

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO SOLMORO, JR., ACCUSED-APPELLANT.[]*G.R. Nos. 139187-94. November 27, 2002*

Ponente: BELLOSILLO, J.

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THE CONVICTION OF RICARDO SOLMORO, JR., of seven (7) counts of rape by the court a quo and sentencing him to death in each count,[1] together with his conviction of the crime of acts of lasciviousness and imposing upon him a prison term of prision correccional is now before this Court on automatic review. For his crimes, the accused was also ordered to pay the victim, his own granddaughter, Maricar Solmoro, P300,000.00 as "moral and exemplary" damages.

Presumably, unlike most pre-adolescent teeners still unspoiled by worldly proclivities, Maricar Solmoro was initiated early on into the sordid realities of life when her own grandfather, accused Ricardo Solmoro, Jr., sexually abused her several times and forever robbed her of her childhood innocence which can never be given sufficient expiation by any human tribunal nor solaced by any human decree.

Fourteen (14) year-old Maricar Solmoro,[2] recounted that a year after she was born she already lived with her grandparents in Barangay Banca-banca Nagcarlan, Laguna, in a one (1)-room shanty together with three (3) younger cousins: Eugene eight (8), Daywin seven (7) and Kay-kay four (4). At around seven o'clock in the evening of 3 October 1995 Maricar and her cousins were asleep in the "papag" when she was awakened and found her Lolo Ricardo sitting beside her. Hissing threats at her, the accused poked a bolo at her neck and forcibly undressed her. He removed his pants and underwear, placed his bolo aside, straddled his helpless prey, inserted his penis into her private part and made a pumping motion on top of her. Maricar could only whimper in helpless submission.

After unleashing his lust on her, Ricardo put on his clothes and told Maricar to do the same as he warned her again never to tell anyone about the incident. She could only suffer in silence. Because of the threat in her life she never told a soul of her sad experience, not even her grandmother who arrived two (2) days later from Manila.

In dark despair, Maricar decided to leave her grandparents' home and move to her mother's in Brgy. Manaol, Nagcarlan, where she stayed for month. But her freedom was momentary. Soon she was fetched by her grandmother and brought back to Brgy. Banca-banca where her devilish grandfather was waiting for her.

On 19 October 1996 Maricar, with her Lolo for a chaperon, left for Manila for the school's educational field trip. Upon their return home early the following morning, 20 October, Maricar took a short nap and after waking up at six o'clock in the morning she started cleaning the house. It was then when the accused approached her and "kissed" her.[3] Ricardo told her to dress up as they were going to a wedding. Maricar revealed that five (5) months after her return to Brgy. Banca-banca she decided to escape again from her tormentor by staying in her mother's house in Brgy. Manaol. But not before long, her grandmother brought her back again to Brgy. Banca-banca.

On 27 December 1996 at around ten o'clock in the evening, taking advantage of the fact that his wife was spending the night in a nipa hut in the rice fields, Ricardo again sexually assaulted Maricar by removing her clothes, massaging her breasts, and then inserting his penis into her vagina. His craving finally slaked, he perfunctorily ordered Maricar to put on her clothes and go back to sleep. She told the court that she could not leave the house despite the repeated molestations because her grandfather forbade her from doing so.

At about midnight of 28 December 1996 Ricardo struck again when he forcibly stripped Maricar of her clothes, kissed her and stroked her body, and in her own words, "inilapat lang po ang kanyang ari sa aking ari." [4] To escape her coerced confinement, Maricar left Banca-banca in the afternoon of 29 December 1996 to seek shelter again in her mother's house but not before the accused kissed her on the lips. Her cruel fate stalked again when after a month Maricar's father, Pancraccio Solmoro, brought her back to Brgy. Banca-banca thus unwittingly tossing his own daughter into the lair of her sexual predator.

Not for long, the lecherous inclination of the accused got the better of him. At nine o'clock in the evening of 3 February 1997, finding himself alone with his captive victim, Ricardo took off her clothes again, kissed her, and inserted his penis into her vagina. But apparently unsatisfied still, the following day, 4 February 1997, he again forced a sexual congress with Maricar when he undressed her, massaged her breasts, and finally inserted his organ into her vagina. Like before, Maricar fled to her mother's house but stayed there for only two (2) months because her lola, upon instructions of the accused, took her back again to Banca-banca.

On 7 March 1997, while Maricar's lola was in the rice fields and her three (3) young cousins already asleep, the accused again pounced on his victim. He "undressed (her), kissed (her) breast and inserted his penis into her vagina." [5] Maricar hurriedly left for the residence of her father's cousin but only for a brief time as she transferred to another relative with whom she stayed until she was hired as a domestic helper in Brgy. Pagsawitan, Sta. Cruz, Laguna. According to Maricar, when she visited her mother, the latter asked her why she left the house of her grandparents. She could only say, "wala po." [6] But when her mother pressed her for an explanation, she blurted, "I found difficulty there in the house of my grandfather." [7] Maricar explained to the court later that her fear for the accused, who threatened her with physical harm, prevented her from revealing the sexual molestations. [8] On 25 May 1997 complainant finally mustered enough courage to tell her close relatives about the nightmarish sexual experiences she had in the hands of her Lolo Ricardo.

On cross-examination, Maricar disclosed that although the accused raped her in almost twenty (20) different occasions she could only recall the dates she testified to because they were the more significant ones. She remembered that 3 October 1995 was the eve of the barangay fiesta of Maravilla, 19 October 1996 was her school field trip and the eve of her cousin's wedding, 27 December 1996 was when her grandmother spent the night at a hut in the rice fields; and 3 and 4 February 1997 were the wake and interment of her great grandmother. [9]

Delia Solmoro, mother of complainant, was separated from her husband Pancraccio since 1987 and she has three (3) children with him: Lamberto, Winefreda and Maricar. Although she kept her children with her, Maricar was eventually taken by her estranged husband to live with his parents in Brgy. Banca-banca.

On 23 May 1987 Maricar returned to her mother in Brgy. Daniw where she later confided that she (Maricar) was being raped now and then by her Lolo Ricardo, accused Ricardo Solmoro, Jr. The sexual abuses had been going on since she was twelve (12) years old but she kept mum about it for fear of the accused.

In view of these revelations, Delia accompanied Maricar to the police authorities for investigation and later to the MCTC of Nagcarlan-Rizal to lodge a complaint against her grandfather. Her complaint was accompanied with a medical certificate issued by Dr. Edilberto S. Isla, Medical Officer III of the Nagcarlan District Hospital, who conducted a medical examination on Maricar and found her to have old vaginal lacerations at 9:00 o'clock and

3:00 o'clock positions with "whitish mucoid vaginal discharges" with no physical injuries noted however on her body. Although Dr. Isla died before he could testify for the prosecution, Mr. Rodel Joyosa, Records Officer of the same hospital, identified Maricar's medical record and the medical certificate issued by Dr. Isla.

Accused Ricardo Solmoro, in his defense, stridently professed his innocence. He claimed that the rape incidents, particularly that which allegedly took place on 3 October 1995, was a malicious lie concocted by complainant to get back at him after he caught her filching some items from his sister's store. He insisted that on 3 October 1995 he was in the house in Brgy. Banca-banca attending to his piggery. He stated that the day before Maricar left the house to work as a "peryante" in the town fiesta of Brgy. Maravilla. According to him, the rape incident on 19 October 1996 could not have taken place because he and Maricar left that day for a field trip to Manila and returned only in the morning of 21 October. An hour after their return, he left for Sta. Rosa, Laguna, to attend the wedding of a grandchild. Neither did he rape complainant on 27 December 1996 because on that day he was in Cabuyao, Nueva Ecija, visiting his sister Alita. He firmly asserted that he left the house three (3) days earlier, or on 24 December, and returned to Brgy. Banca-Banca only on 29 December together with his niece Nora and her two (2) children and a friend. Similarly, the rape incident on 4 February 1997 could not have happened because all the members of his household, including complainant, went to Brgy. Buenavista, Nagcarlan, Laguna, for the wake of his mother-in-law. After the burial, they proceeded to Brgy. Daniw, this time for the wake of another relative. The allegation that he raped Maricar on 7 March 1997 was also untrue since on that date he was in the pigpen, about thirty (30) meters from their house, to look after his swine. By his own account, he slept in the pigpen for two (2) weeks.

Magdalena Solmoro, wife of the accused, likewise disputed complainant's testimony. She said she was in their house in Brgy. Banca-banca on 3 and 4 October 1995 to attend to the delivery of their pigs. As to the alleged rape incident on 19 October 1996, she testified that she was at home in the morning of that day although she admitted that she was at the wake of her grandson when the accused and Maricar arrived from a field trip in Manila. She also denied having spent the night of 27 and 28 December 1996 in the rice field and corroborated her husband's assertion that he was in Nueva Ecija on those dates. She believed that the rape incident could not have possibly taken place on 3 February 1997 because she, the accused and the rest of the children, including complainant, were at the wake of her mother which lasted until 4 February 1997. In the same way, she categorically stated that her husband could not have abused Maricar on 7 March 1997 because she never left the house on that day.

Felimon Solmoro, son of the accused, averred that contrary to the testimony of complainant, he was in his parents' house in Brgy. Banca-banca on 3 October 1995 so that the rape incidents mentioned by Maricar could not have transpired.

In convicting the accused, thus upholding the prosecution, the trial court opined that the string of events lucidly and logically conduced to the guilt of accused Ricardo Solmoro, Jr. since private complainant "actually saw him lying on top of her, being forced to remove her clothings by holding a sharp bolo, and she saw her grandfather's penis inserted into her sexual organ which caused her to feel pain." [10]

Accused's defense of alibi was also disregarded by the trial court because it "cannot prevail over the positive identification by the victim herself that he, Rodolfo Solmoro, Jr. was her abductor and molester." For the trial court, the accused had not shown by strong, clear, and convincing evidence that it was impossible for him to be at the scene of the crime during its commission. Only his self-serving testimony and that of his sister, which appeared to have been coached, supported his claim of absence from the situs of the crime. [11]

The accused now seeking his exoneration bemoans his conviction notwithstanding the fact that (a) the evidence for the prosecution is tainted with inconsistencies, uncertainties and implausibility; and, (b) the evidence for the

prosecution is weak and insufficient to overcome the presumption of his innocence.[12]

The accused draws our attention to what he perceives as inconsistencies and contradictions that taint the narration of the victim, thus: (a) In Crim. Case No. 10497-SP (3 October 1995), private complainant testified that only she, her father, and grandparents resided in Brgy. Banca-banca, but later contradicted herself when she mentioned that her Tiyo Imon and the latter's three (3) young children were residents also of the house in addition to those already mentioned. Moreover, according to him, the sexual abuse could not have been done on the bamboo bed, which was too small to accommodate five (5) persons, i.e., private complainant, the accused and the three (3) small children; (b) In Crim. Case No. 10498-SP (19 October 1996), the Information alleged that the crime was committed on 19 October 1996, but private complainant's testimony shows that they had a field trip on that day and returned only the following day, 20 October 1996; (c) In Crim. Case Nos. 10499-SP (27 December 1996), 10500-SP (28 December 1996), 10502-SP (4 February 1997), 10503-SP (7 March 1997) and 10504-SP (3 February 1997), private complainant did not testify that the sexual assaults upon her were against her will and consent. In effect, the accused wants to downplay the testimony of Maricar because of these alleged inconsistencies.

We are not convinced. The alleged inconsistencies refer to minor and trivial matters that do not puncture the gravamen of the crimes. Jurisprudence is replete with pronouncements by this Court that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details which do not touch the essence of the crime do not impair their credibility. They cannot deflect us from giving full faith to the complainant's testimony especially because at the time she testified in court complainant was still a lass of tender years who was unaccustomed to a public trial. The natural fickleness of human memory compounded by the trauma of a harrowing experience may have conspired to cause difficulty in recalling with accuracy the ugly details of the outrage, an observation earlier articulated in *People v. Barera alias "Narsing"* thus - [13]

This Court has repeatedly said that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair their credibility. The inconsistencies being trivial and minor, they cannot blunt the impact of complainant's testimony especially because at the time she testified, complainant was a mere 15-year-old lass who was unaccustomed to public trial. In fact, she was expected to fall into minor lapses in her testimony considering that she was recounting details of an experience so harrowing, humiliating, and painful to recall.

Hence, far from weakening complainant's testimony, such inconsistencies tend to strengthen her credibility as they actually indicate veracity rather than prevarication, and erase any suspicion of being rehearsed.

Neither can alibi grant the accused any relief. Plain denial and alibi in criminal trial cannot take precedence over the positive testimony of the offended party. A categorical and positive identification, in the absence of any showing of ill motive, on the part of the eyewitness on the matter, prevails over these defenses which are then reduced to mere negative, self-serving defenses devoid of any weight in law.[14]

The accused now laments the misplaced reliance by the court a quo on complainant's bare assertion that she was undressed, kissed and then violated when he inserted his penis into her vagina. His conviction therefore, according to him, is not warranted in view of what he purports to be the prosecution's inability to prove that the sexual intercourse was in fact committed against the will and consent of the alleged victim.

The frailty of this submission betrays the accused's despair for a sensible defense. More than the complainant's categorical and explicit statement that on 3 October 1995 her grandfather jabbed a bolo at her neck, the records are strewn with testimonies that reveal her morbid fear and terror of her grandfather who, by an unfortunate quirk of fate, became her sexual tormentor. Consider the following testimonies by private complainant -

Q: Up to what period did you stay in your grandfather's house after you were fetched from your mother's house by your grandmother?

A: For five (5) months, sir.

Q: After five (5) months, where did you proceed?

A: I stowed away from the house of my grandfather, sir.

Court Why?

A: Because I was afraid of what he did to me and he might do the same thing again that he had done to me, Your Honor (underscoring supplied).[15]

And then again in her testimony given on 24 September 1997 -

Q: The Court would like to ask, why did you not reveal it to your mother?

A: Because I was afraid, Your Honor.

Court: Afraid of whom?

A: Of my grandfather, Your Honor.

Court: Why?

A: Because I was threatened by him not to tell it to anybody, otherwise, I would get killed, Your Honor.

Fiscal Rodrigo: Notwithstanding that threat made by your grandfather, did you reveal it to anybody of what happened to you?

A: Yes, sir.

Q: To whom?

A: Tita Lita and Tiyo Enad, sir.

Q: And do you know what happened after you revealed all those

things that happened to you to your Tiya Lita and Tiyo Enad?

A: I was told by them to reveal it to my mother, sir.

Q: Did you reveal it to your mother?

A: No, sir.

Court: Why?

A: I was still afraid, Your Honor (underscoring supplied).[16]

Nonetheless, the moral ascendancy and influence of the accused over the complainant, being her grandfather, and his threat of bodily harm pervading in complainant's young mind, had practically rendered the young victim subservient to his every command, thus turning her into an easy prey to his fiendish incursions.

Anent the proper penalty, we are of the opinion that despite the allegations in the Informations of the victim's age and her relationship with the offender, the age of the complainant was not proved beyond reasonable doubt. Although Maricar testified that she was born on 12 January 1983,[17] no independent proof, such as the baptismal certificate or certificate of live birth, was ever presented to establish her age with certainty. For the special qualifying circumstance of minority to be appreciated, it must not only be alleged in the information or complaint but duly proved beyond reasonable doubt.[18] In *People v. Jaime Gonzales*[19] we explained that "in fact, no other evidence was ever presented - no certificate of live birth or baptismal certificate or school records, to prove the age of the victim at the time of the crime. Her minority must be proved with equal certainty and clarity as the crime itself. Since there is no acceptable proof as to her exact age, appellant must be held guilty only of simple, not qualified rape."

We also find that in *Crim. Case No. 10500-SP* where the accused was found guilty of acts of lasciviousness, the trial court failed to appreciate the alternative circumstance of relationship provided for in Art. 15 of The Revised Penal Code considering that the offended party was a descendant of the accused. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating.

Jurisprudence dictates that upon the finding of the fact of rape, the award of civil indemnity *ex delicto* becomes mandatory. If the supreme penalty of death is imposed the indemnity of P75,000.00 is granted to the victim, otherwise, she is only entitled to P50,000.00. In addition, she is also entitled to the amount of P50,000.00 as moral damages without need of proof, and another P25,000.00[20] as exemplary damages for each count of rape to set an example for the public good.

Similarly, upon a finding of guilt of the accused for acts of lasciviousness, the amount of P30,000.00 as moral damages may be further awarded to the victim.[21]

WHEREFORE, the appealed Decision is MODIFIED. Accused-appellant Ricardo Solmoro, Jr. is found guilty in *Crim. Cases Nos. 10497-SP, 10498-SP, 10499-SP, 10501-SP, 10502-SP, 10503-SP and 10504-SP* of seven (7) counts of simple rape, not qualified rape as found by the trial court, and is sentenced to reclusion perpetua for each count and ordered to pay the complaining witness P50,000.00 as civil indemnity, another P50,000.00 as moral damages, and P25,000.00 as exemplary damages also for each count of rape.

Accused-appellant Ricardo Solmoro, Jr. is likewise found guilty in *Crim. Case No. 10500-SP* of acts of lasciviousness, and considering the aggravating circumstance of relationship which attended the commission of

the crime, and applying the Indeterminate Sentence Law he is further sentenced to a prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum to six (6) years and two (2) months of prision correccional minimum as maximum. Accused- appellant is still further ordered to pay complaining witness Maricar Solmoro P25,000.00 as moral damages. No costs.

SO ORDERED.

Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Morales, Callejo, Sr., and Azcuna JJ., concur.

Davide, Jr., C.J., and Puno, JJ., on official leave.

[*]G.R. Nos. 139187-94 were forwarded to this Court by the RTC-Br. 32, San Pablo City, for automatic review, while G.R. Nos. 140427-34 were transmitted to this Court by the Court of Appeals to whom the records were forwarded in view of the notice of appeal by the accused. Since the cases reached this Court by separate modes of appeal, they were assigned separate docket numbers although they refer to the same decision of the trial court.

[1] Decision penned by Judge Zorayda H. Salcedo, RTC-Br. 32, San Pablo City, in Crim. Cases Nos. 10497-SP, 10498-SP, 10499-SP, 10501-SP, 10502-SP, 10503-SP, 10504-SP and 10500-SP, respectively.

[2] She was born on 12 January 1983 according to her testimony.

[3] Note that on redirect examination complainant when asked whether the offender was able to insert his penis into her vagina answered in the affirmative; TSN, 12 November 1997, p. 5.

[4] TSN, 24 September 1997, p. 18.

[5] TSN, 24 September 1997, p. 27.

[6] Id, p. 32.

[7] Ibid.

[8] Id., p. 33.

[9] TSN, 15 October 1997, p. 21.

[10] Rollo, p. 52.

[11] Id., p. 54.

[12] Id., p. 68.

[13] G.R. No. 99867, 19 September 1996.

[14] People v. Jose, G.R. No. 130666, 31 January 2000, 324 SCRA 196.

[15] TSN, 24 September 1997, p. 12, in connection with the rape incident that occurred on 3 October 1995.

[16] TSN, 24 September 1997, pp. 33-34.

[17] TSN, 8 October 1997, p. 3.

[18] People v. Bation, G.R. Nos. 134769-71, 12 October 2001.

[19] G.R. No. 140676, 31 July 2002, citing People v. Baniqued, G.R. No. 139384, 11 December 2001; People v.

Virrey, G.R. No. 133910, 14 November 2001; People v. Rivera, G.R. No. 13918, 31 July 2001.

[20] People v. Hernandez, G.R. Nos. 134449-50, 25 October 2001; People v. Bation, G.R. Nos. 134769-71, 12 October 2001; People v. Gonzales, G.R. No. 140676, 31 July 2002.

[21] People v. Pajarillo, G.R. Nos. 143755-58, 20 February 2002.

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