

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO TEVES, ACCUSED-APPELLANT.

G.R. No. 97435. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the judgment of the Regional Trial Court, Branch 41, Daet, Camarines Norte, in Criminal Case No. 4865, convicting appellant of rape.

I

The information filed against appellant reads as follows:

"That on or about the 1st week of August, 1987 at about 9:00 a.m. at Barangay Lugui, Labo, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, by means of violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Eden Malagueno, against her will, and in her own house, to the damage and prejudice of the offended party" (Rollo, p. 19).

A complaint for rape was originally filed before the Municipal Trial Court of Labo, Camarines Norte on November 4, 1987. The case was elevated to the Regional Trial Court, through the Office of the Provincial Prosecutor, after a finding of the existence of a prima facie case against appellant.

Appellant pleaded not guilty upon arraignment.

After trial, the court a quo found appellant guilty as charged and sentenced him to suffer the penalty of reclusion perpetua and to indemnify the victim in the amount of P20,000.00, without prejudice to any action for recognition of paternity of the sibling (Rollo, p. 27).

Hence, this appeal.

II

The findings of fact of the trial court favorable to the prosecution are as follows:

The complaining witness, 20-year-old Eden Malagueno, stopped schooling after the third grade because of her bouts of epilepsy.

In September 1987, Leonora Malagueno, Eden's mother, noticed her vomiting. She, then, realized that Eden's underwear were no longer stained menstrual blood. On November 1, 1987, Leonora consulted Dr. Pio Lizaso regarding Eden's health. After an examination, Dr. Lizaso found that Eden was pregnant (Rollo, p. 20).

When Leonora confronted Eden about her pregnancy, she said that appellant had sexual intercourse with her sometime in the first week of August 1987 at their copra kiln. In court, Eden testified that at about 9:00 A.M. of

August 1, 1987, appellant approached and suddenly embraced her while she was preparing to feed the animals in their piggery. She struggled to free herself. What followed next, as testified by Eden, was summarized by the trial court as follows:

"xxx [t]hat she tried to free herself but he poked a bolo upon her and pushed her to the copra kiln and their house at the same time; then accused removed her panty while still poking the bolo against her, removed his pants and put himself on top of her; that while on top of her, he warned her not to tell anybody and threatened to kill her if she does; then he forcibly inserted his penis in her vagina and after inserting it she felt pain and was hurt and she tried again to free herself but failed because of the bolo poked against her; that accused remained about one hour on top of her; then she went to the place where they were tying the carabaos, but accused followed her; that after tying the carabao, the accused again pushed her down, removed her panty and put himself on top of her and again inserted his penis in her vagina and again she was not able to release herself; again the accused threatened her not to reveal to anybody what happened which she did because she was afraid xxx" (Rollo, p. 20[A]).

III

There are three settled principles to guide the courts in reviewing the evidence in rape cases. These are: (1) that an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the accused, though innocent, to disprove it; (2) that in view of the intrinsic nature of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense (*People v. De los Reyes*, 203 SCRA 707 [1991]).

The prompt outcry and complaint by the rape victim are indicative of the spontaneity of the account of her trauma (*People v. Abonada*, 169 SCRA 530 [1989]). Unless satisfactorily explained, a considerable delay in reporting an alleged rape gives rise to doubt as to the truth of the charges (*People v. Jervoso*, 124 SCRA 765 [1983]; *People v. Pimentel*, 118 SCRA 695 [1982]; *People v. Hayag*, 101 SCRA 67 [1980]).

From the time when the rape allegedly took place in the first week of August 1987, up to November 1, 1987, when Eden was brought to Dr. Pio Lizaso for consultation, four months had transpired.

In similar cases where there were delays in reporting the alleged rape, we enjoined the trial courts to scrutinize closely the testimony of the complaining witnesses in the light of the other evidence. Thus, in *People v. Cueto*, 84 SCRA 774 (1978), we held:

"xxx `It is the duty of the courts in such cases to scrutinize with the utmost care the story told by the complaining witness, especially when it appears that she did not make an immediate outcry or that there was any unexplained delay in instituting criminal proceedings.'

"Applying these guidelines to the instant case, we are of the opinion that the testimony of the complainant does not prove beyond reasonable doubt that Cueto raped her. Her testimony lacks spontaneity and does not ring with truth and candor. It is not clear, positive and convincing" (at pp. 791-792).

The medical finding that appellant sperm count was subnormal - meaning that he was sterile and incapable of begetting a child - when juxtaposed with the belated report of the alleged rape, is enough to engender in the mind a gnawing doubt as to his guilt. The doubt increases in intensity if we take into account the reversal by the trial court of its order directing the examination of the chromosomal genes of appellant and complainant, to determine the paternity of the child. The ground for denying said examination - the fact that the baptismal certificate of the child has an entry stating that the father was one "Domingo Teves," herein appellant - was not sound.

There are other circumstances that cast a cloud on the version of the prosecution.

If the child was normally born on April 19, 1988 (TSN, July 11, 1988, p. 10; Exh. "11"), then the sexual act must have taken place about 280 days before that date or around July 12, 1987. This is on the assumption that fertilization took place immediately after the rape complained of. The normal duration of pregnancy is 280 days from the date of fertilization. (Kerr, Forensic Medicine 173 [5th ed]; Gleister and Rentone, Medical Jurisprudence and Toxicology 359 [12th ed]). However, the date of fertilization is hard to ascertain because the life span of the spermatozoa in the vaginal canal may last for two weeks (William's Obstetrics 236 [14th ed]; People v. Castro, 58 SCRA 473 [1974]). A normal birth after a pregnancy of less than 280 days may occur (Wharton and Stilles, III Medical Jurisprudence 24 [5th ed]) but in a charge of rape such birth is enough to make highly suspect that the crime actually took place. The information fixed the date of the commission of the crime as "on or about the 1st week of August, 1987" (Rollo, p. 19).

According to complainant, it took one hour to consummate the carnal act (TSN, March 7, 1989, p. 30). The length of time the carnal act took place may lead to the unfavorable conclusion that she had consented to the carnal act.

It is intriguing to note that Eden claimed that she was raped twice by appellant after the first rape in the first week of August 1987 (Rollo, p. 21). Dr. Pio Lizaso confirmed that Eden had several sexual intercourses from August to November 1987. Confronted with rape cases of similar nature, this Court in People v. Ymana, 171 SCRA 174 (1989) posed the question:

"xxx [i]f the alleged rape, the day before (sic) happened as the complainant now claims, why would she allow an opportunity for its repetition on the following day under practically the same circumstances without raising hell? That, certainly, would be contrary to human nature" (at p. 189).

One of the essential elements of rape is the use of force, violence or intimidation by the accused to copulate the victims. The burden is on the prosecution to establish this element. But all that the prosecution could present to the Court was that the complaining witness tried to resist the sexual aggression on her person. Mere initial resistance of the complaining witness in a rape case is not sufficient to support a conviction for said offense (People v. Lago, 45 O.G. 1366).

Likewise, the claim of the complaining witness and her mother that she was suffering from epileptic seizures is not a deterrent for one to answer to a natural need for copulation since epilepsy is not a pervading disease but a nerve disorder. Hence, after a seizure, the victim is normal for all intents and purposes.

There was no evidence, except the manifestation of the prosecutor, that the complaining witness was mentally retarded. In making such a finding, the trial court merely relied on the testimony of the complaining witness herself, which testimony cannot come from a retardate. The colloquy was as follows:

"DIRECT QUESTIONS BY:

FISCAL RAMOS :

At this stage may I make it of record that the witness, aside from being a retardate is also suffering from epilepsy.

ATTY. MOYA :

That is evidentiary. We need a medical certificate to that effect. You have to lay the basis first, whether she is or was a retarded child who had been admitted to an institution or hospital.

COURT :

There being an objection -

FISCAL RAMOS :

Ms. Witness, have you ever been afflicted before of any ailment?

A - :

Yes, sir.

Q - :

What kind of ailment or sickness is that?

A - :

I get dizzy; sometimes I become unconscious at night.

Q - :

Have you ever submitted to medical treatment concerning this ailment of yours (sic)?

A - :

Yes, sir.

Q - :

Have you ever been hospitalized because of this ailment you are referring to?

A - :

I am being treated by an "arbularyo."

Q - :

How about a government doctor, has there been anyone who has examined or treated you concerning that ailment of yours?

A - :

I have not submitted myself to any government physician, sir.

xxx xxx xxx

FISCAL RAMOS :

We have no medical certificate to present in this case, Your Honor, and as per testimony of the witness she was only treated by a quack doctor, an "arbularyo." We will submit to the Court the appraisal of the condition of the witness" (TSN, March 7, 1989, pp. 5-8).

WHEREFORE, the Decision dated November 23, 1990 of the Regional Trial Court, Branch 41, Daet, Camarines Norte is REVERSED and SET ASIDE. The appellant is ACQUITTED on grounds of reasonable doubt.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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