

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MONTEFALCON, ACCUSED APPELLANT.

G.R. Nos. 116741-43. March 25, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is an appeal by accused EDWIN MONTEFALCON, from the Joint Decision[1] of Branch 32 of the Regional Trial Court in Dumaguete City, finding him guilty of rape and sentencing him thus:

"WHEREFORE, premises considered, judgment is hereby rendered:

(1) In Crim. Case No. 10741 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided for by law.

(2) In Crim. Case No. 10742 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentence him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided for by law.

(3) In Crim. Case No. 10744 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with accessory penalties provided for by law.

The above three (3) reclusion perpetua penalties shall be served by the accused successively, subject however to the 40-year limit provided for in Art. 70 of the Revised Penal Code (People v. Duco, 86 Phil. 176; People v. Remolleno, 109 Phil. 607). In all these three (3) cases, the accused is ordered to pay the offended party the aggregate sum of P4,000.00 as actual damages, and P75,000.00 as moral damages (at P25,000.00 for each case), and the costs.

The jailer is hereby ordered to make the proper reduction of the period during which the accused was under preventive custody by reason of these cases in accordance with law.

SO ORDERED."[2]

The Informations charging the accused of the crime of rape allege:

In Criminal Case No. 10741

"That on or about the 26[th] day of February, 1993, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did, then and there,

wilfully, unlawfully and feloniously lie, and succeeded in having carnal knowledge with one SHARON SAING, a minor, 10 years of age, against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."

In Criminal Case No. 10742

"That on or about the 28[th] day of February, 1993, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation did, then and there, wilfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with one SHARON SAING, a minor, 10 years of age against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."

In Criminal Case No. 10744

"That on or about the 1[st] day of March, 1993 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did, then and there, unlawfully and feloniously lie, and succeeded in having carnal knowledge with one SHARON SAING a minor, 10 years of age, against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."[3]

Based on three (3) sworn complaints for rape signed by the complaining victim, Sharon Saing, with the assistance of her father, Clemente Saing, the aforequoted Informations were presented by Fourth Assistant City Prosecutor Isabelito I. Trayvilla on March 29, 1993.

With the accused, assisted by counsel, entering a plea of Not Guilty upon arraignment, a joint trial of all three cases ensued.

The facts of the case as stated in the Appellee's Brief and found by the trial court more credible and worthy of belief are as follows:

"[The] victim Sharon Saing was born on May 1, 1982 (Exhs. `A' and `A-1') to spouses Clemente Saing and Paz Silvano Saing. The family lives in a house belonging to Dr. Orbeta, at Batingual, Dumaguete City. Accused Edwin Montefalcon, a handler of the fighting cocks of Dr. Orbeta, stayed with the Saing family (p. 23, tsn, February 1-31, 1994). He had a bed space in the kitchen of the house.

Sharon is a Grade 5 pupil. (p. 23, tsn, September 9, 1993) Her father Clemente is a pedicab driver (p. 4, tsn, December 8, 1993) while her mother Paz serves as a waitress at the Music Box, a disco house, along Rizal Boulevard, Dumaguete City, (p. 5, *ibid*).

Husband and wife used to come home late in the evening due to the nature of their jobs. On February 26, 1993, February 28, 1993 and March 1, 1993, at about 9:00 o'clock in the evening, while Sharon and her younger brother Michael, about eight (8) years old, were sleeping inside their bedroom, accused entered. He covered Sharon's mouth with a pillow and placed himself on top of her. He inserted his penis into her vagina and did some pumping motions of his buttocks. The accused warned Sharon not to tell her parents about the incident otherwise he would kill her. When these three (3) separate sexual abuses were committed by the accused, Michael did not mind. He appeared to be asleep. (pp. 4-12, tsn, September 9, 1993)

On March 5, 1993 at 3:00 o'clock dawn, her parents, upon reaching home discovered the accused sleeping inside their bedroom together with Sharon. His leg was placed over and across her body. Clemente woke him up. Caught by surprise, the accused pretended to have lost his way and immediately went back to the kitchen. Sharon's father noticed that Sharon's shorts and panty were pulled halfway down. He examined her and found seminal fluid on her vagina which was still wet. It was then that he investigated her. Sharon was forced,

although reluctantly, to reveal the series of sexual abused committed by the accused upon her. (pp. 5-8, tsn, December 8, 1993)

She said, the first sexual assault was done on February 22, 1993. This was repeated on February 23, and on February 25. The other sexual acts committed by the accused on February 27, March 2 and March 4, 1993. (pp. 28 and 29, tsn, September 9, 1993) The three other penila (sic) penetrations done by the accused upon her on February 26, 28 and on March 1, are the subject matters of these cases. All in all, the accused made nine (9) separate and distinct sexual intercourses with her on different nights. Alarmed, Clemente brought her (sic) daughter immediately to the police station and reported the incident. Sharon was also brought to Negros Oriental Provincial Hospital. (pp. 8 and 9 , tsn, December 8, 1993) by Dr. Edna Tabaloc. Vaginal examination of Sharon shows `(a) old lacerations at 9, 2 and 4 o'clock positions. (Exh. `D,' `D-1' and `D-2')." [4]

The defense version, as discussed in the Appellant's Brief, runs as follows:

"The evidence for the defense tends to establish that on February 26, 1993, accused Edwin Montefalcon was with Clemente Saing, the father of the victim, from 7:30 o'clock in the evening when they got the rented pedicab from the house of the owner up to 3:00 o'clock dawn the following day when they fetched Clemente's wife at her place of work. In between 7:30 o'clock and 3:00 o'clock, both the accused and the father of the victim were together picking up passengers. After fetching the mother of the victim, all of them went home together and slept in their respective rooms at Dr. Orbeta's house. On February 28, 1993, the accused attended a vigil in Taclobo in the house of his friend, Geoffrey Herrera, whose grandmother died. He left the house at 7:30 o'clock in the evening and returned at 6:00 o'clock in the morning of the following day. On March 1, 1993, at around 7:30 o'clock in the evening, the accused was with his brother Narciso in Taclobo playing cards known as `chekecha.' He returned home at about 11 o'clock. He denied raping Sharon on these three occasions (TSN, February 1, 1994, pp. 4-11)" [5]

On May 3, 1994, the trial court came out with its Joint Decision.

Dissatisfied with the aforesaid judgment convicting him, the accused found his way to this Court placing reliance on the sole assignment of error, that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

Appellant theorizes that the lower court failed to consider infirmities in the testimonies of the prosecution witnesses which should have warranted his acquittal. The testimonies of prosecution witnesses alluded to are as follows:

"The father of the victim, Clemente Saing, testified that on March 5, 1993 he discovered that the accused and her daughter-victim were sleeping together at their room. Sensing foul play, he examined his daughter and in the process found seminal fluid in her vagina. He at once reported the matter to the police station and had her (sic) daughter examined on the same day by Dr. Edna Tabaloc. The findings of the doctor however ran counter with what he had declared in court for the doctor's findings showed no presence of male seminal fluid in her daughter's vagina. We could safely infer therefore that the father was lying when he testified in court.

The testimony of the victim herself could not also be worthy of belief. Her story of how she was raped involved the same mold and pattern. She wanted to impress that the accused did the act in a ritual manner by entering the room while she was asleep, covering her mouth with a pillow, placing himself on top of her, inserting his penis into her vagina and doing pumping motions. It would be noted that as alleged by the victim, she had been raped by the accused nine (9) times. Yet, she did not divulge the same to her parents. Nor did she take necessary precautions to avoid being raped again. She still went to bed with unlocked doors. She did not offer any resistance. Her brother was just beside her, also sleeping. Has she attempted to resist, her brother could have been awakened. Sharon was ten years old when the alleged incidents occurred. Girls of her age

would not have acted that way as human experience would show. The acts done in her would prompt one to revolt, but she chose not."[6]

The court discerns no error in the rejection below of the defense theory of alibi and denial. Well-settled is the rule that alibi cannot prevail in the face of the identification of appellant as the culprit. Here, the victim categorically narrated that the accused had sexual coitus with her on the nights of February 26, 1993, February 28, 1993 and March 1, 1993. He was positively pointed to by Sharon, who is familiar with him. He stayed with the Saings in the same house for a long time, like a member of the Saing family.

Even assuming that Sharon passively submitted to the sexual advances of the accused, consent is not a defense here. At the time of the commission of the three (3) sexual intercourses on February 26, February 28 and March 1, 1993 complained of, Sharon was only eleven years old, having been born on May 1, 1982 (Exhs. "A" and "A-1"). Thus, even if there was consent on the part of the victim, express or implied, what the accused did constituted what is known as statutory rape.

In point is the disquisition of this court in *People vs. Morales*, 94 SCRA 192, to wit:

"xxx Since the offended party was less than 12 years at the time of the intercourse, rape was committed although there might have been consent to the sexual act. Being of tender age, she is presumed not to have a will of her own. The law does not consider any kind of consent given by her as voluntary."

As regards the alleged inconsistency between the testimony of Clemente Saing, father of the victim, and Dr. Edna Tabaloc, on the presence or absence of seminal fluid in the vagina of the victim, the submission of appellant on the matter cannot adversely affect the case of the People nor can it warrant his acquittal.

Being a layman, Clemente Saing cannot be expected to tell with certainty what he found in the vagina of his daughter, Sharon, was seminal fluid. The apparent inconsistency between his testimony and the findings of the medico legal officer does not justify the conclusion that the said witness was not telling the truth. Then, too, this court held:

"The fact that the witness fails to mention a particular detail of an incident, especially when testifying on different occasions, does not per se undermine his credibility. The nature and difference of the proceedings involved and the questions propounded therein would or would not succeed in eliciting the details desired are only some of the factors to be considered. What is controlling is the consistency of the witness in relating the significant and indispensable components of the principal occurrence. We have held that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the basic aspects of the whys and wherefores of the crime, does not impair their credibility." (*People vs. Custodio*, 197 SCRA 538)

"The absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape." (*People vs. Yambao*, 193 SCRA 571; *People vs. Banayo*, 195 SCRA 543)

The victim testified that the appellant threatened to kill her if she would divulge to anybody what he had been doing to her. Afraid, she kept to herself what happened to her until her parents caught appellant sleeping with her. In such a scenario, the victim's reluctance to reveal what appellant did to her did not render her testimony unworthy of belief.

Well-settled is the rule that delay in reporting an incident of rape does not create any doubt over the credibility of the complainant nor can it be taken against her.

"Finally, the fact that Fanny Dolor filed her complaint more than six months after the occurrence of the rape is not a matter that would discredit her charge. Delay in reporting an incident of rape is not an indication of

fabricated charge nor does it cast doubt on the credibility of the complainant as it is not uncommon for young girls to conceal for sometime the assault of their virtue because of the rapist's threat on their lives." (People vs. Pamor, 237 SCRA 462)

"On the other hand, this court has repeatedly held that delay in reporting a rape incident due to death threats should not be taken against the victim. This doctrine applies with greater force to the case at bench, where complainant was only fourteen (14) years of age at the time of the assaults, while accused-appellant was sixteen (16) years her senior and an armed member of the dreaded Alsa Masa movement. The threat to her life and her family was real; her fear was reasonable." (People vs. Sarellana, 233 SCRA 31)

Indeed, the rape perpetrated by Edwin Montefalcon against Sharon Saing has been sufficiently substantiated. Appellant utterly failed to show his innocence of the charges. The inconsistencies in the testimonies of the witnesses for the prosecution alluded to by the defense are too minor and inconsequential. The failure of the victim, Sharon Saing, to report her unfortunate experience is understandable, in the face of the threat of the rapist to end her life should she disclose her misfortune. Anyway, in statutory rape, such as the one sued upon, even with the consent of the victim, carnal knowledge of her is punishable as statutory rape.

Following prevailing jurisprudence, the offended party is entitled to an award of moral damages which, in this case, is fixed at Fifty Thousand (P50,000.00) Pesos per count.

WHEREFORE, the appealed verdict of guilt is **AFFIRMED** and the accused-appellant is hereby sentenced as follows:

(1) In Criminal Case No. 10741 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided by law.

(2) In Criminal Case No. 10742 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with all the accessory penalties provided by law.

(3) In Criminal Case No. 10744 -

The Court finds accused Edwin Montefalcon guilty beyond reasonable doubt of rape penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua together with accessory penalties provided by law.

The three (3) reclusion perpetua penalties shall be served by the accused-appellant successively, subject however to the 40-year limit under Article 70 of the Revised Penal Code (People v. Duco, 86 Phil. 176; People v. Remolleno, 109 Phil. 607). In each of the three (3) cases, accused-appellant is ordered further to pay the offended party, Sharon Saing, the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity; and as a above-indicated, P50,000.00 of moral damages in each case.

Costs against accused-appellant.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Judge Eleuterio E. Chiu.

[2] Rollo, pp. 31-32

[3] Rollo, pp. 20-21.

[4] Rollo, Appellee's Brief, pp. 93-96

[5] Rollo, Appellant's Brief, pp. 48-49.

[6] Rollo, Appellant's Brief, pp. 50-51.

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