

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO PADRE-E, ACCUSED-APPELLANT.*G.R. Nos. 112969-70. October 24, 1995*

Ponente: HERMOSISIMA, JR., J.

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Rape, derived from the Latin word, *rapere*, literally meaning, to seize with violence, is generally defined as the carnal knowledge of a woman by a man forcibly and unlawfully against her will. Differences of opinion there had been in defining the meaning of "carnal knowledge". Is penetration, the act of inserting the penis into the female organ of generation, in itself sufficient or is the rupture of the hymen necessary? Is emission an essential ingredient of the crime? Are both penetration and emission necessary for conviction?

In view hereof and considering that, while the accused-appellant's main defense in this case is that of alibi, he presented evidence to show lack of penetration, intact hymen, and failure of proof of emission, through a medical doctor specializing in pediatrics, it behooves this Court to look into this defense assiduously and with circumspection. On the other hand, the victim especially was only twelve years and six months old when sexually assaulted.

Two informations for rape, both dated April 13, 1993, were filed against appellant Gregorio Padre-e for sexually assaulting and raping Grace Eusebio Peñafiel twice, that is, on November 1, 1992 and on February 26, 1993.

The facts of the case are best narrated, and with fairness, by the prosecution in its brief:

"On November 1, 1992, at about 1:00 p.m., the victim, thirteen-year old Grace Peñafiel went to the house of a certain Antonina Aguenada Padre-e to buy flowers to bring to the cemetery. Upon learning that there were no more flowers being sold, she headed back for home passing by appellant's house, which was about twenty (20) meters away from her house. Suddenly, appellant approached her and blocked her path, forcing her to stop. He took hold of her right arm and poked a knife at her, forcing her to go with him to his house (tsn., G. Peñafiel, June 4, 1993, pp. 9-10).

Upon reaching his house, appellant pushed the victim inside one of the rooms, closed the windows, locked the door, and ordered her to undress. When the latter refused, appellant threatened her with the knife. The victim had no recourse but to follow his order. When both of them were finished undressing, appellant pushed the victim, forcing the latter to lie on the floor, then laid on top of her, pinning her two arms above her head and placing the knife beside her body (tsn., G. Peñafiel, June 4, 1993, pp. 10-12).

Appellant forced the victim's legs apart and inserted his male organ into her vagina, making her bleed and feel pain. He then proceeded to make 'pumping' motions for about five minutes. Thereafter, appellant ordered her to dress up and go home, threatening her with death if she told anyone about what happened (tsn., G. Peñafiel, June 4, 1993, pp. 12-13).

Again, on February 28, 1993, at about 10:00 a.m., after buying candies from a store situated farther down the road, the victim proceeded to her home, passing by appellant's house which was situated along the road

towards her house. Again, appellant who was watching her, blocked her path and poked a knife at her, forcing her to go with him to his house. Bringing her to the same room where he first raped her, he repeated the dastardly act on her a second time in a manner almost similar to the first one and then threatened her with death if she told anyone about it (tsn., G. Penafiel, June 4, 1993, pp. 15-17).

In the early evening of March 6, 1993, the victim's mother asked her to fetch water from the communal well. To her surprise, the victim adamantly refused to go, prompting her to ask the latter the reasons for her refusal. The victim was compelled to tell her mother the sordid details of the sexual assaults committed on her by appellant (tsn., G. Peñafiel, June 4, 1993, p. 18; tsn., T. Peñafiel, June 10, 1993, pp. 3-7).

Dr. Ricardo Jaboneta, the medico-legal expert of the National Bureau of Investigation (NBI) at Iloilo City made an examination on the victim and issued a Medical Certificate stating that there were lacerations on the victim's hymen (tsn., Dr. Jaboneta, June 4, 1993, pp. 4-5; Exhibits 'A' to 'A-2')" (Rollo, pp. 69-71)

Accused-appellant manifested the following defenses:

During the first rape on November 1, 1992, he was not in his house; nor was he in the vicinity of Barangay Bacuranan, he having left Bgy. Bacuranan two days earlier, or on October 30, 1992, for Tigbauan, Iloilo. He went back to Bgy. Bacuranan only in the afternoon of November 2 because he had to attend, as he in fact attended, a dance at Bgy. Humog, in Tigbauan. A friend, a certain Leo Tuala, was with him during his whole stay in Tigbauan. They lived at the house of Tuala's grandfather.

During the second rape on February 28, 1993, he claims that he was at Bgy. Bagobong. He had left his house as early as 8:00 o'clock in the morning and thereafter he attended the funeral rites for a certain Edwin Celubrico. He went home to Bgy. Bacuranan late in the afternoon of the same day.

The defense presented accused-appellant's father, sister, a certain Ignacio Tuala, and Antonio Eusala, to testify on accused-appellant's defense of alibi.

Dr. Lily Jardeleza, a pediatrician, testified that complainant's hymen showed no lacerations when she examined the complainant.

After trial, the court a quo rendered judgment on September 6, 1993; finding accused-appellant guilty beyond reasonable doubt of the crime of rape as charged.

The dispositive portion of the decision reads:

"WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds the accused GREGORIO PADRE-E GUILTY beyond reasonable doubt of the two (2) crimes of RAPE. Accused, having perpetrated the crimes with the use of a deadly weapon, is hereby sentenced to suffer in Criminal Case No. 40244, the penalty of Reclusion Perpetua and in Criminal Case No. 40245, the penalty of Reclusion Perpetua. He is likewise directed to indemnify the victim the sum of P25,000.00." (Rollo, p. 23)

Accused-appellant now comes before this Court assailing the decision of the court below on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

In support thereof, accused-appellant argues:

(1) That upon cross-examination (TSN, p. 26, June 4, 1993), Grace herself admitted that she was not dragged to the accused-appellant's house but she merely obeyed accused-appellant's order to follow him due to fear. She had all the chances to run and shout for help or escape had she wanted to but she did not; (Rollo, p. 40)

(2) That had there really been force employed upon her by accused-appellant, it would have been improbable for complainant to be able to describe accused-appellant's organ, its length and diameter, since she would then be

struggling and thinking about any possible escape; (Rollo, pp. 40-41)

(3) That Dr. Jardeleza's testimony that she found no perineal lacerations nor injuries on the person of Grace Peñañiel upon her medical examination and that her hymen was intact, (TSN, p. 5, July 9, 1993), render the accusation suspicious and incredible. (Rollo, p. 41)

We find the appeal to be without merit.

In fine, accused-appellant's main defense is only that of alibi. Well-settled is the rule that, between the positive assertions of the prosecution witnesses and the negative averments of accused-appellant's, the former indisputably deserve more credence and entitled to greater evidentiary weight.

The straightforward testimonies of the complainant and her positive identification of the accused-appellant as her attacker leave no room for doubt as to the commission by accused-appellant of the criminal act. Courts have always looked upon the defense of alibi with suspicion and have received the same with caution, not only because it is inherently weak and unreliable, but also because of its easy fabrication (People v. Cortes, 226 SCRA 91). It becomes more unworthy of merit where it is established mainly by the accused himself and his relatives and not by credible persons (People v. Gundran, 228 SCRA 583). It must be remembered that the very persons who testified for the defense were accused-appellant's sister and father. Attempted corroboration of accused-appellant's defense of alibi was supplied by Ignacio Tuala, a 70-year old resident of Tigbauan, Iloilo, who testified that accused-appellant stayed in his house from October 30 to November 2, 1992 (TSN, June 29, 1993, p. 16). On cross-examination, however, he admitted that it was his regular schedule to stay in his farm, away from his residence, daily from morning until evening (TSN, June 29, 1993, p. 17). His farm was one kilometer away from his residence. It cannot, therefore, be declared with certainty that accused-appellant stayed in his house and did not go to the scene of the crime on November 1, 1992. It was impossible for Mr. Tuala to have watched over the accused-appellant all the time during the latter's alleged stay in Tigbauan. The person who testified as to accused-appellant's whereabouts during the second rape incident was Antonio Eusala, a resident of Passi, Iloilo. Eusala testified that he was one of those who attended the funeral rites of a certain Edwin Celubrico, held in Bgy. Bagobong on February 26, 1993. He stated that he saw accused-appellant attending the rites which lasted from 9:00 A.M., to 12:00 P.M. Eusala said that he was with the accused-appellant all throughout the funeral rites. On cross-examination, however, Eusala admitted that he only met the accused-appellant at the church at around 9:00 A.M., but, during the funeral procession, he rode on the funeral car with the mother of the deceased. Hence, this witness' testimony is not sufficient to establish the accused-appellant's whereabouts at the time of the alleged second rape incident. Upon the failure of accused-appellant to prove the required physical impossibility of being present at the crime scene, as can be readily deduced from the proximity between the places where the accused-appellant was allegedly situated at the time of the commission of the offense and the locus criminis, the defense of alibi is definitely feeble.

As to the accused-appellant's claim that complainant herself admitted that she was not dragged to the accused-appellant's house but that she merely obeyed accused-appellant's order for her to follow, suffice it to state that there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience (People v. Arnan, 224 SCRA 37). Complainant was only 12 years and 6 months old at the time of the rape incident and at such a tender age, the victim could have been overcome by fear of being stabbed to death if she resisted the order of accused-appellant. This reaction is not uncommon. The law does not in this instance impose a burden on the rape victim to prove resistance (People v. Dusohan, 227 SCRA 87). The argument that complainant did not exert sufficient resistance is bereft of merit for in rape cases it is not necessary that the victim should have resisted unto death (People v. Dio, 226 SCRA 176). Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will,

to the rapist's embrace because of fear for life and personal safety (*People v. Angeles*, 222 SCRA 451).

Accused-appellant claims that, had force been really employed upon complainant by him, it would have been improbable for complainant in the circumstances to discern with comparative ease accused-appellant's sexual organ. The claim is far fetched and without basis in fact. It has to be assumed that accused-appellant would, as he did, take out his organ in order to consummate the act of rape. This act must have alerted the complainant to the fact that rape was imminent. It is not unusual, therefore, for her to be able to give an accurate description of accused-appellant's sex organ. It is in fact in accord with natural human reaction to remember details of a frightening experience.

The absence of any ill motive on the part of a rape victim to institute charges does not render her testimony less credible, for no woman, especially one of tender age, will agree to undergo the trouble of having her private parts medically examined and the humiliation of a public trial if she had not been raped. The only clear and evident reason for her to institute rape charges is to get justice for her plight. Besides, a mother like Thelma Peñafiel herein would not subject her child to a public trial, with its accompanying stigma as the victim of rape, if the charges filed were not true (*People v. Ylarde*, 224 SCRA 405).

Finally, as to accused-appellant's contention that, as Dr. Lily Agnes Bunda Jardeleza testified, no perineal lacerations nor injuries on Grace Peñafiel's private parts and that her hymen was intact (TSN, July 9, 1993, p. 5), which findings are opposed to that of Dr. Ricardo Jaboneta, we find that the lower court did not err in relying on the findings of the latter considering that Dr. Ricardo Jaboneta is an expert on the matter, being a Medico-Legal Officer of the NBI as compared to Dr. Lily Jardeleza who is a pediatrician. Dr. Ricardo Jaboneta declared that the healed laceration was caused by sexual intercourse which could have happened on the dates alleged in the information. He added that although such laceration could have been caused by any pointed object or sharp instrument, he was certain, contrary to the defense's submission, that it was not caused by the instrument he used on the complainant during the latter's medical examination. He merely used a tube to measure the opening of the hymen for the reason that he did not want to destroy her virginity, if at all, just for that examination (TSN, June 4, 1993, p. 7). While it is true that Dra. Jardeleza was the first one to have examined Grace Peñafiel, it does not necessarily mean that she is correct and thus should be relied upon by the court. The trial court took note of the fact that Dra. Jardeleza, in her cross-examination, admitted that she specializes in pediatrics, which is, according to her, "the treatment of children's diseases." (TSN, July 9, 1993, p. 7). Moreover, Dr. Jardeleza, on cross-examination, wavered and did not categorically declare that no laceration was found on the complainant's private parts. What she declared was that maybe she failed to see such laceration:

"COURT:

Q The laceration you mentioned a while ago Doctor, could not be found when you examined her?

A It is not I cannot find maybe I have not seen." (*Id.* p. 8)

Further, Dr. Jardeleza admitted that she did not use any equipment necessary to find any healed laceration during the said examination. It is obvious from Dr. Jardeleza's testimony that she was not certain of her findings and so, her credibility suffers from inaccuracy. Of course, as a pediatrician, she cannot be expected to be a medico-legal expert on cases of rape. Besides, this Court has previously held that, in crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of the crime, the purpose of the examination being merely corroborative in nature (*People v. Arce*, 227 SCRA 406).

The doctrine is firmly settled that the trial court's conclusion on issues of credibility is accorded with highest respect by the appellate courts (*People v. Dominguez*, 217 SCRA 170). Appellate courts will generally respect the findings of trial courts on the credibility of witnesses since trial courts are in a better position to weigh conflicting

testimonies. They heard the witnesses themselves and observed their deportment and manner of testifying. Unless it is found that the trial courts have plainly overlooked certain facts of substance and value, the trial court's conclusions on credibility of witnesses should be respected (*People v. Santito*, 201 SCRA 87).

We find no reason to depart from this rule. A careful examination of the records show that the findings of the trial court are supported by evidence sufficient to pronounce a conviction.

The trial court correctly found the accused-appellant guilty beyond reasonable doubt on the two counts of rape. However, in line with the recent rulings of this Court (*People v. Jimmy Conte*, G.R. Nos. 113513-14, August 23, 1995; *People v. Magallanes*, 218 SCRA 109), the civil indemnity should be, as it is, hereby increased to P50,000.00 for each of the two counts of rape.

WHEREFORE, the appealed decision is hereby AFFIRMED, except as to the amount of indemnity.

SO ORDERED.

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

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