

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JENELITO ESCOBER Y RESUENTO, ACCUSED-APPELLANT.

G.R. Nos. 122980-81. November 06, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JENELITO ESCOBER Y RESUENTO was charged by his eleven-year old daughter Ma. Cristina Escobar in two (2) separate complaints for statutory rape on two (2) counts. He was convicted on both counts. He now comes to us for review of his conviction.

First, the facts. In the evening of 19 December 1993 while Ma. Cristina Escobar, daughter of the accused, was sleeping with her brothers Jenelito Jr. and Zeus and sister Jennylen, the accused Jenelito Escobar Sr. arrived home drunk. He roused Ma. Cristina and told her to turn off the light. He also asked her to transfer to his bed. She obeyed. She did not know what was to come. Her father removed her panty, kissed her, then proceeded to violate her honor. Cristina, now on the throes of an incestuous assault, could only cry in utter disbelief. She tried her best to parry off the sexual advances of her father but it was futile. Her resistance was no match to his physical strength. More, he had moral ascendancy over her. He forcibly inserted his penis inside her vagina (niyogyog 'yong ari niya)[1] with intermittent pumping motions until he ejaculated (may lumabas na tubig na malagkit).[2] After his lechery, the accused left Cristina.

The deeply perturbed Cristina went back to her brothers and sister and tried to sleep. She could not believe her father could do that to her. When she woke up the following morning, she felt an excruciating pain in her vagina. However her fear prevented her from disclosing the incident to her mother Lourdes Escobar because her father warned Cristina not to squeal.

In the evening of 22 December 1993 the accused Jenelito again arrived home drunk. Cristina was already asleep. But with his characteristic perversion and wickedness the accused managed for the second time to force himself on Cristina. After removing her panty, kissing her, he inserted his penis again (pero maliit lang po)[3] inside her vagina where he later ejaculated with a "white sticky substance" spurting from his penis. She could only push her father with what little strength she could muster in her tender years. When she urinated she again felt the burning pain in her vagina. But she had to remain steadfastly quiet for fear her parents would quarrel violently.

It is the contention of the defense that the lower court gravely erred in finding the accused guilty of raping his eleven-year old daughter on the 19th and 22nd of December 1993. Specifically, the defense invokes certain circumstances showing the innocence of the accused -

First. Cristina visited the accused in jail and wrote him a letter exculpating him of his wrongdoings.

Second. She did not tell her mother that she wrote her father for fear that her mother would get mad and quarrel with him.[4]

Third. Mat Ranillo Escobar, brother of accused Jenelito, testified that he often witnessed Jenelito and his wife

Lourdes quarelling as his house was only three (3) houses away. In fact, Lourdes would also have violent spats with Teria Escobar, mother of the accused.[5]

Fourth. Jenelito Escobar Jr., brother of Cristina, denied that his father raped his sister Cristina on the nights of 19 and 22 of December 1993 because they were out caroling and that considering their relative sleeping positions it was impossible for his father to rape his sister Cristina. He said that his father would sleep on one side with Jennylen, Zeus, Cristina and him on the other side, in that order.[6] Jenelito Jr. also testified that he would have known if Cristina woke up that evening of 19 December 1993 because they were sleeping side by side and "malikot siyang matulog" or she would move too often while asleep.[7] He also told the court that his mother, Lourdes Escobar, started to have a live-in partner in July 1995 by the name of Ariston Olario.[8] Obviously sympathizing with his father, Jenelito Jr. insisted on the innocence of the accused thus -

Q: Why are you crying?

A: Masama ang loob ko, sir.

Q: Will you please tell the court why you are not feeling good, why you feel resentment, against whom? Why?

A: Because my father is now in prison because of my mother when everything is not true, sir.

Q: What is not true?

A: That my sister was raped, sir.

Q: Of course, you do not know whether your sister was raped on December 19, 1993 in the evening, you did not sleep in the house of your father, is that correct?

A: I slept there, sir.[9]

Fifth. The accused claimed that on the night of 19 December 1993 he was at the house of Claro Estrera from 7:00 p.m. to 12:00 p.m. to check the television set of the latter, and that on 22 December 1993 he was again in the house of Claro from 7:00 p.m. to 12:30 a.m. to repair the same set.[10]

Sixth. Claro Estrera substantially corroborated the testimony of accused-appellant that the latter was in his (Claro) house on 19 and 22 December 1993 working on the latter's television set from 7:00 p.m. to 11:00 p.m. on 19 December 1993 and from 7:00 p.m. to 12:00 midnight on 22 December 1993.[11] Claro also stated that he clearly remembered what transpired on 19 and 22 December 1993 because he checked on the receipt of the materials he bought which Jenelito Sr. needed for the repair of his (Claro) television set.[12]

As may be gleaned from the above, it is the thesis of the defense that the complaint against Jenelito Sr. was filed because Lourdes Escobar wanted to separate from him; that she was not in good terms with the mother of the accused, Aling Teria; and, that he would spank Cristina every time he was drunk so that Lourdes wanted to teach him a lesson.

As found by the trial court, the reasons given by the defense were too weak and flimsy to drive the child or her mother to break the physical, emotional and spiritual bond between the child and her father and between the wife and her husband by the simple expedient of filing rape cases against him.[13]

In one case it was held that it was unthinkable for a ten-year old virgin to publicly disclose that she had been sexually abused, then undergo the trouble and humiliation of a public trial, if her motive were other than to protect her honor and bring to justice the person who had unleashed his lust on her.[14] In the instant case, Cristina was only eleven when raped by her own father. Also, as observed in another case,[15] the mother of the rape victim would not have filed the complaint out of sheer malice knowing that it would expose her own daughter to humiliation and public curiosity and which could send the father of her two children to prison for the rest of his life.

Apparently, appellant is oblivious of our ruling that it is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject her to embarrassment, and even stigma, as in this case.[16]

The defense seeks refuge in alibi. According to the accused, he was at the house of Claro Estrera on the dates and hours the rapes were supposedly perpetrated so that he could not have committed them himself, more so that his testimony was corroborated by Claro. But the trial court was hardly persuaded. If Jenelito was simply checking on the television set of Claro on the night of 19 December 1993 it could not have taken him three (3) hours to do the job. Moreover, it was highly improbable that on 22 December 1993 he had to do the same odd job for another three (3) hours. And we ask: why should the repairs be done at nighttime?

As regards the testimony of Jenelito Escobar Jr. that he was living at his father's house during the supposed sexual assault on his sister, the same could not with certainty be substantiated by the defense. At any rate, rape can be committed even in a house where there are many other occupants.[17] Crimes against chastity have been committed in various places which many would consider as likely inappropriate.[18] Why Jenelito Jr. testified in favor of his father is obvious. He is his father and he felt for him.

But alibi is a weak defense when unsubstantiated by credible and plausible testimonies. Positive identification of appellant as the rapist prevails over his defense of alibi.[19] He could not have been mistakenly identified by his own daughter. Because of their relationship, Cristina could not have erred in pointing to the accused because of the proximity of their relationship and their natural familiarity with one another.

It is of no moment that complainant did not immediately file the case against her father. The gravity of the situation and the emotional strain and physical trauma that she underwent were just too much for an innocent child to bear. Delay in reporting an incident is not necessarily an indication of a fabricated charge.[20] The moral ascendancy and influence of the accused over his victim have to be considered. No man in his proper mind would behave like a beast and prey on his own daughter like a hungry animal foraging for food in the jungle. In a rape case by a father against his own daughter, his moral ascendancy and influence over the latter can sufficiently substitute for violence and intimidation.[21]

While the evidence may not show full penetration on both occasions of rape, the slightest penetration is enough to consummate the offense. In fact, there was vulva penetration in both cases. The fact that the hymen was intact upon examination does not belie rape for a broken hymen is not an essential element of rape;[22] nor does the fact that the victim has remained a virgin negate the crime.[23] What is fundamental is that the entrance, or at least the introduction, of the male organ into the labia of the pudendum is proved.[24] As in the case at bar, it can be said that there was penetration, although incomplete, and it was sufficient to prove carnal knowledge of a child under twelve years of age. A medical examination is not an indispensable element in a prosecution for rape.[25] The accused may be convicted on the sole basis of complainant's testimony, if credible, and the findings of the medico-legal officer do not disprove the commission of rape.[26]

There are no half measures or even quarter measures nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. The rape is deemed consummated in either case. In a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.[27]

Ma. Cristina narrated in court that she was raped by her own father Jenelito Sr. We quote: "Ginalaw po talaga ako ng papa ko." [28] These words coming from the lips of an innocent child should be given credence and merit. No woman especially of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter pervert herself by being subjected to a public trial if she was not motivated solely by a desire to have the culprit apprehended.[29]

In the case before us, the accused raped his own flesh and blood at such a tender age of eleven. He thus violated not only her purity and her trust but also the mores of his society which he has scornfully defied. By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly spurned by all, not least of all, by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery.[30]

Time and again we have ruled that the testimony of a rape victim is credible where she has no motive to falsely testify against the accused.[31] Courts usually lend credence to testimonies of young girls, especially where the facts point to their having been victims of incestuous sexual assault.[32] Youth and immaturity are generally badges of truth and sincerity.[33]

Under Art. 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman under any of the following circumstances: (a) by using force and intimidation; (b) when the woman is deprived of reason or otherwise unconscious; and, (c) when the woman is under twelve years of age, even though neither of the circumstances mentioned in the two paragraphs is present.

We only have to refer to letter (c), i.e., having carnal knowledge of a woman under twelve (12) years of age. Ma. Cristina was only eleven years old at the time she was twice raped by her own father, the accused. Under the circumstances, and finding the account of the court a quo to be adequately supported by the evidence, we have no recourse but to confirm its factual findings that the accused raped twice his own eleven-year old daughter Cristina.

Although the trial court did not grant damages to the offended party, perhaps believing in the futility of it all, we feel nevertheless that she should be indemnified under the law by the accused, if able, for the debauchery he has perpetrated on his own flesh and blood, and the amount of P100,000.00 may even be hardly enough to make up for the shame and scandal suffered by Ma. Cristina.

WHEREFORE, the judgment of the trial court in Crim. Cases Nos. Q-94-54476 (G.R. No. 122980) and Q-94-54477 (G.R. No. 122981) finding accused-appellant JENELITO ESCOBER SR. Y RESUENTO guilty beyond reasonable doubt of statutory rape on two (2) counts and sentencing him to reclusion perpetua in each count is AFFIRMED, with the modification that the accused is, in addition, directed to indemnify the offended party Ma. Cristina Escobar in the amount of P100,000.00. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, and Kapunan, JJ., concur.

[1]TSN, 4 April 1994, p. 5.

[2] Ibid.

[3] TSN, 4 April 1994, p. 10.

[4] TSN, 29 November 1994, pp. 2 and 5.

[5] TSN, 30 January 1994, pp. 2 and 4.

[6] TSN, 28 August 1995, p. 7.

[7] Id., p. 25.

[8] Id., p. 31.

[9] Id., p. 15.

- [10] TSN, 7 August 1995, pp. 5 and 6.
- [11] TSN, 21 February 1995, p. 5.
- [12] Id., pp. 8 and 9.
- [13] Decision penned by Judge Marcelino F. Bautista Jr., Crim. Case No. Q-94-54476-77, p. 27.
- [14] People v. Buyok, G.R. No. 109771, 25 August 1994, 235 SCRA 622.
- [15] People v. Ignacio, G.R. Nos. 106644-45, 7 June 1994, 233 SCRA 1.
- [16] People v. Ching, G.R. No. 103800, 19 January 1995, 240 SCRA 267.
- [17] People v. Quinevista Jr., G.R. No. 110808, 31 May 1995, 244 SCRA 586; People v. Sanggil, G.R. No. 113689, 31 July 1997.
- [18] People v. Umali, G.R. No. 76530, 1 March 1995, 242 SCRA 17.
- [19] Ibid.
- [20] People v. Banayo, G.R. No. 86938, 22 March 1991, 195 SCRA 543.
- [21] People v. Casil, G.R. No. 110836, 13 February 1995, 241 SCRA 285.
- [22] People v. Salinas, G.R. No. 107204, 6 May 1994, 232 SCRA 274.
- [23] People v. Castro, G.R. No. 91490, 6 May 1991, 196 SCRA 679.
- [24] People v. Castillo, G.R. No. 84310, 29 May 1991, 197 SCRA 657.
- [25] People v. Godines, G.R. No. 93410, 7 May 1991, 196 SCRA 765.
- [26] People v. Base, G.R. No. 92124, 6 May 1991, 196 SCRA 688.
- [27] People v. Salinas, G.R. No. 107204, 6 May 1994, 232 SCRA 274.
- [28] TSN, 29 November 1994, p. 9.
- [29] People v. Yambao, G.R. No. 77778, 6 February 1991, 193 SCRA 571.
- [30] People v. Mandap, G.R. No. 106385, 29 May 1995, 244 SCRA 326.
- [31] People v. Cabilao, G.R. No. 62999, 25 June 1992, 210 SCRA 326.
- [32] People v. Abuyan, Jr., G.R. Nos. 95254-55, 21 July 1992, 211 SCRA 662.
- [33] People v. Casil, G.R. No. 110836, 13 February 1995, 241 SCRA 285.

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