

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NESTOR ABELLA, ACCUSED-APPELLANT.*G.R. No. 98124. December 21, 1993*

Ponente: CRUZ, J.

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We are asked to weigh the testimony of a ten-year old girl against the denials of the herein appellant, who has been convicted of raping her. In pleading for his exoneration, he stresses that he was unjustly accused by the girl upon the prodding of her mother.

Based mainly on the girl's narration, the evidence for the prosecution showed that at around 8 o'clock in the evening of June 15, 1990, in Cagayan de Oro City, Charlyn Villablanca was sent by her mother to fetch her father from her uncle's house some 200 meters away. As her father tarried, she decided not to wait for him and to go back by herself alone. It was on her way home that Nestor Abella, a neighbor of hers, called her and ordered her to buy ice for him. She refused at first but agreed when she saw him get angry. She had gone only a few steps away, however, when he called her back in an apparent change of mind. When she proffered to return the fifty centavos he had given her for the ice, he grabbed her arm and pulled her to a nearby banana grove. There he ordered her to strip and when she refused pulled down her panty himself. Then he took off his shorts. What followed was the violation of the girl, with his hand upon her mouth to prevent her from screaming and his shaft upon her mound to gratify his lust.[1]

Charlyn felt pain in her vagina. The spurt of lascivious fluid smeared her outraged innocence. As for Abella, he stood up after the deed was done, put on his shorts, and casually walked away as if nothing had happened.[2]

Meanwhile, her mother Wilma Villablanca, worried that she had not returned, started out to look for her. She met her on the way and found the girl in tears. Soon enough, she learned the reason for her child's distress. Charlyn told her mother of the rape and the identity of her attacker.[3]

Wilma immediately notified her husband Romulo Villablanca and the couple, together with their daughter, went to the scene of her rape to look for Abella. Finding no one there, they reported the attack upon Charlyn to the barangay captain and later to the police. That same evening, they proceeded to the Northern Mindanao Regional Training Hospital, where the girl was subjected to a medical examination by Dr. Apolinar A. Vacalares, who made the following findings:[4]

Labia majora intact and normal. Labia minora, left reddish, congested and contused, measuring 1.0 cm. in diameter.

Hymen - intact.

Contusion, labia minora, left

x x x

Negative for Spermatozoa.

On the stand, Dr. Vacalares explained that the trauma on the girl's vagina could have been caused by an erect penis although the penetration was superficial and did not tear the hymen. He also opined that the semen could have dripped out of the labia, which would explain the absence of spermatozoa at the time of the girl's examination.[5]

Wilma Villablanca also took the stand to support her daughter's testimony.[6] The prosecution also presented in evidence, among other exhibits, a letter dated September 23, 1990, in which Abella asked Charlyn's parents for forgiveness.[7]

The appellant denied the charge and swore that at the time of the alleged incident, he was in the basketball court at Zone 3 with some friends, including Monico Dalde, who testified to corroborate his defense.[8]

After trial, Judge Senen C. Peñaranda of the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, rendered a decision dated February 14, 1991, the dispositive portion of which read as follows:

WHEREFORE, the court finds the accused NESTOR ABELLA guilty beyond reasonable doubt, as principal, of RAPE as defined and penalized under Article 335, par. 3, Revised Penal Code, with no mitigating or aggravating circumstance, and sentences him to suffer the penalty of RECLUSION PERPETUA and to pay the costs; and to indemnify CHARLYN VILLABLANCA in the amount of Twenty Thousand (P20,000.00) Pesos. The accused shall be credited with the full period of his preventive imprisonment.

In this appeal, Abella faults the trial court for giving credence to Charlyn who, he alleges, was coached by her mother Wilma. He also claims it erred in treating his letter as an admission of guilt notwithstanding the failure of the prosecution to prove its case.

The appeal has no merit.

The supposed inconsistencies between the testimonies of Charlyn and her mother are minor flaws that do not impair the integrity of the evidence for the People. In any event, such inconsistencies must be resolved in favor of Charlyn, who was giving first-hand and direct testimony of her ordeal at the hands of the appellant.

Charlyn's identification of Abella as her attacker was sufficient although she could not tell his name at first. She did not have to know his name to be able to point to him as the person who raped her that night. She knew him by face. They were neighbors. This was the reason, in fact, why she obeyed him when he told her to buy ice for him.

In law, Charlyn was not even required to know her attacker's name. What is important is that at the trial, she positively pointed to him as the person who raped her.[9]

Abella's conviction did not rest alone, if at all, upon his letter to Charlyn's parents in which he expressed his remorse and begged for their forgiveness. All the letter did was strengthen the trial judge's conviction that the appellant was indeed guilty of the crime imputed to him.

The appellant cites the case of *People v. Lao*,[10] where the Court said of a similar letter of apology:

As regards the letter of apology, if it was indeed written by the accused, this cannot be considered as an apology for committing rape. If ever accused asked for apology, it was because he and complainant were cousins and that he was a married man.

That case is not in point because the accused there was acquitted not because of the rejection of the letter but in light of three important circumstances, to wit, the absence of resistance from the complainant to the alleged rapist, who was unarmed and physically small; the fact that the complainant made the accusation of rape only after she

was already six months pregnant; and the continued cordial relations between the complainant and the accused after the alleged rape. No such or similar circumstances are present in the case at bar.

Regarding the intact hymen, it suffices to say that full penetration of the vagina is not necessary to constitute the crime of rape.[11] We have held in many cases that partial penetration of the vagina by the male organ is sufficient, as where it is shown that the labia and the opening of the vagina were inflamed.[12] There was such a finding in the case at bar.

We are satisfied with the conclusion of the trial court, which had the direct opportunity to observe the witnesses and assess their credibility, that the appellant Nestor Abella did, on the night of June 15, 1990, force his lust upon the complainant, who was then only ten years old, and thus committed the crime of rape as punished under Article 335 of the Revised Penal Code.

The Court cannot adequately express its revulsion for the nauseating offense committed by the appellant upon the defenseless girl who had not yet left her childhood years when she was rudely thrust into a violent act of sordid sex. The outrage not only sullied her chastity but also, and no less heartlessly, disenchanted her innocence.

WHEREFORE, the appeal is DISMISSED and the decision of the trial court is AFFIRMED, with the modification that the civil indemnity is increased to P30,000.00. Costs against the appellant.

SO ORDERED.

Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] TSN, December 18, 1990, pp. 34-38.

[2] Ibid., pp. 38-39.

[3] TSN, November 5, 1990, pp. 6-7.

[4] Exhibit "A"/"1," Records, p. 74.

[5] Decision, p. 3; Rollo, p. 18. TSN, January 9, 1991.

[6] TSN, November 5, 1990; December 18, 1990.

[7] Exhibit "B," Records, pp. 75-76.

[8] Decision, p. 4; Rollo, p. 19.

[9] TSN, December 18, 1990, p. 36.

[10] 137 SCRA 523 (1985).

[11] People v. Castro, 196 SCRA 679 (1991).

[12] People v. Magallanes, 218 SCRA 109 (1993); People v. Dabon, 216 SCRA 656 (1992); People v. Alegado, 201 SCRA 37 (1991); People v. Cruz, 180 SCRA 765 (1989); People v. Alvarez, 163 SCRA 745 (1988).

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