

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERNANI DICHOSON, ACCUSED-APPELLANT.

G.R. Nos. 118986-89. February 19, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 25, Iloilo City, finding accused-appellant Hernani Dichoson guilty of one count of acts of lasciviousness and three counts of rape and sentencing him accordingly.

The information[2] for acts of lasciviousness alleged—

That [o]n or about the month of October 1981, in the Municipality of Dumangas, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness upon the person of the undersigned, a minor, by then and there kissing, fondling her breast, touching her vagina and ordering her to hold his penis, against the latter's will and by means of force and intimidation.[3]

Except as to the dates appearing therein, the three informations[4] for rape commonly alleged ¾

That on or about [date][5] in the Municipality of Dumangas, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the undersigned against her will and consent.[6]

Upon arraignment, accused-appellant pleaded not guilty to the charges, whereupon the cases were jointly tried.

The prosecution presented evidence showing the following:

Complainant Lelanie Dusan, born on September 22, 1970, is the seventh of the nine children of Arnulfo Dusan and Concepcion Nene of Bolilao, Dumangas, Iloilo. Accused-appellant's wife, Roces Dichoson, is a first cousin of complainant's parents. In 1979, when complainant was only nine years old, Roces Dichoson asked complainant's parents to let her (complainant) live with her (Dichoson's) family to look after the children. Complainant's parents agreed, and so complainant moved in the Dichoson household in Barangay Bolilao.[7]

According to complainant, one evening in October 1981, at around 8 o'clock in the evening, while she was sleeping in a playpen in the bedroom, accused-appellant, who also slept in the same bedroom with his wife and children, took her hand and placed it on his sex organ. Complainant was awakened and, frightened, she drew back her hand. She said accused-appellant did not say anything.

Complainant said she was again molested by accused-appellant the following evening. Accused-appellant made complainant hold his genitals and fondled her breasts and private parts. Similar incidents took place that month (October 1981) although complainant could no longer recall the exact date of their commission. Complainant stated that she did not report these incidents to her parents because at first she thought accused-appellant had lost

his mind and later because she did not want to bring shame to her family.[8]

On May 4, 1982, accused-appellant's sister came for a visit. Complainant had to sleep in the living room so that accused-appellant's sister could sleep in the room previously occupied by her. Complainant said that while the rest of the household was asleep, accused-appellant went over to her, dragged her towards the kitchen, and there forced her to have sexual intercourse with him. Complainant said she tried to fight accused-appellant's advances but she was overpowered. She was afraid because she knew that, aside from the knives in the kitchen which accused-appellant might use to harm her, he placed a revolver in one of the kitchen cabinets.[9]

In the evening of June 16, 1982, complainant was again sexually abused by accused-appellant. While complainant was asleep, accused-appellant entered complainant's room, lowered her undergarments down to her knees, and had sexual intercourse with her. After he was through, he left without a word.[10]

The third rape incident, which is subject of Criminal Case No. 16250, took place in the morning of July 12, 1982. Complainant testified that while she was in her room, accused-appellant came and had sexual intercourse with her.[11]

According to complainant, after the rape incident of July 12, 1982, accused-appellant continued to rape her on subsequent occasions so numerous that she could no longer recall the dates when each incident took place. When asked during the cross-examination why she did not report the rapes to anyone, she replied that she did not want to put her family to shame.[12]

In May 1983, complainant's parents noticed that complainant had stopped having her menstruation and her abdomen had become distended. They decided to take her to a "healer" but, upon accused-appellant's instruction, complainant told her parents that she had been raped by a certain Tony Lopez. Her parents, therefore, decided that complainant should be brought to Zamboanga.[13]

But complainant's father doubted his daughter's account because the boy she had implicated was a mental retardate. While he and his daughter were on their way to Zamboanga, he decided to drop by his brother's house in La Paz, Iloilo, where, upon the prodding of her cousins, complainant revealed that it was actually accused-appellant who had repeatedly raped her, causing her to become pregnant.[14]

Complainant was then examined at the Iloilo provincial hospital and later at the office of the National Bureau of Investigation. On May 24, 1983, she executed her affidavit-complaint before Assistant Provincial Prosecutor Romeo H. Mediodia of Iloilo. On July 9, 1983, complainant gave birth to a baby girl at the Iloilo provincial hospital. These cases were subsequently filed on August 4, 1983.[15]

Complainant's mother, Concepcion Dusan, was to testify as to complainant's date of birth. However, as the defense agreed that complainant's date of birth was that stated in her birth certificate[16] (September 22, 1970), the mother's testimony was dispensed with.[17]

The defense then presented its case. Accused-appellant, 40, denied the allegations against him. He named Tony Lopez as the guilty party. He testified that in February 1982, he allegedly hired Lopez to tend to his piggery. Lopez, who was allegedly good-looking and single, worked for accused-appellant until December 1982 during which Lopez stayed in the latter's house. Accused-appellant claimed that many times he observed Lopez and complainant sitting beside each other and being "sweet to each other." On one occasion, he said he came upon Lopez and complainant sleeping in the same room with his children.[18]

Accused-appellant testified that Lopez expressed willingness to marry complainant upon learning of the birth of complainant's child.[19]

Accused-appellant's defense was alibi. He claimed that he was not at home from 9 o'clock in the evening of May 4, 1982 to 6 o'clock in the morning of the following day, May 5, 1982. He said that he was in the cockpit in Dumangas in the morning on May 4, 1982. Afterwards, he went with some friends to the town plaza, going home only at 6 o'clock in the morning of the next day, May 5, 1982. At around 12 noon that day, he allegedly went back to Dumangas for the fiesta celebration.[20]

As for his whereabouts on June 16, 1982, accused-appellant testified that from 8 o'clock in the morning to 6 o'clock in the evening of that day, he was in Barangay Barotac to watch a cockfight. He was allegedly not home either from 4 o'clock in the morning to 10 o'clock in the evening of July 12, 1982 as he had allegedly had gone to other barangays to purchase palay for his business. Upon being questioned by the court, however, he could not recall where he had gone to buy palay that day.[21]

Accused-appellant claimed that complainant's father harbored ill feelings towards him because their business venture of buying and selling palay failed.[22] He testified that the day before he was arrested, when he learned that some policemen were looking for him, he immediately went to see his cousin, Sulpicio Diaz, a member of the Sangguniang Bayan of Dumangas, in order to surrender to the authorities. But his cousin told him to go home while he (Diaz) arranged for his bailbond. The following day, the policemen came back and arrested him. He was provisionally released after he posted bail.[23]

Pepito Dumayas, a barriomate of accused-appellant, corroborated the latter's testimony regarding the identity of Tony Lopez and his (Lopez's) alleged stay in the house of accused-appellant. Dumayas admitted, however, that he could not recall the year when he first and last saw Lopez in accused-appellant's house.[24]

On May 27, 1994, the trial court rendered judgment as follows:

Wherefore, in the light of the foregoing premises, there being proof beyond reasonable doubt that the accused committed the three counts of rape and an act of lasciviousness as charged in the [informations], accused Hernani Dichoson is hereby pronounced guilty thereof and is sentenced to suffer an indivisible penalty of Reclusion Perpetua in each of these three cases of rape and, as regards the charge of act of lasciviousness, he is also found guilty thereof and is sentenced to suffer an indeterminate penalty of imprisonment of from Six Months of Arresto Mayor, as minimum, to Two (2) Years, Two (2) Months and one (1) day of Prison Correccional, as maximum, and he is further ordered to give support to the child borne out of his liaison with the private complainant and as well as pay the costs.[25]

Assailing the trial court's decision, accused-appellant alleges that—

- THE COURT IN THE LOWER LEVEL ERRED IN CONVICTING THE ACCUSED IN A JOINT JUDGMENT [FOR] THE CRIME OF RAPE IN CRIMINAL CASE NO[S]. 16250, 16251, AND 16252 AND CRIMINAL CASE NO. 16249 FOR ACTS OF LASCIVIOUSNESS, INSTEAD OF ACQUITTING HIM (ACCUSED) ON [THE] GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.
- THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF INSUFFICIENT AND DOUBTFUL EVIDENCE AND OVERLOOKED FACTS OF SUBSTANCE AND VALUE WHICH AFFECT[ED THE] THE RESULT[S] OF THE CASE.
- THE COURT A QUO ERRED AND FAILED TO TAKE COGNIZANCE OF THE FACT THAT THERE WAS DELAY IN THE FILING OF THE COMPLAINT WHICH RENDERS THE SAME DOUBTFUL.[26]

First. Accused-appellant maintains that, as complainant herself said, the person who had raped her was Tony Lopez.[27]

This is not correct. Complainant explained why in the beginning she implicated Lopez, thus:

Q Can you please tell the Court the circumstances of the discovery of that pregnancy?

A At first, I never thought I was pregnant.

Q But later on?

A Later on, my mother consulted my aunt why I was not menstruating anymore.

Q And what happened when your aunt consulted ... rather, your mother consulted your aunt?

A

They said they would bring me to a healer to be cured. That afternoon I was to be brought to the healer, the accused told me to tell them that I became pregnant because I was raped by a mentally retarded who was staying in their house by the name of Tony Lopez.

Q And were you brought to the healer that day?

A No, Sir.

Q Why?

A They found out I was really pregnant.

Q You mean to say, you told your parents you were pregnant?

A Yes, Sir.

Q And what did you tell your parents as to who made you pregnant?

A The same as what he told me.

Q Whom are you referring?

A That it was Tony Lopez.

Q

When you said the same that "he" told me, you mean the accused as the person who told you to mention the name of Tony Lopez, the mental retardate?

A Yes, Sir.[28]

That complainant followed what she had been told to say by accused-appellant could be explained by the fact that accused-appellant exercised a strong moral dominance over her. It was only after her father had taken her to La Paz, away from the control of accused-appellant, that she found courage to tell the truth and pointed to accused-appellant as the culprit. Complainant vindicated herself during the trial of these cases. She unwaveringly declared that it was accused-appellant who had subjected her to a series of sexual abuse. She affirmed on the stand that what she had told her father and later the investigating prosecutor was the truth, thus:

Q And were they able to bring you to Zamboanga?

A No, Sir.

Q Why, what happened?

....

A

Instead of going to Zamboanga, he brought me to the house of my aunt in La Paz and there made me tell the truth.

Q And when you said "he" made me tell the truth, you are referring to your father?

A Yes, Sir.

Q And did you tell your father the truth?

A Yes, Sir.

Q

Including that you were only told by the accused to implicate Tony Lopez, the mental retardate, as the person who impregnated you?

A Yes, Sir.

Q Do we understand that what you told the Court were the ones you told your father?

A Yes, Sir.

....

Q And you told also the investigating fiscal what you told your father?

A Yes, Sir.

Q And what you told the court this morning?

A Yes, Sir.[29]

Second. Accused-appellant argues that complainant's uncorroborated testimony is insufficient to establish his guilt.[30]

This contention lacks merit. It is settled that in cases of rape (including acts of lasciviousness), the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[31] Such is the testimony of rape victims who are young, immature, and have no motive to falsely testify against the accused.[32]

Here, although already 18 when she took the stand, complainant testified to the acts of lasciviousness and the series of rapes committed by accused-appellant in October 1981, May 4, June 16, and July 12, 1982, respectively, when she was only 11 years old. We have reviewed the records of the case and have found no reason to disturb the findings of the trial court on the credibility of complainant and of her testimony. Her testimony is straightforward, spontaneous, and bereft of any artificialities which are the mark of a rehearsed testimony.

The defense's attempt to show that complainant was merely influenced by her father to bring false charges against accused-appellant flies in the face of the uncontroverted testimony of complainant that her parents would not have known of the rapes and acts of lasciviousness had they not discovered her pregnancy. Clearly, in filing these cases, complainant was impelled by no other motive than to see to it that accused-appellant is brought to justice.

Third. Accused-appellant claims that the delay in the filing of the charges against him gives rise to doubt as to his guilt.

Again, this contention is untenable. Mere delay in the filing of a complaint does not necessarily imply it is merely fabricated specially when such delay is sufficiently explained. Here, complainant testified that she did not report

the sexual abuses committed against her by accused-appellant because she did not want to disgrace her family. She preferred to suffer in silence and was forced to disclose her misfortune only when she became pregnant.

Indeed, different people react differently to a given situation. There is no standard norm of human response when one is confronted with physically and psychologically disturbing incidents such as repeated sexual abuse, especially of a young girl of 11.[33] Indeed, in these cases, as soon as complainant's condition became known, her father lost no time in having her daughter file the charges before the Office of Provincial Prosecutor of Iloilo on May 24, 1983.

Admittedly, the prosecution did not present evidence pertaining to the medical examination of complainant although she had testified that she was examined at the Iloilo provincial hospital and later at the NBI office before executing her complaint-affidavit. However, a medical examination is not an indispensable requirement in prosecutions for rape provided that, as in these cases, the testimony of the victim is credible.[34]

Indeed, to counter the serious charges filed against him, accused-appellant could only rely on the defense of denial and alibi. We have carefully examined his testimony on these points and have found nothing which would justify departure from the settled rule that alibi cannot prevail over the positive identification of the accused.[35] The weakness of accused-appellant's defense is aggravated by his failure to present witnesses to corroborate his version of events. This is specially true with regard to his alibi that, on May 4, 1982, he went with some friends and spent the whole night in the Dumangas town plaza. The same conclusion holds true with regard to his alibi for June 16 and July 12, 1982. His testimony that he went home from Barangay Barotac at 6 o'clock in the evening of June 16, 1982 does not conflict with complainant's testimony that accused-appellant raped her at around 10 o'clock that night. Lastly, accused-appellant's testimony that he was not in his house from 4 o'clock in the morning to 10 o'clock in the evening of July 12, 1982 as he was buying palay elsewhere is undermined by his inability to say where he had gone to buy palay.

Fourth. Accused-appellant contends that the informations in the cases at bar are defective because they do not allege that complainant was below 12 years at the time of the commission of the crimes charged.

The contention is untenable. Accused-appellant was not charged with statutory rape and acts of lasciviousness, but rather with three counts of rape and one count of acts of lasciviousness committed by means of force or intimidation. In a number of cases, this Court has ruled that the moral ascendancy or influence exercised by the accused over the victim substitutes for the element of physical force or intimidation in cases of rape and, it may be added, acts of lasciviousness. The Court has applied this rule to rapes committed by fathers against their daughters,[36] stepfathers against their stepdaughters,[37] a godfather against his goddaughter,[38] uncles against their nieces,[39] and, as in these cases, by the first cousin of the victim's mother.[40]

The prosecution had shown that from the time when complainant was only nine years old up to the time her parents discovered her pregnancy when she was 13 years old, complainant had been living under the care and custody of accused-appellant. Accused-appellant thus acquired moral ascendancy over her, specially because accused-appellant's wife is the aunt of the complainant, a first cousin of her parents.

Fifth. Although accused-appellant testified that the day before he was arrested he had "surrendered" to his cousin, Sulpicio Diaz, who was then a member of the Sangguniang Bayan of Dumangas, he cannot be credited with the mitigating circumstance of voluntary surrender.

The elements of voluntary surrender are: (1) the offender has not been arrested; (2) he surrendered himself to a person in authority or to the latter's agent; and (3) the surrender was voluntary.[41] Needless to say, it is indispensable that the accused must in fact surrender to the custody of a person in authority or of his agent.[42]

Here, although accused-appellant went to see his cousin to surrender, he did not actually do so because he agreed, at the suggestion of his cousin, to just post bail after he has been arrested. Accused-appellant, therefore, went back home.

The trial court correctly sentenced accused-appellant to suffer the penalty of reclusion perpetua for each of the three counts of rape. In addition, however, accused-appellant is likewise liable to pay complainant indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 for each of the three counts of rape.[43] With regard to the penalty[44] imposed by the trial court in Criminal Case No. 16249 (acts of lasciviousness), the Court sees no need to modify the same considering that it falls within the range provided under Art. 336 taking into account the pertinent provisions of the Indeterminate Sentence Law.

However, the order of the trial court requiring accused-appellant to pay support to complainant's child should be set aside. Under Art. 345 of the Revised Penal Code, as amended, those guilty of rape should be ordered to acknowledge and support the child born as a consequence of the rape. Here, however, accused-appellant is married, and, thus, cannot be made to acknowledge the child of complainant.[45] The question is whether accused-appellant should be ordered to support the child. In *People v. Bayani*,[46] it was held that in order for an accused to be made to pay such support, it must be shown that the period of the commission of the rape coincides, more or less, with the period of conception of the child.[47] In *People v. Malapo*,[48] the Court noted that the period of pregnancy is 37 weeks or roughly 9.3 months. It is not disputed that in these cases complainant underwent the full term of her pregnancy and gave birth to a baby girl on July 9, 1983. She is thus estimated to have conceived the child sometime in October 1982. Accused-appellant, however, stands accused of three counts of rape, the last of which was committed on July 12, 1982. In view of the difference of about three months between the date of the commission of the rape on July 12, 1982 and the date of birth of complainant's child on July 9, 1983, accused-appellant cannot be ordered to support complainant's child.

Needless to say, the foregoing does not affect the earlier findings of the Court on the guilt of the accused-appellant with regard to the three counts of rape filed against him. Not only is the impregnation of the rape victim not an element of rape[49] but it must also be remembered that complainant stated that accused-appellant continued to rape her even after July 12, 1982. Although accused-appellant cannot be held liable for such alleged rapes because these cases do not cover other incidents of rape after July 12, 1982, complainant's testimony on this point provides a possible explanation for her childbirth on July 9, 1983.

WHEREFORE, the decision of the Regional Trial Court, Branch 25, Iloilo City, dated May 27, 1994, is **AFFIRMED** with the modification that accused-appellant is ordered to pay complainant Lelanie Dusan moral damages in the amount of P50,000.00 and civil indemnity in the amount of P50,000.00 for each of the three counts of rape in Criminal Case Nos. 16250, 16251, and 16252.

The order of the trial court requiring accused-appellant to give support to the child borne of complainant on July 9, 1983 is **DELETED**.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Bartolome M. Fanuñal.

[2] Docketed as Criminal Case No. 16249.

[3] Rollo, p. 13.

- [4] Docketed as Criminal Case Nos. 16252, 16251, and 16250.
- [5] May 4, 1982, June 16, 1982, and July 12, 1982.
- [6] Rollo, pp. 15-20.
- [7] TSN (Lelanie Dusanar), pp. 9-10, Nov. 11, 1988; TSN, pp. 2-3, March 30, 1990; TSN (Arnulfo Dusanar), pp. 5, 7-8, March 30, 1990.
- [8] TSN (Lelani Dusanar), pp. 11-12, 14-15, Nov. 18, 1988; TSN, p. 9, Sept. 8, 1989.
- [9] Id., pp. 16-17; id., pp. 21-22.
- [10] TSN (Lelanie Dusanar), pp. 16-18, 20, 22, Oct. 6, 1989,
- [11] TSN (Lelanie Dusanar), p. 19, Nov. 18, 1988.
- [12] Id., p. 19; TSN, p. 23, Oct. 6, 1989.
- [13] TSN (Lelanie Dusanar), pp. 20-22, Nov. 18, 1988; TSN (Arnulfo Dusanar), pp. 8-9, March 30, 1990.
- [14] Id., pp. 21-22; id., p. 9.
- [15] TSN (Lelanie Dusanar), pp. 11-13, Nov. 18, 1988.
- [16] Exh. B; Records, p. 162.
- [17] TSN (Concepcion Dusanar), pp. 1-4, May 3, 1991.
- [18] TSN (Hernani Dichoson), pp. 13-14, Oct. 17, 1991.
- [19] TSN (Hernani Dichoson), p. 9, Dec. 9, 1993.
- [20] TSN (Hernani Dichoson), pp. 6-7, Sept. 5, 1991.
- [21] TSN (Hernani Dichoson), pp. 6-7, Dec. 9, 1993.
- [22] TSN (Hernani Dichoson), p. 5, Oct. 17, 1991.
- [23] TSN (Hernanie Dichoson), pp. 3-5, Dec. 9, 1993.
- [24] TSN (Pepito Dumayas), pp. 3-6, Nov. 26, 1993.
- [25] Decision, p. 11; Rollo, p. 43.
- [26] Accused-Appellant's Brief, p. 1; Rollo, p. 62.
- [27] Id., pp. 3-5, 8-10; id., pp. 64-66, 69-71.
- [28] TSN (Lelanie Dichoson), pp. 20-21, Nov. 18, 1988.
- [29] TSN (Lelani Dusanar), pp. 21-24, Nov. 18, 1988.
- [30] Accused-appellant's Brief, pp. 10, 21; Rollo, pp. 71, 82.
- [31] *People v. Acala*, 307 SCRA 330 (1999); *People v. Abordo*, 258 SCRA 571 (1996).
- [32] *People v. Fraga*, G.R. Nos. 134130-33, April 12, 2000; *People v. Abordo*, *supra*; *People v. Molina*, 53 SCRA 495 (1973).

[33] See *People v. Campaner*, G.R. Nos. 130500 & 143834, July 26, 2000; *People v. Raptus*, 198 SCRA 425 (1991).

[34] *People v. Licanda*, G.R. No. 134084, May 4, 2000; *People v. Martinez*, G.R. No. 130606, Feb. 15, 2000; *People v. Bugarin*, 273 SCRA 384 (1997).

[35] *People v. Tabarangao*, 303 SCRA 623 (1999); *People v. Sanchez*, 250 SCRA 14 (1995).

[36] *People v. Bazona*, G.R. Nos. 133343-44, March 2, 2000; *People v. Maglente*, 306 SCRA 546 (1999); *People v. Acala*, *supra*; *People v. Panique*, 316 SCRA 757 (1999) *People v. Tabugoca*, 285 SCRA 312 (1998); *People v. Bartolome*, 296 SCRA 615 (1998); *People v. Adora*, 275 SCRA 441 (1997).

[37] *People v. Vitor*, 245 SCRA 392 (1995); *People v. Robles*, 170 SCRA 557 (1989).

[38] *People v. Casil*, 241 SCRA 285 (1995).

[39] *People v. Betonio*, 279 SCRA 532 (1997).

[40] *People v. Perez*, 307 SCRA 276 (1999).

[41] *People v. Caber, Sr.*, G.R. No. 129252, Nov. 28, 2000; *People v. Antonio*, 303 SCRA 414 (1999).

[42] *People v. Palo*, 101 Phil. 963 (1957).

[43] *People v. Baid*, G.R. No. 129667, July 31, 2000; *People v. Barcelona*, G.R. No. 125341, Feb. 9, 2000.

[44] Six (6) months of *arresto mayor*, as minimum, to two (2) years, two (2) months, and one (1) day of *prision correccional*, as maximum.

[45] *People v. Bayani*, 262 SCRA 660 (1996).

[46] *Id.*

[47] *Id.*

[48] 294 SCRA 579 (1998).

[49] *Id.*; *People v. Alib*, 222 SCRA 517 (1993).

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