

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBINO GALIMBA Y SISON, ACCUSED-APPELLANT.

G.R. Nos. 111563-64. February 20, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Rape is fittingly a condemnable crime. It is cruel enough that the victim is unwillingly violated sexually, but worse, she has to live with the harrowing thought of being smeared with an indelible mark that somehow casts her apart from her fellowmen. This is particularly true in a society like ours, for it has been said that "our culture puts a premium in purity and virginity as virtues, and a non-virgin, even if deflowered against her will, is oftentimes treated, albeit secretly, with unkind scowl and scorn." This explains why rape stigmatizes the victim worse than the perpetrator.[1]

Maria Sarah Villareal was only ten (10) years old when she fell prey to the bestial attacks of a rapist. What made this abominable outrage more repulsive was the fact that the perpetrator was a trusted relative, her mother's own brother and herein accused-appellant, Albino Galimba.

Two separate Informations[2] were filed against accused-appellant charging him with rape committed in the City of Manila sometime in September, 1991 and on December 19, 1991, against Maria Sarah Villareal, then a minor at ten (10) years of age.

Upon arraignment, accused-appellant pleaded not guilty to both charges. However, at the conclusion of the trial, the Regional Trial Court of Manila, Branch 4, convicted him for two counts of rape and sentenced him to the following penalties:

"WHEREFORE, with all the foregoing, the court finds the accused ALBINO GALIMBA y SISON, GUILTY beyond reasonable doubt of two (2) counts of rape under both Informations and hereby sentences him to double life imprisonment and to indemnify the offended party moral damages in the sum of P60,000.00 under Art. 2219 of the Civil Code of the Philippines." [3]

As principal witness for the prosecution, Sarah recounted her ordeal at the hands of accused-appellant and testified as follows:

"Victim Sarah Villareal, a girl aged 10 years old testified that she knows the accused because he is the brother of her mother and that the accused lived with them in their house prior to the rape in 1991.

"According to her, on or about September 1991, accused, her Tito Albino asked her to buy cigarettes. When she came back and handed to him the cigarettes she bought, he summoned her again to get a match and light his cigarette. Her sister Sheryll was then playing outside their house. When she was about to go out, the accused pulled her into the bed and removed her panty, then his pants and then his brief. Thereafter, accused got some cooking oil, dipped his finger into the container and applied it into his organ. After which, he inserted his organ into her vagina. She protested but the accused threatened to whip her. She got hurt when her uncle inserted his penis into her vagina.

"Then again on December 19, 1991, when she arrived home from a school Christmas party, she saw the accused cooking meals while her sister Sheryll and her friend were playing. She later joined them and still later, accused also joined them. Thereafter, she went to her Auntie Linda's house to ask for vinegar. When she went back, they were still playing. She went to pour the vinegar into a saucer and then returned the bottle to the house of her Tita Linda. When she came back, she saw the accused holding a broom and whipping both her sister and her friend. The two girls went out of the house, then accused closed the door of their house, then removed her panty. Later, she saw her sister watching them on top of their roof. Subsequently, her Tita Linda knocked at the door. Whereupon, she was ordered by the accused to go to the bathroom and dress up. Accused was then at a kneeling position on top of her. Then he stood up. When her Tita Linda told her mother about it, her mother told the accused to leave the house, otherwise, she will complain to the barangay.

"On cross, she said her mother was at work when the rape happened. When the accused removed her panty, she protested but he threatened to beat her and held her fast."[4]

Sarah's younger sister, Sheryll Villareal, corroborated her story and narrated that she herself saw the accused-appellant lying on top of her sister on December 19, 1991. According to her, she was able to witness the dastardly deed when she climbed on top of the roof of their house together with her cousin Maricel and peeped through a hole in the roof. There she saw the accused-appellant on top of Sarah, clad only with a T-shirt, while her sister's dress was already raised up. Thereafter, she immediately called her Tita Linda and told her what she saw, after which her Tita Linda proceeded to knock at the door of their house.[5]

However, when physically examined on December 20, 1991 by Dr. Marcia L. Ceñido, Medico-Legal Officer of the Western Police District Command, Sarah's private parts showed no lacerations and her hymen was found to be intact.[6] As a result, the examining physician discounted the possibility of rape and opined that Sarah remained a virgin.[7]

Surprisingly, thinking perhaps that the prosecution's evidence is weak and probably hoping to capitalize on the aforementioned testimony of the medico-legal officer, the defense waived its right to present evidence and instead moved that the case be deemed submitted for decision.[8]

The strategy however backfired on accused-appellant and the trial court found him guilty beyond reasonable doubt of two counts of rape. The trial court ruled that the slightest penetration consummates rape despite the absence of rupture in the hymen.[9]

Accused-appellant now comes to this Court through the instant appeal, pleading for the reversal of his conviction on account of the twin errors allegedly committed by the trial court, namely: 1) the trial court gravely erred in giving full credence to the testimony of the prosecution witness Maria Sarah Villareal which is highly incompetent and unreliable, and 2) the trial court gravely erred in convicting the accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt.[10]

In an attempt to discredit rape victim Sarah Villareal, accused-appellant assails her credibility and argues that at her tender age of ten (10) years, she is utterly innocent of the ways of the world and unfamiliar with the subject of sex and sexual intercourse. Thus, appellant submits that with Sarah's naivety, she could have just fabricated the rape charges against the former. Additionally, appellant belabours that fact that the victim failed to immediately report the sexual abuse against her.

The parameters for scrutinizing the credibility of witnesses has been set forth as follows: (1) the appellate court will not disturb the factual findings of the lower court, unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great

respect since it had the opportunity to examine their demeanor as they testified in the witness stand, and (3) a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.[11]

We have meticulously reviewed the records of his case and found no reason to doubt the testimony of Sarah Villareal as she did not waver in her declaration that she was indeed raped and that the culprit was accused-appellant.

Moreover, contrary to accused-appellant's assertion, the prevailing rule is that testimonies of rape victims who are young and immature deserve full credence[12] considering that "no woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to have the culprit apprehended and punished." [13]

Neither do we find convincing accused-appellant's claim of delay on the part of the victim in immediately reporting the sexual assault because of his failure to timely raise the same before the lower court. By opting not to present any controverting evidence at all during the trial, appellant foreclosed his right to interpose any objection to the prosecution's evidence upon appeal in conformity with the rule that issues not raised in the proceedings below can not be ventilated for the first time before this Court.[14] Nevertheless, it should be stressed that the mere failure to report the incident immediately does not cast doubt on the credibility of the charge even notwithstanding the fact that the delay is not in any way attributable to the threats of death or intimidation made and exercised by the accused on the victim.¹⁵

Finally, with respect to accused-appellant's assertion that the prosecution failed to establish his guilt beyond reasonable doubt, the same is totally bereft of merit. Appellant's theory is that the absence of any laceration in the victim's private parts completely negated the fact of rape, there being no physical evidence of the same. This, according to appellant, is confirmed by the findings of the medico-legal officer who examined the victim and testified in this wise:

"xxx xxx xxx

FISCAL EUGENIO, JR. continuing

Q Now, with respect to the person of Maria Sarah Villareal, will you read your findings for the information of the Honorable Court, Doctor?

A For Maria Sarah Villareal, (1) hymen is circular in shape, thick (sic) and intact. Opinion: Virginity is maintained.

Q In your opinion virginity is maintained, you totally discount the said person was ever raped?

A Yes, sir, on account of the frequency there must necessarily be a laceration. In the absence there was no penetration.. . of the penis into the vagina.

Q You are aware that with those injuries or findings it does not necessarily mean that rape is committed with actual penetration?

A Yes, sir.

Q So that there could have been rape even if there is no actual penetration?

A Yes, sir.[16]

The Court is not persuaded. Although initially, the aforementioned examining physician ruled out the possibility

of rape in this case due to the absence of the hymenal lacerations, he nevertheless admitted that rape is still possible even without actual penetration, which declaration clearly contravenes appellant's posture.

More importantly, the rule is well-settled that to sustain a conviction for rape, full penetration is not required. It is enough that there be proof of the entrance of the male organ within the labia of the pudendum of the female organ.[17] Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.[18] Thus, with the -testimony of the victim that accused-appellant did insert his penis into her organ,[19] there is no doubt that the rape was consummated in this case.

But while accused-appellant's guilt has been established beyond reasonable doubt, a scrutiny of the evidence revealed that he can only be held liable for one count of rape, that committed in September, 1991. The prosecution failed to establish that during the alleged rape on December 19, 1991, accused-appellant was able to consummate the act. The absence of any testimony that there was indeed the slightest penetration of the victim's organ, coupled with the lack of physical evidence to confirm the same, cannot warrant his conviction for the alleged rape committed on the latter date. The trial court therefore erred in convicting accused-appellant for two counts of rape.

Moreover, the proper penalty imposable is reclusion perpetua and not life imprisonment, the two penalties not being synonymous and interchangeable.[20] And considering that the rape victim is a minor, the civil indemnity of P30,000.00 for one count should be increased to P50,000.00.[21]

ACCORDINGLY, the conviction of accused-appellant for the rape committed in September, 1991 is hereby AFFIRMED with the modification that he is sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim Maria Sarah Villareal the increased amount of Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] People vs. Ibay, 233 SCRA 15, 27(1994).

[2] Record, pp. 2, 9.

[3] Decision, p.4, Rollo, p. 12.

[4] Decision, p. 2, Rollo, p. 10; TSN, January 21, 1993, pp. 3-11.

[5] TSN, January 21, 1993, pp. 13-15.

[6] Record, p. 123.

[7] TSN, May 13, 1993, pp. 2-3.

[8] Record, p. 133.

[9] Decision, p. 3, Rollo, p. 11.

[10] Brief for Appellant, p. 5.

[11] People vs. Gasper, 225 SCRA 189, 195 (1993) citing People vs. Clores, 184 SCRA 638 (1990).

[12] People vs. Guibao, 217 SCRA 64,73(1993) citing People vs. Bruca, 179 SCRA 64 (1989); People vs. Salita, 179 SCRA 438 (1989); People vs. Liquiran, 228 SCRA 62 (1993).

[13] *People vs. Derpo*, 168 SCRA 447(1988) cited in *People vs. Guibao*, *supra.*; *People vs. Buyok*, 235 SCRA 622 (1994); *People vs. Magpayo*, 226 SCRA 13(1993).

[14] *C. Alcantara & Sons, Inc. vs. NLRC*, 229 SCRA 109(1994).

[15] *People vs. Ulili*, 225 SCRA 594, 603 citing *People vs. Yambao*, 193 SCRA 571 (1991).

[16] TSN, May 13, 1993, pp. 2-3.

[17] *People vs. Tismo*, 204 SCRA, 535, 555 (1991) citing *People vs. Bacani*, 181 SCRA 393; *People vs. Mangalino*, 182 SCRA 329.

[18] *People vs. De Guia*, 185 SCRA 336, 342 (1990) citing *People vs. Abonada*, 169 SCRA 530 (1989); *People vs. Tabago*, 167 SCRA 65; *People vs. Estrebella*, 164 SCRA 114(1988).

[19] TSN, January 21, 1993, p. 5.

[20] *People vs. Florendo*, 230 SCRA 599(1994); *People vs. De la Cruz*, 224 SCRA 506 (1993).

[21] *People vs. Montes*, 230 SCRA 753 (1994). .

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