

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO CALDERON, APPELLANT.

G.R. Nos. 145343-46. December 03, 2002

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PER CURIAM:

For automatic review by this Court is the decision[1] of the Regional Trial Court of Iloilo City dated March 31, 2000, finding the accused-appellant Eduardo Calderon guilty beyond reasonable doubt of one (1) count of attempted rape and three (3) counts of consummated rape.

The similarly worded complaints against the accused-appellant read as follows:

“That sometime in the month of March, 1997, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, abuse of confidence and trust, he, being the father of the undersigned, with deliberate intent and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse of the undersigned who, at that time was 10 years of age when she was raped for the first (second/third/fourth) time.”[2]

When arraigned on September 16, 1997, the appellant pleaded “not guilty.”[3]

In the appellee’s brief, the Solicitor General summarized the evidence for the prosecution thusly:

“Complainant Cheryl Calderon was born on May 18, 1986 to spouses appellant Eduardo Calderon and Melanie Calderon. She has two (2) younger brothers. She was ten (10) years old when appellant raped her four (4) times inside their house in Tambal, Janiuay, Iloilo. Her mother, Melanie Calderon, was then working in Manila.

“The first rape incident happened in the evening of March 20, 1997. She, her two (2) younger brothers and appellant were all asleep on the floor of their house. Their house had no partition. She slept farthest from appellant with her two (2) younger brothers between them.

“About midnight, she was awakened when appellant placed himself on top of her. Her panties had already been removed. Appellant inserted his penis into her vagina and made push and pull movements for quite sometime. She felt pain in her organ. However, she did not shout for help nor wake her brothers up because appellant had a bolo with him. She just cried and asked appellant why he did it to her but the latter gave no reply. After appellant was through, he returned to his place on the floor and went back to sleep.

“Complainant was again raped by appellant on March 21, 22 and 23, 1997. The three (3) succeeding rapes were all committed about the same time, in the same place and in the same fashion and manner as the first. Thus, she would be awakened about midnight with appellant on top of her. Appellant would then insert his penis into her vagina and proceed to make push and pull movements. Appellant would thereafter return to his place on the floor and go back to sleep. She did not shout for help nor wake her brothers up because appellant had a bolo with him. She merely cried.

“Meantime, in the morning of the day following the third time she was raped, complainant told her cousin

Lorna Sta. Cruz what appellant had done to her. Lorna Sta. Cruz relayed the information to complainant's aunt, Merlyn Hilado who, in turn, reported the matter to complainant's grandmother, Juliana Correal.[4] Consequently, Juliana Correal brought complainant to Dr. Noel G. Gigare of the Federico Roman Tirador, Sr. Memorial Hospital in Janiuay, Iloilo, for medical examination. Dr. Gigare issued a medical report dated April 29, 1997 with the conclusion that the 'patient is in a virgin state physically albeit 'there is a presence of deep, old hymenal laceration at 3 o'clock.'

"On April 18, 1997, complainant's mother, Melanie Calderon, arrived in Janiuay, Iloilo. She came home from Manila because complainant called her up by telephone twice asking her to come home. The first time she called, complainant gave the pretext that her younger brother was in the hospital and, on the second time, that the barangay captain wanted to see her. It was only on her arrival that she came to learn the true cause why complainant wanted her to come home. Complainant confided to her that she was repeatedly raped by appellant.

"Melanie Calderon brought Cheryl to their barangay captain Virgilio Escander who then accompanied them to the police. On July 8, 1997, Cheryl was examined by Dr. Owen Libaquin, medico-legal officer, PNP Crime Laboratory, Camp Delgado, Iloilo City. The doctor issued the following report on the result of his examination, thus:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are conical, with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is absent growth of pubic hairs. Labia majora are full, convex and coaptated with the light brown labia minora presenting in between. On separating the same disclosed an elastic and fleshy hymen with deep healed lacerations at 3 and 7 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of application of any form of violence."[5] (Citations omitted)

On the other hand, the appellant raised the defense of denial and alleged that the charge had been merely concocted by his wife's relatives, who disdained him for his laziness. He added that when he and his wife quarreled, the latter was joined by his mother-in-law in beating him up. He claimed that on the nights of March 20, 21, 22 and 23, 1997, private complainant slept in his sister's house, which was 100 meters away from their conjugal dwelling:[6]

Aida Dalisay, sister of the accused-appellant, testified "[t]hat on March 16, 1997 up to March 24, 1997, private complainant stayed in their house because she is afraid of her father as she was beaten by the latter. When she asked her niece why her father has beaten her, the private complainant answered that she was lazy in fetching water when asked to do so. The latter stayed there for almost five (5) weeks and left on April 25, 1997 when her mother came home from Manila."[7]

The trial court ruled that "Cheryl's straightforward and vivid account of her traumatic experience shows that she was impelled by no other impetus than to bring to justice the defiler of her virtue."[8] It considered as outlandish and preposterous the allegation of the appellant that she had fabricated the charges of rape against him. It thus decreed:

“WHEREFORE, premises considered and in the light of the facts obtaining and the jurisprudence aforesaid, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of one (1) count of Attempted Rape hereby sentencing the accused to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prison mayor as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, and three (3) counts of consu[m]mated Rape hereby sentencing the aforesaid accused to the supreme penalty of DEATH by lethal injection in each of these three (3) cases, further condemning said accused to indemnify the victim the sum of P75,000.00 or in the total sum of P225,000.00 and P30,000.00 for each case by way of moral damages.

“The accused who is presently detained is ordered immediately remitted to the New Bilibid Prison, Muntinlupa City at the earliest opportunity.

“Let the entire records of this case be elevated to the Honorable Supreme Court, Manila for automatic review.

SO ORDERED.”[9]

In his appeal Brief, the accused-appellant argues that “THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE AND GIVING CREDENCE AND WEIGHT TO THE TESTIMONY OF THE PRIVATE COMPLAINANT DESPITE HER TESTIMONY BEING INCONSISTENT WITH THE MEDICAL FINDINGS, THUS, INHERENTLY FULL OF MATERIAL INCONSISTENCIES THAT BELIE HER CREDULITY [sic].”[10]

The accused-appellant avers that the testimony of the private complainant is uncorroborated and materially inconsistent with the first examining doctor’s medical findings and hence not credible. He also claims that during the month of March, she slept either in his sister’s or his mother-in-law’s house; thus, the alleged rape incidents could not have taken place.

Time and time again, the Court has held that appellate courts will not disturb the evaluation by the trial court of the witnesses’ credibility because, having observed their deportment and manner of testifying, it was in a better position to weigh conflicting testimonies. This rule stands, unless the trial judge has overlooked certain facts of substance and value which, if considered, might affect the result of the case.[11] Herein appellant has failed to give us cogent reasons to disturb the ruling of the court a quo upholding the private complainant’s credibility.

With regard to the sleeping arrangement, the evidence shows that the girl slept at her aunt’s house for a few days after she had been scolded and beaten up by her father, and at her grandmother’s house after the alleged rape incidents had taken place. Such evidence, however, does not foreclose her claim of having slept in their own house with her brothers and father on the nights of March 20 to 23, 1997 when the rapes occurred. When tested against normal human experience, her claim is more credible than that of the accused-appellant, who insists that she did not sleep at all in their own house during the month of March 1997.

Neither do we find any reason to overturn the factual findings of the court a quo regarding the credibility of her testimony on the rape incidents. The medical report of Dr. Noel Gigare that “the patient is in virgin state physically” does not warrant the reversal of the trial court’s finding. It must be noted that in that same report, the doctor also reported the “presence of deep, old hymenal laceration at 3 o’clock.”

This finding indicates that the girl’s vagina may have indeed been penetrated by something that could cause such deep laceration. Furthermore, Dr. Gigare was not presented as an expert witness during the trial. Neither the prosecution nor the defense admitted or showed to the satisfaction of the RTC that he was an expert on the subject of examining rape victims. Hence, his conclusions were correctly disregarded by the trial court.

On the other hand, Dr. Owen Libaquin was presented by the prosecution as an expert witness, and the defense

accepted his qualifications. His medical findings were as follows: the hymen of the girl was (1) elastic and fleshy with deep healed lacerations at the 3 and the 7 o'clock positions, and her external vaginal orifice offered moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum; and (2) she was in a non-virgin state physically. These findings corroborated and lent truth to her account that she had been raped.

Verily, the testimony of a rape victim against her father is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law.[12] A daughter would not accuse her own father of a serious offense like rape had she not really been aggrieved.[13] Moreover, when a 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.[14]

In the present case, the complainant testified on the fact of carnal knowledge as follows:

“Q

By the way, that midnight of March 20, 1997, could you tell this Court what were you doing at that time?

A

I was sleeping.

Q

Now, where did you sleep, in what part of your house did you sleep that night of March 20, 1997?

A

At the side of our house.

Q

What side of your house?

A

At my back.

COURT:

Q

Is it inside or outside the house?

A

Inside the house.

COURT:

Proceed.

FISCAL:

Q

How many rooms did your house have?

A

None, Ma'am.

Q

Now, your house is only a one-room affair?

A

Yes, Ma'am.

Q

In sleeping, could you tell us who was your companion at that time sleeping inside your house?

A

Me, my father and brothers.

Q

In what particular part inside your house did you sleep on that particular hour and date, on the bed or on the floor?

A

On the floor.

Q

Could you tell us the sequence how you were situated at that time while sleeping on the floor of your house?

A

Yes, Ma'am.

Q

Tell this Honorable Court.

A

I was sleeping with my other brothers.

Q

What side of your body was your brother sleeping with you?

ATTY. DALIPE:

No basis that the brother was sleeping.

COURT:

Reform.

COURT:

Q

Who was your companion when sleeping inside your house?

A

My third brother.

Q

What is the name?

A

Cyril Kit.

Q

Who else besides Cyril Kit?

A

Eduardo, Jr.

Q

And your father?

A

Yes, Ma'am

Q

What were your 2 brothers doing when you went to sleep?

A

They also went to sleep.

Q

Where did they sleep in relation to the place where you were sleeping?

A

My 2 brothers were situated in between.

Q

In between who?

A

In between my father and me.

Q

Your 2 brothers were in between you and your father?

A

Yes, Ma'am.

COURT:

Proceed.

FISCAL:

Q

You said on March 20, 1997 at 12:00 midnight you were sleeping on that floor. You said your 2 brothers were sleeping, in between you and your father. Tell us what happened while you and your 2 brothers were sleeping on that floor on March 20, 1997?

A

Yes, Ma'am, I was raped by my father.

Q

How did your father rape you?

A

He pulled out my panty.

Q

When your father pulled your panty, were you awakened?

A

No, Ma'am.

Q

Did your father wake you up?

A

Yes, Ma'am.

Q

Then after your father pulled your panty, what did he do?

A

He made a push and pull.

COURT:

Q

Push and pull what?

A

Push and pull movement.

COURT:

Proceed.

FISCAL:

Q

What was the position of your father when he pulled your panty?

A

He was on top of me.

x x x x x x x x

Q

What did you feel when your father was on top of you making a push and pull movement?

A

Painful.

Q

What was painful?

A

My vagina.

Q

Why did you experience pain in your vagina?

A

Because he inserted his penis to my vagina.

Q

Was he able to penetrate his penis fully into your vagina?

A

Yes, sir

Q

Can you estimate how long more or less was the penis of your father that penetrated your vagina?

A

I do not know, it was dark.

Q

How long did the penis of your father remained inside or remained inserted in your vagina?

A

For quite sometime.

Q

While the penis of your father was inserted in your vagina, what did you feel?

A

I felt pain.

Q

Did you enjoy it?

A

No, sir.

Q

Did you experience any orgasm on the part of your father?

A

No, sir.

Q

Did you shout for help?

A

No, sir.

Q

Why did you not shout for help?

A

Because he has a bolo.

Q

Did you not awaken your younger brother?

A

No, sir.

FISCAL:

Q

So you said you did not shout, what were you doing at that time when he inserted his penis and did the push and pull movement?

A

I just cried.

Q

You said that your father made the push and pull movement for quite a long time. After he was finished, how did you know that your father was already through with his evil act?

A

He left.

Q

What did he do after he left?

A

He slept.

Q

Where did he sleep?

A

At the other side.

Q

Now, while your father was doing the push and pull movement, did you tell anything to your father?

A

Yes, Ma'am.

Q

What did you tell him ?

A

‘Why is it you have done this to me.’

Q

And what was his answer?

A

No, Ma’am, he just left.

Q

And after he did the act, did he tell you anything?

A

No, Ma’am.

Q

You mean he just left you and went to the place where he used to sleep?

ATTY. DALIPE:

Already answered.

COURT:

Q

You said your only companions were your father and 2 brothers. Where was your mother at that time?

A

In Manila.”[15]

xxx xxx xxx

Q

What time was that when you were raped on March 21, 1997?

A

About 12:00 o'clock.

Q

The same time as the first time he raped you?

A

Yes, sir.

Q

In what place?

A

At Tambal.

Q

In what place at Tambal?

A

In our house.

Q

And what were you doing at that time when you said your father raped you for the second time?

A

I was sleeping.

Q

And what was your position at that time when you were sleeping? the same position the night before?

A

Yes, sir.

Q

Who were your companions?

A

The same two (2) brothers.

Q

And the same two brothers of yours were sleeping in between you and your father?

A

Yes, sir.

Q

What did your father do that March 21, 1997 at 12:00 o'clock midnight while you were sleeping?

A

He raped me.

Q

How did your father raped you?

A

He pulled out my panty.

Q

And after that?

A

He made a push-and-pull movement.

Q

How about the attire of your father below, what was his attire before he made a push-and-pull movement?

A

Brief.

Q

What was the color?

A

White.

Q

When your father pulled out your panty, what was his position at that time?

A

On top of me.

Q

You mean he was already on top of you when he pulled out your panty?

A

Yes, sir.

Q

After you said he pulled your panty up and made that push-and-pull movement, what did you feel?

A

I felt pain.

Q

Why did you feel pain?

A

Because he inserted his penis to my vagina.

COURT:

Q

You said the accused was wearing a brief, how could he have inserted his penis to your vagina when he was wearing brief?

A

Because he also pulled off his brief.

FISCAL:

Q

For how many minutes he did that push-and-pull movement?

A

Its quite a long time.

Q

What was your father doing at that time?

A

He did the push-and pull.

Q

And you?

A

Crying.

Q

Did you not resist him?

A

No, sir.

Q

Why?

A

Because he has a bolo.

Q

Where was his bolo at that time?

A

On my side.

Q

How did you know he was already through?

A

He left.

Q

After he left did he tell you anything?

A

Yes, sir.

Q

What did he tell you?

A

I will not reveal it.

Q

Why, if you reveal what will happen?

A

He will kill me.

Q

How about the third time, could you still remember when was that?

A

March 22, 1997.

Q

Could you still remember what day was that?

A

It was a Saturday.

Q

What time was that when he raped you on March 22, 1997?

A

12:00 o'clock.

Q

Almost the same time as the first and the second?

A

Yes, sir.

Q

In what place?

A

At Tambal.

Q

In what place?

A

In our house.

Q

And what were you doing at that time?

A

I was sleeping.

Q

Did he awake you again?

A

Yes, sir.

Q

What did he do?

A

He raped me again.

Q

How did he rape you?

A

He pulled off my panty.

Q

What did he do when he pulled off your panty?

A

He made the push-and-pull movement.

Q

And what was his position at that time?

A

He was already on top of me.

Q

How did he do the push-and-pull act, what did he do with his penis?

A

He held it and inserted to (sic) my vagina.

Q

Was his penis able to penetrate your vagina the third time?

A

Yes, sir.

Q

After he inserted his penis inside your vagina, what did he do?

A

He left.

Q

He left after he made the push-and-pull movement?

A

Yes, sir.

Q

For how long did he do the push-and-pull movement?

A

Quite a long time.

Q

What were you doing at that time when he did the push-and-pull movement?

A

Crying.

Q

You did not resist him, you did not kick him?

A

No, sir.

Q

You did not elbow him?

A

No, sir.

Q

Why?

A

Because he has a bolo.

Q

You mean your father is always sleeping with a bolo on his side.

A

Yes, sir.

Q

How big is that bolo?

A

Quite big.

Q

After he was through what did he do?

A

He left.

Q

And where did he go?

A

In his resting place.

Q

Did he tell anything to you after he left you?

A

Yes, sir.

Q

What did he tell you?

A

I will not reveal.

Q

And what happen if you will reveal?

A

He will kill me.

Q

When your father was doing this for three (3) times, were the two (2) boys not awakened?

A

No, sir.

Q

Did you not tell your brother who is 9 years old about what your father did to you?

A

No, sir.

Q

Why?

A

Because my father told me not to reveal to anybody.

Q

The fourth time your father raped you, could you still remember what date was that?

A

Yes, sir.

Q

What?

A

March 23.

Q

Could you still remember what day was that?

A

Sunday.

Q

You mean your father raped you from Thursday, Friday, Saturday and Sunday?

A

Yes, sir.

Q

About what time, was that again?

A

Around 12:00 o'clock.

Q

The same time as the previous three (3) rapes?

A

Yes, sir.

Q

In what place?

A

At Tambal.

Q

In what place at Tambal?

A

Our house.

Q

And what were you doing at that time when your father raped you for the 4th time?

A

Sleeping.

Q

Were you awakened?

A

No, sir.

Q

Did he awake you?

A

Yes, sir.

Q

Why, what did he do?

A

Because he raped me.

Q

How did he rape you?

A

He pulled out my panty.

Q

And after he pulled out your panty what did he do?

A

He made the push-and-pull movement.

Q

Before he made the push-and-pull movement, what did he do with his panty?

A

He held it and inserted his penis into my vagina.

Q

And he did the push-and-pull movement?

A

Yes, sir.

Q

For how many minutes he did it?

A

Quite a long time.

Q

What were you doing at that time when your father was doing the push-and-pull movement?

A

I was crying.

Q

Did you not resist?

A

No, sir.

Q

Did you not elbow him?

A

No, sir.

Q

Did you not kick him?

A

No, sir.

Q

Why?

A

Because he has a bolo.

Q

All these four (4) rapes committed by your father against you, what did you feel?

A

Its [sic] painful.

Q

Where, on what part of your body?

A

Vagina.

Q

Because you felt the pain, what did you do?

A

I cried.”[16]

The foregoing positive and categorical testimony of the private complainant bears the earmarks of truth. It sufficiently establishes that the accused-appellant had carnal knowledge of her. That qualified rape had been committed was proven by her testimony; coupled with the fact that, as shown by her birth certificate,[17] she was only ten (10) years old when the incidents took place. Where the girl is below twelve (12) years of age, violence or intimidation is not required, because the only subject of inquiry is whether “carnal knowledge” took place.[18] The absence of a struggle or an outcry from the victim is immaterial to the rape of a child below 12 years of age. The law presumes that such a victim, on account of her tender age, does not and cannot have a will of her own.[19]

We now proceed to the twin qualifying circumstances of relationship and minority. The father-daughter relationship between the accused-appellant and the private complainant, as well as the minority of the latter, was duly alleged in the complaint-informations and proven beyond reasonable doubt by the presentation of the victim’s birth certificate.[20] Thus, the court a quo correctly convicted the accused-appellant of qualified rape. Its imposition of the death penalty[21] must thus be affirmed.[22]

Further, the RTC correctly awarded to the private complainant civil indemnity In the amount of P75,000 for each count of rape. However, its award of P30,000 as moral damages for each count should be increased to P50,000, consistent with prevailing jurisprudence.[23] In addition, exemplary damages in the amount of P25,000 should be awarded to her for each count in view of the proven father-daughter relationship of the parties.[24]

WHEREFORE, the Decision of the RTC of Iloilo City in Criminal Cases Nos. 48007-48010 is AFFIRMED with the MODIFICATION that, for each count of consummated rape, the appellant is ordered to pay the private complainant P50,000 as moral damages and P25,000 as exemplary damages, in addition to P75,000 as civil indemnity for each rape incident. Costs against the accused-appellant.

Upon finality of this Decision, let the records of these cases be forwarded to the Office of the President -- in accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659 -- for the possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales and Callejo, Sr., JJ., concur.

Puno, J., abroad on official business.

Azcuna, J., on leave.

[1] The Decision was penned by Judge Tito G. Gustilo.

[2] Rollo, pp. 9-12; records, pp. 3, 24, 26, 28.

[3] RTC order dated September 16, 1997; records, p. 35.

[4] Also spelled as “Carial.”

[5] The appellee’s brief, pp. 4-10; rollo, pp. 200-206.

[6] The appellant’s brief, pp. 9-10; rollo, pp. 165-166.

[7] Id., p. 11; id., p. 167.

[8] RTC decision, p. 16; rollo, p. 40.

[9] Decision, pp. 17-18; rollo, pp. 41-42; records, pp. 310-311.

[10] The appellant’s brief, p. 1; rollo, p. 157.

[11] People vs. Batailer, GR Nos. 134540-41, July 18, 2001; People vs. Baybado, 335 SCRA 712, (2000); People vs. Diasanta, 335 SCRA 218, (2000).

[12] People vs. Docena, 322 SCRA 820 (2000).

[13] People vs. Bernaldez, 322 SCRA 462 (2000).

[14] People vs. Llamo, 323 SCRA 791 (2000).

[15] TSN October 6, 1997, pp. 14-24.

[16] Id., pp. 26-34.

[17] Exhibit “E;” p. 5, Roll of Exhibits.

[18] Art. 266-A, par. 1 d, (previously Art. 335, par. 3) Revised Penal Code; People vs. Lerio, 324 SCRA 76 [2000]; People vs. Bato, 325 SCRA 671 [2000]; People vs. Melendres, 339 SCRA 465 [2000].

[19] People vs. Alcartado, 334 SCRA 701 [2000].

[20] Exhibit “E,” p. 5, Roll of Exhibits.

[21] Art. 266-B, Revised Penal Code, as amended by RA 8353.

[22] Three members of the Court maintain their position that RA 7659, insofar as it prescribes the death penalty, is unconstitutional; however, they submit to the ruling of the Court, by majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

[23] People vs. Alpe, GR No. 132133, November 29, 2001.

[24] People vs. Catubig, GR No. 137842, August 23, 2001.

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