

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR ESTOMACA Y GARQUE, ACCUSED-APPELLANT.

G.R. Nos. 134288-89. January 15, 2002

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PER CURIAM:

Accused-appellant, Melchor Estomaca y Garque, was charged by his daughter, Melita Estomaca, of five counts of rape, committed on different occasions, before the Regional Trial Court of Iloilo, Branch 38, and docketed as Criminal Cases Nos. 43567, 43568, 43569, 43570 and 43571.

During the arraignment on June 15, 1994, accused-appellant entered a plea of guilty to Criminal Cases Nos. 43568 and 43571, and a plea of not guilty to Criminal Cases Nos. 43567, 43569 and 43570.

Trial ensued with respect to Criminal Cases Nos. 43568 and 43571. The criminal complaint subject of Criminal Case No. 43568 reads:

“That sometime in the month of December, 1993, in the Municipality of San Joaquin, Province of Iloilo, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, abuse of confidence and trust, he, being the father of the undersigned, with deliberate intent and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with (sic) the undersigned who, at that time, is 15 years of age.

“CONTRARY TO LAW.”[1]

while Criminal Case No, 43571 reads:

“That on or about March 6, 1994, in the Municipality of San Joaquin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the undersigned complainant, with deliberate intent and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse of the undersigned, who, at that time, is 15 years of age.

“CONTRARY TO LAW.”[2]

On July 15, 1994, the trial court rendered judgment finding accused-appellant guilty beyond reasonable doubt of the crimes charged and sentencing him to suffer the penalty of reclusion perpetua in Criminal Case No. 43568 and death in Criminal Case No. 43571. He was also ordered to indemnify the private complainant the sum of P50,000.00 in each case.[3]

The cases were brought to this Court for automatic review and docketed as G.R. No. 117485-86. On April 22, 1996, judgment was rendered setting aside accused-appellant’s conviction, the decretal portion of which reads:

“WHEREFORE, the judgment of the court a quo in Criminal Cases Nos. 43568 and 43571 convicting accused-appellant Melchor Estomaca y Garque of two crimes of rape is hereby SET ASIDE. Said cases are REMANDED to the trial court for further and appropriate proceedings, with instructions that the same be given appropriate priority and the proceedings therein be conducted with deliberate dispatch and circumspection.

“SO ORDERED.”[4]

On August 30, 1996, the records of the case were returned to the trial court.[5] However, with the inhibition of Judge David A. Alfeche, Jr., Presiding Judge of the trial court, Criminal Cases Nos. 43568 and 43571 were referred to Branch 67 of the Regional Trial Court of Guimbal, Iloilo and re-docketed as Criminal Cases Nos. 024(97) and 025(97), respectively.

Accused-appellant, assisted by counsel, was arraigned anew on November 26, 1997, where he entered a plea of not guilty to both criminal complaints. Thereafter, the two cases were tried jointly.

The prosecution’s evidence revealed that Melita Estomaca, was born on July 21, 1972[6] to accused-appellant and Nenita Ruelo, Sometime in December of 1993, at about 11:00 in the evening, Melita was in their house at Barangay Tiolas, San Joaquin, Iloilo, sleeping on the floor with her brother Nicolas and accused-appellant. Suddenly, she felt somebody touching her breast and forehead. When she woke up, she saw accused-appellant who told her to go back to sleep. Thereafter, accused-appellant removed her shorts and panty, laid on top of her and inserted his penis in her vagina. Melita struggled but accused-appellant boxed her on the stomach which rendered her unconscious. She did not report the incident to her mother because accused-appellant threatened to kill her mother and brother.

The incident was repeated on March 6, 1994. Melita was about to sleep when accused-appellant started fondling her breast. She pleaded with her father to stop but the latter continued. She kicked him but accused-appellant punched her on the stomach which rendered her unconscious. Thereafter, accused-appellant succeeded in satisfying his lust.[7]

Unable to take the abuses of her father, Melita finally narrated the incidents to her mother, Nenita who confronted accused-appellant but the latter maltreated her. Melita left their house and stayed at her grandmother’s house in Nueva Valencia, Guimaras. Accused-appellant followed her and asked her to go home, but Melita refused. It was at this instance when Melita narrated to her grandmother her ordeal. Criminal complaints were filed against accused-appellant.[8]

Melita was brought to Dr. Shiela D. Gumabong, Rural Health Physician of Nueva Valencia, Guimaras, for medical examination which revealed the following findings:

“EXTERNAL EXAMINATIONS:

“Breast, fully developed, hemispherical in shape, slightly soft in consistency, areola brownish in color with nipples prominent and protruding.

“No evidence of contusion, hematoma or abrasion in external body surfaces.

“INTERNAL EXAMINATIONS:

“Pubic hair grown and slightly abundant; labia majora and minor are coaptated.

“Hymenal opening shows an old laceration with scar formation at 3:00 o’clock and 9:00 o’clock position on the face of the watch. Hymenal orifice admits 2 fingers with moderate resistance. Vaginal rugosities are present and prominent. Vaginal canal is moderately tight.

“Speculum examination: Cervix closed, well formed, pinkish in color. Uterus not enlarged.

“CONCLUSION: 1. No extra-genital injuries noted

2. Physical Virginity Lost.”[9]

For his defense, accused-appellant denied the charges levelled against him, testifying thus:

“ATTY. TIONGCO:

“Q

You are accused by Melita Estomaca on raping her five (5) times on five (5) separate occasions, are those accusations true?

“A

No, Sir.

“Q

Melita Estomaca while in the witness stand testified before this Honorable Court that you boxed her in the stomach in order to rape her, is that true?

“A

No, Sir.

“ATTY. TIONGCO:

That would be all, Your Honor, with the witness.”[10]

His testimony was corroborated by his wife Nenita and son Nicolas, who both testified that they were never informed by Melita of the rapes and had learned of the incident only through the radio news broadcast.[11] Nicolas likewise vowed that it was impossible for accused-appellant to rape Melita because he was sleeping between the two.[12]

On April 29, 1998, the trial court rendered judgment, the dispositive portion of which reads:

“WHEREFORE, the Court finds the accused, MELCHOR ESTOMACA Y GARQUE guilty beyond reasonable doubt for the crime of Rape and hereby sentences him as follows:

“1.

In Criminal Case No. 024(97) penalized under Article 335 of the Revised Penal Code and sentence him to suffer a penalty of Reclusion Perpetua and to indemnify the offended party, Melita Estomaca, the sum of P50,000.00

“2.

In Criminal Case No. 025(97) penalized under Article 335 of the Revised Penal Code as Amended by Paragraph 7, Section 11 of Republic Act No. 7659, otherwise known as An Act to Impose the Death Penalty on Certain Heinous Crimes and sentence him to suffer the penalty of DEATH and to indemnify the offended party, Melita Estomaca, the sum of P50,000.00.

“Costs against the accused in both cases.

“SO ORDERED.”[13]

In convicting accused-appellant, the trial court gave weight to Melita’s testimony and rejected accused-appellant’s denial, ratiocinating, thus:

“Accused did not care to explain his whereabouts in the hours and dates mentioned in the two criminal complaints. He did not bother to advance any serious, credible or well-founded motive or reason why his own daughter charged him of the heinous crime of RAPE. Yes, the records of the proceedings are bereft of any evil motive why Melita Estomaca should charge his father of rape. There was no effort on the part of the accused to impute ill or evil motive on the complainant. The record is bare of any evidence to show any improper motive on the part of the victim to charge her own father of such a very serious crime that is punishable by death. The legal conclusion therefore, is that the testimonies of the victim, Melita Estomaca is worthy of full faith and credit.”[14]

Accused-appellant now comes to this court assailing the above decision, arguing that the trial court erred in convicting him and sentencing him to suffer the penalty of reclusion perpetua and death. He contends that the testimonies of Nenita and Nicolas negate the claim of Melita that force or intimidation was used for him to have carnal access to her.

Such contention deserves no merit.

Melita’s failure to shout or offer tenacious resistance did not make voluntary her submission to the criminal acts of the accused-appellant.[15] We have, time and again, ruled that in rape committed by the father against the daughter, violence or intimidation need not be proven because of the former’s moral ascendancy and influence over the latter.[16] Being the father, accused-appellant exercises moral and physical ascendancy over Melita which could be sufficient to cow her into submission to his bestial desire.[17] Moreover, evidence shows that Melita resisted the efforts of accused-appellant. In fact, in the March 1994 incident, Melita kicked accused-appellant. Her resistance, however, proved futile. On the other hand, Nicolas’ failure to hear any commotion during the sexual assaults may be attributed to the fact that at the time of the rapes, it is possible that Nicolas was in deep slumber and not awakened by the resistance offered by the latter against her father.

Accused-appellant likewise asserts that the testimony of Melita is incredible, full of improbabilities and inconsistent with human experience. He specifically points to the following: (a) it was impossible for accused-appellant to rape Melita in the presence of his son who was sleeping between them; (b) Melita continued to sleep with accused-appellant and her brother despite the alleged assault on her honor; (c) Melita did not report the incident to her mother and brother; and (d) Melita did not make any attempt to escape.

Again, we find the above contentions unmeritorious.

In a prosecution for rape, the complainant’s credibility becomes the single most important issue and when the testimony meets the test of credibility, an accused may be convicted solely on the basis thereof.[18] Thus, the testimony of the offended woman standing alone can be the basis of conviction if such testimony meets the test of credibility.[19]

We have carefully read the testimony of Melita and finds the same to be truthful and credible. Her narration of the December 1993 incident is convincing:

“Q

Miss Witness, on December, 1993 at about 11:00 o’clock in the evening, you said that you were sexually abused by your father, sometime on December, 1993 at about 11:00 o’clock in the evening. Could you tell the Court what specific date was that on December that you were sexually abused by your father?

“A

I cannot remember the date but it was before Christmas day.

“Q

Could you tell us where were you in the evening, say around 11:00 o’clock in the evening of December, 1993 while you were sexually abused or raped by your father?

“A

Yes, I was at our house at Tiolas.

X X X X X X X X

“Q

Was there any unusual incident that happened at that month of December, 1993 at around 11:00 o’clock in the evening?

“A

Yes, sir.

“Q

What was the incident all about?

“A

He raped me.

“Q

You are referring to whom?

“COURT INTERPRETER:

Witness pointing to a person sitting on a chair who is an accused in these cases.

“X X X X X X X X

“Q

And what happened next while you were sleeping together with your brother in the evening of December, 1993?

“A

While we were sleeping at around 11:00 o'clock in the evening, I felt somebody is touching me.

“Q

Could you tell which part of your body you feel somebody was touching you?

“A

My breast and my forehead.

“Q

Did you know who is (sic) that person who is (sic) touching your breast and your forehead?

“A

Yes, Sir.

“Q

Could you tell us the name of that person?

“A

Melchor Estomaca.

“Q

And then after that, what happened next?

“A

And he told me to lie down here and go to sleep.

“Q

While you are (sic) lying down but you were not sleeping, what did your father do if he did anything?

“A

He removed my shorts and panty.

“Q

Was your father able to remove your short and your panty completely away from your body?

“A

Yes, Sir.

“Q

By the way Miss Witness, can you tell us what were you wearing at the time you go (sic) to sleep in the evening of December, 1993?

“A

I am (sic) wearing T-shirt and shorts.

“Q

Okey, answer the question. What happened next?

“A

He lied (sic) on top of me.

“Q

When your father was lying on top of you, what happened next?

“A

He inserted his penis inside my vagina.

“Q

Miss witness please tell us, while your father is (sic) inserting his penis inside your vagina, what were you doing then?

“A

I kept on struggling.

“Q

Aside from struggling, did you do anything?

“A

I did nothing because he boxed me in my stomach.

“Q

And what happened to you when your father boxed you in your stomach?

“A

I fell unconscious.

“Q

Later on did you gain consciousness?

“A

Only early in the morning.

“Q

And after regaining your consciousness what did you do if you did anything?

“A

I stood up and I examined my panty and I saw that there is (sic) a yellowish substance.”[20]

Similarly, her account of the March 6, 1994 incident is quite revealing:

“Q

Please tell the Court what was that unusual incident that occurred in the midnight of March 6, 1994?

“A

He again raped me.

“Q

Could you tell us how did your father rape you on March 6, 1994 at midnight?

“A

He again touched my body and forced to pull down my shorts and panty and I struggled and I told him that I do not like it because it is painful but he told me that it will not last long.

x x x x x x x x

“Q

Miss witness what were you doing then when you said your father was touching your breast in the evening of March 6, 1994?

“A

We were lying down about to sleep.

“Q

And when you father was touching your breast, did you do anything to say preventing him to do such thing?

“A

Yes, Sir.

“Q

Can you tell us what did you do?

“A

I asked permission from him to drink water but my father did not permit me.

“Q

After your father did not permit you to drink water, what did he do next?

“A

He told me that we will go to sleep and he continue (sic) on touching me and I keep (sic) on struggling then I kicked him to which maybe he felt the pain and so he boxed me on my stomach.

“Q

Now, where did your father boxed (sic) you?

“A

Here.

“COURT INTERPRETER:

Witness pointing to her stomach.

“Q

What happened to you after your father boxed you?

“A

I was then unconscious.

“Q

Later on you regain consciousness?

“A

Only in the morning

“Q

How did you feel after regaining consciousness?

“A

I felt pain over my body and my ‘hita’ (thigh) is slippery.”[21]

Melita’s candid and straightforward narration of how she was abused and the tears that accompanied her story, are earmarks of credibility and must be given full faith and credit. In addition, no ill motive can be imputed against her to concoct a story of defloration were she not motivated by the desire to have the culprit apprehended and punished. Certainly, no barrio lass, still in her teens, innocent and naive to the ways of the world, would fabricate a story of bestiality against her own father that could sully her reputation and expose herself, as well as her family to all sorts of public aspersions were she not motivated to seek justice for a wrong committed against her.[22]

Similarly, we cannot sustain accused-appellant’s argument that it was impossible for him to commit the rape in the presence of his son who was sleeping beside him. There is no rule that rape can be committed only in seclusion. We have time and again held that rape can be committed even in places where people congregate, in parks along the roadside, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping and even in places which to many would appear unlikely and high risk venues for its commission.[23] Lust is no respecter of time and place.[24]

Also, Melita’s failure to immediately report the incident to her mother or to the police authorities do not negate the crime of rape.

We have ruled, in a plethora of cases, that failure of the victim to immediately report the rape is not necessarily an indication of fabricated charge. It is not uncommon for young girls to conceal for some time the assault on their virtues because of the rapist’s threat on their lives, more so when the rapist is living with her. Melita’s delay in reporting the sexual violations is thus understandable and does not affect her credibility.[25]

Accused-appellant’s sheer denial cannot overthrow the unequivocal and positive testimony of Melita. Mere denial, just like alibi, constitute a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[26] Without being substantiated by clear and convincing evidence, his defense deserves no weight in law and cannot be given greater evidentiary value than the testimony of complainant, whom the court finds to be a credible witness.[27]

Accused-appellant, in an attempt to evade the death penalty, assails Melita’s age claiming that her birth date was altered from 1972 to 1978 to make it appear that at the time of the alleged rape, Melita was a minor. He also insinuates that Melita is not his daughter claiming that at the time he married Melita’s mother, the latter was already two months pregnant. He denies having carnal knowledge of Melita’s mother before the marriage.

The contention has no leg to stand on.

The Certificate of Live Birth shows that Melita was born on July 21, 1978 and that she is the daughter of

accused-appellant and Nenita Ruelo. At the time of rape, Melita was 14 years old. The defense failed to present contrary evidence to dispute Melita's age. It presented Melita's mother, Nenita, but the latter did not refute the former's age much less her paternity. It requires more than a party's bare allegation to defeat the face value of the Birth Certificate which enjoys a legal presumption of regularity of issuance.[28]

In sum, this court finds no reversible error in the trial court's decision finding the accused- appellant guilty beyond reasonable doubt of two counts of rape and sustains the imposition of the penalties with a modification that the civil indemnity awarded in Criminal Case No. 025(97) be increased from P50,000.00 to P75,000.00, in view of the attendant qualifying circumstances for which the death penalty is authorized under RA No. 7659.[29]

In addition, we deem it proper to award moral damages for the shame, as well as mental anguish, fright, serious anxiety, besmirched reputation, moral shock and social humiliation Melita has suffered, which, conformably with current jurisprudence, should be placed in the amount of P50,000.00 for each count.[30] An award of exemplary damages is also proper to deter other fathers with similar perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters, in the amount of P25,000.00 for each count.[31]

Four Justices of the Court maintain their position that R. A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Court hereby AFFIRMS the appealed decision sentencing accused-appellant MELCHOR ESTOMACA y GARQUE to suffer the penalty of Reclusion Perpetua in Criminal Case No. 024(97) and Death in Criminal Case No. 025(97) with the MODIFICATION that accused- appellant shall be ordered to indemnify the victim MELITA ESTOMACA in Criminal Case No. 025(97) the amount of P75,000.00 as civil indemnity instead of P50,000.00, and in addition, to pay Melita Estomaca the sum of P50,000.00 as moral damages and P25,000.00 as exemplary damages for each count of the offense proved.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified copies thereof, as well as the records of this case, be forwarded without delay to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

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

[1] p. 1, Records, Criminal Case No. 43568.

[2] p. 1, Records, Criminal Case No. 43571.

[3] pp. 57-66, Records.

[4] 256 SCRA 421, 439-440 [1996].

[5] p. 187, Records.

[6] Exhibit "B", p. 41, Records.

[7] TSN, December 10, 1997, pp. 33-43.

[8] TSN, December 10, 1997.

- [9] Exhibit "A", p. 42, Records.
- [10] TSN, December 17, 1997, pp. 18-19.
- [11] TSN, December 16, 1997.
- [12] TSN, December 17, 1997.
- [13] RTC Decision, pp. 451-476, Records.
- [14] RTC Decision, 451-476, Records.
- [15] *People vs. Vergel*, 316 SCRA 199 [1999].
- [16] *People vs. Burse*, March 7, 1997; *People vs. Traya*, 332 SCRA 499 [2000].
- [17] *People vs. Sagaral*, 267 SCRA 671 [1997].
- [18] *People vs. Roberto Palero*, G.R. No. 138235, May 10, 2001 citing *People vs. Gagto*, 253 SCRA 455 [1996]; *People vs. Pasayan*, 261 SCRA 558 [1996].
- [19] *People vs. Bragas*, 315 SCRA 216 [1999].
- [20] TSN, December 10, 1997, pp. 25-39.
- [21] TSN, December 10, 1997, pp. 40-42.
- [22] *People vs. Agunos*, 316 SCRA 836, 846 [1999].
- [23] *People vs. Castillo*, 335 SCRA 100 [2000]; *People vs. Ramos*, 296 SCRA 559, 571 [1999] citing *People vs. Manuel*, 236 SCRA 545 [1994];
- [24] *People vs. Enrique Labayne*, G.R. No. 132170, April 20, 2001.
- [25] *People vs. Traya*, 332 SCRA 499, 506 [2000] citing *People vs. Espinoza*, 247 SCRA 66 [1995]; *People vs. Vitor*, 245 SCRA 392 [1995]; *People vs. Plaza*, 242 SCRA 724 [1995]; *People vs. Abendano*, 242 SCRA 531 [1995]; *People vs. Casil*, 241 SCRA 285 [1995].
- [26] *People vs. Alvero*, 329 SCRA 737 [2000]; *People vs. Tumaob, Jr.*, 291 SCRA 133 [1998]; *People vs. Victor*, 292 SCRA 186 [1998].
- [27] *People vs. Tarado*, G.R. No. 132364, May 23, 2001; *People vs. Pecayo, Sr.*, G.R. No. 132047, December 14, 2000; *People vs. Belga*, 258 SCRA 583 [1996]; *People vs. Amaguin*, 229 SCRA 166, 174-175 [1994].
- [28] *Chan vs. Court of Appeals*, 299 SCRA 680 [1998].
- [29] *People vs. Tipay*, 329 SCRA 52 [2000].
- [30] *People vs. delos Santos*, G.R. No. 138235, May 10, 2001 citing the case of *People vs. Laray*, 253 SCRA 654 [1996].
- [31] *People vs. Dizon*, G.R. No. 134522-24, April 3, 2001 citing *People vs. Guiwam*, 331 SCRA 70 [2000].

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