

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEROME GALLATE, ACCUSED-APPELLANT.*G.R. Nos. 144395-98. June 26, 2002*

Ponente: BELLOSILLO, J.

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This is an appeal from the Decision of the court a quo^[1] finding accused-appellant Jerome Gallate guilty of rape, imposing upon him the penalty of reclusion perpetua and ordering him to pay the offended party P50,000.00 as indemnity and P20,000.00 as damages.

In October 1991 four (4) separate Informations were filed against accused-appellant Jerome Gallate charging him with four (4) counts of rape before the Regional Trial Court of Bontoc, Mt. Province. In Crim. Cases Nos. 832-834, three (3) Informations alleged that on various dates in June 1991^[2] (28 June 1991 in Crim. Case No. 832; 26 June 1991 in Crim. Case No. 833; and, 27 June 1991 in Crim. Case No. 834) the accused "with lewd design and with force, threat, and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of one Angelyn Gunaden, 15 years of age and a niece of the accused, against the will and without the consent of said victim to her grave damage and prejudice."^[3]

In Crim. Case No. 835 the Information alleged that sometime in July of 1991 the accused "with lewd design and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge of one Lilia Gunaden, a minor barely five (5) years of age and a niece of the accused, to the grave damage and prejudice of said victim."^[4]

The accused was apprehended and detained at the Sabangan Jail, Mt. Province. However, he was able to escape and went into hiding. Hence, the cases were archived in April of 1992 and were only revived upon his arrest in January of 1999.^[5]

During the trial, thirteen (13)-year-old Lilia Gunaden testified that in 1991 she resided with her six (6) brothers and sisters at their house in Dogo, Sabangan, Mt. Province.^[6] She recounted that in 1991 when she was barely five (5) years old her maternal uncle, Jerome Gallate, did an "evil thing" to her at the balcony of their house. When asked to elaborate, she answered that the accused inserted his penis into her vagina and that she felt pain.^[7] After satisfying himself he gave her some candy.^[8] She also remembered that her father brought her to a hospital in Bontoc where she was examined.^[9]

Conrado Gunaden testified that he was married to Rose Gallate and complainants, Angelyn and Lilia Gunaden, were their legitimate children.^[10] Rose however left him in 1991 and he did not hear from her since then.^[11] He claimed that on 15 August 1991 his neighbor, a certain Banayan,^[12] told him that his daughters were both sexually molested by his brother-in-law Jerome Gallate.^[13] Conrado immediately confronted his daughters and both admitted that they were raped by their uncle.^[14] They further disclosed that they kept the incident among themselves as they were afraid of the accused.^[15] Conrado then brought his daughters to the municipio of Sabangan to file a complaint. At the municipio complainants were investigated by SPO4 Eduardo Palicos^[16] and

thereafter Conrado executed an affidavit of complaint.

SPO4 Eduardo Palicos narrated that while he was assigned at the Sabangan Police Station in August of 1991 he investigated a rape case involving the sisters Angelyn and Lilia Gunaden.[17] He recalled that the complainants, together with their father Conrado Gunaden and a certain Marcelo Gallate, uncle of the accused, went to the police station to file a complaint for rape. After obtaining their statements, he accompanied the girls to the Bontoc Hospital for medical examination.[18] He then arrested the accused and detained him at the Sabangan Jail, Mt. Province. However, while SPO4 Palicos was submitting some important papers to the Prosecution Office the accused escaped and absconded.[19] The next time he saw the accused was when the latter was apprehended in 1999 by members of the Intelligence Section of the Mt. Province Command of the Philippine National Police.[20]

SPO3 Froilan Changat also testified that he was assigned at the Intelligence Section of the Mt. Province Command of the Philippine National Police.[21] Sometime in 1995 he noticed the name of the accused in the "wanted" list for being an escaped suspect in a pending rape case. In December of 1998, a civilian asset informed him that the accused was in Sitio Katawaran, Madela, Quirino Province. He immediately assembled a six (6)-man team and proceeded to Sitio Katawaran where he coordinated with some "barangay" officials to apprehend the accused.[22] With the help of the local townsfolk, SPO3 Changat's team accosted the accused on 6 January 1999 and brought him to Bontoc for interrogation.[23]

Dr. Elaine Fagsao affirmed on the witness stand that she was employed at the Bontoc General Hospital since passing the 1990 medical board examinations.[24] She recalled that in August of 1991 she examined Angelyn and Lilia Gunaden in the hospital. In the Medico Legal Certificate her findings on Lilia Gunaden, then four (4) years and ten (10) months old, were as follows: non-gaping labia; rounded fourchette; vagina admitted tip of little fingers with resistance; distorted hymen with hymenal tears;[25] the multiple hymenal tears could have been caused by the penetration of an erect male organ.[26] Dr. Fagsao added that Lilia was very shy when the physical examination was conducted.[27]

As regards Angelyn Gunaden, then fifteen (15) years and eight (8) months old, her findings were as follows: erythematous vulva; non-gaping labia, rounded fourchette; hymenal tears at 3, 6, 7, & 9 o'clock position and vagina admitted 2 fingers with ease.[28]

Accused-appellant Jerome Gallate, lone witness for the defense, on the other hand, strongly denied the allegations against him, but offered no alibi nor revealed any ill motive on the part of the complainants or their father. He merely narrated that he was arrested by SPO4 Eduardo Palicos after his nieces, Angelyn and Lilia Gunaden, filed a complaint for rape against him.[29] Upon his arrest he was taken to the Sabangan Police Station where he was detained for about a week. While in custody, he was occasionally allowed to go outside the premises to cook food.[30] During one of those days, he ran away and hid in Madela, Quirino Province, where he was subsequently captured after eight (8) years.[31]

The trial court acquitted the accused of the charges in Crim. Cases Nos. 832-834 ratiocinating that there was insufficient evidence to convict him of raping then fifteen (15)-year old Angelyn Gunaden since she never testified during the trial. Furthermore, Conrado Gunaden's testimony that Angelyn Gunaden confided to him what accused did to her was hearsay and could not be used as a basis for conviction. However, the court a quo gave credence to the testimony of Lilia Gunaden and convicted the accused of rape in Crim. Case No. 835. He was sentenced to reclusion perpetua and ordered to pay Lilia P50,000.00 as indemnity and P20,000.00 as damages.[32] Hence, this appeal.

In his brief, accused-appellant raises three (3) main arguments: First, accused-appellant contends that complainant's story is incredible for being contrary to human nature and experience. According to him, it is

extremely unbelievable that Lilia Gunaden did not even shout while she was being sexually assaulted. Surely, a child of tender age would have made an outcry if a fully erect penis penetrated her genitals, yet she testified that she never shouted.[33] Furthermore, if she was truly raped then she would have seen the penis of the accused. Her claim that she did not see the organ of the accused evidently proves that her testimony is patently illogical.[34] Accused-appellant also points out that it is quite unconvincing that a ravaged child would opt to remain silent instead of immediately reporting her harrowing ordeal to her parents.[35] For him, these circumstances make the complainant's testimony highly doubtful.

We are not naive; hence, we disagree. The fact that complainant failed to make an outcry while being molested does not diminish her credibility for the failure of a victim to shout for help does not negate rape.[36] In fact, the absence of a struggle or an outcry from the victim is immaterial in the rape of a child below twelve (12) years of age because the law presumes that the victim, on account of her tender age, does not have a will of her own.[37] Neither can her failure to immediately report the incident to anyone be taken against her. It has long been established that the delay in the filing of a case does not necessarily impair the credibility of the victim - experience teaches us that many victims of rape never complain or file criminal charges against the rapist, for they prefer to bear the ignominy and pain in silence, rather than reveal their shame to the world or risk the offender's making good on his threats.[38]

Complainant's failure to see the penis of accused-appellant cannot also cast doubt on the truth of her allegations since the sight of the rapist's organ is certainly not an element of the crime of rape. What is essential is proof that rape was consummated by the slightest introduction of the male organ into the labia of the pudendum.[39] This was sufficiently established by complainant's positive testimony of the sexual assault and as a consequence of accused-appellant's insertion of his penis into her vagina she felt pain.[40] Complainant Lilia's sexual violation is further confirmed by the medical findings that she suffered multiple vaginal tears.[41] Besides, the assessment of the credibility of the offended party in a rape case falls primarily within the province of the trial court.[42] We see no cogent reason why we should deviate from this principle.

Second, accused-appellant asserts that Conrado Gunaden merely forced his daughter Lilia to fabricate the charges against him in retaliation for a previous scuffle they had. Accused-appellant further insinuates that Conrado himself could have very well been the author of the crime as he was charged with "acts of lasciviousness" in 1993 before the trial court of Mt. Province.[43]

This argument is pointless. Apart from the allegations of accused-appellant in his brief, he never presented a single strand of proof that Conrado Gunaden harbored any ill feelings against him. As a matter of fact, nowhere in his testimony did it appear that he and Conrado were ever involved in any altercation. His testimony comprised only of bare denials to the complainant's accusations. Moreover, we do not believe that Conrado merely compelled his daughter to testify against accused-appellant for it is unnatural for a parent to use his offspring as an instrument of malice, especially if it will subject a daughter to embarrassment.[44] And no man in his right mind would needlessly subject his child to a humiliating ordeal just to get even with another.[45]

Neither do we believe that Conrado Gunaden cunningly implicated accused-appellant to conceal the former's perverted acts. The fact that Conrado admitted during cross-examination that he was previously involved in an "acts of lasciviousness" case[46] does not necessarily mean that he was the one who molested his own daughters and that he pressured them to concoct the rape charges against accused-appellant. After all, there was never any whimper of a complaint against him by his daughters. The case for "acts of lasciviousness" against him was actually initiated sometime in 1993 by a certain Emma Sumedca and is totally unrelated to this case.

Third, accused-appellant insists that Lilia Gunaden, who was only thirteen (13) years old during the trial, was

incapable of remembering what transpired eight (8) years before. In fact, her testimony revealed that she could not recall important events in 1991 such as her birthday and Christmas day. Thus, the trial court erred in relying heavily on her testimony to convict him of rape.

Indeed, it was established during the trial that complainant Lilia Gunaden was only four (4) years and ten (10) months old when she lodged her complaint before the Sabangan Police Station in 1991. But, although she was unable to remember majority of the events in 1991, such as her birthday and Christmas day, she clearly recounted the "evil thing" that her uncle did to her, thus -

Q:

You said that Jerome Gallate is (sic) your uncle, do you know him personally this person?

A:

Yes, sir.

Q:

Madam witness, do you remember of any evil thing that this Jerome Gallate did to you?

A:

There is.

Q:

What is the bad thing that this Jerome Gallate did to you?

A:

He had a sexual intercourse with me.

Q:

And what do you mean when you said he had sexual intercourse with you?

A:

He inserted his penis into my vagina.

x x x x

Q:

Do you remember how old were you then?

A:

I could remember I was five (5) years old.

x x x x

Q:

You said that Jerome Gallate had sexual intercourse with you a long time ago. Would that be 8 years ago since you said you are 13 years old now?

A:

Yes, sir.

x x x x

Q:

You said that Jerome Gallate had sexual intercourse with you, what did you feel at that time?

A:

I felt pain on my vagina.[47]

Complainant Lilia Gunaden categorically stated that accused-appellant inserted his penis into her vagina and that she felt pain. Evidently, despite forgetting several significant events in 1991 due to her tender age, she vividly recalled the ordeal she endured in the hands of her uncle. And surely, it is not hard to fathom that such a shocking and traumatic experience would be indelibly imprinted in a child's mind even if it occurred when she was barely five (5) years old. This Court finds no reason to doubt her testimony for no woman, especially one who is of tender age, would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma, of a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[48]

Moreover, the medical findings of Dr. Elaine Fagsao corroborate the testimony of Lilia, thus -

Q:

In this document which you have identified in connection with your examination to (sic) Lilia Gunaden likewise indicated certain findings, please explain to the honorable court your findings?

A:

Findings on Lilia Gunaden: Non-gaping labia means non-retracted labia. Rounded fourchette – the same as what I said a while ago. Vagina admits 2 fingers with resistance means not with ease. Distorted hymenal tears means we could not locate where the hymenal tears are.

Q:

On your findings on this person you examined, there is distorted hymen with hymenal tears without indicating the position of the hymenal tears, will you tell us again what is the situation or condition of those distorted hymen?

A:

There are many hymenal tears that you could not locate the exact position of these tears.

Q:

And what could have caused the distortion of the hymen in the hymenal tears that you mentioned?

A:

Again from the history of the patient [sic] was due to rape.

Q:

And when you say rape, you are referring to the fact that there was penal (penile) penetration?

A:

Yes sir.[49]

Thus, Lilia's credible testimony coupled with the medical findings confirms that accused-appellant was the one who defiled her.

Another significant fact which convinces the Court of accused-appellant's guilt is his escape from the Sabangan Jail. If he is truly innocent of the crime charged, why did he flee from detention at the first available opportunity? We have repeatedly considered flight of an accused as an awareness of guilt and a consciousness that he has no tenable defense to the rape charge.[50]

Complainant Lilia Gunaden initiated the complaint for rape in 1991. However, trial started only in 1999 as accused-appellant had consistently eluded the authorities for eight (8) years. However, despite the long delay, the complainant has remained steadfast in her quest for justice. After eleven (11) years of frustration she deserves nothing less than the full force of the law. We affirm the findings of the trial court.

WHEREFORE, the assailed Decision of the Regional Trial Court, Br. 36, Bontoc, Mt. Province, finding accused-appellant Jerome Gallate guilty of rape in Crim. Case No. 835 and sentencing him to reclusion perpetua and to pay the offended party Lilia Gunaden P50,000.00 is AFFIRMED with the MODIFICATION that the damages of P20,000.00 awarded by the trial court should be increased to P50,000.00 consistent with existing jurisprudence and heretofore denominated as moral damages. Costs against accused-appellant.

SO ORDERED.

Mendoza, and Corona, JJ., concur.
Quisumbing, J., on official business.

[1] Penned by Judge Artemio B. Marrero, RTC-Br. 36, Bontoc, Mt. Province, prom. 26 May 2000; Rollo, pp.

31-32.

[2] Rollo, pp. 23-24.

[3] Id., pp. 23-24.

[4] Id., p. 24.

[5] Ibid.

[6] TSN, 6 July 1999, p. 4.

[7] Id., p. 5.

[8] Id., p. 6.

[9] Id., p. 5.

[10] TSN, 7 July 1999, p. 2.

[11] Id., p. 3.

[12] Full name of Banayan was not stated in the TSN; id., p. 4.

[13] Id., p. 3.

[14] Id., p. 17.

[15] Id., p. 7.

[16] Id., p. 6.

[17] Id., p. 26.

[18] Id., p. 28.

[19] Id., p. 29.

[20] Ibid.

[21] TSN, 10 August 1999, p. 2.

[22] Id., p. 4.

[23] Id., pp. 5-6.

[24] TSN, 11 August 1999, p. 3.

[25] Records, Crim. Case No. 835, p. 10.

[26] TSN, 11 August 1999, p. 8.

[27] Id., p. 9.

[28] Records, Crim. Case No. 832, p. 12.

[29] TSN, 26 October 1999, p. 5.

[30] Id., p. 7.

[31] Id., p. 6.

[32] See Note 1, p. 31.

[33] Rollo, p. 55.

[34] Id., p. 56.

[35] Id., p. 57.

[36] People v. Barcelona, G.R. No. 125341, 9 February 2000, 325 SCRA 168.

[37] People v. Alcartado, G.R. Nos. 132379-82, 29 June 2000, 334 SCRA 701.

[38] People v. Razonable, G.R. Nos. 128085-87, 12 April 2000, 330 SCRA 562.

[39] People v. Loriega, G.R. Nos. 116009-10, 29 February 2000, 326 SCRA 675.

[40] TSN, 6 July 1999, p. 5.

[41] TSN, 11 August 1999, pp. 7-8.

[42] People v. Villanueva, G.R. No. 135330, 31 August 2000, 339 SCRA 465.

[43] Per his testimony during cross examination, Conrado Gunaden admitted that he was charged with “acts of lasciviousness” by a certain Emma Sumedca in Crim. Case No. 1430 before the RTC of the Mountain Province, (branch not given) in 1993; TSN, 7 July 1999, p. 5.

[44] People v. Yaparraguire, G.R. No. 124391, 5 July 2000, 335 SCRA 69.

[45] People v. Gajo, G.R. No. 127749, 9 March 2000, 327 SCRA 612.

[46] TSN, 7 July 1999, p. 15.

[47] TSN, 6 July 1999, p. 10.

[48] People v. Segui, G.R. Nos. 131532-34, 28 November 2000, 346 SCRA 178.

[49] TSN, 11 August 1999, pp. 7-8.

[50] People v. Serellana, G.R. Nos. 102056-57, 8 June 1994, 233 SCRA 33.

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