

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLITO ESPINOZA Y DUAZO, ACCUSED-APPELLANT.

G.R. Nos. 113521-31. August 03, 1995

Ponente: MELO, J.

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MELO, J.:

Accused was charged in eleven separate informations with eleven counts of rape allegedly committed on November 28, 1992, November 29, 1992, December 6, 1992, December 7, 1992, December 8, 1992, December 9, 1992, December 10, 1992, December 11, 1992, December 12, 1992, December 13, 1992, and January 19, 1993. Except for the alleged dates of commission of the rapes, these informations identically read as follows:

That on or about [date], in Barangay San Vicente, Municipality of Apalit, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MANOLITO ESPINOZA y DUAZO, with lewd design, with the use of force and violence, by means of threats and intimidation by then and there pointing a bladed weapon at 12 year old Mary Grace Nicdao, and taking advantage of his superior strength, did then and there wilfully, unlawfully, feloniously and maliciously have carnal knowledge with the said Mary Grace Nicdao against her will.

(p. 3, Rollo.)

After joint trial of the cases, the court a quo rendered a decision the dispositive of which reads as follows:

From all the foregoing consideration, the Court finds the accused Manolito Espinoza guilty beyond reasonable doubt of eleven (11) counts of rape as charged in the aforesaid eleven (11) separate informations penalized under Article 335 of the Revised Penal Code and as a consequence of which he is hereby sentenced to suffer the penalty of reclusion perpetua for each and every count and all the accessory penalties provided in Article 41 of the said Code, and pursuant to existing law, elevate the record of all these cases to the Honorable Supreme Court after the lapse of the reglementary period of fifteen (15) days.

(pp. 26-27, Rollo.)

From said decision, accused interposed the present appeal contending that

The trial court erred in giving credence to the prosecution's version that accused-appellant raped the 12-year old private complainant on eleven (11) separate dates and in rejecting his disclaimer although accompanied by a showing of the motive of those responsible for charging him with such series of serious crime.

(p. 1, Brief for the Accused-Appellant.)

The facts of the case, as summarized by the Office of the Solicitor General and as borne out by the evidence, are as follows:

Appellant Manolito Espinoza was a stay-in--baker in the bakeshop owned by Mr. and Mrs. Ricardo Pineda since

1992 (TSN, July 13, 1993, p. 6, Sept. 2, 1993, p. 5). The victim, Mary Grace Nicdao, is the natural daughter of Mrs. Luz Pineda by a previous relationship and was twelve years old when the incidents involved happened (TSN, July 13, 1993, p. 5). The bakeshop is situated on the ground floor of a two-storey building, the upper floor of which is used for residential purposes by the Pinedas (TSN, August 5, 1993, pp. 5-6).

On November 28, 1992, at about three o'clock in the morning, appellant surreptitiously entered the room of Mary Grace Nicdao and by threatening to use a "veinte-nueve" knife on her forced her to have sexual intercourse with him. She tried hard to fight him off but the latter was just too strong for her. (TSN, July 14, 1993, pp. 12-18) She was able to recognize appellant because of the light coming from the terrace near her bedroom. (TSN, July 15, 1993, p. 10) Appellant also threatened Mary Grace not to tell anyone about the incident or else he will kill her (Exh. "C", sworn statement of Mary Grace Nicdao). Mary Grace slept in one of the two rooms on the second floor with her niece Judith and cousin Jef-Jef, both aged seven years old. Appellant's sexual assaults upon Mary Grace was repeated on November 29, 1992 and then again on December 6-13, 1993. Each lasted for about five minutes (TSN, July 15, 1993, pp. 4-26).

On January 19, 1993, Mary Grace and her two companions, slept in the sala on the upper floor because her stepfather's daughter was then occupying their room. Early in the morning of that day, appellant forced Mary Grace to have sexual intercourse with him again. In the course thereof, she was made to swallow a tablet by appellant which caused her to feel dizzy (TSN, Ibid., pp. 27-29). Meanwhile, at about four o'clock that same morning, Mrs. Pineda stepped out of her room and caught appellant lying on top of her daughter. Shocked, she immediately retreated to her bathroom. After regaining composure, she went to the sala and saw accused sitting on the stairs with a bladed weapon, while her daughter was still in a lying position. When accused went downstairs, she went to her daughter and repeatedly slapped her until she woke up. It was then, that Mary Grace disclosed to her mother the ordeal she had gone through with appellant. Mrs. Pineda told her husband about the incident and the latter called the police (TSN, July 13, 1993, pp. 7-9).

Mary Grace went with her mother to the municipal hall and filed a complaint against appellant for eleven counts of rape (TSN, July 13, 1993, p. 9) Mary Grace was examined by Medico-legal examiner Dr. Edgardo Gueco and was found to be in a non-virgin state. Her hymen had deep-healed laceration at one o'clock position (TSN, August 12, 1993, pp. 13--14; Exh. "A", Medico-legal Report). Later that same day, and on the bases of the complaints filed against him, appellant was arrested and detained by the police. (TSN, September 2, 1993, pp. 13-14)

(pp. 4-7, Brief for the Appellee.)

Accused-appellant maintains that the reaction of complainant's mother, when she chanced upon accused-appellant at around 4 o'clock in the morning of January 19, 1993 having sexual intercourse with the victim, is contrary to human nature and experience. Indeed, according to the victim's mother when she saw accused-appellant raping her daughter, she was startled and rushed to the bathroom and, after regaining her composure, she got out and saw accused-appellant sitting on the stairs holding a bladed weapon. Such reaction, contrary to accused-appellant's contention, is not a breach of human nature and experience. We have observed in a long line of decisions that different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience (People vs. Raptus, 198 SCRA 425 [1992]; People vs. Dabon, 216 SCRA 656 [1992]). The reaction of the victim's mother when she chanced upon the rape scene cannot be faulted and made the basis of discrediting her testimony. She was simply too shocked, unnerved, and offended by the scene she chanced upon that early morning to be able to think clearly and to immediately taken action. Nonetheless when Mrs. Pineda had regained her composure, she immediately went to the succor of her drugged and semi-unconscious daughter.

Accused-appellant contends that, if it is true that the rape was committed in the very room where the victim and her niece, Judith, and cousin, Jef-Jef, were sleeping together on the same mat, Judith and Jef-Jef should have been called to the witness stand to testify to the act of rape. Accused-appellant's contention is devoid of merit. Both Judith and Jef-Jef were only seven years old at the time of the rape and young children are sound sleepers. Moreover, the prosecution and complainants, to our mind acted properly in not presenting these two minors as witnesses, even on the assumption that they did witness the rape at that time, for the identification of accused-appellant as the rapist was sufficient without the need of putting to risk the psychological and mental health of two young persons by asking them to relive an utterly horrible, evil, and disgusting scene.

Accused-appellant advances the argument that the sexual encounters between him and the victim were not rapes as the circumstances indicate that the victim had given her consent to the sex acts and that the separate acts of sexual congress were animated by mutual lust. The evidence does not support accused-appellant's argument. Accused-appellant threatened the victim with a knife and forced her to have sexual intercourse with him. She tried hard to fight him off but the superior strength of accused-appellant prevailed. Accused-appellant likewise threatened to kill the victim should she divulge the incident. Threatening the victim with a knife is sufficient to cow the victim to submission and constitutes an element of rape (*People vs. Adlawan, Jr.* (217 SCRA 489 [1993])). The testimony of the victim who was only 12 years old at the time of the rape as to the circumstances of the rape must be given weight, for testimony of young and immature rape victims are credible (*People vs. Guibao*, 217 SCRA 64 [1993]). No woman, especially one of tender age, practically only a girl, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished (*People vs. Guibao, supra*).

Accused-appellant furthermore insists that the failure of the victim to immediately report the rape to the immediate members of her family or to the police authorities is a clear manifestation of acquiescence or consent to the sexual encounters. We are not persuaded by such contention. Failure of a rape victim to immediately report the rape is not an indication of a fabricated charge (*People vs. Ulili*, 225 SCRA 594 [1993]). The failure of a complainant to report the rape immediately does not detract from her credibility, her hesitation being attributable to accused-appellant's death threats (*People vs. Dio*, 226 SCRA 176 [1993]).

The defense that the filing of the rape charges is in retaliation against accused-appellant for leading a strike against his employers, the mother of the victim and her husband, seems too shallow. By accused-appellant's own testimony, when the strike fizzled out, he stayed on to collect his unpaid wages while some of his co-workers left the bakery. Such conduct does not fit the character of a labor leader. Moreover, he had been employed in the bakery for less than a year when the alleged strike took place. It is unlikely for a newcomer like him to lead a strike against his employer. Moreover his testimony is uncorroborated. He did not call to the witness stand any of his co-workers to corroborate his testimony that there was a strike at his employers' bakery with accused-appellant as the leader. His failure to do so renders his testimony and defense unworthy of belief.

In a last-ditch effort at exculpation, accused-appellant cites the testimony of Dr. Edgardo Gueco, the medical examiner, to the effect that accused-appellant and the victim could not have engaged in sexual intercourse on January 19, 1993 because of the deep healed lacerations in the victim's hymen and vagina and the absence of spermatozoa in her vaginal canal. It should, however, be borne in mind in this connection that the first rape occurred on November 28, 1992, or almost 2 months before Dr. Gueco conducted the examination on January 19, 1993, and whatever laceration may have been inflicted on the victim's vagina must have already healed when the examination was conducted, as Dr. Gueco himself testified to when he stated that there were deep healed lacerations on the victim's hymen. It is well settled that healed lacerations do not negate rape (*People vs. Liquiran*, 228 SCRA 62 [1993]). Neither does the absence of spermatozoa in the vaginal canal preclude rape (*People vs.*

Magallanes, 218 SCRA 109 [1993]).

One last point. The trial court failed to award moral damages to the victim. The offended party in the crime of rape is entitled to moral damages in the amount of at least P50,000 (People vs. Bondoy, 222 SCRA 216 [1993]). In the case at bench, there having been multiple rapes on the victim, we believe that she should be awarded no less than P150,000.

WHEREFORE, the appealed decision is hereby **AFFIRMED**, with the modification that accused-appellant is hereby ordered to pay the offended party the amount of One hundred fifty thousand Pesos (P150,000.00) as moral damages.

SO ORDERED.

Feliciano, (Chairman), Romero, and Vitug, JJ., concur.

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