

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANDY HINTO Y BUENO, ACCUSED-APPELLANT.

G.R. Nos. 138146-91. February 28, 2001

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PER CURIAM:

These cases are here on appeal from the decision[1] rendered on April 12, 1999 by the Regional Trial Court of Malabon, Branch 170, finding accused-appellant guilty of one count of rape and 45 counts of acts of lasciviousness and sentencing him accordingly.

In Criminal Case No. 17424-MN, the information alleged:

"That on or about the 27th day of November, 1996 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the common-law spouse of Liza Hinto's mother, with lewd design by means of force, violence and intimidation, and or threat willfully, unlawfully and feloniously, did, then and there have sexual intercourse with the said LIZA HINTO Y FERNANDEZ who is under 18 years of age against her will and without her consent.

"CONTRARY TO LAW."

In Criminal Case Nos. 17570-MN-17583-MN, the information alleged:

"That on or about the 7th day of September 1996,[2] in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design by means of force, violence and intimidation did, then and there willfully, unlawfully and feloniously mash and touch the private parts of LIZA HINTO Y FERNANDEZ who is under 12 years of age against her will and without her consent.

"CONTRARY TO LAW."

In Criminal Case Nos. 17584-MN-17614-MN, the information alleged:

That on or about the 1st day of October 1996,[3] in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this honorable Court, the above-named accused with lewd design by means of force, violence and intimidation and/or threat did, then and there willfully, unlawfully and feloniously mash the breast of and insert his finger into the vagina (fininger) of one LIZA HINTO Y FERNANDEZ, who was then under 12 years of age against her will and without her consent.

Liza Hinto was born on October 30, 1984.[4] At the time of the incidents in question, Liza was twelve years and one month old. She had been living with accused-appellant since she was two years old, after her mother, Elsa Fernandez-Hinto, separated from her father and started living with accused-appellant.[5] Accused-appellant had five children with Elsa.[6] Liza used to sleep beside her stepbrothers and stepsisters and accused-appellant[7] on the floor in their house at Reparo St., Malabon, Metro Manila.[8]

On the evening of September 5, 1996, Liza slept with a stepbrother to her left and accused-appellant slept to her right with a pillow placed between them.[9] In the middle of the night, Liza was awakened by the touch of her

Papa, as she fondly called accused-appellant, who fondled her breasts and sexual organ.[10] Liza resisted accused-appellant and moved her body away from him,[11] but accused-appellant persisted in touching her. Since that night, accused-appellant made it a habit to touch Liza's breasts and sexual organ, doing so every other night throughout the months of September and October 1996.[12] Liza resisted accused-appellant's advances each time,[13] but she was threatened if she told anyone what accused-appellant had been doing to her.[14] The incidents took place while Liza's stepbrothers and stepsisters were asleep and her mother was in Monumento selling fruits.[15]

Events took a more dastardly turn on the night of November 27, 1996. On that night, as Liza was sleeping, she felt accused-appellant undressing her. He removed her shorts and panty.[16] Then accused-appellant himself undressed and went on top of Liza and started inserting his penis into her vagina.[17] Once he had inserted his penis, accused-appellant performed the sexual act.[18] She resisted but accused-appellant held down her hands and threatened to beat her up if she did not give in to his demand.[19] Liza said she felt accused-appellant reach climax inside her, after which he wiped something below her organ.[20]

The next day, Liza told her mother that her stepfather had raped her. Her mother made her sleep with her aunt[21] and filed a complaint at the police station against accused-appellant. The principal of Morning Breeze Elementary School, where Liza went to school, also reported the matter to the police. SPO1 Leonardo M. Balinag went with the complaining party to the 7-11 Store at the corner of EDSA and Morning Breeze, where accused-appellant sold fruits.[22] They brought accused-appellant to the Criminal Investigation Division of the Northern Police District Office for investigation.[23]

On December 18, 1996, Liza was taken to the medico-legal division of the National Bureau of Investigation where she was examined by Dr. Ida P. Daniel. Dr. Daniel's findings are contained in the medico-legal report (Exh. G) she issued, which report states in part:

"GENITAL EXAMINATION

"Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick, with healing, superficial laceration 9 o' clock position, edges congested and edematous. Hymenal orifice, admits a tube 2.5 cms., in diameter. Vaginal walls, tight. Rugosities, prominent.

"CONCLUSIONS:

"1. No evident sign of extragenital physical injury noted on the body of subject at the time of examination.

"2. Healing hymenal laceration, present."

Dr. Daniel testified in court that the hymenal laceration was caused by the penetration of a hard blunt object with an average diameter of 2.5 cms. He said that the hard blunt object could be an erect penis and that penetration could have occurred during sexual intercourse.[24]

On December 18, 1996, a complaint for rape was filed against accused-appellant. Subsequently, on January 30, 1996, 45 separate complaints for acts of lasciviousness were filed against accused-appellant.

Accused-appellant denied the rape charge against him. He claimed that on the morning of November 27, 1996, he was in Balintawak buying fruits.[25] According to him, he had been going to Balintawak every day to buy fruits, even before Liza's mother started living with him.[26] On the date in question, he was at Balintawak at 10:00 p.m. and went home between 4:00-5:00 a.m. of the next day.[27] When he got home, two neighbors, Jobo and Iday Catcat, helped him bring down the fruits he had bought. Accused-appellant claimed that Liza trumped up the rape charge against him to help her mother separate from him and return with her real husband, Liza's father.[28]

The trial court found the prosecution evidence more credible and convicted accused-appellant of rape and acts of lasciviousness. The dispositive portion of its decision states:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

"1. In Criminal Case No. 17424-MN, the Court finds the accused Sandy Hinto y Bueno, guilty beyond reasonable doubt of the crime of RAPE and hereby imposes upon him to suffer the penalty of DEATH. Likewise, the accused is hereby ordered to pay Liza Hinto y Fernandez also known as Elisa F. Adea the amount of P50,000.00 by way of civil indemnity and the cost of the suit;

"2. In Criminal Case Nos. 17570-MN to 17614-MN, the Court finds accused Sandy Hinto y Bueno guilty beyond reasonable doubt of the crime of ACTS OF LASCIVIOUSNESS (Article 336 of Revised Penal Code in relation to R.A. 7610), there being the presence of the aggravating circumstance of relationship, hereby sentences him to an indeterminate penalty of twelve (12) years, as minimum, to fifteen (15) years, both of reclusion temporal, as maximum, in each of the forty-five (45) cases and to pay the costs of the suit.

"Let the accused be credited for whatever preventive imprisonment he has undergone in connection with the forty-five (45) cases of Acts of Lasciviousness.

"SO ORDERED."

Hence, this appeal.

In his lone assignment of error, accused-appellant contends that "the court a quo gravely erred in finding herein accused-appellant guilty of the crimes charged beyond reasonable doubt despite the incredible and fabricated testimony of private complainant Liza Hinto." [29]

First. Accused-appellant contends that it was impossible for him to have committed the crimes charged inside their home because they lived in a small house in a squatter's area. Liza slept beside her five siblings with the lights on. He would have easily been found out by his own children if he tried touching or raping Liza. These conditions, accused-appellant claims, made it impossible for him to commit any of the acts imputed to him. [30]

Accused-appellant's contention has no merit. Neither the crampedness of the room, nor the presence of other people inside it, nor the high risk of being found out has been held sufficient and effective obstacles to deter the commission of rape. As this Court observed in *People vs. Umali*: [31]

"[I]t has become a matter of judicial notice that rape can be committed in many different kinds of places which many would consider as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place. Thus, the crime can, and has been, committed in places where people congregate, e.g., inside a place where there are occupants, a five-meter room with five people inside, and even the same room which the victim was sharing with the accused's sisters. Therefore, we find it not so incredible that accused somehow had the temerity to sexually assault private complainant even with his wife and two small children just nearby. To repeat what has been said before, animal lust is an aberration which this Court will not explain for the benefit of the accused." [32]

Second. Accused-appellant claimed that he had punished Liza in the past, and she resented this, and it was to avenge her maltreatment by him, that she falsely accused him. Accused-appellant contends that the fact that she never screamed for help when she was allegedly molested, coupled with the delay in reporting the incident at once to her mother, put in doubt the charges against him.

Accused-appellant's contention has no merit. Settled is the rule that the trial court's evaluation of the credibility of the testimony of witnesses is entitled to great respect. Unless shown that it has overlooked some facts which would affect the result of the case, the trial court's factual findings will not be disturbed by the appellate court. [33]

The reason for this rule is to be found in the unique position of the trial court. As the trier of facts, it has the opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the stand and his manner of testifying during trial, an opportunity which is denied to the appellate court.[34]

In this case, the trial court, in giving full faith and credence to complainant's testimony, was impressed with "the simplicity and spontaneity of Liza" and was convinced that "she is telling the truth." [35] Further, "the testimony of Liza on this score is replete with directness so [overwhelming] as to be impervious to a mere denial of the accused." [36] Accused-appellant has presented no reason for us to overturn the trial court's assessments and findings.

Indeed, this Court has consistently held that testimonies of rape victims who are young and of tender age are credible. The revelation of a young child whose chastity was violated deserves full credence.[37] In the case at bar, the victim, a poor elementary school student, steadfastly maintained that she was taken advantage of by her mother's common-law husband. In a crime of rape which is usually committed without any witnesses thereto, the culpability of the offender almost invariably hinges on the story of the complainant.[38] Consequently, when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[39] Liza Hinto's testimony meets this test.

Accused-appellant makes much of the fact that complainant did not shout for help when she was allegedly molested and that it took her sometime before finally telling her mother that accused-appellant had molested her. According to accused-appellant, these circumstances cast doubt on the veracity of her testimony. The contention has no merit. Liza Hinto had lived with accused-appellant since she was two years old. She considered him her own father and called him "Papa." For this reason, accused-appellant had moral and physical ascendancy over Liza which rendered her vulnerable to the threats and intimidation by accused-appellant.[40] In addition, Liza's innate modesty and inexperience may have restrained her from reporting the incidents at once. After all, complainant was only a little over 12 years old at the time she was raped.

Third. Finally, accused-appellant claims that he could not have committed the crimes charged because he was usually out of the house from 10:00 p.m. up to 4:00-5:00 a.m. the next morning to buy fruits, which he later sold, at the Balintawak market in Caloocan City.

It is settled, however, that for the defense of alibi to prosper, there must be proof not only that the accused was at some other place at the time the crime was committed but also that it was physically impossible for him to be at the locus criminis at the time of the alleged crime.[41] Here, accused-appellant claimed that on the night Liza was raped he was at the Balintawak market from 10:00 p.m. until about 4:00-5:00 a.m. the next day, when he went back home. Even if this was really so, the fact is that he lived in Malabon. It was entirely possible for him to have gone home and afterwards returned to the Balintawak market.

He claims that two of his neighbors saw him as he was going home from Balintawak and even helped him unload the fruits he was bringing, but the supposed witnesses were never presented in court. In any event, accused-appellant claims that he could not have committed the crime at the time given because this would be a departure from his regular schedule of going to Balintawak market at night. A man's lust, as we have said many times, can be no respecter of time and place. If this is so, we see no reason why it could be constrained by habit or schedule. This last defense of accused-appellant is clearly an afterthought which does not convince this Court.

In sum, without any concrete proof that it was utterly impossible for him to be at the scene of the crime when it was committed and without any witnesses to corroborate his story, accused-appellant's alibi cannot be sustained. He has done nothing more than to deny the charge against him. In contrast, complainant Liza Hinto gave an

indubitably credible and detailed account of how accused-appellant took advantage of her and raped her. Accused-appellant's self-serving denial cannot prevail over complainant's testimony.[42] Furthermore, between a positive and categorical testimony, the former is generally held to prevail.[43]

Under Art. 335, par. 7(1) of the Revised Penal Code, as amended by R.A. 7659, if the victim is under eighteen (18) years of age and the offender is a common-law spouse of the parent of the victim, the imposable penalty is death. In these cases, the information for rape alleges that Liza Hinto was under 18 years of age at the time she was raped and that accused-appellant is the common-law spouse of her mother. Her birth certificate was offered as evidence in this case. It was also proven during the trial that accused-appellant is the common-law spouse of Liza's mother. Considering the foregoing, we are constrained to affirm the death sentence imposed by the trial court on accused-appellant.

Four (4) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[44] that R.A. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

With respect to the civil liability of the accused-appellant, as recommended by the Office of the Solicitor General, we hold that the trial court's award of P50,000.00 as civil indemnity should be increased to P75,000.00, consistent with the decisions of this Court,[45] that if the crime is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the complainant should be awarded P75,000.00 as civil indemnity. In addition, accused-appellant should be ordered to pay P50,000.00 as moral damages. This award requires neither allegation nor proof because it is assumed that the victim has suffered moral injuries entitling her to such an award.[46]

WHEREFORE, the decision of the trial court is AFFIRMED with the MODIFICATION that the indeterminate penalty imposed by the trial court of twelve (12) years, as minimum, to fifteen (15) years, both of reclusion temporal, as maximum, in each of the forty-five (45) cases of acts of lasciviousness, is made subject to the application of the rules on successive service of sentences as provided in Art. 70 of the Revised Penal Code. Accused-appellant is likewise ordered to indemnify Liza Hinto in the sum of P30,000.00[47] for each count of acts of lasciviousness. Accused-appellant is finally ordered to pay complainant P75,000.00 as civil indemnity, and, in addition, P50,000.00 as moral damages, and the costs.

In accordance with Section 25 of R.A. 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the President of the Philippines for the 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] Per Judge Benjamin T. Antonio.

[2] The allegations in the other complaints are the same except for the dates. The dates of the other complaints are as follows: September 5, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, and 30, 1996.

[3] The allegations in the other complaints are the same except for the dates. The dates of the other complaints are as follows: October 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,

30 & 31, 1996.

[4] See Exh. B, Birth certificate of Liza Hinto, Records, pp. 97.

[5] Sworn Affidavit of Elsa Fernandez-Hinto, December 17, 1996, Record, p. 3; TSN, July 21, 1998, p. 4.

[6] Sworn Affidavit of Elsa Fernandez-Hinto, December 17, 1996, Record, p. 3.

[7] Id, pp. 2-3.

[8] TSN, June 25, 1998, pp. 1-3.

[9] Id, p. 6.

[10] Id, pp. 2-4.

[11] Id, p. 4.

[12] Id, pp. 3-4.

[13] Id, p. 4.

[14] Sworn Affidavit of Liza Hinto, December 17, 1996; Records, p. 2.

[15] Id, p. 3.

[16] Id, pp. 4-5.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id, p. 6; Sworn Affidavit of Liza Hinto, December 17, 1996; Records, p. 2.

[22] Sworn Affidavit of SPO1 Leonardo M. Balinang, December 17, 1996, Record, p. 4.

[23] Id.

[24] TSN, July 21, 1998, p. 3.

[25] TSN, Nov. 10, 1998, p. 3.

[26] Id.

[27] Id.

[28] Id, p. 5.

[29] Brief for the Appellant, pp. 7-8; Rollo, pp. 89-90.

[30] Id, pp. 10-11; Rollo, pp. 92-93.

[31] 242 SCRA 17, 24-24 (1995).

[32] See also *People vs. Mangalino*, 182 SCRA 329 (1990); *People vs. Corro*, 197 SCRA 121 (1991); *People vs. Codilla*, 224 SCRA 104 (1993); *People vs. Abordo* 258 SCRA 571 (1996).

[33] *People vs. Tan*, 264 SCRA 425, 445 (1996), citing *People vs. Acabo*, 259 SCRA 75 (1996); *People vs. Matrimonio*, 215 SCRA 613 (1992); *People vs. Florida*, 214 SCRA 227 (1992).

[34] *People vs. Tan*, 264 SCRA 425, 445 (1996), citing *People vs. Cura*, 310 Phil. 237, 247 (1995) and *People vs. Dado*, 314 Phil 635 (1995).

[35] Joint Decision, April 12, 1999, p. 3; Rollo, p. 57.

[36] Id, at p. 4; Rollo, p. 58.

[37] *People vs. Liquiran*, 228 SCRA 62 (1993), citing *People vs. Guiabao*, 217 SCRA 64 (1993).

[38] *People vs. Liquiran*, G.R. Nos. 105693-96, Nov. 19, 1993, citing *People vs. Pido*, 200 SCRA 45 (1991); *People vs. Matromonio*, 215 SCRA 656 (1992).

[39] *People vs. Liquiran*, G.R. Nos. 105693-96, Nov. 19, 1993, citing *People vs. Tismo*, 204 SCRA 535 (1991); *People vs. Grefiel*, 215 SCRA 596 (1992),

[40] See *People vs. Casil*, 241 SCRA 285 (1995).

[41] *People vs. Umali*, supra note 31; *People vs. Liquiran*, 228 SCRA 62 (1993).

[42] *People vs. Caballes*, 199 SCRA 152 (1991).

[43] See id.

[44] 267 SCRA 682 (1997).

[45] *People vs. Brondial*, G.R. No. 135517, October 18, 2000; *People vs. Sancha*, G.R. Nos. 131818-19, February 3, 2000; *People vs. Alba*, 305 CRA 811 (1999), citing *People vs. Victor*, 292 SCRA 186 (1998); *People vs. Empante*, 306 SCRA 250 (1999); *People vs. Lim*, 312 SCRA 550 (1999);

[46] *People vs. Velasquez*, G.R. Nos. 132635 & 143872-75, February 21, 2001, citing *People vs. Prades*, 293 SCRA 411 (1998); *People vs. Ponce Hermoso*, G.R. No. 130590, October 18, 2000, citing *People vs. Payot*, 308 SCRA 43 (1999); *People vs. Dizon*, 320 SCRA 513 (1999); *People vs. Rondero*, 320 SCRA 383 (1999); *People vs. Tahop*, 315 SCRA 465 (1999); *People vs. Aquino*, 310 SCRA 437 (1999); *People vs. Managat*; 310 SCRA 101 (1999).

[47] See *People vs. Velasquez*, G.R. Nos. 132635 & 143872-75, February 21, 2001.

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