him so

that he will not anymore bother Benilda. The latter told appellant that she will keep her daughter, Jennelyn, and that he could get their son, Arnel. Appellant, however, insisted on getting complainant and even threatened Benilda and mauled her. While Benilda was testifying on this fact, she cried very hard (pp. 10-12, *ibid.*).

"Dr. Alberto M. Reyes, a supervising medico-legal officer at the NBI, examined complainant on July 31, 1986 and issued a Living Case Report No. NG 86-454 (Exhibit 'D', p. 6, *ibid.*).

"Dr. Reyes testified that his most important finding was that complainant's genital organ had an 'old healed deep laceration' which meant that the hymen, the membranous (*sic*) covering of the vaginal canal, had been lacerated and the laceration was inflicted a long time ago which could be more than six (6) months ago (pp. 4-6, *ibid.*) and that she has experienced repeated sexual intercourse because the vaginal walls were lax and the rugosities were shallow (p. 9, *ibid.*)."[2]

On the other hand, appellant's version of the case against him was duly and fully summarized by the trial court in its decision and which, for dialectic contrast and in equal measure, is likewise quoted hereunder.

"Evidence for the defense shows that the accused was employed as a security guard of the Securicor Watchman Agency, Inc.; that as per Certification (Exhibit '1') by Personnel Officer, Ma. Corazon B. Agbulos, it shows that from January 1, 1984 to April 1984, he was assigned at the Bolanos Estate Detachment in Tatalon, Araneta Avenue, Quezon City, and then transferred to Mercury Drug Store cor. Washington and Buendia from July 9, 1984 until August 18, 1984, and on January 19, 1985 was assigned at the Airport Motel in Baclaran.

"On the evening of January 19, 1984, he (the accused) reported for duty at the Bolanos Estate Detachment, that is from 7:00 in the evening of January 19, 1984 until 7:00 in the morning of January 20, 1984; that after his duty he went to their barracks where he was staying, ate his breakfast, talked to his co-guards and was told that it was their payday and then rested. At about 12:00 noon, he was awakened by one of his co-guards and was told that his wife ha(d) arrived to get his salary. Since his salary ha(d) not yet arrived, his wife waited until 4:00 o'clock in the afternoon, in which (*sic*) she was able to get his salary and then went home.

"That everytime he was assigned in far places, he did not go home and instead stayed in their barracks in order to save. That when he was assigned at the Bolanos Estate, he did not go home. His wife was the one who went to get his salary and sometimes together with their children. When he was assigned in Airport Motel in Baclaran, he did not go home. When his wife visited (him) to get his salary, together with Jennelyn* and Arnel (their children), on June 20, 1985, his wife requested that the two children be left with him in order that they could sell some food but he did not want to agree because it was prohibited for them to have other people sleep in their barracks except the guards. But in the middle of August of 1985, Jenelyn was able to sell bread, coffee and others in front of his post. That he made for her (Jenelyn) a cart so that she could place her goods and at the same time where she could sleep at night. That on June 7, 1986, she (Jenelyn) left for reason or reasons he did not know. Together with his wife, they looked for Jenelyn but to no avail.

"That on August 8, 1986, he went home (to) Bagong Silang, Caloocan City, in order to find out if his daughter Jenelyn had already come back. That he was arrested by some policemen and was brought to Sikatuna Police Headquarters in Quezon City where he was asked to admit the crime imputed to him by Jenelyn ([his] daughter) but refused to admit. Neither did he give any statement. Then he was transferred to the Caloocan City Jail.

"That during the hearing of this case, he talked to Jenelyn and asked her about her life and why she was pregnant. She (Jenelyn) told him that she was already married. Also he asked her why she destroyed his honor. And she (Jenelyn) replied that she could not do anything because she was only forced by her mother to file a rape case against him and was threatening her. That the reason why a case was filed against him was because he had discovered that his wife has a 'kalaguyo' (lover). That he discovered it because their son told him that there was a man who was sleeping in their house and the man was sleeping beside her."[3]

On August 29, 1990, the trial court rendered a decision convicting appellant of two crimes of rape, one committed in Caloocan City and the other at the guardhouse of the Airport Motel in Baclaran, with the following decretal portion:

"WHEREFORE, finding the prosecution evidence -to have established the guilt of the accused beyond reasonable doubt in the two offenses of rape, the Court, pursuant to Article 335 of the Revised Penal Code, hereby imposes the penalty of RECLUSION PERPETUA for each crime of rape, which, under Article 70 of the Revised Penal Code, must be served successively but the total duration shall not exceed forty (40) years."[4]

Appellant seasonably filed an urgent motion for reconsideration and/or new trial with the trial court, assailing said decision on these grounds:

1. The decision is vitiated by error of law and irregularity in the trial which violated the right of the accused to due process and prejudiced his defense when he was tried and convicted for two alleged offenses of rape one of which was not and may not be charged in the criminal complaint and allegedly was committed in a place outside the court's territorial jurisdiction.

2. The decision is contrary to the facts and evidence, because:

(a) There is no clear, positive evidence on record that the alleged carnal intercourse with the complainant was perpetrated against her will.

(b) Complainant's testimony, the main prosecution evidence, is rendered unworthy of credence by improbabilities, self-contradictions and contradictions from other witnesses.[5]

In an order dated September 25, 1990, the court below modified its aforesaid decision in this wise.

"Accordingly, the 'Motion for New Trial' is hereby DENIED.

"The Decision is hereby amended to the effect that all the findings and conclusions reached by the Court with respect to the second offense of the rape committed in the guardhouse, at the Airport Motel, Baclaran Pasay City, and the judgment rendered therein convicting the accused on said second rape, are hereby SET ASIDE.

"The Decision as to the conviction of the accused for rape committed in Caloocan City on the basis of the evidence adduced by the prosecution which as stated, has established the guilt of the accused beyond reasonable doubt, as well as the penalty of Reclusion Perpetua imposed against the accused under Article 335 of the Revised Penal Code, STANDS FIRM."[6]

Not satisfied therewith, appellant is now before us and, by way of assignment of errors in his brief,[7] repeats substantially the same grounds adduced in his aforestated motion for reconsideration and/or new trial earlier filed in the trial court.

There is no merit in this appeal.

The first assignment of error raised by appellant as to the lack of jurisdiction of the trial court on the alleged second rape committed in Baclaran is now moot and academic. The trial court had already rectified the oversight when it modified its previous decision in its aforequoted order of September 25, 1990, convicting appellant only of the rape committed in Caloocan City which is the subject of the present proceedings.

The other assigned error hinges on the issue of credibility.

Well-settled is the rule that conclusions as to credibility in rape cases lie heavily on the trial court. Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight

and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties.[8]

In the case at bar, we find no reason to depart from this general rule. A careful review of the records of the case shows that the prosecution evidence was correctly appreciated by the court a quo to establish the guilt of appellant beyond peradventure of a doubt.

The contention of appellant that there was insufficient evidence of resistance on the part of the victim against the sexual assaults against her is untenable. In her testimony, complainant narrated that appellant threatened to kill her and poked a knife at her as he was abusing her and this indisputably constitutes sufficient intimidation. This Court has repeatedly ruled that intimidation includes the moral kind, such as the fear caused by threatening the girl with a knife or pistol.[9]

Moreover, in cases of rape, the manner, form and tenacity of resistance of the victim therein are dependent on a number of factors, among which are the age and size of the victim, as well as of the aggressor himself; the degree of actual force and intimidation employed; and, of utmost importance, the relationship between the rapist and his prey.[10]

In the instant case, the victim at the time of the incident was a mere thirteen-year old girl and the one who raped her was her own father. Hence, even assuming that force or intimidation had not been actually employed, the crime of rape was nevertheless committed. The absence of violence or offer of resistance would not be significant because of the overpowering and overbearing moral influence of the father over the daughter which takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim.[11]

We reject the pretension of appellant that the complainant was just forced by her mother to file this case against him because the former had a lover. There is nothing novel nor imaginative in such a contrived defense. As we have heretofore held, it is unbelievable that a daughter would agree to charge her own father with rape, exposing herself to the ordeal and embarrassment of a public trial, and subjecting her private parts to examination, just to keep a mantle over her mother's alleged liaison with another man,[12] or for a mother of a thirteen-year old child to fabricate a rape charge, knowing fully well that such an experience would damage her daughter's psyche and tar her for life, unless it is the truth.[13]

Appellant further contends that it is improbable, if in fact complainant was sexually assaulted by him, that at such tender age of less than fourteen years she did not exhibit nor made mention of any vaginal bleeding; that after the alleged rape, she still willingly went with him to his alleged place of work in Baclaran and stayed with him there for more than two years up to 1986; that she did not tell her mother or her mother's brother, a Quezon City policeman, of the alleged rape earlier; that when she allegedly ran away from her father in July, 1986, she went somewhere else and not straight home to her mother; that she wrote and left a letter to her mother about the alleged rape instead of telling her directly; and that it took her more than two years to go to the authorities to complain against him.[14]

Aside from the foregoing attempt to undermine complainant's credibility by the foregoing supposed improbabilities, appellant also contends that complainant's reliability has likewise been destroyed by self-contradictions and the testimonies of and the evidence presented by other witnesses.

We have ruled in a number of cases that inconsistencies in the testimony of prosecution witnesses with respect to

minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimony. In fact, these inconsistencies, if only in minor details, reinforce rather than weaken their credibility.[15]

In the present case, the alleged flaws or discrepancies in the testimony of the complainant are on minor details which do not destroy the substance of her testimony or the other circumstances that point unerringly to the guilt of appellant.

Complainant's failure to state that there was bleeding in her vagina is immaterial. Vaginal bleeding or virginity is not an element in rape. What is important is the victim's testimony that appellant sexually abused her.[16] When a victim says that she had been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[17]

The fact that complainant, after the first rape, still went with appellant to the guardhouse of the Airport Motel where she was repeatedly raped by him and left the place only in 1986, does not affect her trustworthiness. She was only thirteen years old then and dependent upon her parents for sustenance, not to speak of appellant's unquestionable moral ascendancy over her. She had no option but to go with appellant when ordered to do so. Aside from that, there was that continuing threat by appellant against her life and the lives of the other members of her family, the fear of which was ingrained in her consciousness.

Consequently, the failure of the complainant to immediately report the incident to the authorities does not cast doubt on the credibility of the charge, since the foregoing circumstances satisfactorily explain the unintended delay. One should not expect such a young girl to act like an adult or like a mature and experienced woman who would know what to do under such difficult circumstances, and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered.[18]

It is not uncommon for young girls to conceal, for some time, the assaults on their honor because of the rapist's threat on their lives.[19] An intimidated person cowed into submitting to a series of repulsive acts may acquire some courage but only when she grows older and can finally state that enough is enough, the depraved malefactor must be punished.[20] That is what happened in this case. Lamentably, however, the tragedy herein is that the criminal is her own father.

Furthermore, the defense of appellant is anchored on denial. We need not belabor the entrenched doctrine that alibi is the weakest defense that can be availed of by the accused because it can easily be manufactured and fabricated.[21] Suffice it to state that appellant's defense of alibi does not inspire belief. Firstly, he was positively identified by complainant as the person who abused her, with complainant having no dubious motive at all to make such a serious imputation. Secondly, his alibi does not preclude the possibility that he was present at the scene of the crime when it was committed.

Incestuous rape of a daughter by a father has heretofore always been bitterly and vehemently denounced by this Court as more than just a shameful and shameless crime. And, as we recently reiterated, rape is a nauseating crime that deserves the condemnation of all decent persons who recognize that a woman's cherished chastity is hers alone to surrender of her own free will. Whoever violates that will descends to the level of the odious beast. The act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood for the culprit is reduced to lower than the lowly animal, and forfeits all respect as a human being.[22]

The execrable crime of herein appellant is made more odious by the total lack of remorse or even a penitential gesture on his part. It displays the nadir to which the beast in man can sink. Such a transgressor of basic human

norms of conduct does not deserve to live in a decent human society, and that society has the right to exclude from its membership anyone cursed with such an atavistic and subhuman propensity.

On the foregoing considerations and in light of the present law in force, we uphold the findings and conclusions of the lower court. We note, however, that it failed to award civil indemnity to the offended party as provided by Article 345 of the Revised Penal Code. Accordingly, accused-appellant is hereby further ordered to indemnify the offended party which, under the circumstances of this case, should be in the amount of P40,000.00 in accordance with the current policy of the Court.[23]

WHEREFORE, with the modification above indicated, the amended judgment of the court a quo is hereby AFFIRMED.

SO ORDERED.

Feliciano, Nocon, and Campos, Jr., JJ., concur.
Narvasa, C.J., (Chairman), on leave.

[1] Rollo, 11.

[2] Ibid., 87-93.

* The complainant's name is also spelled "Jenelyn" in the decision a quo.

[3] Ibid., 23-24.

[4] Ibid., 27.

[5] Original Record, 347.

[6] Rollo, 29.

[7] Ibid., 38.

[8] People vs. Ablaza, 30 SCRA 173 (1969); People vs. Payumo, 187 SCRA 64 (1990); People vs. Sendon, G.R. Nos. 95903--05, June 8, 1992.

[9] People vs. Garcines, 57 SCRA 653 (1974); People vs. Copro, 126 SCRA 403 (1983); People vs. Cabilao, G.R. No. 62999, June 25, 1992.

[10] People vs. Savellano, 57 SCRA 320 (1974); People vs. Bruca, 179 SCRA 64 (1989); People vs. Natan, 193 SCRA 355 (1991).

[11] People vs. Erardo, 127 SCRA 250 (1984); People vs. Ramos, 167 SCRA 476 (1988); People vs. Bruca, *supra*.

[12] People vs. Gargoles, 83 SCRA 282 (1978); People vs. Avila, 192 SCRA 635 (1990); People vs. Vinas, 202 SCRA 720 (1991).

[13] People vs. Yambao, 193 SCRA 571 (1990); People vs. Telio, G.R. Nos. 72786-88, June 22, 1992.

[14] Rollo, 51.

[15] People vs. Talla, 181 SCRA 133 (1990); People vs. Buka, et al., 205 SCRA 567 (1992); People vs. Sendon, *supra*.

[16] People vs. Lamberte, 142 SCRA 685 (1986); People vs. Poculan, 167 SCRA 176 (1988).

[17] People vs. Budol, et al., 143 SCRA 241 (1986); People vs. Avero, 165 SCRA 130 (1988).

[18] People vs. Sonico, 156 SCRA 419 (1987).

[19] People vs. Oydok, 125 SCRA 250 (1983); People vs. Natan, supra.

[20] People vs. Molero, 144 SCRA 397 (1986).

[21] People vs. Pacada, Jr., et al., 142 SCRA 427 (1986); People vs. Loveria, 187 SCRA 47 (1990); People vs. Hatague, et al., G.R. No. 97308, April 7, 1992.

[22] People vs. Ramos, 165 SCRA 400 (1988); People vs. Telio, supra.

[23] People vs. Yambao, supra; People vs. Tongson, 194 SCRA 257 (1991); People vs. Santiago, 197 SCRA 556 (1991).

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