

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANSELMO BARING, ALIAS "SIMOY", ACCUSED-APPELLANT.

G.R. Nos. 130515 & 147090. March 14, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 54, Lapu-Lapu City, finding accused-appellant Anselmo Baring, alias "Simoy," guilty of two counts of rape against Baby Haydee Grace B. Pongasi and sentencing him to suffer in each case the penalty of death and to pay complainant the amount of P50,000.00, or a total of P100,000.00 in the two cases, as moral damages.

Except for the dates of the commission of the crime,[2] the complaints against accused-appellant similarly alleged —

That on the __th day of April 1994 at about 7:00 o'clock in the morning, in Babag I, Lapu-Lapu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned private offended party, BABY HAYDEE GRACE B. PONGASI, his stepdaughter, who is still twelve (12) years old against her will.

CONTRARY TO LAW.[3]

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

The evidence for the prosecution is as follows:

Complainant Baby Haydee Grace B. Pongasi, then 12 years of age, lived with her mother Lilia Bensi and accused-appellant Anselmo Baring in a house in Tianggue, Babag I, Lapu-Lapu City. Accused-appellant was Lilia's second live-in partner after her separation from complainant's father, Solomon Pongasi. On April 13, 1994, at about 7:00 a.m., complainant was left in the house with accused-appellant, her mother, Lilia, having gone out to buy and sell sacks. At that time, complainant took a bath in a bathroom near the kitchen, after which she wrapped a towel around her body and proceeded upstairs. Accused-appellant followed her and suddenly pulled complainant towards him and took off the towel from her body, rendering her totally naked. He fondled her breasts and made her sit on his lap facing him. Complainant resisted, but she was overcome by accused-appellant who threatened to kill her if she shouted for help. She felt excruciating pain as accused-appellant succeeded in penetrating her. After she was released, complainant noticed that her vagina was bleeding. Her private parts felt sore and she could hardly walk. Complainant told her mother what had been done to her, but she was told that she just fell from a guava tree.

A week later, on April 19, 1994, also at around 7:00 a.m., complainant was again left alone with accused-appellant in their house as her mother had gone to Calawisan to borrow from a friend money which she

planned to use for her business. She was raped by accused-appellant for the second time. As on the first occasion, she had just taken a bath and was upstairs dressing when accused-appellant seized her. Accused-appellant fondled her breasts and forcibly had sexual intercourse with her. She also felt pain in her vagina which made it difficult for her to walk and to urinate. She developed a fever and was taken to Dr. Rubie Tapang for treatment. Dr. Tapang found complainant to have lacerations and inflammation of the genitals and prescribed an antibiotic for her. Suspecting that the patient was probably sexually molested, Dr. Tapang advised Lilia to bring complainant to a medico-legal expert or a gynecologist for further examination. Lilia, however, insisted that the girl had simply fallen from a tree and her vagina had been pierced by a branch.[4]

Around 10:00 a.m. of the same day, complainant went to the house of her aunt Tomasa Larayos and told the latter about the pain in her genitals. For this reason, Tomasa took her niece to the Carajay Lapu-Lapu District Hospital where she was examined by a certain Dr. Mendoza, who told Tomasa that complainant had been abused. When confronted by her aunt, complainant told her that she had been raped by accused-appellant on April 13 and 19, 1994. Accordingly, Tomasa took complainant to the police station and filed a complaint against accused-appellant. Accused-appellant was shortly brought to the police headquarters for investigation. There he was positively identified by complainant as her assailant and subsequently detained. Complainant, accompanied by Tomasa, was examined by Dr. Nestor Sator,[5] Medico-Legal Officer of the Philippine National Police Crime Laboratory,[6] who confirmed that complainant had been raped.[7] Dr. Sator made the following findings:

GENERAL AND EXTRA-GENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are underdeveloped with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and tight.

GENITAL:

There is absence of pubic hair. Labia majora is light brown, round, convex, coaptated and swollen with the pinkish brown, abraded and swollen labia minora presenting in between. Pus formation and the onset of an infection was noted at the mucosal surface of the labia minora. The posterior fourchette is lacerated. On separating, the same disclosed an elastic and fleshy type hymen with deep fresh lacerations at 3, 6 and 9 o'clock positions. The external vaginal orifice offers moderate resistance to the introduction of the examining index finger.

REMARKS:

Vaginal and peri-urethral smears are **NEGATIVE** for the presence of gram negative diplococci and for spermatozoa.

CONCLUSION:

Findings are compatible with recent loss of virginity.

Barring unforeseen complications, the above mentioned injuries are estimated to resolve in 10 to 14 days.[8]

Two complaints for rape were thereafter filed against accused-appellant.

Accused-appellant denied the allegations against him. He claimed that complainant's father, Solomon Pongasi, had instigated the filing of the charges because his wife, Lilia Bensi, had left him and lived with accused-appellant. Accused-appellant testified that at around 7:00 a.m. of April 13, 1994, his friend Jimmy Berdon arrived in their house and invited him to a birthday party being given by Berdon's cousin. Accused-appellant and Jimmy Berdon went to the party at 7:00 a.m.[9] According to accused-appellant, he stayed at the party the whole day and returned home only in the evening.[10] Accused-appellant further testified that at around 7:00 a.m. of April 19, 1994, he and his wife Lilia in fact took complainant to the clinic of Dr. Rubie Tapang because complainant had a fever. They returned home at around 11:00 a.m. to 12:00 noon.[11]

Danilo Augusto corroborated accused-appellant's testimony. He testified that he saw accused-appellant and

Jimmy Berdon bringing a karaoke to the birthday party on April 13, 1994. Augusto said he was asked by the two to come along, but he declined because he had not been invited by the celebrant.[12]

Lilia Bensi, complainant's mother and accused-appellant's common-law wife, testified that it was impossible for accused-appellant to have raped complainant on April 13 and 19, 1994, at around 7:00 a.m., because complainant had a fever on both occasions and so could not have taken a bath. According to her, on April 13, 1994, she did not leave their house until 9:00 a.m, while on April 19, 1994, she and complainant went out at 7:00 a.m. to see Dr. Tapang on account of the latter's fever. She further testified that her daughter sustained injuries in her genitals because, as she had been told by the latter's friend, her daughter fell from a guava tree. Lilia Bensi denied having been told by Dr. Tapang that complainant had probably been abused and advised to see a government physician for further examination.[13]

On the basis of the evidence presented by both parties, the trial court rendered its decision on April 10, 1997, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Anselmo Baring nicknamed "Simoy" GUILTY BEYOND REASONABLE DOUBT of two (2) counts of Rape in Criminal Cases Nos. 012931-L and 012932-L as defined under Art. 335 of the Revised Penal Code, as amended, and hereby imposes upon him the supreme penalty of DEATH for each count of rape committed with all the accessory penalties provided by law, and further sentences him to pay Moral Damages in the amount of Fifty Thousand Pesos (P50,000.00), Philippine Currency, for each count of rape in accordance with current jurisprudence and to pay the costs.

In view of the penalties imposed, let the records of these two (2) cases be forwarded to the Supreme Court for automatic review pursuant to the mandates of the 1987 Philippine Constitution.

SO ORDERED.[14]

In this appeal, accused-appellant contends that the trial court erred —

- IN SUSTAINING THE DOUBTFUL AND INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT THAT SHE WAS RAPED BY THE ACCUSED IN TWO (2) OCCASIONS;
- IN GIVING CREDENCE TO THE TESTIMONY OF THE EXPERT WITNESS DR. SAT[O]JR THAT THE PRIVATE COMPLAINANT WAS A VICTIM OF RAPE;
- IN NOT GIVING SUFFICIENT WEIGHT TO THE DEFENSE'S WITNESS; and
- IN FINDING THAT THE PRIVATE COMPLAINANT WAS BELOW EIGHTEEN (18) YEARS OLD WHEN THE ALLEGED RAPE WAS COMMITTED.[15]

These contentions are without merit. As in most rape cases, the issue in these cases is the credibility of the witnesses. This issue is to be resolved primarily by the trial court which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying on the stand.[16] The trial court's evaluation of the credibility of the witnesses is given great respect on appeal, particularly if no evidence is shown that there was bias, partiality, or grave abuse of discretion on the part of the trial judge.[17] In these cases, we hold that the trial court correctly gave credence to the testimonies of the prosecution witnesses.

First. Contrary to the claim of accused-appellant, there was nothing unusual regarding the similarity in the circumstances of the crimes committed on April 13 and 19, 1994. Complainant was categorical and consistent when she testified that, in both instances, accused-appellant forced her to have sexual intercourse with him in their house. In both cases, complainant was made to sit on accused-appellant's lap facing him. The fact that the two rapes were perpetrated in a similar manner does not make her claim doubtful. Complainant necessarily based her

narration of the incident on what actually transpired during the assaults.[18]

Accused-appellant tries to impeach the credibility of complainant by pointing out inconsistencies in her testimony during direct examination and cross-examination. It is said that she testified on direct examination that accused-appellant removed his pants after she was made to sit on his lap,[19] while on cross-examination she stated that accused-appellant had already removed his pants when she was made to sit astride him.[20] This inconsistency, however, is a minor one and does not detract from the fact that accused-appellant forced complainant to sit on his lap and have sexual intercourse with him.

Another alleged inconsistency in complainant's testimony refers to the exact time her mother was out of the house. Accused-appellant points out that she testified on direct examination that on April 19, 1994, her mother was out of the house until around 9:00 p.m., while on cross-examination she said that on the said date, she was with her mother from 6:00 a.m. to 11:00 a.m. at the clinic of Dr. Tapang. This was sufficiently explained by complainant. Upon confrontation with the said conflicting statements, she clarified that her mother returned home at 8 a.m. in the morning on April 19, 1994, after which her mother brought her to the clinic of Dr. Tapang.[21] For the same reason, complainant's inconsistent declarations with respect to the presence of her father, Solomon Pongasi, while she executed her sworn statement before the police[22] cannot be taken against her.

It is settled that a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party, for, as has been observed by this Court, rape victims cannot be expected to be errorless in recounting the details of a harrowing experience.[23] Such minor inconsistencies in fact tend to bolster the plausibility of complainant's claim that she was raped by accused-appellant as they negate any possibility that she was a rehearsed witness.[24] In fact, the trial court even noted that complainant, in the course of her testimony, broke into tears, stared blankly into space, and manifested involuntary movements on her face and mouth, which only showed the veracity of her claim and the trauma brought to her by her ordeal.[25]

Accused-appellant claims that the two rape charges against him have been trumped up at the instance of complainant's father whose wife (complainant's mother) had left him and lived with accused-appellant. This is pure speculation. It is unnatural for a parent to use his offspring as an engine of malice, especially if it will subject a daughter to disgrace.[26] Moreover, accused-appellant had been living with Solomon Pongasi's wife (complainant's mother) for seven years without any incident arising from the acts of complainant's father. It is unlikely, therefore, that the latter would think of seeking revenge after such a long time. Moreover, Solomon Pongasi himself had been living with another woman.[27]

Complainant had been living with accused-appellant for seven years and had treated him like her own father.[28] It would be unthinkable that she would go through the trouble and humiliation of the trial of a rape case if she had not actually been abused by accused-appellant.[29] Absent any showing that complainant was moved by any ill will towards accused-appellant, her testimony deserves to be accorded the full faith and credit given to it by the trial court.[30]

Complainant's testimony is confirmed by Dr. Rubie Tapang's findings that complainant suffered lacerations and inflammation in her genitalia. These findings caused Dr. Tapang to disbelieve Lilia's claim that her daughter's injuries were due to a fall from a guava tree. Thus, Dr. Tapang suggested that complainant be examined by a medico-legal expert due to probable sexual molestation.[31] Dr. Tapang's suspicion was in turn confirmed by Dr. Nestor Sator, who testified that complainant was indeed raped. Dr. Sator declared that it was possible for complainant to be raped twice because he found super-imposed injuries and the onset of infection in her vagina. He testified that the injuries in complainant's vagina were due to penile penetration.[32] As this Court has held, when the victim's testimony of her violation is corroborated by the physician's findings of penetration, there is

sufficient foundation to prove the existence of the essential requisite of carnal knowledge.[33]

Accused-appellant, however, contends that the testimony of Dr. Sator should not be given weight on the ground that the latter did not identify complainant in court. He contends that this circumstance creates a doubt as to whether the person whom he examined and found to have been sexually abused was the same person as the complainant. He further argues that complainant's aunt, Tomasa Larayos, might have presented to the doctor an impostor.

This is untenable. It is noteworthy that during the trial, accused-appellant never put in issue whether the complainant and the patient examined by Dr. Sator were one and the same person. He even cross-examined Dr. Sator regarding his findings. Thus, he is now considered to have waived such objection and cannot raise this issue for the first time on appeal.

Second. Accused-appellant contends that it would be impossible for him to have raped complainant at around 7:00 a.m. of April 13 and 19, 1994, because complainant's mother was in the house during those times and did not leave until around 9:00 a.m. He adds that his friend, Jimmy Berdon, visited him in his house on those dates.

This contention is also untenable. Time and again, this Court has ruled that the presence of people in a certain place is not a guarantee that rape was not committed, for lust is not a respecter of time and place.[34] Nor does accused-appellant's alibi that he was out of the house practically the entire day of April 13, 1994 because he was at the birthday party of Jimmy Berdon's cousin deserve any consideration. Even if he was at the party from 7:00 a.m. until evening, accused-appellant failed to show that it was impossible for him to return to his house during the day. He admitted on cross-examination that he could go home any time if he wanted to because his house was only 200 meters away.[35] For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime occurred but he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[36]

Anent the rape committed on April 19, 1994, accused-appellant contends that the fact that he accompanied complainant and the latter's mother to Dr. Tapang negates the possibility that he had anything to do with complainant's illness. This claim is not only uncorroborated; it was also denied by Dr. Tapang, who testified that only Lilia Bensi accompanied complainant to her clinic. Indeed, there was no mention that accused-appellant was with them.[37]

Third. Accused-appellant raises in issue the age of complainant. He maintains that the prosecution failed to establish that she was 12 years old on the dates the crimes were committed because her birth certificate was not presented. He further argues that it is possible that complainant was already 18 years old and, thus, the death penalty cannot be imposed on him.

The contention has no basis. Although the birth certificate of complainant was not presented in evidence, there was sufficient evidence to show that complainant was 12 years old in April of 1994.[38] Complainant testified that she was born on February 11, 1982.[39] This was corroborated by her father, Solomon Pongasi.[40] Complainant's mother, Lilia Bensi, who testified in favor of accused-appellant, also said that complainant was the youngest of five children she had by Solomon Pongasi and that complainant was about 12 years old in April 1994 when she was raped.[41] She thus confirmed Solomon's testimony. Lilia's testimony with regard to complainant's age was in turn corroborated by Dr. Rubie Tapang who testified that she had been informed by Lilia Bensi that complainant was 12 years old at the time of her physical examination.[42] The claim of accused-appellant that medico-legal examiner Dr. Nestor Sator had doubts regarding complainant's age is misleading. What Dr. Sator said was that complainant could even be below 12 years old on April 19, 1994 when he examined her.[43] There is, therefore, no basis for accused-appellant's contention that the evidence does not clearly show complainant to be

less than 18 years of age on the dates of commission of the crime.

Nonetheless, we hold that accused-appellant cannot be held liable for qualified rape and sentenced to death. Under Art. 355 of the Revised Penal Code, as amended by R.A. No. 7659, the death penalty shall be imposed for the commission of the crime of rape if the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[44] In these cases, the allegation in the complaints that accused-appellant is the stepfather of complainant is not correct. For accused-appellant to be considered the stepfather of the complainant, he must be legally married to complainant's mother.[45] The evidence in these cases shows, however, that accused-appellant and complainant's mother were not legally married but that they lived only in common-law relation.[46] On the other hand, although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is also punishable by death, this fact must be alleged in the complaint or information so as to warrant the imposition of the death penalty.[47] This was not done in the cases at bar.

In these cases, the informations alleged that accused-appellant, through the use of force and intimidation, had carnal knowledge of complainant. This Court has consistently held that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion.[48] Accused-appellant, whom complainant regarded as her father, exercised moral ascendancy and parental influence over her, producing in her reasonable fear, which made her vulnerable to threat.[49] Hence, the trial court should have found accused-appellant guilty of two counts of simple rape only and sentenced him in each case to reclusion perpetua.

The award of moral damages in the amount of P50,000.00 for each count of rape should be upheld, being in line with recent rulings. In addition, however, complainant should be paid indemnity in the amount of P50,000.00 for each count of rape. This is actually in the nature of actual or compensatory damages, which is mandatory upon the finding of the fact of rape.[50]

WHEREFORE, the decision of the Regional Trial Court, Branch 54, Lapu-Lapu City, in Criminal Case Nos. 012931-L and 012932-L, finding accused-appellant Anselmo Baring, alias "Simoy," guilty of two counts of rape against Baby Haydee Grace B. Pongasi is **AFFIRMED** with the **MODIFICATION** that, in each of the cases, accused-appellant's sentence is reduced to reclusion perpetua and he is further ordered to pay complainant the amount of P50,000.00 for each count of rape as civil indemnity, in addition to the amount of P50,000.00 for each count of rape awarded to complainant as moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Per Judge Rumoldo R. Fernandez.

[2] April 13, 1994 in Crim. Case No. 012931-L and April 19, 1994 in Crim. Case No. 012932-L.

[3] Rollo, pp. 5-10.

[4] TSN, pp. 7-11, Dec. 5, 1994; TSN, pp. 2-7, Dec. 6, 1994.

[5] Also referred to as Dr. Satur in the records.

[6] TSN, p. 3, Nov. 16, 1994.

[7] TSN, pp. 7-11, Dec. 6, 1994; TSN, pp. 4-14, Oct. 3, 1994; TSN, pp. 6-17, Nov. 16, 1994.

[8] Exh. A.

[9] TSN, pp. 2-4, July 29, 1996; TSN, pp. 3-7, Apr. 19, 1996.

[10] TSN, p. 4, July 29, 1996.

[11] Id., pp. 4-7; TSN, pp. 7- 14, Apr. 19, 1996.

[12] TSN, pp. 3-7, Nov. 8, 1996.

[13] TSN, pp. 3-10, Jan. 8, 1996.

[14] Rollo, pp. 57-58.

[15] Id., p. 86.

[16] *People v. Manahan*, 315 SCRA 476 (1999).

[17] *People v. Dizon*, 309 SCRA 669 (1999).

[18] *People v. Padil*, 318 SCRA 795 (1999).

[19] TSN, p. 2, Dec. 6, 1994.

[20] TSN, p. 5, May 29, 1995.

[21] TSN, p. 8, May 29, 1995.

[22] In her sworn statement (Exh. E), complainant stated that she was with her father in the police station, while in her direct examination on Dec. 6, 1994, she stated that it was only her aunt who was with her.

[23] *People v. Reñola*, 308 SCRA 145 4(1999).

[24] *People v. Padilla*, 301 SCRA 265 (1999).

[25] *People v. Sagun*, 303 SCRA 382 (1999).

[26] *People v. Perez*, 319 SCRA 622 (1999).

[27] TSN, p. 7, July 29, 1996.

[28] Id., pp. 8-9.

[29] *People v. Lopez*, 302 SCRA 669 (1999).

[30] *People v. Sagun*, *supra*.

[31] Exh. F; TSN, pp. 4-17, Dec. 18, 1996.

[32] TSN, pp. 4-17, Nov. 16, 1994.

[33] *People v. Bation*, 305 SCRA 253 (1999).

[34] *People v. Losano*, 310 SCRA 707 (1999).

[35] TSN, p. 10, July 29, 1996.

[36] *People v. Rabang, Jr.*, 315 SCRA 451 (1999).

[37] TSN, p. 6, Dec. 18, 1996.

- [38] *People v. Javier*, 311 SCRA 122 (1999).
- [39] TSN, p. 3, Dec. 5, 1994.
- [40] TSN, p. 3, July 10, 1995.
- [41] TSN, p. 14, Jan. 8, 1996.
- [42] TSN, pp. 5-6, Dec. 18, 1996.
- [43] TSN, p. 17, Nov. 16, 1994.
- [44] *People v. Carullo*, 311 SCRA 680 (1999).
- [45] *People v. Tolentino*, 308 SCRA 485 (1999).
- [46] *People v. Mangasin*, 306 SCRA 228 (1999).
- [47] *People v. Fraga*, G.R. Nos. 134130-33, Apr. 12, 2000.
- [48] *People v. Mosqueda*, 313 SCRA 694 (1999).
- [49] *People v. Mangasin*, *supra*.
- [50] *People v. Bañago*, 309 SCRA 417 (1999).

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