

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOURIEL DIMACUHA Y CASAO, APPELLANT.

G.R. Nos. 152592-93. February 13, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Appellant Jouriel Dimacuha y Casao was charged with two (2) counts of rape in two (2) Informations^[1] which, except for the dates, are similarly worded, thus:

That on or about February 2000 at Brgy. Sampaga, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Sherie Ann Dimacuha y Reynaldo, a 7-year old girl, against the latter's will and consent.

CONTRARY TO LAW.

The second information charged appellant with having raped Sherie Ann in March 2000.

Appellant pleaded "not guilty" when arraigned. Trial on the merits then ensued.

Sherie Ann Dimacuha was 7 years old when the events material to this case transpired, having been born on August 21, 1992. She lived in the house beside that of appellant, who is her first degree cousin.

On two occasions, the first in February 2000 and the second in March 2000, appellant, then 20 years old, kissed Sherie Ann on her lips, breasts and genitalia. He then inserted his finger and his penis in her vagina which caused her to shout in pain. He also put his penis in her mouth. After performing these bestial acts, appellant warned Sherie Ann not to tell anybody what he did or else he will harm her. Despite the threat, Sherie Ann narrated the incident to her older cousin, Beth.

Sometime later, Sherie Ann complained of pains in her lower abdomen. She went to see their family doctor who, upon examining her, found that she had urinary tract infection.

On June 3, 2000, Beth told Sherie Ann's mother what happened to Sherie Ann. When confronted by her mother, Sherie Ann finally recounted her ordeal with appellant.

Sherie Ann's mother brought her to Dr. Angelita Acosta, a child psychiatrist, who found that she was suffering from post-traumatic stress disorder brought about by the rape incident as manifested in her nightmares, depression and difficulty in concentrating and functioning in school.

Sherie Ann was referred to the Batangas Regional Hospital, but the doctors found no lacerations in her vagina. She was brought to Camp Vicente Lim for another physical examination and Dr. Roy Camarillo found a shallow laceration in her vagina at the 6 o'clock position.

Thereafter, formal charges for rape on two counts were brought against appellant.

Appellant denied the accusation against him. He claimed that on the dates of the alleged commission of the rape, he was enrolled at the University of Batangas taking up Electronics Computer Technology, where he had classes from 7:00 in the morning to 3:00 in the afternoon. During the weekends, he stayed at his grandmother's house in Tulo, Batangas City, where he took care of the hogs. He invoked the findings of Drs. Rhommel Forronda and Haidee Dauigoy of the Batangas Regional Hospital that Sherie Ann's hymen was intact and that there were no lacerations found.

The trial court gave credence to the prosecution's evidence and rendered a decision,[2] the dispositive portion of which reads:

WHEREFORE, the accused, JOURIEL DIMACUHA y CASAO is found guilty beyond reasonable doubt of two (2) counts of Rape defined and penalized under the provisions of Articles 266-A and 266-B of the Revised Penal Code, and is hereby sentenced to suffer two (2) penalties of imprisonment of Reclusion Perpetua, with costs. He is also ordered to pay Sherie Ann Dimacuha the sum of P80,000.00 as actual damages and P100,000.00 as moral damages.

SO ORDERED.

In this appeal, appellant raises the following errors:

I

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF WITNESS SHERIE ANN DIMACUHA;

II

THE COURT A QUO ERRED IN FINDING THAT ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF RAPE DESPITE THE EXISTENCE OF A MEDICAL REPORT STATING THAT THE HYMEN OF THE ALLEGED VICTIM IS STILL INTACT;

III

THE COURT A QUO ERRED IN NOT FINDING THAT THERE ARE INCONSISTENCIES AND CONTRADICTIONS IN PROSECUTION'S THEORY AND EVIDENCE;

IV

THE COURT A QUO ERRED IN NOT FINDING ILL MOTIVE ON THE PART OF THE PROSECUTION WITNESSES AS THE BASIS OF THE WRONGFUL ALLEGATION OF RAPE AGAINST HEREIN ACCUSED-APPELLANT; AND

V

THE COURT A QUO ERRED IN AWARDING ACTUAL AND MORAL DAMAGES IN FAVOR OF SHERIE ANN DIMACUHA.[3]

The oft-repeated principle is that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[4] We find that none of these exceptions obtain in the case at bar.

In this regard, Sherie Ann's testimony was described by the trial court, thus:

The testimony of Sherie Ann is positive while that of the accused is negative. The positive prevails over the negative. Being a seven year old minor, Sherie Ann, a victim of sexual assault, is credible. She has not yet absorbed the wiles of the world. The testimony of Sherie Ann, considering her very young age, was straightforward and candid. It is sufficient to convict the accused.[5]

Jurisprudence is replete with findings that between the positive and categorical testimony of a rape victim, on one hand, and appellant's bare denial, on the other, the former generally prevails. Universally accepted is the rule that a denial is self-serving and cannot prevail over the declaration of a credible witness who testifies on affirmative matters.[6]

Moreover, no woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[7] In assessing the testimony of the child victim, the standards used for adults should not apply. Rather, her testimony should be viewed as a narration of a minor who barely understands sex and sexuality.[8]

Anent the findings invoked by appellant that there were no lacerated wounds, the same do not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even if the hymen of the victim was still intact, the possibility of rape cannot be ruled out. For rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia. It suffices that there is proof of the entrance of the male organ with the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. To repeat, the rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape.[9]

Appellant's argument that the findings of the different physicians who examined Sherie Ann did not jibe with the testimony of her mother is untenable. Dr. Angelita Acosta found that Sherie Ann was suffering from an acute type of post-traumatic stress disorder as manifested in her nightmares, depression and difficulty in concentration and functioning in school.[10] Luz corroborated this when she testified that after the rape incident in February and March 2000, Sherie Ann was sad and preferred to be alone. She also cried everytime she was left behind in appellant's house and would accuse them of not loving her anymore.[11]

Nevertheless, any inconsistencies refer to trivial matters that do not detract that appellant committed the crime of rape against Sherie Ann.

Likewise, we do not subscribe to appellant's contention that the prosecution's failure to present the testimony of Beth was fatal to its case.

Well-settled is the rule that conviction for rape may be based solely on the testimony of the victim, as long as the same is competent and credible. This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[12] If at all, Beth's testimony would only be corroborative in nature.

Appellant alleges that the Dimacuha family harbored ill feelings against him because he scolded Sherie Ann and because Sherie Ann's father, Ramon, was jealous of their grandfather's attention towards his family.

We are not persuaded.

A grudge resulting from a scolding is too specious a motive for one to file a serious charge of rape against

appellant. Likewise, the fact that Ramon had a grudge against appellant's father is too insignificant to cause Sherie Ann and her family to contemplate filing a rape charge against him.

Since there is no showing of any improper motive on the part of the victim to falsely testify against or implicate the appellant in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence.[13]

As against Sherie Ann's positive and credible testimony, appellant could only offer denial and alibi in his defense. Firmly established is the rule that denial and alibi are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. Such defense warrants the least credibility or none at all and cannot prevail over the positive identification of the accused by the prosecution witnesses. Denial is self-serving evidence that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matters.[14]

On the other hand, we have held that an accused who raises the defense of alibi must not only prove his presence at another place at the time of commission of the crime. He must also establish that it would be physically impossible for him to be at the scene of the crime during the incident.[15] Appellant failed in this regard. He alleged that he was in Tulo, which is still within Batangas City. Hence, he could have easily been at the scene of the crime at the time of its commission.

The trial court convicted appellant of statutory rape and sentenced him to suffer the penalty of reclusion perpetua. However, while Sherie Ann's age was alleged in the informations and admitted by the accused at the pre-trial conference, as embodied in the Pre-Trial Order signed by him and his counsel,[16] the prosecution failed to present further proof that Sherie Ann was 7 years old at the time of the commission of the crimes. In the recent case of *People v. Biong*,[17] we held that in cases where the age of the victim is material to the determination of the nature of the crime and the imposable penalty, the prosecution must present independent proof of the victim's age. The minority of the victim must be proved with equal certainty and clearness as the crime itself.

This notwithstanding, the prosecution was able to prove that the elements of force, threat and intimidation attended the crimes. Thus, Sherie Ann testified as follows:

X X X X X X X X

Q And after the sin of Jouriel Dimacuha was committed to you, what did your cousin Jouriel Dimacuha do to you or tell you?

WITNESS:

A He told me not to tell it to anybody (H'wag daw po akong magsusumbong, kung hindi daw po, lagot daw po ako).

COURT INTERPRETER:

Witness demonstrating by raising her arm and clenching her fist.

ATTY. MORALEJA:

Q Did you report the sin or wrongdoing of your cousin Jouriel Dimacuha to your mama or to your papa?

A To my ate, sir.

Q And what is the name of your ate?

A Beth, sir.

Q Why did you not tell the sin of your cousin Jouriel Dimacuha immediately to your mama or papa?

A He was threatening me, sir.[18]

Therefore, we find that appellant was guilt beyond reasonable doubt of simple rape, for which the penalty is reclusion perpetua.

ART. 266-A. Rape; When and How Committed. – Rape is committed.

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

xxx xxx xxx.

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

xxx xxx xxx.

The trial court awarded P80,000.00 as actual damages despite absence of competent proof as required by Article 2199 of the Civil Code. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence available to the injured party.[19] The award of P80,000.00 as actual damages therefore has no legal basis and must be deleted.

The trial court, however, failed to award civil indemnity in favor of Sherie Ann. Civil indemnity, which is in the nature of actual or compensatory damages,[20] is distinct and separate from actual damages as the former is mandatory upon the finding of rape. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of rape.[21] The amount of P50,000.00 for each count of rape, or a total of P100,000.00 as civil indemnity is therefore proper in the instant case.

The trial court's award of P50,000.00 for each of the two (2) counts of rape or a total of P100,000.00 as moral damages is proper and in line with current jurisprudence.[22]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Batangas City, Branch 1, in Criminal Cases Nos. 11108 and 11109, is MODIFIED. Appellant Jouriel Dimacuha y Casao is found guilty beyond reasonable doubt of two counts of simple rape and is sentenced to suffer the penalty of reclusion perpetua for each count. Further, appellant is ordered to pay Sherie Ann Dimacuha P50,000.00 for each of the two counts of rape, or a total of P100,000.00, as civil indemnity, and (2) P50,000.00 for each of the two counts of rape, or a total of P100,000.00, as moral damages. The amount of P80,000.00 awarded as actual damages is DELETED for lack of basis.

SO ORDERED.

Davide, Jr., C. J., (Chairman), Panganiban, Carpio and Azcuna, JJ., concur.

[1] Rollo, pp. 8-11; docketed as Criminal Cases Nos. 11108 and 11109 of the Regional Trial Court of Batangas City, Branch I.

[2] Penned by Judge Conrado C. Genilo, Jr.

[3] Rollo, pp. 70-71.

[4] *People v. Gutierrez*, G.R. Nos. 147656-58, 9 May 2003.

[5] Decision, Records, pp. 169-170.

[6] *People v. Operario*, G.R. No. 146590, 17 July 2003.

[7] *People v. Operario*, *supra*.

[8] *People v. Umayam*, G.R. No. 147033, 30 April 2003.

[9] *People v. Operario*, *supra*.

[10] TSN, December 4, 2000, pp. 18-19.

[11] TSN, November 24, 2000, p. 13.

[12] *People v. Operario*, *supra*.

[13] *People v. Umayam*, *supra*.

[14] *People v. Watiwat*, G.R. No. 139400, 3 September 2003.

[15] *People v. Watiwat*, *supra*.

[16] Records, pp. 20-21.

[17] G.R. Nos. 144445-47, 30 April 2003.

[18] TSN, March 8, 2001, pp. 18-19.

[19] *People v. Ruales*, G.R. No. 149810, 28 August 2003.

[20] *People v. Zabala*, G.R. Nos. 140034-35, 14 August 2003.

[21] *People v. Esperida*, G.R. Nos. 139637-38, 22 January 2003.

[22] *People v. Zabala*, *supra*.

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