

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN MANALO Y CASTOR, ACCUSED-APPELLANT.

G.R. Nos. 135964-71. February 21, 2001

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PER CURIAM:

On April 22, 1997, Juan Manalo y Castor was charged in separate complaints with eight (8) counts of rape before the Regional Trial Court, Branch 4, Pallocan, Batangas City four (4) allegedly committed against Liezel Delica[1] and four (4) against Ivy Adame[2].

The criminal complaints read as follows:

"CRIM. CASE No. 8845

That sometime in the period comprising between December 1, 1996 and December 4, 1996, at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said six (6) year old girl, Liezel Delica, against her will and consent.

CONTRARY TO LAW.

CRIM. CASE No. 8846

That sometime in the month of May 6, 1996 at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said six (6) year old girl, Liezel Delica, against her will and consent.

CONTRARY TO LAW.

CRIM. CASE No. 8847

That sometime in the month of June 1996, at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said six (6) year old girl, Liezel Delica, against her will and consent.

CONTRARY TO LAW.

CRIMINAL CASE No. 8848

That on or about the 5th day of December 1996, at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said six (6) year old girl, Liezel Delica, against her will and consent.

CONTRARY TO LAW.

CRIMINAL CASE No. 8849

That sometime in the month of May, 1996 at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said below seven (7) year old girl, Ivy Adame, against her will and consent.

CONTRARY TO LAW.

CRIMINAL CASE No. 8850

That sometime in the month of June, 1996 at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said below seven (7) year old girl, Ivy Adame, against her will and consent.

CONTRARY TO LAW.

CRIMINAL CASE No. 8851

That on or about the 5th day of December, 1996 at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said seven (7) year old girl, Ivy Adame, against her will and consent.

CONTRARY TO LAW.

CRIMINAL CASE No. 8852

That sometime in the period comprising between December 01, 1996 and December 04, 1996 at Brgy. Ilat South, Municipality of San Pascual, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of the said seven (7) year old girl, Ivy Adame, against her will and consent.

CONTRARY TO LAW."^[3]

Ivy Adame and Liezel Delica were both six years of age at the time of the alleged rape incidents; they are cousins and Liezel is a niece of the accused Juan Manalo by affinity. The family of Liezel and the accused were living in the same house in Brgy. Ilat, South, San Pascual, Batangas while the family of Ivy Adame is living in a nearby house. The rapes against the two (2) complainants happened on the same occasions.

The evidence for the prosecution is summarized by the trial court as follows:

"Complainant, Liezel Adame Delica, testified that, while she and Ivy Adame, the other complainant in these cases, were playing, accused Juan Manalo, whom they call Tito Juancho, asked them to enter his room; that inside his room, the accused undressed himself and she saw his penis; that he also undressed her and Ivy; that thereafter, the accused placed himself on top of her and kissed her on her cheeks, that while still on top of her, the accused inserted his penis inside her vagina, which cause her pain; that thereafter what the accused did to her, she also saw the same things being done to her cousin, Ivy, by her Tito Juancho; that the undressing, kissing and insertion of Tito Juancho's penis into their vagina happened four (4) times to each of them; once each in the months of May and June and twice in the month of December, 1996, inside the house of their Nanay Loring at Barangay Ilat, San Pascual, Batangas, and all in the afternoon.

Liezel Adame Delica further declared that in all the four (4) occasions during which she and her cousin, Ivy

were subjected to the beastly desires of their Tito Juancho, he always told them not to tell their parents what he had done to them or else he will spank them; that when her mother learned of what her Tito Juancho did to her, she was investigated and brought to a doctor for medical examination; and that she gave a sworn statements which she signed together with her complaint.

Complainant, Ivy Adame, in her testimony before the Court, materially corroborated the declaration of her cousin, Liezel, particularly on her seeing the penis of their Tito Juancho, being undressed, kissed on her cheeks, his penis being inserted in her vagina and feeling pain as they lay in bed inside his room with their Tito Juancho on top of them; that these acts done to them happened both once in the month of May and June, and twice in December, 1996 inside his room in the house owned by their Nanay Loring all in the afternoon. She added to these corroborating testimonies, that when their uncle told them not to tell anybody she became afraid of him as he had previously spanked them before; that at the NBI where her mother brought her, she executed a sworn statement which she signed; that she was also brought to the hospital where her vagina was examined.

Prosecution witness, Mrs. Teodora Adame, mother of complainant Ivy Adame, testified that on December 11, 1996, she overheard her daughter Ivy tell Liezel that her Tito Juancho let her hold his penis again; that confronting her daughter with what she heard; Ivy told her that when she and Liezel play in the house of Nanay Loring, the accused would call them and give them candies; that thereafter, among others, the accused would insert his penis inside her daughter's and that of Liezel's vagina; that whenever the complainants feel pain as the accused insert his penis into their vagina, the accused would withdraw it; that Ivy told her that the penis insertions happened in four separate occasions to her and to Liezel; that the parents of the accused went to her for two times, once in her place of work and another time at her residence and asked her to forgive the accused for his actuations; that later on, the accused and his wife went also to her house; that the accused admitted his actuations on the complainants and asked to be forgiven; that she and husband told him that their answer would depend on the result of the medical examination; that she had noticed Ivy after the incidents on her showing her private part to her playmates; that these cases caused her husband to be hospitalized; and that they filed these cases for what the accused did to her daughter.

Mrs. Lolita Delica, mother of Liezel Delica, also gave evidence in these cases, she corroborated witness Teodora Adame that it was from her that she learned first what the accused did to their children; that afterwards, she confronted Liezel who narrated to her what Ivy had told her mother; that on December 12, 1996, the accused and his family went to Teodora Adame to settle these cases; that on this occasion the accused admitted the wrongful acts narrated by their children and asked forgiveness promising not to do the same things again to the complainants; that these wrongdoings by the accused were reported to the NBI; that she executed a sworn statement for these cases and her complaint because of what the accused did to her daughter.[4]

Accused Juan Manalo denied the charges imputed to him. He admitted that he showed fondness for Liezel by giving her candies and kissing her cheeks, as he was childless; that once while undressing in his room, Liezel might have seen his penis, but he never deliberately showed it to her.[5] His wife Rosanna was presented by the defense to corroborate his testimony.

The trial court found the accused guilty beyond reasonable doubt in each of the eight (8) cases:

"WHEREFORE, and pursuant to the provisions of Republic Act No.7659 quoted herein above, said accused is sentenced with the capital penalty of death to be carried out in the manner provided for under Article 81 of Republic Act No.7659. Further, the accused is directed to indemnify each complainants, Liezel Adame Delica and Ivy Mendoza Adame with the sum of P200,000.00 representing moral and exemplary damages and to pay the costs.

SO ORDERED."[6]

The case is before us on automatic review.

Under the lone assignment of error, accused-appellant claims that the trial court gravely erred in convicting the accused of the crimes charged despite the "incredible testimonies" of the two alleged rape victims which were not in accordance with the ordinary common experience. Thus, Ivy recounted that after the first alleged rape took place, she and her cousin proceeded to play and did not report the experience to their respective mothers. Moreover, if it were true that the two girls were raped one after the other, and the other complained of extreme pain on her vagina, it was not possible for the other girl to just lie in bed and wait for her turn to be ravished, when she could have easily escaped. It was allegedly surprising that both remained passive and did not shed tears. Moreover, no weapon was used to coerce them into submission, and it was only after the accused had inserted his penis that he warned them not to tell their parents of what happened. Accused-appellant also points out that Ivy again succumbed to his invitation despite the fact that Liezel was not around, indicating Ivy did not entertain any fear despite the alleged four rapes committed against her.

Accused-appellant also claims that the prosecution failed to prove the material dates when the rapes occurred; Liezel merely testified that the rapes occurred in the afternoon, without mentioning the dates alleged in the information. Finally, accused-appellant contends that the rape incidents took place in the upper floor of the house occupied by several persons and there was no showing that there were no other people present when the rapes occurred.

We find accused-appellant's contention untenable.

We have examined carefully the records and find that the evidence supports the trial court's finding of guilt.

The trial court gave full weight and credence to the testimonies of the two young complainants. Liezl's testimony is as follows:

"Q: Can you please narrate to the Honorable Court what was (sic) the bad things done to you by your Tito Juancho?

A: Yes, ma'am.

Q: What was that?

A: While we were playing Ate Ivy and I called (sic) by Tito Juancho to go with him to his room, ma'am.

Q: After that, what happened?

A: When we entered to (sic) the room he did something to us, ma'am.

Q: What was that?

A: He undressed us and our shorts too and then he put himself on top of us and I was the one first, ma'am.

Q: What else happened?

A: And then he kissed me in (sic) my cheek, ma'am.

Q: What else?

A: He had no short, ma'am.

Q: And while he was on top of you, what else happened?

A: Tito Juancho inserted his penis into my vagina, ma'am.

Q: When he did that, what did you do?

A: None, sir.

Q: Why?

A: I was just layed (sic) I did nothing, ma'am.

Q: Did you feel anything when he inserted his penis to your vagina?

A: Yes, ma'am.

Q: What did you feel?

A: It hurts, ma'am.

Q: Where is your Ate Ivy?

A: Ate Ivy is also laying (sic) down, ma'am.

Q:

Did you see what happened to your Ate Ivy?

A: Yes, ma'am.

Q: What did your Tito Juancho do with your Ate Ivy?

A: He also kissed Ate Ivy, ma'am.

Q: After he kissed your Ate Ivy, did he do anything else to your Ate Ivy?

A:

Yes, ma'am. He also put himself on top of my Ate Ivy, and he was trying to insert his penis to the vagina of my Ate Ivy."[7]

The above testimony was corroborated by Ivy who testified as follows:

Q: Can you tell this Honorable Court what is that bad thing that your Tito Juancho did to you?

A:

Every time we played in their house he would call us and he give (sic) us candies and he would bring us in his room and he would kiss me on my lips. He would ask me to hold his penis and he would rub his penis on my vagina and he was trying (sic) to insert his penis into my vagina.

Q: When you said that he tried to insert his penis into your vagina, what did you feel when he did that?

A: It hurts.

Q: Did you tell him anything about the pain that you are feeling?

A: Yes, ma'am.

Q:

Now, you said that your uncle would bring you to the room. What do you mean by their room. Whose room is this?

A:

The room of Tito Juancho.

Q:

And you said you were brought inside the room. Who are with you whenever your Tito Juancho bring (sic) you inside the room?

A: Liezel, ma'am.

Q:

Now, do you remember how many times that your Tito Juancho brought you at his room and inserted his penis into your vagina?

Atty. Exchaure:

We object to that, your honor. There is no basis.

Court:

Reform the question.

Atty. Sandoval:

Q: You said your Tito Juancho brings you up to his room. Is that correct?

A: Yes, ma'am.

Q: When your Tito Juancho brings you up to his room does he close the door or open?

Atty. Exchaure:

We object, your honor.

Court:

Answer the question.

A: He closed the door .

Q: What does your Tito Juancho tell you after he closed the door?

A: He told me not to tell my parents.

Q: And then what does he tell you after that?

A: He allowed us to leave.

Q:

When does your Tito Juancho allows (sic) you to leave after he tries to insert his penis into your vagina or before?

A: After, ma'am.

Q: Can you tell this Honorable Court what was the bad thing that your Tito Juancho did to you?

A:

He would allowed (sic) us to enter his room and then he would let us lied (sic) down on his bed, he would asked me to insert his penis and then he would kiss me on my lips and then he would place his body on top of me and he was trying to insert his penis on my vagina and then he rubbed his penis on my vagina then I could

(sic) say 'aray'.

Q: Can you feel his penis being inserted into your vagina.

A: Yes, ma'am.

Q: How do you know that you felt his penis into your vagina?

A: Because I felt pain.

Q:

You said that whenever your Tito Juancho would ask you to go inside his room you would be with Liezel. Did your Tito Juancho do the same thing to Liezel?

Atty. Exchaure:

We object, your honor.

Witness:

A: Yes, ma'am."[8]

The trial court believed the complainants' "clear and unequivocal versions" of the rapes that took place inside the bedroom of the accused at the house of their Nanay Loring in Barangay Ilat, San Pascual, Batangas, which versions had no "significant variations."

The trial court observed:

"The complainants are both only six (6) years old children and inspite of their tender ages neither one of them gave the Court impression that they lied during their testimony. They were candid and straight-forward even to the point of describing the penis of the accused. They also cried when they relieved the pain they experienced when the accused inserted his penis into their vagina."[9]

We find no compelling reason to disturb the trial court's findings that the rapes took place in December, 1996, being based as they were on an assessment of the testimonial evidence from the vantage view of the presiding judge who had full opportunity to observe the demeanor of the witnesses and calibrate their responses. The complainants' testimonies were consistent with each other and described vividly the sexual molestation .

Moreover, the medico legal findings contained in the certifications[10] of Dra. Merlyn Espino during her examination of the private parts of the complainants[11] corroborated the complainants' accusation of sexual abuse. Ivy had one hymenal laceration at 9'00 o'clock position and Liezel had one hymenal laceration at 1:00 o'clock position.

The demeanor and statements of the accused were also given significance by the court. Thus, the court noted that when complainants pointed to the accused in court as the person who had subjected them to shame, the eyes of the accused-appellant were "downcast and unable to withstand the eyes of his nieces", and he appeared "meek as a lamb with apparent shame on his face manifested by its turning reddish pale". The trial court noted further that the accused and his wife admitted that they did not know why these cases were filed as their families "have good relationship with one another". The accused himself declared that he harbors no ill-feeling against his accusers and asks for pity from them. We agree that these statements clearly belie any ulterior motives behind the filing of the cases other than to seek redress for the grievances of the victims.

We cannot fault the trial court for upholding the credibility of the testimonies of the complainants as against that of the accused-appellant. The victims are young guileless children, whose testimonies deserve full credence[12].

It must be stressed that in cases of statutory rape, as in this case where the ages of the victims were established with certainty to be below seven years as shown by their birth certificates[13] and testimonial evidence[14], force is not an essential element since the absence of free consent is presumed when the woman is below such age[15].

We are however constrained to hold that the rapes alleged to have taken place in the month of May, 1996[16] and in the month of June, 1996[17] were not proven. We have searched the records in vain for any evidence that would establish that the victims were raped in May and in June of 1996 as alleged in the Informations, and find no such proof, unlike the rapes committed between December 1 and 4, 1996[18] or on December 5, 1996[19], the time of the commission of which was established by the testimony of Liezel who recalled that the fourth rape was committed before Christmas[20] and Ivy's mother[21] who overheard the conversation between Ivy and Liezel on December 11, 1996[22]. Although the two (2) complainants testified that they were raped four times, there is no testimony pinpointing May and June 1996 as the dates when the previous rapes occurred.

It is true that the date of the commission of the rapes is not an essential element of the crime[23], the date or time of the commission of rape not being a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission.[24]

In this case, however, the Informations in Criminal Cases Nos. 8846, 8849, 8847 and 8850 specifically alleged that the two rapes took place in the months of May 1996 and June 1996. While it may be true that the Informations were sufficient as a basis for prosecution in that they stated that the crimes were committed at certain times as near as possible to the date of their possible commission and therefore the accused was given an opportunity to defend himself, the absence of proof to establish that the rapes actually occurred in May or June of 1996 is fatal to the conviction of the accused-appellant. The failure of the prosecution to prove its allegation in the subject Informations that the accused raped complainants in the months in question manifestly show that the dates of the commission of the offense as alleged were based merely on speculation and conjecture, and a conviction anchored mainly thereon cannot satisfy the question of evidence required for a pronouncement of guilt, i.e. proof beyond reasonable doubt that the crime was committed on the date and place indicated in the Informations[25]. Accordingly, the accused-appellant can not be held liable for the offenses charged in Criminal Cases Nos. 8846, 8849, 8847 and 8850.

Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 reads as follows:

"ART. 335. When and how rape is committed.- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

xxx xxx xxx

3. When the woman is under twelve years of age.

xxx xxx xxx

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

xxx xxx xxx

"4. When the victim is a religious or child below seven (7) years old.

xxx xxx xxx

The civil indemnity is increased to P75,000.00 since the rape is qualified by the circumstance of age which makes the death penalty imposable.[26]

Four justices of the Court, however, have continued to maintain the unconstitutionality of Republic Act No.7659

insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the appealed judgment is **AFFIRMED** insofar as it found accused-appellant Juan Manalo y Castor guilty beyond reasonable doubt of the crime of rape in Criminal Cases Nos. 8845, 8848, 8851 and 8852 and imposes the death penalty in each of the said cases and is **MODIFIED** with respect to the civil indemnity: accused-appellant is directed to indemnify Liezel Adame Delica the amount of P125,000.00 (P75,000.00 as civil indemnity and P50,000.00 as moral damages) each in Criminal Cases Nos. 8845 and 8848, or a total of P250,000.00 and Ivy Mendoza Adame the amount of P125,000.00 (P75,000.00 as civil indemnity and P50,000.00 as moral damages) each in Criminal Cases Nos. 8851 and 8852 or a total of P250,000.00.

In accordance with Section 25 of Republic Act No.7659, amending Article 83 of the Revised Penal Code, upon the finality of the decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

[1] Criminal Cases Nos. 8845 to 8848.

[2] Criminal Cases Nos. 8849 to 8852.

[3] Rollo, pp. 7-28.

[4] Decision, pp. 6-8; Rollo, pp. 95-97.

[5] TSN, May 27, 1998, pp. 3-9.

[6] Penned by Judge Conrado R. Antona.

[7] TSN, November 12, 1997, pp. 7-8.

[8] TSN, November 13, 1997, pp. 4-7.

[9] Decision, p. 9.

[10] Exhibits "L" and "M".

[11] TSN, January 5, 1998, pp. 4-5; January 6, 1998, 5-6.

[12] People vs. Dacoba, 289 SCRA 265.

[13] Exhibits "Q" and "R".

[14] TSN, April 1, 1998, p. 2; November 13, 1997, p. 16; January 6, 1998, p. 22.

[15] People vs. Bolatete, 303 SCRA 709; People vs. Lagrosa, Jr. 230 SCRA 298.

[16] Criminal Case No.8846; Criminal Case No. 8849.

[17] Criminal Case No. 8847; Criminal Case No. 8850.

[18] Criminal Cases Nos. 8848 to 8852.

[19] Criminal Cases Nos. 8848 to 8851.

[20] TSN, November 12, 1997, p. 15.

[21] At p. 6.

[22] TSN, December 1, 1997, p. 6.

[23] People vs. Bugarin, 273 SCRA 384; People vs. Hortillano, 177 SCRA 729.

[24] People vs. Magbanua, 319 SCRA 719.

[25] People vs. Ladrillo, 320 SCRA 61.

[26] People vs. Victor, 292 SCRA 186.

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