

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. RICARDO O. RABOSA, RESPONDENTS.

G.R. Nos. 119362 & 120269. June 09, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

What anguish, pain and shame an innocent fifteen-year old girl has to suffer when her pristine maidenhood, which is as dear to her as life itself, was deflowered by the offender's demonic lust, is hardly imaginable. But when the perpetrator of the dastardly act is the victim's own father, the torment of human degradation is more intolerable; one wonders how there can be such a person so absolutely devoid of any human feeling that distinguishes man from beast.

On the sworn complaint of fifteen-year old AAA, two informations for Rape were filed against her father, Ricardo O. Rabosa, before the Regional Trial Court of xxx.

The information in Criminal Case No. Q-93-42335 reads as follows:

That on or about 5:00 in the morning of February 14, 1993 at house xxx and within the jurisdiction of this Honorable Court, accused Ricardo O. Rabosa, did then and there, wilfully, unlawfully and feloniously by force and intimidation and with the use of fan knife, had carnal knowledge with his daughter, AAA, against her consent.[1]

In Criminal Case No. Q-93-42336, the information reads:

That sometime during the last week of January, 1993 at house xxx and within the jurisdiction of this Honorable Court, accused Ricardo O. Rabosa, did then and there, wilfully, unlawfully and feloniously by force and intimidation and with the use of fan knife, had carnal knowledge with his daughter, AAA, against her consent.[2]

When arraigned, accused-appellant pleaded not guilty to the two counts of rape.[3] Joint trial of the two criminal cases ensued. In its decision dated December 29, 1994, the trial court convicted appellant, holding as follows:

Criminal Case No. Q-93-42335:

ACCORDINGLY, accused RICARDO O. RABOSA is hereby found guilty of the crime of Rape beyond reasonable doubt as alleged in the Information and is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law and to pay the cost. He is, likewise, ordered to indemnify AAA the amount of Fifty thousand pesos (50,000.00).

Criminal Case No. Q-93-42336:

ACCORDINGLY, accused Ricardo O. Rabosa is hereby found guilty of the crime of Rape beyond reasonable doubt as alleged in the Information and is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law and to pay the cost. He is, likewise, ordered to indemnify AAA in the amount

of fifty thousand pesos (P50,000.00).[4]

The trial court gave credence to the testimony of the complainant. Complainant testified thus:

On one evening in the last week of January, 1993, at around eight o'clock, complainant was at home with her brothers. While complainant was washing dishes, her brothers asked permission to go to their aunt's place, which was about one electric post away from their house. Complainant did not allow her brothers to leave, but when she heard a loud noise, which turned out to be a door closing, the boys were gone.

Complainant turned towards the noise and noticed appellant at her back. There were no other persons in the house. Appellant started kissing complainant's neck, pulling her by the back of her t-shirt towards a room,[5] five steps away from where she was washing dishes.[6] Inside the room, appellant switched off the light.

Appellant forced complainant to lie on the floor. When complainant fought his advances by boxing and kicking him, appellant poked a fanknife at her neck.[7] Appellant was able to pull complainant's shorts and underwear down to her feet.[8] He then removed his shorts and got on top of complainant.[9] After forcing complainant to spread her legs, appellant succeeded in inserting his penis into complainant's private part.[10] After about two minutes, appellant stood up and put on his clothes. Complainant did the same while crying. Appellant turned on the light.[11] He forbade complainant to leave the house.

Complainant went to the bathroom. When she came out, her brothers were already home, having been summoned by appellant.[12] Complainant's brother Jayson asked her why she was crying, to which query she did not reply to. Later, appellant left the house.[13]

On February 14, 1993, complainant was at their house sleeping.[14] At home at that time were her brothers and appellant. Complainant woke up early, between four and five in the morning, to go out jogging. On her way out of the bathroom after taking a bath, complainant ran into appellant.[15] Appellant asked complainant where she was going. Complainant said she was going out to jog with her friends.[16] Appellant forbade her to leave, so complainant went to her room.

While complainant was in her room, the light went out. Complainant started to look for a candle and matches, thinking there was a power interruption. Groping in the dark, complainant felt a pointed object at her neck, while being pulled by someone to the floor.[17] Her assailant was appellant.[18] When complainant was on the floor, the left leg of her jogging pants was pulled down to her left foot by appellant. After appellant was able to pull down the left side of complainant's underwear, he got on top of her and succeeded in forcing her to spread her legs. Appellant inserted his penis into complainant's private part.[19]

After the act, appellant stood up, switched on the light and went to the bathroom.[20] Complainant put on her t-shirt, underwear and jogging pants, took some extra clothes, and went to her aunt's bathroom, which was seven steps from their house. There she changed clothes, as she planned to leave. Complainant proceeded to friends' house at the next street to tell them she would not be going jogging with them.[21]

At her friends' house, complainant saw her father driving a tricycle, looking for her. She hid behind the house until she heard the tricycle leave. Then she went to a friend's house in Fairview to hide.[22]

Complainant reported the incidents to the police on February 17, 1993.[23]

Accused now appeals his conviction, raising the following lone error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT BY THE PROSECUTION.

The credibility of fifteen-year old complainant AAA is at issue here.

Appellant first asserts that complainant's testimony in court that she was raped by her father in the last week of January 1993 is at variance with her Sinumpaang Salaysay dated February 17, 1993[24] and her statement dated March 9, 1993[25] where there was no mention of such rape. He further points out that the medico-legal report dated February 17, 1993,[26] while mentioning alleged incidents of rape in the second week of August, 1990 and February 14, 1993, made no mention of rape allegedly committed in the last week of January, 1993.[27] Such inconsistencies, appellant contends, renders complainant's testimony without probative value.

As pointed out by the Solicitor General, contrary to appellant's contention, the Sinumpaang Salaysay dated March 9, 1993 specifically mentions the assault committed upon complainant's chastity, thus:

T: Nabanggit mo na pagkatapos noong una kang hinalay ng Papa mo ay nasundan pa ulit ito ng pagkalipas ng limang araw, at nasundan pa ng ilang beses, natatandaan mo ba ang eksaktong mga petsa kung kailan ka inulit-ulit na gahasain ng Papa mo?

S: Hindi ko po matandaan ang mga eksaktong mga petsa ngunit ang natatandaan ko po ay pinakamarami po iyong tatlong beses isang lingo at pinakakaunti ay isang beses isang linggo mula po noong August 1990 hanggang Dec. 1990 maliban lang noong Sept. 1990 ay isang beses lang po noong buwan na iyon ngunit noong Oct. ay umabot po sa apat na beses isang linggo. Noon pong 1991, January hanggang August ay dalawang beses isang linggo at noon pong Sept. at Oct. ay tatlong beses isang buwan, iyon naman pong Nov. at Dec. parehong taon (1991) ay dalawang beses lang po isang buwan niya ako ginamit. Noon naman pong taon ng 1992, January at April ay tatlong beses lang po sa isang buwan ako ginahasa at noon naman pong June 1992 ay limang beses lang sa buwan na iyon ako ginamit. Nasundan na nga po ito noong 1993, Jan. na dalawang beses sa buong buwan at February 1993 ay dalawang beses rin."[28]

This allegation in complainant's sworn statement was the basis for the filing of the information in Criminal Case No. Q-93-42336 charging appellant with rape committed in the last week of January.[29]

The document marked Exhibit "E" referred to by appellant contains the handwritten notes of Medico-Legal Officer Jesusa Nieves taken during the course of the physical examination conducted by her upon complainant's person at the Crime Laboratory of the Headquarters of the Philippine National Police in Camp Crame, Quezon City.[30] Nieves's handwritten entry "1800-1900 H 2nd week of Aug. 1990 & Feb. 14, 1993 4 AM" to the query "alleged time & date of commission," as well as the brief history of the case were culled by Nieves from an interview with the complainant.[31] This interview and physical examination were done only three days from the last rape incident on February 14, 1993. With complainant's state of mind at that time and the venue of the examination, it is not surprising or even unusual that Exhibit "E" be inaccurate or incomplete.[32] Needless to say, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[33]

Appellant further assails the credibility of complainant's testimony that she was threatened by him with a knife. He contends that, considering appellant's moral ascendancy over complainant, it was "unnatural" for him to arm himself with a knife to commit the rape.[34]

We agree with the Solicitor General that contrary to appellant's allegation, it is a natural tendency for a rapist to arm himself to be certain of attaining his objective.[35] Such is the essence of the element with force and intimidation.

Appellant also argues that complainant's failure to put up a tenacious resistance against her assailant and her composure immediately after the February 14, 1993 rape is behavior unusual for a rape victim.[36]

We disagree. The rule in rape cases is that physical resistance need not be established 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.[37] In the instant case, complainant was cowed into submission, not only because of appellant's moral and physical ascendancy over her, but also because of the very real and present threat of physical harm on her person. Complainant's fear was reinforced by appellant's threats of harming her brothers should she report the rapes.[38]

That complainant was calm and composed after the February 14, 1993 incident is not a ground for dismissing her testimony as unusual for a rape victim. Different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a frightful experience.[39] The victim's mien, rather than composure, could mean resignation, considering her continuing suffering, or apoplexy and numbness as aftermaths of her ordeal.

Appellant further argues that there was no rape on February 14, 1993, as may be concluded from the testimony of Medico-Legal Officer Jesusa O. Nieves that the lacerations, already healed, were sustained seven or more days prior to the date of examination.[40]

Healed lacerations do not negate rape.[41] The hymenal lacerations here may have been inflicted on the occasion of the prior rapes, which explains why these have already healed. The latest rape incident occurred on February 14, 1993, or three days from the date of physical examination.

It must be noted that, even absent a medical examination, the accused can still be convicted of the crime of rape.[42] When a woman says that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[43]

Complainant's tribulation, which began in 1990, ended with the conviction of appellant in 1994. We affirm such conviction, bringing to a close a dark chapter in complainant's young life.

WHEREFORE, the instant appeal is DISMISSED. The trial court's joint decision in Criminal Cases Nos. Q-93-42335 and Q-93-92336 dated December 29, 1994 is AFFIRMED in toto.
SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.
Padilla, (Chairman), J., on leave.

[1] Rollo, pp. 9-10.

[2] Id., at 11-12.

[3] Record, p. 18.

[4] Id., at 212.

[5] TSN, June 17, 1993, p. 3; TSN, July 30, 1993, p. 3.

[6] Id., at 4; Id., at 4.

[7] Id., at 5.

[8] TSN, July 1, 1993, p. 2.

[9] Ibid.

[10] TSN, July 30, 1993, p. 5.

[11] See note 8.

[12] Id., at 3.

[13] Ibid.

[14] TSN, September 29, 1993, p. 2.

[15] Id., at 3.

[16] Ibid.

[17] Id., at 4.

[18] Id., at 5.

[19] Ibid.

[20] Id., at 6.

[21] Ibid.

[22] Id., at 7.

[23] TSN, October 13, 1993, p. 5.

[24] Exh. "A".

[25] Exh. "B", Record, p. 117.

[26] Exh. "E".

[27] Rollo, p. 77.

[28] See note 25.

[29] See Resolution of Prosecuting Attorney Emmanuel Y. Velasco dated March 11, 1993 in I.S. No. 93-142; Record, p. 2.

[30] See note 25.

[31] TSN, November 4, 1993, p. 252.

[32] See cases re affidavits.

[33] *People v. Ching*, 240 SCRA 267 (1995).

[34] Rollo, pp. 78-79.

[35] Id., at 134.

[36] Id., at 79.

[37] *People v. Ramos*, 245 SCRA 405 (1995); *People v. Padre-e*, 249 SCRA 422 (1995); also *People v. Conte*, 247 SCRA (1995) where it was held that the absence of resistance on the part of the complainant on the subsequent occasions that the accused had carnal knowledge with her did not make voluntary her submission to

the criminal acts where the intimidation was a continuing one.

[38] See note 8 at p. 4.

[39] *People v. Espinoza*, 247 SCRA 66 (1995); *People v. Malunes*, 247 SCRA 317 (1995); *People v. Ibay*, 233 SCRA 15 (1994).

[40] See note 1 at p. 80.

[41] *People v. Espinoza*, 247 SCRA 66 (1995); *People v. Liquiran*, 228 SCRA 62 (1993).

[42] *People v. Sadang*, 233 SCRA 413 (1994); *People v. Liquiran*, *supra*; *People v. Rostata, Jr.*, 218 SCRA 657 (1993).

[43] *People v. Liquiran*, *supra*.

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