

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO TEODOSIO Y CARREON, DEFENDANT-APPELLANT.

G.R. No. 97496. June 03, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The crime of rape is a heinous offense. Its commission must be established by clear and convincing evidence. Invariably, the prosecution must rely on the sole testimony of the offended party. If her version proves to be weak if not credible, then the conviction for the offense charged cannot follow. This is the status of the instant case.

Fernando Teodosio y Carreon was charged of the crime of rape in a sworn complaint that was filed by Elaine R. Cesar in the Regional Trial Court (Special Criminal Court) in Manila which reads as follows:

"The undersigned accuses FERNANDO TEODOSIO Y CARREON of the crime of rape, committed as follows:

That on or about December 19, 1985, in the City of Manila, Philippines, the said accused, by means of force, violence and intimidation, to wit: by then and there dragging the undersigned, more than 12 years of age, inside the room at the Champion Lodge Inn, located at Sta. Cruz, this City and thereafter, she was made to drink the softdrink which rendered her dizzy and unconscious, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned while she was deprived of reason or otherwise unconscious, against her will.

Contrary to law.

(SGD.) ELAINE R. CESAR

Complainant"[1]

Upon arraignment the accused entered a plea of not guilty, after which a trial on the merits was conducted. On May 17, 1988 a decision was rendered by the trial court convicting the accused of the offense charged as penalized under Article 335 of the Revised Penal Code. The trial court sentenced him to imprisonment for a term of twenty (20) years, one (1) month and one (1) day of reclusion perpetua and to pay the offended party Elaine Cesar the sum of P15,000.00 as actual damages and P50,000.00 as moral damages.

An appeal therefrom was interposed by the accused to the Court of Appeals alleging that the trial court committed the following errors:

"I

THE LOWER COURT ERRED IN FINDING THAT THE CRIME OF RAPE DEFINED AND PENALIZED UNDER ART. 335 OF THE REVISED PENAL CODE WAS PROVEN BEYOND REASONABLE DOUBT BY THE PROSECUTION.

II

THE LOWER COURT ERRED IN GIVING CREDIBILITY TO THE TESTIMONY OF THE COMPLAINANT AND HER OTHER WITNESSES."[2]

Pursuant to Section 13, Rule 124 of the 1985 Rules on Criminal Procedure, the Court of Appeals resolved to certify this case to this Court for decision. The resolution of the appellate court is accompanied by a report recommending affirmance of the appealed decision, and the imposition of the penalty of reclusion perpetua.

The findings of facts of the court a quo are as follows:

"In the case at bar, it was established that at time of the incident on December 19, 1985 the offended party, Elaine Cesar, was only 12 years and 6 months old and a mere 6th grader while the accused was already 20 years old and a 4th year college student; and that the accused is a sexually hot individual as borne by the fact that he admittedly masturbates at least once a week. The offended party, Elaine Cesar, testified in a simple, honest and straight-forward manner whereas the accused testified in an evasive and sometimes incredible and inconsistent manner. Elaine, at the time of the incident, being only 12 years and 6 months old and a mere Grade 6 student, was quite gullible and easily deceived by the accused. This Court also noted that the accused admitted, on cross-examination, that he and Elaine agreed that they would stay in the Champion Lodging House for only 'a short time which would be for 3 to 4 hours' only.

It also appeared from the testimony of the accused that they left Lyceum at about 3:25 P.M. and then took the LRT at the Central Station and alighted at the LRT Station at Doroteo Jose St., and then they proceeded on foot to the Champion Lodging House which is located along Rizal Avenue between Doroteo Jose and Zurbaran Street, so that the accused and Elaine must have arrived at the said motel between 4 to 5 P.M. on December 19, 1985. The accused failed to explain why they overstayed and left that motel only at about 7:30 A.M. on the following day, December 20, 1985. The accused claimed that when they first arrived at that motel in the afternoon of December 19, 1985, he phoned his house and talked to her sister, Imelda, to tell his family that he would arrive home late that day. In order to satisfy his lustful desires, the accused who is a sexually hot person, drugged the soft drink or pineapple juice which Elaine later drank inside the room in that motel so that she became dizzy and eventually lost consciousness. Once Elaine was unconscious, the accused raped her. According to the accused, they were very tired after walking so much on December 19, 1985 so that when they arrived inside the room of the Champion Lodging House in the afternoon of that day, the first thing they did was to order two glasses of pineapple juice to quench their thirst. And yet according to the accused he alone drank the two glasses of pineapple juice while Elaine did not, so that his testimony on that point is incredible, being against the common experience of mankind. They were both tired and thirsty after having walked around so much and they both needed a drink badly.

When she woke up at 5:00 A. M. on the following morning, December 20, 1985, Elaine found blood on her private part or vagina and she felt pain in her body; when she asked the accused what happened, the accused lied by saying that nothing happened. On the following day, December 21, 1985, when Elaine told her mother what happened at the motel, her mother got angry and lost no time in bringing her to the PC Crime Laboratory before 5:00 o'clock in the afternoon to have Elaine physically examined by the expert Medico-Legal Examiner, Col./Dr. Gregorio Blanco. Dr. Blanco testified positively that in the course of his physical examination of Elaine, he found her hymen to have a fresh laceration at 5:00 o'clock and that said fresh laceration meant that there was a very recent sexual intercourse, and he also concluded that the child, Elaine Cesar, was therefore in a non-virgin state because of that fact. Considering that the accused first met Elaine, Cesar only on September 11, 1985, it is difficult to believe that the said young girl, being only 12 years and 6 month old at that time, would have consented to go with the accused to a motel on December 19, 1985 for the purpose of submitting her virginity to him. The accused also admitted on cross-examination that while he and Elaine were inside the room in that motel that he kissed and embraced Elaine and that he asked Elaine to give her virginity to him "three times". The accused, being much older than Elaine, took advantage of, deceived and abused the latter

sexually by raping her when she was unconscious on account of her having drunk the drugged soft drink or pineapple juice. The defense's evidence, more particularly the two pictures (Exh. 1 and 2) of Elaine Cesar including the tenderly-worded handwritten dedication (Exh. 1-A) at the back of Exh. 1, did not disprove the fact that the accused raped the child, Elaine Cesar, while she was unconscious inside the room of the Champion Lodging House.

The straight-forward testimony of Elaine Cesar as well as the testimony of the disinterested witness, Col/Dr. Blanco, that his physical examination of Elaine Cesar on December 20, 1985 at the PC Crime Laboratory revealed that her hymen had a fresh laceration at 5 o'clock and which indicated recent sexual intercourse was not over-turned by the evidence of the defense.

In this connection, it has been held that absence of spermatozoa does not disprove rape. (People vs. Calainquim, 125 SCRA 655). If the ability to resist is taken away by administering drugs, even though the woman may be conscious, sexual intercourse with her is rape (People vs. Lintag, 126 SCRA 511). In rape, there must be sexual intercourse. Penetration even partial, is necessary. The slightest penetration is enough. Proof of emission is not necessary. (People vs. Selfasion, et al. L-14732 Jan. 28, 1961). Every person criminally liable for a felony is also civilly liable (Art. 100 Revised Penal Code)."[3]

Upon a careful review of the records of the case there is no question that on that fateful day of December 19, 1985 Elaine and appellant were together from 7:00 o'clock in the morning when they met in front of the Fargo Department Store in Caloocan City when they attended the Christmas party at the Manila Central University, where Elaine was enrolled, up to 10:00 A.M.. Thereafter, they proceeded to the Luneta where they took a stroll. Then they went to the Fiesta Carnival at Cubao, Quezon City and they ate at a nearby Mc Donald's restaurant. They later proceeded to Lyceum where appellant took his examinations at about 2:30 P.M. Then he fetched Elaine at the canteen where she was waiting. They rode the metropolitan light rail transit at the Central Station up to Doroteo Jose Street. Upon alighting therefrom, they walked to the Champion Lodging House. After drinking two glasses of pineapple juice, they had sexual intercourse. They stayed overnight in the said motel.

The focal question is whether the account of Elaine in that she was only forced to go to the motel and that she was made to drink the soft drink so that she lost consciousness is true and supported by the evidence.

Elaine admitted that she knew appellant some three months before the alleged incident took place because they were neighbors, i.e., she resided with her grandmother in Caloocan City during her school days. Apparently, they fell in love with each other for Elaine gave appellant her photograph marked Exhibit 1 with her handwritten dedication.

"12-6-86

Love, may this picture serve as remembrance for someone special. This shows how much I love you. Take care, study hard, I love you. Please take care of this picture. I trust and love you. Between us remember me always. Love.

I love you

Elaine"[4]

This picture was given by Elaine to appellant while they were inside the Luneta Theater on December 16, 1985 and because of this memento, he kissed her out of joy, according to appellant. He said he courted Elaine for a few weeks and she accepted his proposal by phone. They went out three times to see a movie, that is, in October, 1985, December 16, 1985 and December 18, 1985. It was while at Luneta Theater on December 18 that Elaine invited appellant to accompany her to her class Christmas party. Thus the following day, appellant informed his mother of the invitation and she permitted him and gave him P50.00 pocket money. From 7:00 A.M. of December

19, 1985 to the following morning, they were together, going from one place to the other, until they slept together in the lodging house. There was no force or compulsion involved. It was a day of joy for the two young lovers. Appellant did not drug Elaine to lay with her. She was in love with him and did not hesitate to surrender her virginity to her sweetheart upon a promise of marriage.

The contradictions in the testimony of Elaine where she attempted to prove that their coition was involuntary rather than fortify the case of the prosecution, served to demolish the same.

Firstly, while Elaine claimed she was dragged to the hotel, her medical examination did not reveal any contusions on her body showing use of any force on her. Indeed, if she was under any compulsion, she could easily have escaped during the many hours they were together going from one place to another, but she did not. She was enjoying their tryst.

Secondly, if she was really drugged she should have been given at least a blood and urine test to determine if there were any remaining chemicals in her system. This was not done.

Thirdly, after the incident, Elaine was composed and was not disturbed at all. She did not show any sign of having had a traumatic experience. It was only when her mother scolded her that she contrived her story.

Fourthly, in one part of her Sagot Salaysay submitted to the fiscal's office, she said she did not accept the invitation of appellant for them to go to the Luneta.[5] In another part thereof, she said she accepted the same.[6] In court, she said she agreed to go to the Luneta[7] and thereafter she said she was forced.[8]

She also stated in her Sagot Salaysay that she was only persuaded to give appellant her photograph and appellant dictated what she wrote thereon.[9] In court she admitted she gave the photograph to appellant and that appellant did not ask her to write the dedication thereon.[10]

Verily, the foregoing circumstances effectively disproves the theory of force and involuntariness in the sexual interlude of the two.

What is obvious and clear is that these two young lovers, carried by their mutual desire for each other, in a moment of recklessness, slept together and thus consummated the fruition of their brief love affair. Appellant cannot be held liable for rape as there was none committed. It was a consensual affair.

Nevertheless, based on the evidence the crime committed by appellant is simple seduction. Article 338 of the Revised Penal Code provides:

"ART. 338. Simple seduction. - The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor."

All the elements of the offense are present.

Frankly -

1. Elaine was over 12 and under 18 years of age.
2. She is single and of good reputation.
3. The offender had sexual intercourse with her.
4. It was committed by deceit.

Appellant said he planned to marry Elaine and for this reason he successfully persuaded her to give up her virginity. This is the deceit contemplated by law that attended the commission of the offense.[11]

Section 4, Rule 120 of the 1985 Rules on Criminal procedure provides:

"Sec. 4. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

Unfortunately, the essential ingredients of simple seduction are not alleged nor necessarily included in the offense charged in the information. The only elements of the offense alleged in the sworn complaint of the offended party is that she is over 12 years of age when appellant had carnal knowledge of her. Thus, appellant cannot be convicted even for simple seduction either.[12]

WHEREFORE, the appealed judgment is hereby REVERSED AND SET ASIDE and another judgment is hereby rendered ACQUITTING appellant of the offense charged, with costs de oficio. Let a copy of the decision be furnished the Honorable Secretary of Justice for his appropriate action.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 48, rollo.

[2] Page 10, appellant's brief; page 46, Rollo.

[3] Pages 12 to 15, decision; page 48, rollo.

[4] Exhibit 1-A.

[5] See paragraph 6 of Sagot Salaysay.

[6] Ibid, paragraph 8.

[7] TSN, December 8, 1987, page 7.

[8] Ibid, page 8.

[9] Paragraph 4, Sagot Salaysay.

[10] TSN, December 8, 1987, pages 25, 28, and 29.

[11] People vs. Iman, 62 Phil. 92 (1935); and U. S. vs. Sarmiento, 27 Phil. 121 (1914).

[12] People vs. Ramirez, 69 SCRA 144 (1976) and People vs. Quintal, 125 SCRA 734 (1983).

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