

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HECTOR ALVIZ, APPELLANT.

G.R. Nos. 144551-55. June 29, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the decision[1] of Branch 74 of the Regional Trial Court of Olongapo City, convicting appellant of the crimes of rape and acts of lasciviousness.

Appellant Hector Alviz was charged with two counts of rape and three counts of violation of Section 5 (b), Article III of RA 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act) committed against his daughter, Hazel Alviz, in five separate informations:

Criminal Case No. 211-95

That on or about the month of July, 1994 at around 8:00 o'clock in the evening, at No. 2072 Brgy. Old Cabalan, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of minor Hazel Alviz, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness on the person of Hazel Alviz, who was only then fifteen (15) years old, by then and there kissed her on the mouth and put his tongue inside her mouth, against the will and consent of said Hazel Alviz, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 212-95

That on or about the 9th day of June, 1993 at around 2:00 o'clock in the morning, at 2072 Brgy. Old Cabalan, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the said accused, being the father of minor Hazel Alviz, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously, commit acts of lasciviousness on the person of Hazel Alviz, who was only then 13 years old, by then and there touched her breast and genital of said minor Hazel Alviz, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 213-95

That on or about the month of February, 1993, at No. 2072 Brgy. Old Cabalan, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of minor Hazel Alviz, with lewd design, and by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously, commit acts of lasciviousness on the person of Hazel Alviz, there touched her breast, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 214-95

That on or about the 6[th] day of August, 1994, at around 4:30 o'clock in the morning, at No. 2072 Brgy. Old Cabalan, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of Hazel Alviz, a minor of 15 years old, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Hazel Alviz, against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.

Criminal Case No. 215-95

That on or about the 2nd day of November, 1993 at No. 2072 Brgy. Old Cabalan, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the father of Hazel Alviz, who was then 14 years old, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said Hazel Alviz, against her will, to the damage and prejudice of the latter.

CONTRARY TO LAW.[2]

When arraigned on September 20, 1995, appellant pleaded not guilty to all the crimes charged. Thereafter, trial ensued.

The inculpatory facts, based on the testimony of victim Hazel Alviz and social worker Rubilyn Domingo, follow.

Sometime in February 1993 at about 8:00 p.m., then thirteen-year-old Hazel Alviz was in their living room watching television while lying down on their couch. Her three brothers, Ronald, Joseph and Joey, who were about an arm's length away from her, were also watching TV. Their mother was in the kitchen.

Appellant arrived and lay down beside Hazel. Suddenly, appellant touched her breasts and genitalia. She tried to stop her father but appellant persisted and kept on touching her private parts for about 10 to 15 minutes. She testified that she was so afraid that her father would hit her and her mother and brothers, as he usually did, so she did not report the incident to her mother.

On June 9, 1993, appellant repeated what he did to her. At about 2:00 a.m., she was sleeping in their living room together with her brothers when appellant arrived home drunk. She was awakened by the noise he created. Again, he lay down beside her and started to touch her private parts. She attempted to move away from appellant but her father pulled her back and continued to fondle her until he fell asleep. Again, she did not report this incident to her mother because of fear that her father might hurt her and the rest of her family.

Appellant molested his daughter again on the night of November 2, 1993. While she was sleeping in their living room with her brothers, she woke up when she felt that someone was sucking her breasts. True enough, her father was on top of her doing so. He then went down to lick her genitalia. Thereafter, appellant inserted two fingers inside her vagina and repeatedly rubbed his penis against it. She could only cry that night.

In July 1994, at about 8:00 p.m., she went to her bedroom.[3] Appellant followed her. He kissed her and when he attempted to insert his tongue inside her mouth, she shouted "ang bastos." Appellant reasoned that he was inserting his tongue in her mouth to ease her toothache. He continued to insert his tongue into her mouth. Hazel this time shouted "Ma, tingnan mo ang ginagawa sa akin ni papa!" However, her mother said nothing. Appellant then went out of her room and proceeded to his own room where her mother was. She later overheard her mother asking her father "Ano na naman ang ginagawa mo sa anak mo?" He replied "Naglalambing lang naman ako sa anak mo... madumi ang utak mo." [4]

August 6, 1994 was Hazel's birthday. At about 4:30 a.m. while she was sleeping, appellant fondled her breasts and inserted his finger inside her vagina. He then forced his penis inside her organ. When he failed to penetrate it

completely, he again inserted his finger. Alternately, he inserted his finger and penis until he ejaculated. Then he left her crying.

She did not disclose to her mother the ordeal she had been undergoing in the hands of her father because of fear. Instead, she intimated it to her friend, Aurora Turibio, who offered her house for Hazel to temporarily stay in. Later, she divulged it to another friend, Edilberto de Leon, and her teacher, Lilia Tudla, who referred the matter to the guidance counselor. Her mother was summoned but she showed her no sympathy or support. She even scolded her. So Hazel ran away from home.

In Burnham Park, Baguio City, Hazel found shelter. She became a street child wandering about in the park. There she met some students to whom she related her bitter experience. Through their kindness, she was referred to PROLIFE (a non-governmental organization focused on teenage pregnancy) which in turn directed her to the Child and Family Service (CFS). She was admitted to the CFS for temporary care and underwent counseling under social worker Rubilyn Domingo.

During one of the sessions, Hazel admitted to Rubilyn that she was first molested by her paternal grandfather who used to live with them in Olongapo. After her grandfather left their house, her own father started to do to her what seemed to be a common sexual perversity of her father's clan. After her disclosure, she was brought to the Philippine National Police (PNP) crime laboratory for medico-legal examination which revealed that there were shallow, healed hymenal lacerations in the 6 and 9 o'clock positions and that she was in a "non-virgin" state.[5]

In his defense, appellant denied the charges against him. He alleged that it was impossible for him to commit such acts against Hazel without being noticed because his wife slept in the bedroom with him while their children slept together in the sala. He added that he was strict with her but he never abused much less raped his daughter. He suspected that the cases were filed against him either because Hazel was scared for running away from home or because he threatened not send her to school anymore or because somebody else forced her to file the complaints. Appellant concluded that, in any event, his daughter had already forgiven him.

On July 12, 1999, the defense called Hazel to the witness stand to confirm that she had already forgiven her father. Despite her deep emotional and psychological trauma, Hazel showed nothing but deference and respect for her parents. She stated in open court that, after she gave birth on February 8, 1999, she realized how much she owed her father (and mother) for having been born in this world and that there was nothing she could do to repay them for that. After her testimony, no other witnesses were called to testify for the defense.

On March 30, 2000, the trial court[6] convicted appellant of all the charges:

WHEREFORE, this Court finds accused HECTOR ALVIZ –

GUILTY of Violation of Section 5(b), Article III, R.A. No. 7610 in Criminal Case No. 211-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of prision correccional;

GUILTY of Violation of Section 5(b), Article III, R.A. No. 7610 in Criminal Case No. 212-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of prision correccional;

GUILTY of Violation of Section 5(b), Article III of R.A. No. 7610 in Criminal Case No. 213-95 and hereby sentences said Hector Alviz to suffer the penalty of six (6) years of prision correccional.

GUILTY of Rape under Article 335 of the Revised Penal Code in Criminal Case No. 214-95 committed on August 6, 1994 and hereby sentences said Hector Alviz to suffer the penalty of DEATH and to pay his victim the sum of Seventy Five (P75,000.00) Pesos for damages;

GUILTY of Rape under Article 335 of the Revised Penal Code in Criminal Case No. 215-95 committed on

November 2, 1993 (before the restoration of death penalty as a capital punishment) and hereby sentences said Hector Alviz to suffer the penalty of RECLUSION PERPETUA and to pay his victim the sum of Seventy Five (P75,000.00) Pesos for damages.

SO ORDERED.[7]

In his brief, appellant argues that the trial court erred in (1) finding him guilty beyond reasonable doubt of the charges imputed against him on the basis of the incredible story of the complaining witness; (2) finding him guilty of rape in criminal case nos. 214-95 and 215-95 when the evidence adduced tended to prove otherwise; (3) imposing the penalty of death on him in criminal case no. 214-95 despite the failure of the prosecution to prove the real age of the victim and its failure to allege and prove that the rape was committed in full view of relatives within the third degree of consanguinity.

In support of these arguments, appellant posits that it taxed human credulity that appellant could be so brazen as to sexually molest his daughter openly within the full view and hearing of his wife and other children. The uncorroborated testimony of the complaining witness, being incredible, could not justify a conviction. What baffles appellant is why the prosecution failed to present as witnesses the complainant's mother and siblings who could have been good eye-witnesses had the imputations been true.

Appellant further asserts that the physical evidence belied the truthfulness of complainant's story. He claims that the accusations against him were made to conceal Hazel's real predicament. The medical report showing that complainant's hymen had shallow healed lacerations at the 6 and 9 o'clock positions and that she was in a "non-virgin" state only proved that complainant had a previous sexual encounter but not necessarily with the appellant. Furthermore, the finding was contrary to the victim's admission that appellant never fully and successfully penetrated her organ.

Appellant also maintains that, although the minority of the victim was alleged in the informations, it was not proven during the trial.

In his brief, appellant underscores the doubtful and incredible testimony of Hazel that sexual intercourse took place. He quotes that portion of her testimony when she said appellant was not able to insert his organ into hers, thus creating a doubt as to whether or not the penis of appellant did in fact enter the vagina or pudendum of Hazel.

The Court has been consistent in applying the following guiding principles in rape cases: (a) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (b) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution, and (c) the evidence of the prosecution must stand or fall on its own merit and cannot be allowed to capitalize on the weakness of the evidence of the defense.[8]

The focal point of the prosecution's evidence is, in the final analysis, Hazel's testimony. After carefully observing her demeanor, with emphasis on gestures and tenor of voice, the trial court found Hazel's testimony clear, honest, spontaneous and straightforward, as opposed to appellant's evasive attitude.

It has long been held that the trial court's evaluation of the credibility of witnesses should be viewed as correct and entitled to the highest respect because it has the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they give their testimony. The trial judge therefore is in a better position to determine if witnesses are telling the truth and to weigh conflicting testimonies. Thus, unless the trial judge plainly overlooks certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of witnesses must be respected.[9]

Appellant's defense is primarily denial which is essentially a weak defense. A denial unsubstantiated by clear and convincing evidence is negative, self-serving and merits no weight in law, and cannot therefore be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[10] A denial cannot prevail over the positive identification of an accused by the prosecution witnesses.[11]

As already stated, appellant argues that the commission of the crimes charged was improbable due to the attendant circumstances. In the first place, rape is not necessarily committed only in seclusion. Rape has in fact been committed in a room adjacent to where the victim's family was sleeping or even in a room the victim shared with other women.[12] In this light, rape in the case at bar was not an impossibility.

Evil knows no bounds and the beast in man respects neither time nor place, driving him to commit rape anywhere, even in places where people congregate such as parks, along the roadside, within school premises or in a house where there are other occupants.[13] Lust is no respecter of time and place.[14]

Hazel's testimony painted a graphic picture of a cruel and shameless father who always got what he wanted. He was quick to maul his wife and children and we can safely presume that the cries and moans of his family during such incidents were easily heard by their neighbors. If that did not stop appellant from hurting them, what would have deterred him from satisfying his bestial instincts within the confines of a house in the presence of a wife and young children who were all cowering in fear of him?

At the center of appellant's defense is the theory that Hazel was induced by other people to file the cases against him. Thus, the accusations against him were allegedly mere concoctions.

The Court is inclined to believe, however, that it was appellant who concocted his defense. Hazel, a young and innocent adolescent, would not have fabricated a tale of defloration, allowed an examination of her private parts and thereafter subjected herself to a public trial had she not been motivated solely by the desire to have her tormentor apprehended and punished.[15]

Appellant argues that Hazel herself testified that he merely attempted to insert his penis into her vagina. We are not persuaded and in fact have no doubt that rape was consummated.

According to the recent case of *People vs. Campuhan*,[16] we must first ascertain whether the penis of the accused succeeded in entering the labial threshold of the vagina before we can safely conclude that rape was consummated:

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g. mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e. touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

The trial court, after carefully analyzing Hazel's categorical and spontaneous answers, concluded that the penis of appellant slightly entered the victim's vagina or pudendum. We agree. Then fourteen-year-old Hazel was not expected to be knowledgeable about sexual intercourse and every stage thereof. The fact that she answered "he

was not able to penetrate all of his organ, only the end portion (dulo)” — when asked whether or not appellant succeeded in inserting his penis into her vagina — did not mean that there was no penetration.

The findings of the medico-legal officer revealed that Hazel’s vagina bore lacerations at the 6 and 9 o’clock positions and that she was in a non-virgin state physically.

Perforce, we conclude that both the victim’s positive testimony and the findings of the medico-legal officer complemented each other in the conclusion that there was penetration, however slight. Appellant attempted to insert his penis several times. Because of Hazel’s resistance, the penetration was slight. Nevertheless, this already constituted rape considering that appellant’s penis did not just touch Hazel’s organ but actually entered it. The mere entry of the penis into the labia majora of the vagina suffices to convict for rape.[17]

We are thus convinced that, when Hazel testified that she had been raped, she said, in effect, all that was necessary to constitute the commission of the crime. And this should be applied with more vigor in the case at bar where the culprit was the victim’s father. An incestuous sexual assault is a psycho-social deviance that inflicts a stigma not only on the victim but on her entire family as well.[18] In these cases, the sole testimony of a credible victim may seal the fate of the rapist. Hazel, although she has forgiven her father for the sexual assaults against her, must finally obtain justice.

In imposing the death penalty in criminal case no. 214-95, the trial court applied Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659 (the Death Penalty Law) which reads:

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

- when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

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The trial court took into consideration the testimonial and documentary evidence adduced. Although the minority of the complainant was alleged in the informations, it was not proven during the trial. Significant is the case of *People vs. Javier*[19] where the Court ruled that the minority of the victim must be proved with equal certainty and clearness as the crime itself:

In a criminal prosecution especially cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld.

We have meticulously examined the records of the case and we are convinced that the evidence for the prosecution falls short of the required quantum of proof for the proper imposition and carrying out of the death penalty. Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently established the victim’s age is fatal and consequently bars conviction for rape in its qualified form.

Likewise, in *People vs. Liban*,[20] we ruled:

Relative particularly to the qualifying circumstance of minority of the victim in incestuous rape cases, the Court has consistently adhered to the idea that the victim’s minority must not only be specifically alleged in the information but must likewise be established beyond reasonable doubt during trial. Neither the obvious minority of the victim, nor the absence of any contrary assertion from the defense, can exonerate the prosecution from these twin requirements. Judicial notice of the issue of age, without the requisite hearing

conducted under Section 3, Rule 129, of the Rules of Court, would not be considered enough compliance with the law. The birth certificate of the victim or in lieu thereof, any other documentary evidence, like a baptismal certificate, school records and documents of similar nature, or credible testimonial evidence, that can help establish the age of the victim should be presented. While the declaration of a victim as to her age, being an exception to the hearsay proscription, would be admissible under the rule on pedigree, the question on the relative weight that may be accorded to it is another matter. Corroborative evidence would be most desirable or even essential when circumstances warrant.

In the instant case, nothing could be obtained from the records of the case to ascertain the correct age of Hazel except her bare testimony that she was 14 years old at the time she was raped.

We therefore reduce the death penalty imposed by the trial court to reclusion perpetua in criminal case no. 214-95[21] on account of the insufficiency of proof of the qualifying circumstance of minority of the victim.

It follows that the award of P75,000 as civil indemnity should be reduced to P50,000 since the commission of rape by appellant was not effectively qualified by any of the circumstances justifying the death penalty under the present amended law. The award of P50,000 as moral damages for each rape committed by appellant is likewise in order according to the ruling in *People vs. Prades*[22] without the necessity for pleading or proof.

Lastly, considering the depravity of the acts of appellant, the award of exemplary damages in the amount of P25,000 for each rape committed is proper to deter similar perversities, particularly the sexual abuse of one's daughter.[23]

WHEREFORE, the decision under review is hereby **AFFIRMED** with the following **MODIFICATIONS**:

(a)

In criminal case no. 214-95 for the rape committed on August 6, 1994, appellant Hector Alviz is hereby sentenced to suffer the penalty of reclusion perpetua. He is likewise ordered to pay victim Hazel Alviz the amount of P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

(b)

In criminal case no. 215-95 for the rape committed on November 2, 1993, appellant Hector Alviz is hereby sentenced to suffer the penalty of reclusion perpetua and is ordered to indemnify the victim the reduced amount of P50,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, J., on official leave.

Austria-Martinez, J., on leave.

[1] Penned by Judge Fatima Gonzales-Asdala.

[2] Rollo, pp. 128-130.

[3] Hazel had no bedroom of her own prior to July 1994. The said room was a former store later converted into a bedroom.

[4] TSN, February 7, 1995, pp. 15-18.

[5] TSN, February 5, 1997, pp. 10-11.

[6] Branch 74, RTC, Judge Fatima Gonzales-Asdala presiding.

[7] RTC Decision dated March 20, 2000, Rollo, pp. 40-41.

[8] *People vs. Gallo*, 284 SCRA 590 [1998]; *People vs. Barrientos*, 285 SCRA 221 [1998]; *People vs. Balmoria*, 287 SCRA 687 [1998]; *People vs. Sta. Ana*, 291 SCRA 188 [1998]; *People vs. Perez*, 270 SCRA 526 [1997].

[9] *People vs. Ramirez*, 266 SCRA 336 [1997]; *People vs. Gabris*, 258 SCRA 663 [1996]; *People vs. Vallena*, 244 SCRA 685 [1995].

[10] *People vs. Tumaob, Jr.*, 291 SCRA 133 [1998].

[11] *People vs. Villamor*, 297 SCRA 262 [1998].

[12] *People vs. Talaboc*, 256 SCRA 441 [1996]; *People vs. Burce*, 269 SCRA 293 [1997].

[13] *People vs. Agbayani*, 284 SCRA 315 [1998].

[14] *People vs. Gementiza*, 285 SCRA 478 [1998]; *People vs. Lusa*, 288 SCRA 296 [1998].

[15] *People vs. Taneo*, 284 SCRA 251 [1998].

[16] 329 SCRA 270 [2000].

[17] *People vs. Cabiles*, 284 SCRA 199 [1998]; *People vs. Sanchez*, 250 SCRA 14 [1995].

[18] *People vs. Burce*, *supra*.

[19] 311 SCRA 122 [1999].

[20] 345 SCRA 453 [2000].

[21] In criminal case no. 214-95, the trial court imposed the death penalty on appellant. In criminal case no. 215-95, the trial court imposed reclusion perpetua as his penalty.

[22] 293 SCRA 411 [1998].

[23] *People vs. Sangil, Sr.* 276 SCRA 532 [1997].

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