

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO SAGARAL ALIAS TONY, ACCUSED-APPELLANT.

G.R. Nos. 112714-15. February 07, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Antonio Sagaral alias "Tony" stood charged with two (2) counts of RAPE Criminal Cases No. 8778 and 8793 before the Regional Trial Court of xxx:

In Criminal Case No. 8778, the information reads:

"That on or about June 14, 1989, at xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously succeed in having sexual intercourse with AAA, a complainant below twelve years old.

Contrary to Article 335 of the Revised Penal Code."[1]

The information in Criminal Case No. 8793 reads:

"That on June 3, 1989 at xxx, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge with AAA, 11 years old, against the latter's will.

Contrary to Article 335 of the Revised Penal Code."[2]

Criminal Case No. 8778 was raffled to Branch xxx, Regional Trial Court of xxx, while Criminal Case No. 8793 was raffled to Branch xxx of the same court. Appellant, arraigned on separate occasions, pleaded "not guilty" to both charges. Upon agreement of the parties, the cases were consolidated for trial in Branch xxx.

The following narration of facts, as summarized by the prosecution in its brief, are in accord with the evidence:

"At about 5:00 o'clock in the afternoon of June 3, 1989, AAA who was about thirteen (13) years old was playing "takian" with BBB and CCC at the house of her DDD situated at xxx (pp. 12-13, TSN, March 13, 1990). EEE, a brother of AAA, dropped by and informed AAA that their Papa (appellant herein, their stepfather who was then living in another house), was calling for her. EEE told her to better hurry or else his Papa would beat her again (pp. 14-15, id). So AAA went to the house of his stepfather, which happened to be also owned by her DDD, situated at a distance of thirty (30) to forty (40) meters from where AAA was staying (p. 11; 14-15, ibid).

AAA arrived at the place where she saw appellant upstairs by the window of the house. EEE was ordered by appellant to buy kerosene, and appellant and AAA were left alone in the house (pp. 16-17, ibid.) AAA stood by the door of the stairs a little inside the house already, when appellant called her to come near him (p. 17, id.). As AAA was reluctant to approach appellant, the latter got mad and started cursing her (pp. 17-18, ibid.). He stood up, and AAA immediately started crying as she was afraid that she would be beaten up. She attempted to run when appellant went near him (sic), but she was not able to do so as appellant held her hands (pp. 18-19, ibid.).

While gripping AAA's hands, appellant dragged her towards the room (p. 19, id.). Inside the room appellant removed his pants. AAA attempted to stand up and run, as she was then lying down already, because when she was dragged by appellant she fell down on the floor (pp. 20-21, id.).

Appellant, who was then already naked, got near AAA, embraced her and removed her panty. At that instance, appellant inserted his penis into AAA's sex organ (pp. 20, 21, 22, *ibid.*). AAA attempted to shout, but she was slapped by appellant. Not satisfied, appellant boxed AAA on the stomach, causing her to lose consciousness (p. 22, *id.*).

Regaining her consciousness, AAA felt pain in her vagina and other parts of her body. She also saw blood aside from something whitish mucus in her vagina-and on the floor where she was lying down (p. 20-24, *ibid.*).

Corazon asked appellant why her body and vagina were in pain and why was there blood. Appellant retorted just to keep quiet. AAA told appellant that she would like to talk to her DDD about the incident but appellant warned her not to do so or else she would be killed (pp. 25-26, *ibid.*).

On her way out of the house, she met at the stairs her brother EEE, who asked her why she was crying, but she said nothing. AAA did not doubt that she was raped by appellant, for there was nobody else in the house at that time, and it was appellant who dragged her to the room before she lost her consciousness (p. 26, *ibid.*).

In a separate incident on June 14, 1989, AAA was having lunch at the house of her DDD when again her brother EEE was ordered by appellant to call her to go to their house (pp. 27, 28, TSN March 13, 1990). She told her brother to wait because she was still eating; but her brother told her to hurry, because appellant was already very mad and he might beat her again (p. 28, *ibid.*).

Reluctantly, AAA followed his brother EEE to the house where appellant was. Appellant ordered her brother EEE to go to xxx to watch betamax show, again leaving appellant and AAA by themselves (p. 29 *id.*). Appellant again told AAA to get inside the room; but the latter asked him what was the purpose why she was again called. Appellant told her to just come near him for a while, but AAA refused to do so (p. 30, *id.*).

Appellant, who was then mad, stood up and went near AAA, who then attempted to jump to the door but failed, because appellant held her right hand (p. 31). As in the first occasion, appellant dragged AAA inside the room. Then he removed his pants. AAA could not do anything but cry, as she was afraid that appellant would rape her again. AAA attempted to shout; but appellant squeezed her mouth hard and strong, thence, removed her panty and started embracing her (p. 32, *id.*).

Appellant positioned himself on top of AAA, while she was lying on the floor, as she had been earlier pushed down by appellant. Again appellant inserted his penis inside AAA's vagina, causing the latter to feel pain. AAA attempted to free herself and told appellant, "do not do it to me Pa" meaning don't rape me. After satisfying his lust, appellant again warned AAA not to tell anyone or else she would be killed (pp. 33-34).

Not satisfied with raping AAA, appellant hog-tied her hands and feet to a bench (pp. 34-35, *id.*) as she had threatened appellant to tell the incident to her DDD (p. 35, *ibid.*).

AAA shouted for help, and a certain Nang Kanora and DDD attempted to succor but were haplessly unable to do anything, for they were afraid appellant would kill them (pp. 35-36, *ibid.*).

AAA, upon freeing herself, went to see the barangay captain to report the incident accompanied by her DDD and other ladies. As the barangay captain was not there at that time, AAA hid for a while at the store in front of the house of the barangay captain. When the barangay captain arrived, AAA told him that she was hog-tied and beaten by appellant. She was at that time reluctant to disclose what appellant did to her. From the barangay captain's residence, they proceed (*sic*) to the Municipal Hall of xxx where they reported the matter to the police (pp. 36, 37, 38, *ibid.*).

At the police station, again AAA did not disclose that she was raped by appellant as she was again ashamed to disclose the hideous crime perpetrated by appellant (pp. 39, 40, 41).

Subsequently, appellant was arrested and brought to the Municipal Hall of xxx. When appellant was already in the custody of the police, AAA then and there disclosed that she was twice raped by appellant in the latter's house (pp. 42-44, TSN id.).[3]

Private complainant AAA was subsequently examined by xxx, a resident physician of the xxx Hospital, and xxx made the following findings:

"Erythema of Skin Both Sides of Vulva.

"I.E. - Entroitus Open, Allowing Index Finger to be Inserted Easily.

"Healed Hymenal Laceration at 12:00 o'clock, 1/2" Long.

"Ecchymosis with Hematoma-Postero-Lateral Aspect, Middle 3rd Left Thigh.

"Alleged Pain on Palpation & Motion."[4]

XXX, Chief of the xxx Hospital, amplified on the foregoing findings, which were found in the medical records and explained that:

"First Finding: Erythema of skin both sides of the vulva means redness due to irritation which is caused by instrumentation or contact with another object which presumably can be either a penis or a finger;

Second Finding: Entroitus open allowing index finger to be inserted easily means that there is no resistance;

Third Finding: Healed hyperal (sic) laceration at 12:00 o'clock 1/2 inch long may be brought about by instrumentation or any kind of insertion, like a penis which would cause fracture of the hymen;

Fourth Finding: Ecchymosis with Hematoma Postero lateral aspect, middle third left thigh which is a sort of black-eye (bunol) due to extravasation of blood could have been caused by trauma or contact with a foreign object;

Fifth Finding: Alleged pain on palpation and motion is part of the examination wherein the doctor would press a portion causing actual pain. When the thigh was made to stretch the muscle, pain was also felt."[5]

In his defense, appellant merely denied the accusation claiming that on the two occasions that he allegedly raped complainant, he had only maltreated and beaten her. On June 3, 1989, during the first alleged rape, he had beaten her with a bamboo stick, because she lied to him regarding her receipt of a letter from her mother.[6] On June 14, 1989, during the second alleged rape, he had again beaten her, not only because he wanted to force her to reveal to him the whereabouts of the letter but also because she took P35.00 from his trousers.[7] He also denied having caused the injuries on the private parts of private complainant insinuating that the same must have come about as a result of her having climbed trees.[8]

After trial, the Court a quo rendered judgment finding accused-appellant Antonio Sagaral guilty of the crimes charged. The dispositive portion of the decision reads:

"FOREGOING CONSIDERED, this Court finds the accused guilty beyond reasonable doubt of having committed RAPE on two (2) counts and is sentenced to RECLUSION PERPETUA on each of the crime of RAPE and the complainant AAA is awarded moral and exemplary damages in the amount of Fifty Thousand Pesos (P50,000.00) and Twenty Five Thousand Pesos (P25,000.00), respectively on each of the said cases."[9]

Hence, this appeal which is anchored on a lone assignment of error, to wit:

"THE TRIAL COURT ERRED IN FINDING ACCUSED- APPELLANT ANTONIO SAGARAL @ "TONY" GUILTY BEYOND REASONABLE DOUBT OF HAVING COMMITTED RAPE ON TWO COUNTS."

Appellant assails the trial court's reliance on the testimony of private complainant, AAA in arriving at a verdict of conviction upon the assertion that said testimony is tainted with serious flaws and inconsistencies. He pointed out with emphasis that he perceived a conflict between private complainant's earlier testimony and that which she adduced later. She told the Barangay Captain and the police investigator that she was then only tied and beaten. Her later testimony was that she was twice raped by accused-appellant. The said conflict puts in serious doubt the veracity of private complainant's claim of having been raped.

This contention is bereft of merit.

Indeed, private complainant testified at the preliminary stage of her testimony that she did not disclose to the barangay captain and to the police during the initial stage of the investigation the sexual abuse perpetrated upon her by accused-appellant. However, private complainant explained why she did not bare everything at the first opportunity. She claimed that she was frightened by appellant's threats of bodily harm or even death should she report the incidents of rape.

We held in the case of *People vs. Natan*[10] that the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein. Thus, considering the foregoing testimony of private complainant in this light, we can only conclude that private complainant, by so testifying, was, in effect, not saying that she was not raped. In fact, she testified later that she subsequently revealed all that she suffered, including her defilement, in the hands of appellant, that is, when the latter was already in the custody of the police.

Appellant alleged other inconsistencies in a further attempt to discredit the testimony of private complainant. He pointed out that private complainant gave conflicting statements with respect to the date of the raping incidents. She testified during the preliminary examination on June 16, 1989 before Judge xxx that the June 3, 1989 incident was the second rape yet she testified during the trial that the second time was on June 14, 1989.[11] Appellant likewise found to be inconsistent the private complainant's testimony with respect to what appellant was wearing when he raped her.[12] We note that these alleged inconsistencies are trivial and bear no materiality to the commission of the crime of rape of which appellant was convicted. Moreover, inconsistencies, are to be expected of persons of such tender years as the private complainant. Protracted cross-examination of a young girl not accustomed to public trial would produce contradictions which nevertheless would not destroy her credibility.[13] It is an accepted rule that the credibility of a rape victim is not impaired by some inconsistencies in her testimony.[14]

Appellant's assault on the credibility of private complainant's testimony relative to the latter's claim that she sought the help of a certain Nang Kanora and her DDD and yet these women were unable to help her deserves scant consideration. It is to be noted that this happened during the second rape, and it is to be assumed that by this time, these women had already been alerted by private complainant with respect to appellant's threats of killing her. It is therefore understandable that these women could not immediately come to her rescue as they were afraid that appellant would make good his threats.

Appellant further contends that no force or intimidation attended the alleged carnal knowledge appellant had of private complainant.

This argument is also unavailing.

Contrary to appellant's assertions, the attendance of force or intimidation has been clearly shown by the evidence.

It must be remembered that on the first occasion, appellant slapped and boxed private complainant, rendering her unconscious, and, on the second incident, appellant held and squeezed her mouth hard when she attempted to shout. On both occasions, appellant dragged complainant inside the room. It will also be recalled that appellant was mad and was cursing when private complainant hesitated to approach him on his bidding during both rape incidents. It must also be pointed out that appellant's threats after the first rape must have hovered around private complainant's head during the second rape that could have grossly intimidated her into submission. Indeed, these acts of the appellant amount to force and intimidation. Furthermore, it is to be noted that appellant, being the "stepfather" (complainant called him "Papa"), definitely exercised moral and physical ascendancy over her which could be sufficient to cow the private complainant into submission to his bestial desires.[15]

Appellant imputes upon the private complainant ill-motives in filing these cases, alleging that the latter begrudged him for the beatings he did to her. The trial court correctly ignored this defense and held that:

"xxx. Such actuation, that of filing a complaint against accused for rape, when in fact, she was only beaten could only come from a sophisticated, self-assured, well-informed and thoroughly confident person and not from a timid, playful, and cowering girl who could not even read or write."[16]

Surely, a thirteen-year old complainant cannot be considered sophisticated enough to falsely and maliciously attribute the crime of rape to appellant, and to weave such an intricate and richly detailed story to support it.[17] Besides, it simply would be unnatural for a young and innocent girl to concoct a story of defloration, allow an examination of her private parts, and thereafter subject herself to a public trial or ridicule if she had not, in fact, been a victim of rape and deeply motivated by a sincere desire to have the culprit apprehended and punished.[18] In other words, it is most improbable that a victim of tender years and one not exposed to the ways of the world would impute a crime so serious as rape to any man, let alone her stepfather, if it were not true.[19]

Rape, under par. 1 of Article 335 of the Revised Penal Code, is committed by having carnal knowledge of a woman by using force and intimidation.

There is no doubt in our mind that appellant had carnal knowledge of private complainant by employing force and intimidation in attaining the same. This was positively testified to by private complainant. The physical evidence corroborated complainant's averments and accusations.

In fine, as foregoingly discussed, no ground has been found to warrant a reversal of the herein assailed conviction.

WHEREFORE, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Record, p. 1.

[2] Record, p. 2.

[3] Brief for Plaintiff-Appellee, pp.2-9; Rollo, pp. 66-73.

[4] Exhibit "D", p. 4, Record, Criminal Case No. 8793; Exhibit "E", p.109, Record, Criminal Case No. 8778.

[5] See note 8; Rollo pp.167-168.

[6] TSN, February 19, 1991, p. 7.

[7] Id., p. 8.

[8] Id., p. 10.

[9] Decision p. 14; Record, Criminal Case No. 8778, p. 181.

[10] 193 SCRA 355, 361-362 [1991], cited in *People vs. Dabon*, 216 SCRA 656, 664 [1992].

[11] Appellant's Brief, p.17.

[12] Id., pp. 16-17.

[13] *People vs. Gozum*, 135 SCRA 295, 297 [1985].

[14] *People vs. Abapo*, 239 SCRA 373, 381 [1994].

[15] *People vs. Obejas*, 229 SCRA 579, 552 [1994]; *People vs. Casil*, 241 SCRA 285, 292 [1995].

[16] See note 9; Rollo, p.179.

[17] *People vs. Rejano*, 237 SCRA 627, 641 [1994].

[18] *People vs. Dado*, 244 SCRA 655, 660 [1995]; See also *People vs. Sanchez*, 250 SCRA 14, 23 [1995]; *People vs. Manzana*, 250 SCRA 152, 161 [1995].

[19] *People vs. Dela Cruz*, 251 SCRA 77, 84 [1995].

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