

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORENZO TOPAGUEN ALIAS “APIAT”, ACCUSED-APPELLANT.

G.R. Nos. 116596-98. March 13, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

LORENZO TOPAGUEN alias Apiat was charged with three (3) counts of rape in separate Informations filed with the Regional Trial Court of xxx. After trial he was found guilty as charged and sentenced to reclusion perpetua in each case and to indemnify each victim P40,000.00 for moral damages.[1] The accused now comes to us on appeal.

The facts: At twelve o'clock noon of 15 December 1990, AAA, 9, and BBB, 9-1/2, were sitting on the stairs of the house of a certain Mendoza at xxx, when Lorenzo Topaguen approached them. He showed them some money and asked them to follow him.

CCC, intimately called CCC, 9, was on her way home from the xxx where she fetched water. Her attention was attracted by the presence of AAA and BBB sitting on the stairs of Mendoza. CCC saw Apiat in the act of removing the pants of AAA and BBB and saying, "I just want to see if you have panties." CCC then hurried home to bring the water she was carrying and went back to where she saw AAA and BBB earlier. However they were no longer there. CCC proceeded to the house of Apiat which was just nearby. As she was about to peep through the window the accused suddenly grabbed her and dragged her inside his house. There she saw AAA and BBB seated on the bed of accused Apiat. Apiat ordered the three (3) girls to lie down and threatened to kill them should they talk or disobey him. He was armed with a knife. Then he took off his pants, undressed his victims and had carnal knowledge of them one after another - first with AAA, then with CCC, and finally with BBB who resisted at first. However, Apiat whipped BBB until she submitted to his lustful advances. He inserted his penis into her vagina. She felt pain so she begged the accused to stop but the latter continued until his lust was satisfied.

After his encounter with the three (3) victims, the accused gave BBB P16.50. But before sending them away he told the girls that he enjoyed his sexual intercourse with them.

The following day BBB confided their grisly experience to her mother DDD. DDD immediately brought AAA and BBB to the xxx Hospital where they were physically examined by Dr. xxx. The medical findings showed that AAA's vulva was erythematous and her hymen fully lacerated.[2] As regards BBB, the medical report likewise revealed that her vulva was erythematous, her hymen ruptured, and her skin on the left elbow and right knee was superficially scraped off.[3]

On 17 December 1990 DDD also brought CCC to Dr. xxx who found that her patient's vulva was also erythematous with rupture and lacerations of the hymen, and her right chest, back, as well as left flank swollen. She was in pain.[4]

The physical examination conducted by Dr. xxx confirmed that there was penetration of the vaginas of AAA,

BBB and CCC by a male sexual organ.

The accused had a different story to tell. He insisted that he never raped anyone in his life. He alleged that in the afternoon of 15 December 1990 he was asleep in his house as he was on a drinking spree that morning. He claimed that he already started to drink gin and beer earlier that day so that at eleven o'clock he had to be brought home by an acquaintance on a tricycle and went straight to bed and sleep. He was only awakened when he heard voices of children in gay abandon. They were AAA, BBB and CCC. According to him, he heard BBB say, "Ka at nan kinaot mo iska borsana?"[5] At that time he did not understand what the question meant as he was still groggy so he just went back to sleep.

At five o'clock that afternoon he woke up to defecate and look for a cigarette. He went to Mendoza's store but when he was about to pay for the cigarettes he discovered that his money was gone. He then realized that he must have been robbed by the children.

Apiat described his room as being separated by a single wall of 3/8-inch plyboard and any noise originating therefrom could be easily heard by his neighbors. But he claimed that when he went out that afternoon neither the children playing in the yard nor the women playing cards accused him of molesting the three (3) girls. He surmised however that the motive behind the filing of the rape case against him was because the children disliked him as he was a drunkard and that a niece of his wanted him behind bars so she could take possession of his house.

Alfonso Mendoza, a neighbor of the accused as well as of complainants, attempted to corroborate the version of the defense. According to Mendoza, between eleven in the morning and twelve o'clock noon of 15 December 1990, while he was sitting on the stairs of his house, Apiat passed by. They teased one another. He called Apiat "Commander Pusa." Mendoza claimed that there were many children playing at that time and women playing cards in the backyard of the accused. He also said that he did not know of any complaint for rape against Apiat until 15 December 1990.

But the trial court was not persuaded. It found the accused guilty as charged. It observed that -

x x x x the clear and positive assertions of the complainants-witnesses to the effect that the accused had sexual intercourse with them in his quarters at noon or thereabouts on December 15, 1990 are on the whole plausible. The individual testimonies of AAA, CCC, and BBB on how the accused inserted his penis into each of the girls' vaginas, one after the other, jibes substantially on material points. Albeit the descriptions of the alleged victims of the incidents are not very much detailed, such narrations having been made by innocent children is sufficient, taken in its entirety to establish the truth of the matter (PP vs. Natan, GR No. 6649, January 25, 1991). The minor inconsistencies or conflicts in the gamut of the complainants' statements do not detract from the veracity of the principal points. The discrepancies may even be considered as ear-marks of honesty. Given the tender ages of the children, they are expected to contradict themselves under extended, repetitious, and gruelling interrogations (PP vs. Decena, GR. No. 3713, February 9, 1952).[6]

In this appeal, accused-appellant assails his conviction. He contends that the testimonies of the prosecution witnesses should not have been given credence. First, he questions the credibility of AAA because her testimony conflicts with a previously executed sworn statement. Secondly, he challenges the findings in the medical certificate issued by Dr. xxx as being unreliable because of her inexperience. He also claims that the trial court erred in giving weight to the bare and self-serving allegations of private complainants whose testimonies were not corroborated by other credible and competent evidence. Finally, he maintains that it was inherently impossible for him to commit the crime of rape considering his advanced age, more so that he allegedly raped all three (3) victims on a single occasion.

We cannot sustain the defense. It is elementary that conclusions as to the credibility of witnesses in rape cases lie heavily on the sound judgment of the trial court which is generally accorded great weight and respect, if not conclusive effect. Accordingly, in the appreciation of the evidence the appellate court accords due deference to the trial court's views on who should be given credence, since the latter is in a better position to assess the credibility of witnesses considering its opportunity to observe their demeanor as well as their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses will be sustained by the appellate court unless the trial court overlooked, misunderstood or misapplied the facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[7] In this instance, none of the excepting circumstances is availing.

The contention of accused-appellant that there are inconsistencies between the testimony of AAA and her sworn statement with respect to the presence of CCC as rape victim is bereft of merit. On direct examination, AAA testified -

COURT:

Q: The answer of the witness is Apat made sexual intercourse with us, now what do you mean when you said that, with whom among you did Apat make sexual intercourse?

A: Me and BBB.

PROSECUTOR PATNA-AN:

Q: You know the family name of BBB?

A: Yes sir.

Q: Miss Witness, you said that the accused had sexual intercourse with you, where did this happen, what particular place?

A: At his house.

Q: At the house of Apat?

A: Yes sir.

Q: When you said Apat are you referring to the accused in this case?

A: Yes sir.

x x x x

COURT:

Q: What is the full name?

A: Lorenzo Topaguen.

x x x x

PROSECUTOR PATNA-AN:

Q: Miss Witness, when he told you that you will (sic) go to the bed, did you like to go to the bed, Miss Witness?

A: No sir.

Q: And what did you do when you did not like to go to the bed?

A: He threatened us.

Q: What did he say when he threatened you?

A: He said that if we do (sic) not like he will (sic) kill us.

Q: Do you know CCC?

A: Yes.

Q: Was she there in the house that time?

A: Yes.

Q: x x x x So how many of you were there in the house with whom Apiat had intercourse?

ATTY. PADONG:

We object to the question being suggestive, your honor. Witness never told of any intercourse when it comes to CCC, your honor. I believe, your honor, that the prosecution has been training this witness in such a way that he could suggest x x x x vital facts x x x x on the witness on suggesting certain facts she never testified to, I object to the manner (by) which the prosecution is trying to obtain and elicit information from the witness, if he continues, your honor, to ask questions which are suggestive to witness.

PROSECUTOR PATNA-AN:

We are just trying to get the testimony of the witness to find out if (in) her sworn statement she is telling the truth in this case. She already submitted her sworn statement and we are just trying to follow to bring out the details for the consideration of the court.

COURT:

Q: Let us get this clear x x x when you went to the house of Apiat as you have stated, how many of you went?

A: We first, the two of us.

Q: And then when you were at the house of Apiat what happened there?

A: He took our clothes off and had intercourse.

Q: Who among you did Apiat first strip?

A: Me.

Q: And then when Apiat took off your clothes as you have stated what happened next?

A: He had intercourse with us.

Q: You mean you, after he stripped you as you stated he had sexual intercourse with you?

A: Yes.

Q: What do you mean, inyot, what do you understand by inyot?

A: He placed his penis inside our vaginas.

Q: After that did you feel it when he placed his penis inside your vagina?

A: Yes.

Q: How did it feel?

A: Painful.

Q: After that what happened next?

A: And then he did it also to BBB.

Q: BBB?

A: BBB.

Q: Will you describe what Apiat did to BBB as you have seen?

A: He stripped her and let her lie in bed and had sexual intercourse with her.

Q: What do you mean, will you describe when he allegedly made sexual intercourse?

A: He placed it.

Q: What did he put?

A: His penis.

Q: Whose penis?

A: Apiat

Q: He placed it where?

A: To the vagina of BBB.

Q: After that, what happened?

A: He gave us P16.50.

Q: Whom did he give that P16.50, meaning Apiat?

A: Both of us.

Q: Whom did he hand the money?

A: BBB, sir.

Q: After that, what happened?

A: He let us out sir.

Q: So there were only two of you who went to the house of Apiat?

A: CCC was peeping at the window and Apiat went to call for her.

COURT:

Fiscal, proceed.

PROSECUTOR PATNA-AN:

Q: Miss Witness, you said that Apiat went to pull CCC when she was peeping through the window.

ATTY. PADONG:

We object to that line of questioning your honor, since there was never any mention of peeping at the window.

PROSECUTOR PATNA-AN:

The question is, counsel should listen carefully to the answer of the witness so that we will not be delayed in the presentation of our evidence. Witness said that CCC was peeping and we are now asking what time did that happen.

COURT:

Q: When all these things that you had testified to transpired, what else happened there in the house of Apiat, if any?

A: No more.

Q: So meaning to say that when x x x Apiat allegedly had sexual intercourse with you and BBB there was nobody else there and nothing happened after that?

A: None sir.

Q: So meaning they were the only ones x x x x Now, where were you when Apiat went to pull CCC?

ATTY. PADONG:

No basis, we object to the questioning as having no basis.

COURT:

The objection is well taken because there was no mention of any CCC.

PROSECUTOR PATNA-AN:

There was.

COURT:

Probably the other witnesses can testify to that matter. The understanding of the court is that she was only with BBB.

PROSECUTOR PATNA-AN:

In the statement they were three and she mentioned that at first there were two of them and then later came CCC peeping through the window and this Apiat went to pull her inside. That is what the witness mentioned at first which was not accurately translated.

ATTY. PADONG:

The witness was relating having been molested having had sexual intercourse with BBB and the accused and after that the accused gave them P16.50 and they went out and after that nobody else was there so nothing happened and they went to the stairs where they were sitting and then they went home in the afternoon that was the only narration of the witness so far as counsel has noted, your honor.

PROSECUTOR PATNA-AN:

That is why we are saying your honor that the witness has also mentioned a certain CCC who was pulled inside, that is why we are trying to clarify the participation of this CCC if she was there during the incident.

COURT:

Q: You were in the house of the accused Lorenzo Topaguen, with you was BBB is that correct?

A: Yes.

Q: Did you see anybody else also around the house when you were there?

A: None sir.[8]

It is clear from the foregoing testimony that AAA confirmed the presence of CCC at the scene of the crime although she did not categorically state that CCC was also raped. But the alleged contradiction between AAA's testimony and her sworn statement may be explained by the fact that during her direct examination AAA was under unfamiliar surroundings and strange atmosphere and she simply wanted to end her testimony. The unrelenting objections posed by defense counsel, followed by the barrage of questions from the court, caused her to wish her testimony had ended soonest, thus resulting in the anticlimactic termination of her testimony which left out CCC as another rape victim.

AAA was only nine (9) years old when she went through her traumatic experience. As such, error-free testimonies could not be expected especially when she was recounting details of a terrifying ordeal.[9] Minor lapses should be expected when a person is made to recall minor details of an experience so humiliating and so painful as rape.[10] After all, the credibility of a rape victim is not destroyed by some inconsistencies in her testimony.[11] Moreover, testimonies of child victims are given full weight and credit.[12]

Even assuming that on direct examination AAA failed to testify regarding the presence of CCC during the rape such omission is not fatal to the cause of the prosecution. BBB, one of the rape victims, testified thus -

PROSECUTOR PATNA-AN:

Q: We will rephrase. When CCC was peeping according to you at the window what did Apat do, if any?

A: Then he went out and pulled CCC inside and placed her on his bed so we were all three whom he undressed.

Q: You mentioned CCC, what is the complete name of CCC?

A: CCC.

Q: The other name?

A: Yes sir.

Q: What is her family name?

A: CCC.

x x x

PROSECUTOR PATNA-AN:

Q: When he had sexual intercourse with AAA whom did he have sexual intercourse next?

A: CCC and after that I was next.[13]

Accused-appellant also avers that it was error for the court a quo to have relied on the testimony and findings of Dr. xxx as the latter had no experience yet in the physical examination of rape victims. We do not agree. Generally, any person who by study or experience has acquired particular knowledge or expertise may be allowed

to give in evidence his opinion upon matters of technical knowledge relating to such business or employment.[14] While it may be that the cases of AAA, BBB and CCC were the initial cases on rape handled by Dr. xxx, such fact is not a bar to her testimony being given credence since the prosecution was able at the first instance to qualify her as a medical expert.

Moreover, it cannot be said that the prosecution relied solely on the hymenal lacerations of the victims as evidence of rape but on the testimonies of complainants themselves which, standing alone and even without medical examination, were sufficient to convict.[15] A medical examination is not indispensable in a prosecution for rape otherwise grave and irreparable injustice would be inflicted upon hapless victims if the crime be committed in remote areas where there may be no doctors to conduct a medical examination on the rape victim. So, too, if the victim would not submit to physical examination since what immediately preoccupies her mind after her ordeal is not necessarily the filing of a complaint but the fear of what the perpetrator will further inflict upon her should she reveal his criminal act, or the embarrassment and humiliation accompanying a public disclosure of the ignominy and dishonor she suffered in the hands of her tormentor.[16]

Accused-appellant further claims that there was no credible or competent evidence to show that AAA, BBB and CCC's vaginas had been penetrated by a male organ as their hymenal lacerations could have been caused by several factors other than sexual intercourse. Ironically, while the accused questions the qualifications of Dr. xxx as medical expert, he nonetheless relies on her findings as to the cause of the injuries. In a case,[17] this Court held -

Appellant loses sight of the fact that while the prosecution had proved that the laceration was caused by sexual intercourse, contrarily he had failed to establish that the laceration was caused by other factors. It is elementary in our rules on evidence that a party must prove his own affirmative allegations.

Lastly, the defense posits that it was incredulous for accused-appellant to have committed the rapes considering his rather advanced age and that he supposedly raped all three (3) girls on just one occasion. We disagree. He was only fifty-six (56) years old at the time he sexually assaulted his victims. But even if he was older his age would not mean that sexual intercourse was no longer possible as age is not a criterion, taken alone, in determining the sexual interest and capability of middle-aged and older people.[18]

WHEREFORE, the decision appealed from finding accused-appellant LORENZO TOPAGUEN alias Apiat guilty of three (3) counts of rape and sentencing him to reclusion perpetua in each case is **AFFIRMED**, with the modification that the indemnity of P40,000.00 for each rape victim is increased to P50,000.00 conformably with existing jurisprudence. Costs against accused-appellant.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge xxx, RTC-Br. xxx, xxx.

[2] Records, Crim. Case No. 814 , p. 7.

[3] Id., Crim. Case No. 816, p. 9.

[4] Id., Crim. Case No. 815, p. 7.

[5] Translated into English, "How much did you get from his pocket?"

[6] Rollo, p. 91.

- [7] People v. Cura, G.R. No. 112529, 10 January 1995, 240 SCRA 234.
- [8] TSN, 27 August 1991, pp. 12-13, 15-22.
- [9] See Note 7.
- [10] People v. Dado, G.R. No. 87775, 1 June 1995, 244 SCRA 655.
- [11] People v. Abapo, G.R. No. 108584, 22 December 1994, 239 SCRA 373.
- [12] People v. Digno Jr., G.R. No. 108958, 23 November 1995, 250 SCRA 237.
- [13] TSN, 29 August 1991, pp. 174-175, 177.
- [14] People v. Rubio, G.R. No. 66875, 19 June 1986, 142 SCRA 329.
- [15] People v. Delovino, G.R. Nos. 116132-33, 23 August 1995, 247 SCRA 37.
- [16] People v. Saldivia, G.R. No. 55346, 13 November 1991, 203 SCRA 461
- [17] People v. Ching, G.R. No. 103800, 19 January 1995, 240 SCRA 267.
- [18] People v. Bahuyan, G.R. No. 105842, 24 November 1994, 238 SCRA 330.

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