

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARVEL SABALLE, ALIAS BEBOT ALIAS BETROK, ACCUSED-APPELLANT.

G.R. No. 98704. September 08, 1994

Ponente: MELO, J.

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MELO, J.:

Accused was charged with the crime of rape in an Information reading as follows:

That on or about the 1st day of March, 1989, in the Municipality of Tolosa, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Maricel Rendora, a six (6) year child, against her will and consent to her damage and prejudice.

(p. 5, Rollo.)

After trial, the court a quo found accused-appellant guilty as charged in a decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, this Court finds the accused Arvel Saballe alias “Bebot Saballe” alias “Betrok” guilty beyond reasonable doubt of statutory rape under Article 335, paragraph 3 of the Revised Penal Code; and hereby sentences him to suffer the penalty of reclusion perpetua and to pay the sum of P20,000.00 to the offended party Maricel Rendora and her family (People vs. Simeon Mangalino y Lumanoy, G.R. No. 79011, Feb. 15, 1990.)

(p. 29, Rollo.)

Accused-appellant appealed, raising the sole assigned error that the prosecution failed to prove his guilt beyond reasonable doubt.

The evidence for the prosecution, as concisely set forth in the brief submitted by Solicitor General Raul I. Goco, Asst. Solicitor General Azucena R. Balanon-Corpuz, and Associate Solicitor Angelo R. Arizolsa, is as follows:

Imelda Rendora testified that on March 1, 1989 at about 5:00 p.m. in Barangay San Vicente, Tolosa, Leyte, she left her three (3) children, namely Maricel (6 years old), Michelle (4 years old) and Messanli (2 years old), alone inside their house while she went to the house of her own mother, about thirty (30) to forty (40) meters away, to obtain some rice and burning charcoals which she brought to her kitchen where she built a fire in preparation for supper. She went out again to the street about fifteen meters from the house and talked with the neighbors. (pp. 4-6, tsn, September 27, 1989).

Maricel testified that while her mother was outside their house, appellant entered and enticed her to play with him. While they were playing, appellant forced himself on top of Maricel and inserted his penis into the latter’s vagina (pp. 3-4, tsn, September 26, 1989) causing her extreme pain and instant bleeding (p. 13, tsn, August 29, 1989). Maricel cried (p. 7, tsn, September 27, 1989). Having finished with his bestial desires, appellant left through the window before Imelda came back to the house (p. 14, tsn, August 29, 1989).

When Imelda returned to the house after talking to her neighbors, she found Maricel sitting in the sala and crying. She found out that Maricel's vagina was bleeding. Acting instinctively, she washed it with water and tried to find what was causing the bleeding. She discovered that the opening had widened and that the bleeding was coming from the inside of the vagina. Imelda went to her parent's house and together with her father they chartered a motorcycle to proceed to the Rural Health Clinic. Since it was already 6:00 p.m., the tricycle driver advised them to proceed to the Leyte Provincial Hospital at Palo, Leyte (p. 8, tsn, September 27, 1989). Along the way, somewhere in Borac, Maricel informed her mother that it was "Betrok", the nickname of appellant, who caused the bleeding when he went on top of her. They reached the Leyte Provincial Hospital, at around 7:00 to 7:30 p.m. where Maricel was treated by two resident physicians, one of whom was Dr. Lydia B. Hayabo M.D., (p. 6, tsn, August 29, 1989). She came up with the following findings:

MEDICO-LEGAL REPORT

NAME : RENDORA, MARICEL

Age : 6 ; Female

Status : Child

Address : San Vicente, Tolosa, Leyte

Alleged Case: Allegedly raped by a known person

Alleged Date, Time and Place of Infliction:

March 1, 1989

4:00 p.m.

San Vicente, Tolosa, Leyte

Purpose of Examination: Medicolegal

FINDINGS

P.E. : No gross P.E. Findings

- No pubic hairs,
- Hymen - fresh laceration with bleeding at the base of clitoris area.
- Vagina - admits 1 finger with ease.
- Vaginal smear for the presence of spermatozoa -negative.

Time of examination: 7:30 p.m.

Date of examination: March 1, 1989

Remarks : Said patient was admitted on March 1, 1989 and discharged on the following day.

The same doctor concluded that the fresh laceration at the hymen was due to the penetration of the penis. Maricel was ordered to be confined for one day at the hospital (p. 6, tsn, August 29, 1989). For the duration of Maricel's stay at the hospital, the medicines needed and all other expenses incurred, Imelda had to shell out P500.00 (p. 9, tsn, September 27, 1989).

The crime was reported to the Tolosa INP Station in the evening of March 1, 1989. Acting on such report, Station Investigator P. Cpl. Eufonio Malate, together with other police officers, went to Barangay San

Vicente, apprehended appellant and brought him to the station (pp. 4-6, tsn, October 9, 1989) for investigation. The following day appellant was released from custody since no case was yet filed against him (p. 7, tsn, October 9, 1989). On March 3, 1989, however, appellant was re-arrested and brought to the hospital where he was positively identified by Maricel (p. 8, *ibid*).

(pp. 3-7, Appellee's Brief, ff. p. 107, Rollo.)

Accused-appellant's defense rests on denial and alibi.

Accused-appellant contends that the charge of rape is a sheer fabrication by Imelda Rendora, the mother of the victim, Maricel Rendora, to get back at the family of accused-appellant against whom she entertained animosities arising out of a land dispute. The contention of accused-appellant is patently unsustainable in the face of the prosecution evidence. The fact that the victim was sexually assaulted is patently established by the medical certificate (Exhibit A) issued by Dr. Lydia B. Hayabo who physically examined the victim which Dr. Hayabo later confirmed on the witness stand. The medical certificate clearly states that the victim's vagina was lacerated and bleeding and easily admitted one finger with ease. Dr. Hayabo concluded that the fresh laceration of the vagina was caused by the penetration of a penis.

As to who raped the victim, there can be no doubt. The victim categorically identified accused-appellant as the person who raped her. Her testimony is simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction. She is a guileless and artless 6-year old girl who can be expected to tell the truth without any embellishment. Her testimony must be given full faith and credit.

Accused-appellant's protestation that the victim's mother filed the charge to get back at the family of accused-appellant because of an existing enmity and antagonism between the victim's and accused-appellant's family arising out of an alleged land dispute is too unsubstantial and implausible to negate the actuality of the rape. As above demonstrated, the fact of rape as well as the identity of the malefactor have been clearly established by the evidence. Too, the misunderstanding between the family of accused-appellant and that of the victim happened three years before the rape and had been in fact already forgotten by the parties involved who have since become friends. Finally, we are totally appalled by accused-appellant's posture view that a mother would willingly subject her daughter, one of very tender age at that, to the rigors of a rape trial just so she could satisfy her desire for revenge. As we stated in *People vs. Yambao*, (193 SCRA 571 [1991]):

It is inconceivable that a mother of a six-year old child would fabricate a rape charge, subject her daughter to physical examination and the embarrassment of a public trial. A mother would not sacrifice her daughter's honor to give vent to a grudge knowing fully well that such an experience would damage her daughter's psyche and tar her for life.

(p. 578, Rollo.)

The proffered alibi is likewise unavailing. Alibi is a weak defense for it is easy of fabrication (*People vs. Ragas*, 44 SCRA 152 [1972]) and cannot prevail over the prosecution's positive and clear identification of the accused as the perpetrator of the crime (*People vs. Rendoque*, 205 SCRA 783 [1992]).

Accused-appellant was positively and categorically identified by the victim as her debaucher and defiler. Material to establishing alibi as a valid defense, it must be shown that it was physically impossible for the accused-appellant to have been present at the place of the crime at the time it was committed (*People vs. Cruz*, 208 SCRA 326 [1992]). In the case at bench, accused-appellant claimed that at the time of the commission of the crime he was harvesting palay at a ricefield owned by one Genoveva Cinco. However, by his own testimony said ricefield is only 180 meters away from the house of the victim (pp. 2-3, tsn, March 7, 1990). At such a short distance, clearly it was not physically impossible for accused-appellant to have been at the place of the crime at

the time of commission thereof.

WHEREFORE, the decision appealed from is hereby affirmed in toto.

SO ORDERED.

Feliciano, (Chairman), Romero, and Vitug, JJ., concur.

Bidin, J., on leave.

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