

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICITO SILVANO Y OBSEÑARES, ACCUSED-APPELLANT.

G.R. Nos. 141105-11. March 08, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Felicito Silvano y Obseñares was charged with seven counts of rape in seven separate informations which, save for the dates of commission, contain the following identical allegations, to wit:

RTC Crim. Case No. 6227-98-C:

That sometime in June 1995, at San Valentin compound, Barangay Timugan, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and thru force and intimidation and with intent to satisfy his lust, did then and there wilfully and feloniously have carnal knowledge of his step-daughter Ma. Theresa Silvano a minor, 11 years old, against her will and consent.

The dates of commission of the other six informations were as follows:

1. RTC Criminal Case No. 6228-98-C - sometime in the month of July 1996;
2. RTC Criminal Case No. 6229-98-C sometime in the month of August 1996;
3. RTC Criminal Case No. 6230-98-C - sometime in the month of September 1996;
4. RTC Criminal Case No. 6231-98-C - sometime in the month of October 1997;
5. RTC Criminal Case No. 6232-98-C - sometime in the month of November 1997; and
6. RTC Criminal Case No. 6233-98-C - sometime in the month of June 1998.

Accused-appellant pleaded “not guilty” on arraignment. The seven cases were then jointly tried.

In June 1995, complainant was an eight-year old Grade II pupil at the Los Baños Central School. Accused-appellant is the second husband of her mother. The first rape occurred inside complainant’s house at Barangay Anos, Los Baños, Laguna. Accused-appellant took off complainant’s clothes and undress himself, then had sexual intercourse with her. Complainant cried in pain and her vagina bled. Accused-appellant warned her not to complain or else he will haunt her after he dies.[1]

Sometime in July 1996, accused-appellant again removed complainant’s clothes and then inserted his penis into her vagina. After accused-appellant had sex with her, complainant noticed something white come out of his organ. Accused-appellant threatened to kill her if she complained.[2] Complainant’s younger siblings, eight-year old Sherilyn, seven-year old Evelyn, and six-year old Bernabe witnessed the incident, but did nothing as they were afraid of accused-appellant.

The third rape incident occurred sometime in August 1996. Complainant shouted, prompting accused-appellant to punch her on the legs. Accused-appellant threatened to kill her if she told anybody what he did to her.[3] Again, complainant's brother and sisters saw what happened but were too fearful of their mother and father to complain.

The fourth rape incident transpired sometime in September 1996 on the first floor of their house. When complainant uttered, "masakit", accused-appellant punched her on the stomach.

Accused-appellant raped complainant for the fifth time in October 1997. Again, he threatened to kill complainant if she would tell anyone what he did.[4]

The sixth sexual assault happened sometime in November 1997 in the comfort room of their house. After taking off all articles of clothing from complainant, accused-appellant inserted his penis into her vagina. As in the previous incidents, complainant could do nothing but cry as accused-appellant threatened to kill her if she complained.

The last rape incident occurred on Saturday morning in June 1998 on the upper floor of their house.[5]

After the seventh incident, complainant could no longer bear the violations committed against her by accused-appellant, and decided to tell her mother everything. Her mother, however, refused to believe her. So, complainant turned to the one person who could be of help to her --- her teacher.

Complainant's teacher, Nancy de Asis Gutierrez, brought complainant to Elsa de Jesus, the school guidance counselor, who likewise informed the school principal, Virginia Casino. Complainant also confided to Grade VI teacher Leah Cabral and guidance counselor Elsa de Jesus that accused-appellant had been inserting his finger in her vagina and raping her whenever her mother was not around.

Cristina Gesmundo, another guidance counselor, met with complainant's mother. At the meeting, the latter declared that her daughter was a liar and that accused-appellant was incapable of committing the acts imputed on him. Complainant's mother also castigated Gesmundo for meddling in family matters. She berated Ma. Theresa and ordered her to take back what she told Gesmundo. The latter asked complainant if she wanted her father jailed, but she replied that she did not want to as she was afraid.

School principal Virginia Casino also asked complainant's mother to come to her office, but the latter refused. Consequently, Casino reported the matter to the Department of Social Welfare and Development (DSWD) and to Florencio Bautista, the barangay captain who, in turn, also sought the assistance of the DSWD through Ms. Teresita S. Silo. Complainant was then brought to the police station.

Dr. Ariel Ang, Municipal Health Officer of Los Baños, Laguna, stated in his Medical Examination Report that:

Pertinent findings at the time of examination revealed positive sign of previous vaginal injury, particularly the scarred lesion on the vaginal wall that may have been due to a previous sexual contact. However, the possibility of conducting laboratory tests for further confirmation is no longer feasible due to the period of time that had lapsed since the alleged time of incident and the time of examination.[6]

Accused-appellant, for his part, simply denied the accusations against him. He claimed that his established routine for the whole month of June 1995 was to leave the house between 6:00 to 6:30 in the morning and be at his workplace until 7:00 o'clock in the evening. He also alleged that in July of 1996, he was working at a shop in Los Baños, Laguna owned by a certain Jovito Diaz.

He denied any knowledge of the rape incidents that occurred in September 1996, October 1997, November 1997 and June 1998. According to him, complainant was mad at him for spanking her whenever she refused to obey her mother. He alleged that his brother-in-law prodded complainant to file the rape charges against him.

On November 10, 1999, the Regional Trial Court of Calamba, Laguna. Branch 34, rendered a joint decision, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered as follows:

In Criminal Case No. 6227-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6228-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6229-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6230-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6231-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6232-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

In Criminal Case No. 6233-98-C, this Court finds accused Felicito Silvano y Obseñares GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of DEATH.

Accused is further directed to indemnify the victim, Ma. Theresa Silvano, the sum of PhP50,000.00 as compensatory damages.

With costs against the accused in all cases.

SO ORDERED.[7]

Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act 7659, accused-appellant submits the following:

- THE TRIAL COURT ERRED IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF SEVEN (7) COUNTS OF RAPE.
- EVEN ASSUMING THAT ACCUSED WAS GUILTY OF SEVEN (7) COUNTS OF RAPE, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH IN EACH COUNT OF RAPE.[8]

Accused-appellant attempts to cast doubt on the credibility of complainant. He claims that “the overall testimony of private complainant does not inspire credence, thus impersuasive to support a conviction.” He also asserts that “[t]he defense of denial and alibi put up by the accused may be weak, but the same must not be taken against him as he has no other possible defense as that could really be the truth.”[9]

In particular, accused-appellant points to alleged material inconsistencies in complainant’s testimony, to wit:

ATTY. PADERAYON:

I will read the part of your letter to Gng. Casino:

“Tamang-tama na dumating si Mama. Nagwala si Mama.”

A:

That happened when I was in Grade II and Grade IV, my mother came and “inaano”.

Q:

But a while ago you testified that your mother was never present?

A:

Yes, sir, but my mother saw twice.

Q:

That was when you were in Grade II and Grade IV?

A:

Yes, sir.[10]

Accused-appellant contends that complainant’s testimony that her mother was not around during the times she was raped is inconsistent with what she said in her letter to her school principal and what she declared on cross-examination.

Accused-appellant further argues:

If it was really true that Ma. Theresa's mother twice saw the incident, it was perplexing why the victim would have a need of further telling or convincing her mother about accused's acts of abuses on her honor.[11]

According to accused-appellant, if there is truth to complainant's claim that her brother, sisters and mother saw the incidents of rape, then they should have testified to corroborate her story. Their failure to testify casts doubt on her credibility as well as of her testimony.

The contentions fail to persuade.

Anent the alleged inconsistency in complainant's testimony on cross-examination and her declaration in her letter to the school principal, we quote with approval the following observation of the Solicitor General:

Private complainant was never asked to explain what she exactly meant by her aforequoted answer "No" and likewise her "Yes, sir but my mother saw twice." The defense failed to ask clarificatory questions on the alleged inconsistency. This Honorable Court held that "[w]here an allegedly inconsistent statement was not related to the witness during cross-examination and she was never asked to explain the same, it cannot be used to discredit her entire testimony." (citation omitted) The perceived inconsistency cannot be taken against private complainant on an apparent contradiction in the two answers, which the defense, however, caused and failed to clarify.[12]

Defense counsel's failure to ask clarificatory questions on the perceived inconsistency was apparently a cross-examination strategy meant to discredit the testimony of complainant. While defense counsel is provided with all the latitude in conducting his defense including the adoption of whatever method, strategy and tactic to advance the cause of his client, the conduct of the defense should always be in line with the goal of ultimately arriving at the truth and with regard to due process.

Besides, the alleged inconsistency is more apparent than real. In complainant's direct testimony, she was asked if her mother was present during the times she was being sexually assaulted and she answered that her mother was either not in their house[13] or not in the house as she was working.[14] It can at least be inferred from her testimony that at the commencement of every rape incident, her mother was not around. Indeed, it would make sense for accused-appellant not to commence his evil designs on complainant with her mother around.

A reading of the above-quoted testimony of complainant shows that the sexual assault commenced prior to her mother's arrival. This is what she really meant when she wrote in her letter that, "tamang tama na dumating si Mama nahuling inaano ako." Conversely, complainant's mother was never around whenever accused-appellant began his sexual advances.

As regards the non-presentation of the testimonies of complainant's mother and siblings, suffice it to state that in rape cases, the prosecution is not bound to present witnesses other than the victim herself, considering that an accused may be convicted solely on the testimony of the complaining witness, provided such testimony is credible, natural, convincing and otherwise consistent with human nature and the course of things.[15]

In the case at bar, there is no reason to doubt the trial court's assessment of complainant's credibility, considering that the trial court has the advantage of observing the demeanor of the witnesses as they testify, unless found to be clearly arbitrary or unfounded. The rationale for this doctrine, as explained in *People v. Cayabyab*, is that "the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal records by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous

mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[16]

Accused-appellant's defense consists mainly of denial and alibi. The defense of alibi is always viewed with suspicion and received with caution, not only because it is inherently weak and unreliable, but also because it can easily be fabricated. For this defense to prosper, it must be convincing enough to preclude any doubt about the physical impossibility of the presence of the accused at the locus criminis or its immediate vicinity at the time of the incident. In other words, he must prove not only that he was somewhere else when the offense was committed, but also that it was physically impossible for him to have been at or near the crime scene. In the absence of strong and convincing evidence, alibi could not prevail over the positive testimony of the victim, who had no improper motive to testify falsely against him.[17]

Besides, accused-appellant's conviction was not primarily based on the weakness of his defense of denial and alibi. Rather, he was found guilty on the basis of complainant's consistent and steadfast testimony, even under rigid cross-examination, pointing to him as the one who despoiled her honor.

Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[18]

All told, accused-appellant failed to discredit complainant and her testimony. He could not even ascribe a credible motive for complainant to impute such a grave accusation against his person.

However, we agree with accused-appellant that the supreme penalty of death should not be imposed.

The prosecution failed to present complainant's birth certificate and the marriage contract between her mother and accused-appellant. While the defense did not contest complainant's age and her relationship to accused-appellant, the prosecution still had the burden of proving these circumstances with certainty.

In *People v. Francisco*,[19] we held that:

[T]he seven circumstances (including minority and relationship) added by R.A. 7659 to Article 335 of the Revised Penal Code, are special qualifying circumstances, the presence of any of which takes the case out of the purview of simple rape and effectively qualifies the crime to one punishable by death. Corollary thereto, the Court, in *People v. Javier*, stressed that in a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which the accused is charged must be established by the prosecution in order for the said penalty to be upheld. Therefore, to warrant the imposition of the supreme penalty of death in the instant case, the qualifying circumstances of minority and relationship must be proved with equal certainty and clearness as the crime itself.

In the case at bar, the records are bereft of any independent evidence, such as complainant's Certificate of Birth, Baptismal Certificate, or other authentic documents showing her age. The fact that accused-appellant has not denied the allegation that she was a minor when the crimes were committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Hence, the qualifying circumstance of minority required under RA 7659 cannot be appreciated in this case.[20]

Moreover, the prosecution failed to so present a marriage certificate to prove the fact of marriage between accused-appellant and complainant's mother. Therefore, the relationship between accused-appellant and complainant of stepfather and stepdaughter, respectively, was not established by the prosecution. Accordingly, the qualifying circumstance of relationship likewise cannot apply.[21]

Under the circumstances, accused-appellant can only be sentenced to suffer the penalty of reclusion perpetua on all seven (7) counts of rape.

Complainant is also entitled to an award of moral damages in the amount of P50,000.00 for each count of rape pursuant to prevailing jurisprudence.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Calamba, Laguna, Branch 34 in Criminal Cases Nos. 6227-98-C, 6228-98-C, 6229-98-C, 6230-98-C, 6231-98-C, 6232-98-C, 6233-98-C, finding accused-appellant guilty beyond reasonable doubt of seven counts of rape, is **AFFIRMED** with **MODIFICATION**. As modified, accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the victim the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. Costs against accused-appellant.

SO ORDERED.

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

[1] TSN, February 12, 1999, pp. 6-7.

[2] Ibid., pp. 7-8.

[3] Ibid., p. 9.

[4] Ibid., pp. 10-11.

[5] Ibid., pp. 11-13.

[6] Records, pp. 4-5.

[7] Rollo, pp. 39-40; penned by Judge Antonio M. Eugenie Jr.

[8] Rollo, p. 50.

[9] Ibid. p. 56.

[10] TSN, February 24, 1999, p. 6.

[11] Rollo, p. 58.

[12] Ibid., p. 101.

[13] TSN, February 12, 1999, pp. 6 and 11.

[14] Ibid., pp. 8,9, 10, 11 and 12.

[15] *People v. Lusa*, 288 SCRA 296 [1998].

[16] *People v. Estorco*, 331 SCRA 52 [2000].

[17] People v. dela Cuesta, 342 SCRA 166 [2000].

[18] People v. Manuel, 298 SCRA 184 [1998].

[19] G.R. Nos. 134566-67, January 22, 2001.

[20] People v. Virrey, G.R. No. 133910, November 14, 2001.

[21] People v. Francisco, G.R. Nos. 134566-67, January 22, 2001.

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