

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELEE, VS. EDGARDO MANUEL Y GALANG, DEFENDANT AND APPELLANT.

G.R. Nos. 107732-33. September 19, 1994

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

This case chronicles the harrowing experiences of a young girl, barely 14, at the hands of a member of the same household; twice snatched from sleep in the dead of night, her will to resist sapped by being made to smoke marijuana at knife-point, twice forced to submit in silence to that which her sex would consider the ultimate invasion -- rape.

The Court is called upon to review the conviction of the accused on two informations filed before the trial court, ordering Edgardo Manuel y Galang to suffer reclusion perpetua and pay the victim the amounts of P40,000.00 as indemnity and P10,000.00 as moral damages for each rape.[1]

Emma Ruth Rabago was 13 years and eleven months old when the alleged rapes occurred in 1989. She shared residence at 1163 Kagitingan Street, Tondo, Manila, with her sisters (Estela and Anne Marie Garcia), cousins (Jeffrey Manlili, Josephine Rabago) and niece (Jaja Manuel), as well as with Edgardo Manuel, the accused, and his mother Lucy Manuel. Emma's mother, Lucy Paclibar Rabago was then working in Saipan.

The first information alleges --

"That on or about the 21st day of July, 1989, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, and feloniously with lewd designs, have carnal knowledge with (sic) the undersigned complainant, a minor, 14 years of age, by then and there forcing her to smoke marijuana, thereby making her dizzy, weak and unable to resist, undressing her, threatening to kill her, lying on top of her and inserting his penis into her private parts, then succeeded in having carnal knowledge of her, against her will and consent." [2]

A second information, alleging substantially the same facts, averred that the complainant was also raped on the 23d of June, 1989.[3] On arraignment, the accused pleaded not guilty to both charges. Upon order of the trial court, the cases were consolidated and tried jointly.[4]

The prosecution built its case primarily on the testimony of the complainant. Emma Rabago testified that on the night of June 23, 1989, while sleeping in her unlit room with her sister Estela P. Garcia, Edgardo entered, smoking a marijuana cigarette, holding a balisong. He tapped her on the shoulder, pointed the balisong at her neck and threatened to kill her if she would shout. Emma did not shout, fearing for her safety. She smoked the marijuana as ordered.[5] Edgardo, while keeping the weapon levelled at her neck, then carried her to the floor and removed her clothing. He lay on top of her, inserted his penis in her vagina several times. She felt pain, but did not struggle or resist because she was very weak.[6]

Emma testified that she reported the incident to two neighbors, a certain Auntie Nitz, friend of her mother, and

one Linda Borillo, another neighbor, but nothing came of the reports. She did not tell anyone else of the rape.[7]

She narrated the events that led to the second rape on July 21, 1989, stating that it took place at around 1:00 o'clock in the morning, while sleeping with Estella Garcia on the same bed. Emma claims that she woke up on the floor, apparently having been carried there by Edgardo, who again made her smoke marijuana while pointing a balisong at her neck. When the drug had taken effect on Emma, Edgardo removed her clothes, lay on top of her and inserted his penis into her vagina. She again felt pain, unable to offer any struggle against Edgardo, however, as she was overcome by weakness.[8]

This time, she reported the incident again to her Ate Linda, then to the police on Aug. 13, 1989, with the assistance of her mother, who had returned from Saipan. On cross-examination, Emma stated that she also reported the rapes to her father and brother, who did nothing. The latter advised her, however, to wait for her mother.

Adoracion Paclibar-Rabago, mother of Emma, testified that she entrusted her children, Emma, Anne Marie Garcia and Estella Garcia, to Lucy Manuel, mother of Edgardo. It was, however, Linda Borillo, her friend, who called overseas and told her to come home as her daughter had been raped. She returned to the Philippines on Aug. 10, 1989. The next day, she had Emma examined at the NBI by medico-legal officer, Dr. Noel B. Minay, who prepared a report which indicates the presence of a "healed hymenal laceration." [9]

It was also learned at the trial that Edgardo was the defendant in another case for acts of lasciviousness allegedly committed on Anne Marie Garcia by touching her private parts.[10]

The evidence of the defense, on the other hand, consists mainly of denial.

Edgardo testified that on the night of June 23, 1989, he was sleeping in the sala of the house of Adoracion Paclibar. He denied forcing Emma Ruth to smoke marijuana and claimed he could not have raped her on either of the alleged dates since three other persons slept in the room -- Anne Marie Garcia, Anthony Rabago and Estella Garcia.[11] Nor could he have carried Emma to the floor because that is where Anthony slept. He claimed that it was Anthony Rabago smoking marijuana, not he.[12]

Pressed for a reason for the filing of criminal cases against him, Edgardo asserted that it was instigated by a certain Linda Hernandez (godmother of Emma[13]) who became envious when Adoracion entrusted her children to his mother, Lucy Manuel. He claims Linda was angered when his mother refused to lend her money, so she convinced the children to create a scandal that would drive him and his mother out of the house.[14]

Edgardo also said that he was confronted about the reported rape of Emma by Adoracion Paclibar when she returned from Saipan. He refused to marry her, as demanded by Adoracion, because he was "not in love with Emma Ruth Rabago and * * the family is very troublesome," the daughters having different fathers. He was surprised when policemen arrived to arrest him, thinking that Adoracion was only joking when she said she would file charges against him.[15]

The defense presented Danilo Forte, who testified that he saw Adoracion Paclibar, the mother of the complainant, having a beer with one Leandro Ibarra at the store of Aling Virgie. Forte testified that Adoracion said to the two persons she was speaking with: "You witnessed, even if a person is innocent, I was able to have him incarcerated." [16] The statement, Forte claims, was made in the presence of many persons, and clearly in reference to the accused.

The trial court, through Assisting Judge Willelmo C. Fortun,[17] promulgated its decision on April 29, 1992, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Edgardo Manuel y Galang guilty beyond reasonable doubt of the crimes of "Rape" charged in Crim. Cases No. 89-76010 and 89-76011, and pursuant to Article 335 of the Revised Penal Code, as amended, hereby sentences him as follows:

"(1) In Crim. Case No. 89-76010, accused is sentenced to suffer the penalty of reclusion perpetua, to indemnify Emma Ruth P. Rabago in the amount of P40,000.00, plus P10,000.00, as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs;

"(2) In Crim. Case No. 89-76011, accused is sentenced to suffer the penalty of reclusion perpetua, to indemnify Emma Ruth P. Rabago in the amount of P40,000.00, plus P10,000.00, as moral damages without subsidiary imprisonment in the case of insolvency, and to pay the costs."

In this appeal, the accused assigns the following errors to the trial court, viz.: (1) finding the accused guilty beyond reasonable doubt of the crimes of rape charged in Crim. Case Nos. 89-76010 and 89-76011; (2) sentencing the accused to the penalty of reclusion perpetua for each case; (3) ordering the accused to indemnify the private complainant in the amount of P40,000.00 plus P10,000.00 as moral damages in each case, and; (4) not giving "due course" to (i.e., ignoring) the inconsistencies between the sworn statement of the complainant before the police and her testimony before the trial court.[18]

At the outset, it must be pointed out that the medical certificate allegedly issued following the medical examination of the private complainant is not reliable evidence as to the fact of rape. The document appears to have been prepared by Noel B. Minay, M.D., of the- Medico-Legal Division of the NBI, the examining physician. He was, however, out of the country during the trial. The prosecution attempted, nonetheless, to introduce the certificate in evidence against the accused by presenting Dr. Nieto M. Salvador,[19] whose competence was limited to identifying the signatures of his colleagues which appeared on the document.[20] The medical certificate of Dr. Minay as to the condition of the complainant's genitalia must be regarded as hearsay, the accused never having had the opportunity to confront and cross-examine him.[21] Evidence of this nature deserves, as it possesses, no credibility whatever. It cannot, therefore, establish any fact as to the condition of the genitalia of the victim.

Essentially, therefore, the Court is called upon to resolve the conflicting claims of the complainant and the accused. Reference to well-settled jurisprudence of this Court removes the difficulty of this task. As against the positive identification by the private complainant, mere denials of accused cannot prevail to overcome conviction by the trial court.

Appellant would persuade the Court that inconsistencies in the statements of the private complainant suffice to destroy her credibility, questioning her claim of having reported the rapes to several persons. He rejects the possibility of consummating sexual congress in a room where other persons were sleeping. Moreover, he attempts to impute ill-motive to the complainant and other persons for filing of these charges against him.

These protestations are unavailing and discussed forthwith, seriatim.

The Court had occasion to note the difficulty that young girls have in coming forward to denounce an unwelcome sexual assault:

"One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life * * and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threat on their lives, more so when the rapist is * * living with her." [22]

The Court is similarly not convinced that the discrepancies between complainant's testimony in court and what she deposed in the affidavit she signed at the police station on August 13, 1989 destroy her credibility.

"The general rule has always been that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete. Affidavits are generally subordinated in importance to open Court declarations because they are oftentimes executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to them." [23]

The fact is that Emma did report the matter to her mother immediately upon the latter's arrival from Saipan, and this after earlier confiding in Linda Borillo, who had called her mother overseas. It is entirely natural and in accord with ordinary experience that a girl of her tender years would need the presence and support of her parent to go through the ordeal of a physical examination, reporting to the police and testifying against her rapist in open court. The Court has reviewed the testimony of Emma and finds the same to be forthright and unwavering, and her identification of the accused positive and certain.

Nor is the Court impressed by the claim that the charges against the accused were filed by complainant because Edgardo refused to marry her. On the contrary, it seems more in accord with reality that the offer to marry Emma was a result of the reported rape, intended to spare her from the dishonor of Edgardo's uninvited lust. Surely, no mother would prod her own daughter to expose herself to humiliation and public curiosity for no good reason. Nor could it be expected that Emma would, on her own, venture into the embarrassment of a rape investigation and trial on trumped-up charges, given the Filipino woman's well-known modesty and reticence. [24]

Accused attempts exculpation on the theory that the presence of other persons in the room rendered it impossible to commit the alleged rapes. He maintained that it was not possible to carry Emma on the floor, since that is where her brother Anthony slept, in such a way as to obstruct ingress to or egress from the room. [25]

The Court has ruled repeatedly that the crime of rape may be committed even when rapist and victim are not alone. Rape may take only a short time to consummate, given the anxiety of discovery, especially when committed near sleeping persons oblivious to the goings-on. Thus, the Court has held that rape is not impossible even if committed in the same room while the rapist's spouse was sleeping, [26] or in a small room where other family members also slept. [27]

Finally, appellant questions the imposition of separate penalties for each of the offenses charged. He forwards, however, no ground to show any infirmity in the judgment. Suffice it to say that the appealed judgment correctly, and in accordance with law, penalizes the accused for what the evidence established to be two (2) separate and independent offenses of rape.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, without pronouncement as to costs.

SO ORDERED.

Padilla, Regalado, Puno, and Mendoza, JJ., concur.

[1] Decision of Hon. Willelmo C. Fortun in Crim. Case Nos. 89-76010-11, assisting judge of Branch V, RTC of Manila, April 29, 1992.

[2] Information in Crim. Case No. 89-76010.

- [3] The information in Crim. Case No. 89-76011 substantially replicates the first, but for the allegations that the rape took place on June 23, 1989 and that the accused threatened to kill the complainant.
- [4] August 24, 1989; Vol. II, Original Record at 6.
- [5] TSN of Aug. 20, 1990, at 8-10.
- [6] Id., at 11-17.
- [7] Id., at 17-19.
- [8] Id., at 20-22.
- [9] Exh. B.
- [10] TSN of August 10, 1989 at 9.
- [11] TSN of January 11, 1991 at 5, 6.
- [12] Id.
- [13] See TSN of August 8, 1989 at 22
- [14] Id. at 7.
- [15] Id. at 9.
- [16] TSN March 18, 1991 at 4.
- [17] Pursuant to Adm. Order no. 68-92, Judge Fortun was designated to assist in the disposition of this inherited case.
- [18] Brief for the Appellant, Rollo at 37.
- [19] Officer of the Medico-Legal Division of the NBI.
- [20] TSN September 11, 1990 at 9; SEE also §34 of Rule 130, Rules of Court.
- [21] U.S. v. Lorenzana, 12 Phil. 64; De Guia v. Manila Electric Railroad & Light Co., 40 Phil. 706; and Peo. v. Marcedonio, 192 SCRA 579 (December 21, 1990).
- [22] Peo. v. Ignacio, G.R. Nos. 106644-45, June 7, 1994, citing Peo. v. Oydoc, 125 SCRA 250; Cf. Peo. v. Sonico, 156 SCRA 419; see also Peo. v. Ibay, G.R. No. 101631, June 8, 1994, citing Peo. v. Olivar, 215 SCRA 759 (1992).
- [23] Peo. v. Sarellana, G.R. Nos. 102056-57, June 8, 1994; Peo. v. Ponferada, 220 SCRA 46 (1993), citing Peo. v. Dumpe, 183 SCRA 547 (1990); see also Peo. v. Gonzales, 99 SCRA 697 (1980).
- [24] See Peo. v. Ansioko, 131 SCRA 486; Peo. v. Resane, 132 SCRA 711
- [25] TSN, Jan. 11, 1991 at 6.
- [26] Peo. v. Ignacio, supra at note 23
- [27] Peo. v. Cervantes, 222 SCRA 365 (1993).

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