

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PACIFICO LAZARO Y REPIZO, DEFENDANT-APPELLANT.*G.R. No. 99263. October 12, 1995*

Ponente: BELLOSILLO, J.

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The rule that courts accord much credence to the testimony of a child who has been raped is once again graphically illustrated in the case at bench. Here the testimony of the victim while sufficient in itself to convict the accused is strengthened even more by another young, adolescent, eyewitness.

Jose Lucio Lim lived with his children Jefferson and Jocelyn in a two-storey house in San Andres Bukid, Manila. Jefferson was in Grade I while Jocelyn was a 5-year old kindergartner. The wife of Jose Lim had been working since 17 December 1988 as a domestic helper in Macao, China. The family occupied the second floor of the house. A sister-in-law of Jose, Andrea Lim, stayed in the ground floor where she ran a sari-sari store. One of Andrea's children is Mylene Lim, then a Grade VI pupil.

Accused-appellant Pacifico Lazaro alias "Piko," a tricycle driver, lived with his step-brothers and step-sisters in an apartment next to the Lims.

On 20 July 1989, at around five o'clock in the afternoon, "Piko" went to the abode of the Lims. Andrea was attending to her customers at the store while Mylene was sitting on a wooden bench at the living room adjacent to the store. "Piko" proceeded to the living room, sat beside Mylene, boldly touched her cheeks and then held her by the shoulder. Frightened, Mylene stood up, ran to Andrea and reported, "Mama, binastos ako ni Piko." But Andrea only told her daughter to stay inside the store and keep away from him.

Disheartened, "Piko" went up the second floor and entered the room where he found Jocelyn lying on bed. Slowly he lifted her skirt and removed her panties. Then he pulled down his pants with his underwear and started inserting his erect organ into hers. Jocelyn pained. She cried as she struggled to free herself. But "Piko" held her back and moved his buttocks up and down as he intimated to her, "Hindi naman masikip."

Meanwhile, unaware of the happening upstairs, Andrea asked Mylene to look for "Piko." Failing to find him at the ground floor Mylene went up the second floor and, to her surprise, she saw "Piko" half-naked on top of her cousin Jocelyn. "Piko" was moving his buttocks up and down. She was only a foot away from "Piko" and Jocelyn. Shocked, she looked for Jocelyn's brother Jefferson. She found him playing in the living room at the second floor. She immediately told him about the dastardly act of "Piko." Forthwith, Jefferson ran to the kitchen, took a knife and proceeded to his sister. He found her lying on bed crying. "Piko" was putting back his pants. Jefferson could only shout to "Piko," "Umalis ka diyan sa kapatid ko. Umalis ka sa bahay namin." Informed of the incident, Andrea and Mylene ran to the second floor. On the way up they met the accused who was rushing down the stairs.

Mylene and Jefferson then called up Jose Lim in his office and reported the matter. Jose immediately went home and brought Jocelyn to the Western Police District (WPD) and then to the National Bureau of Investigation (NBI)

for genital examination. Dr. Noel B. Minay of the NBI who examined Jocelyn found no evident sign of extragenital physical injury on Jocelyn and that her hymen was intact.[1] In his testimony, Dr. Minay disclosed that while he inadvertently did not state it in his medical report, his notes during the examination contained findings of discoloration in Jocelyn's labia minora which could have been caused by the unsuccessful penetration of an erect male organ.[2]

From the NBI Jose and Mylene returned to the WPD and gave their respective sworn statements. At this juncture "Piko" was brought in. Mylene identified and pointed to "Piko" as the person who raped Jocelyn.

On 21 July 1989 a complaint for rape was filed against accused-appellant.

The defense of the accused was alibi. Testifying for himself and presenting no other witness appellant related that at about three o'clock in the afternoon until seven o'clock in the evening of 20 July 1989 he was at home, very tired and feverish in fact. He said he worked as an extra tricycle driver the whole morning. He also disclosed that at around seven-thirty that evening he was picked up by two (2) barangay tanods who brought him to the Barangay Headquarters where he was questioned in connection with the rape of Jocelyn.

The Regional Trial Court of Manila[3] found accused Pacifico Lazaro guilty of rape, sentenced him to reclusion perpetua and ordered him to pay Jocelyn Lim P30,000.00 as moral and exemplary damages, and Jose Lim P20,000.00 as moral and exemplary damages plus P2,000.00 as actual damages. The trial court ruled that "(t)he crime committed by the Accused is that of consummated statutory rape x x x it appearing in the records that at the time the Accused abused Jocelyn Lim she was barely six (6) years old. While it is true that the hymen, per report of Dr. Noel Minay, Exhibit "E", is still intact, however, such circumstance does not militate against nor preclude the finding of the Court that the crime charged is, in fact, consummated. Jurisprudence is to the effect that, for 'Rape' to be consummated, rupture of the hymen is not necessary, nor is it necessary that the vagina sustained a laceration especially if the complainant is a young girl."[4]

Accused-appellant now questions in this appeal the credibility of the prosecution witnesses as well as the finding of the trial court of consummated statutory rape. He argues that the failure of Jocelyn to shout is abnormal and contrary to human experience; that Jocelyn's testimony regarding the presence of blood in her vagina after the alleged rape is false it being contrary to the NBI finding that she did not suffer any extragenital physical injury; that the open court statement of witness Mylene Lim is inconsistent with her sworn statement which did not narrate her encounter with Jefferson and the latter's reaction to the former's report of accused-appellant's alleged wrongdoing; and, that he was merely framed up by the Lims because he had earlier reprimanded the Lim children for fetching water from his house late in the evening.

Accused-appellant maintains that the foregoing circumstances show the failure of the prosecution to prove his guilt beyond reasonable doubt; and, be that as it may, assuming that a crime was committed, the same could only be acts of lasciviousness, not rape, considering the finding of the Medico-Legal Officer of the NBI.

We find no merit in the arguments of accused-appellant. The assessment of the credibility of witnesses is left largely to the trial court because of its opportunity unavailable to the appellate court to see the witnesses on the stand and to determine by their conduct and demeanor whether they are testifying truthfully or simply lying.[5] Its factual findings are accorded the highest respect unless it is shown that certain facts of value have been plainly overlooked which, if considered, could affect the result of the case.

In the case at bench, accused-appellant has not presented any substantial or convincing evidence to disturb the findings of the lower court. A careful review of the records discloses that despite her age, Jocelyn testified on her misfortune in a simple and forthright manner. Significantly, she never wavered in her assertion that

accused-appellant assaulted her despite defense counsel's subtle attempt to cajole her into changing her stance -

Atty. Cabaron:

Jocelyn, I would like to inform you that there is a possibility that "Pico" will be imprisoned for life. Now, just tell us the truth. Did "Pico" really lie on top of you?

Witness:

Yes, sir.[6]

Thus we sustain the trial court's evaluation on the trustworthiness of Jocelyn's testimony -

x x x x What to the Court was noteworthy and primordial is that when Jocelyn Lim was asked questions pertaining to the crime itself, she perked up and effortlessly and spontaneously responded to questions delving into the gravamen of the crime charged. Jocelyn Lim averred in a natural and straightforward manner when she testified before the Court that the Accused entered the room, removed her green-colored attire, including her panties, and then removed his own short pants and attire, went on top of her and inserted her stiff and erect private organ into her private parts and (she) cried, when she felt pain in her private parts, although she did not shout x x x x On the whole, the Court is impressed by and is fully convinced that the testimony of Jocelyn Lim is bereft of the affectations and artificialities of a coached, rehearsed and/or perjured witness x x x x[7]

Accused-appellant asserts that Jocelyn's testimony is false because she failed to shout during the assault and the Medico-Legal findings of the NBI are contrary to her allegation that there was blood in her vagina.

Such arguments are unavailing. We have held that failure of the offended party to make a struggle or outcry is immaterial in the rape of a child below twelve years of age because the law presumes that the victim on account of her age does not and cannot have a will of her own.[8] Likewise, Jocelyn's testimony relating to the blood in her vagina does not at all destroy her credibility as she may have merely mistaken the discolorations on her labia minora as bloodstains. Besides, vaginal bleeding is not an element of rape as what is important is that the rape victim testified that the accused-appellant sexually abused her,[9] and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[10] As mentioned earlier, courts usually lend credence to the testimony of a young girl especially where the facts point to her having been a victim of sexual assault.[11]

While the testimony of Jocelyn was already sufficient to convict accused-appellant the prosecution, perhaps not wanting to leave anything to chance, still presented Mylene who witnessed the incident and whose narration was adjudged by the trial court to be credible and convincing coming as it did from a minor with no tinge of artificiality nor ulterior motive to falsely testify. The alleged inconsistencies between her testimony in open court and her sworn statement before the investigators are not fatal defects to justify a reversal of appellant's conviction. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are almost always incomplete.[12] It bears emphasis that a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant.[13] Sworn statements taken ex-parte are generally considered to be inferior to the testimony given in open court.[14]

Further, the imputation by accused-appellant of ill-motives behind the filing of the rape charge is unsupported by the records. The instinctive tendency of parents to protect their children strongly militates against the claim. Thus, a father would not allow his own daughter to undergo the rigors and trauma of a rape trial and subject her to humiliation and public curiosity just to get back to the accused who supposedly berated the victim earlier for fetching water late in the evening.[15] Nobody in his right mind could possibly wish to stamp his child falsely

with the stigma that follows a rape.[16]

Accused-appellant also invokes alibi to extricate himself from the charge. He was supposedly not there when Jocelyn was abused. For lack of corroboration, his explanation hardly persuades. Also, well entrenched is the doctrine that for alibi to prosper it is not enough to prove that appellant was somewhere else when the crime was committed but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[17] Moreover, accused-appellant was positively identified as the perpetrator of the crime by Mylene and the victim herself who both have long known him. Consequently, accused-appellant's alibi cannot prevail over the positive identification made by credible witnesses.[18]

Finally, accused-appellant submits that assuming he committed a crime, the same could only be acts of lasciviousness because Jocelyn did not suffer from any extragenital physical injury and her hymen remained intact.

Appellant's theory is untenable. In the crime of rape, full or complete penetration of the complainant's private part is not necessary as the only essential point to prove is the entrance, or at least the introduction of the male organ into the labia of the pudendum.[19] The present case clearly establishes the crime of statutory rape, i.e., the offender had carnal knowledge of a woman under twelve (12) years of age. Jocelyn's consistent testimony that she was raped was confirmed by the NBI Medico-Legal finding of discoloration in the inner lips of the vagina or in the labia minora of the pudendum. The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate rape which is committed even with the slightest penetration of a woman's sex organ.[20] Hence, the trial court was correct in convicting accused-appellant of consummated statutory rape. For in rape cases, there are no half measures or even quarter measures nor their gravity graduated by the inches of entry.[21]

WHEREFORE, the judgment of the trial court finding accused-appellant PACIFICO LAZARO y REPISO alias "Piko" guilty of statutory rape is AFFIRMED in all respects with the modification that the civil indemnity in favor of Jocelyn Lim is INCREASED from P30,000.00 to P50,000.00.

Costs against accused-appellant.

SO ORDERED.

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

[1] Records, p. 26.

[2] TSN, 20 September 1989, pp. 37-38.

[3] Decision penned by then Judge Romeo J. Callejo, now Associate Justice, Court of Appeals; Rollo, pp. 13-36.

[4] Decision, pp. 23-24; Rollo, pp. 32-33.

[5] See *People v. Pija*, G.R. No. 97285, 16 June 1995.

[6] TSN, 8 November 1989, p. 14.

[7] Decision, p. 9; Rollo, p. 20.

[8] *People v. Bacani*, G.R. No. 77854, 24 January 1990, 181 SCRA 393, 399-400.

- [9] People v. Alegado, G.R. No. 80532, 8 November 1993, 227 SCRA 514, 521.
- [10] People v. Repollo, G.R. No. 108872, 7 October 1994, 237 SCRA 476, 482.
- [11] People v. Junio, G.R. No. 110990, 28 October 1994, 237 SCRA 826, 831.
- [12] People v. Dabon, G.R. No. 102004, 16 December 1992, 216 SCRA 656, 664.
- [13] People v. Gabas, G.R. No. 96951, 13 June 1994, 233 SCRA 77, 83.
- [14] People v. Loveria, G.R. No. 79138, 2 July 1990, 187 SCRA 47, 59.
- [15] See People v. Abapo, G.R. No. 108584, 22 December 1994, 239 SCRA 373, 381.
- [16] People v. Rio, G.R. No. 90294, 24 September 1991, 201 SCRA 702, 715.
- [17] People v. Bernardo, G.R. No. 97393, 17 March 1993, 220 SCRA 31, 40.
- [18] People v. Dural, G.R. No. 84921, 8 June 1993, 223 SCRA 201, 215.
- [19] People v. Castillo, G.R. No. 84310, 29 May 1991, 197 SCRA 657, 662.
- [20] See People v. Palicte, G.R. No. 101088, 27 January 1994, 229 SCRA 543, 547.
- [21] People v. Salinas, G.R. No. 107204, 6 May 1994, 232 SCRA, 274, 279.

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